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Opportunities to Extend Uncertain Tax Treatment

Response by the Chartered Institute of Taxation

1. Executive Summary

1.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

1.2. We support action to tackle the tax gap (which includes the legal interpretation tax gap) and measures that seek to create a fairer, more consistent and transparent tax system, and we recognise that the current Uncertain Tax Treatment (UTT) regime, supported by the Customer Compliance Manager (CCM) framework for large business, can assist with identifying and managing tax uncertainties. However, the CIOT has significant concerns about the proposed extension of the UTT regime and does not support several core elements of the proposals as currently put forward.

1.3. The CIOT does not support the introduction of the proposed third notification trigger. A test based on the existence of more than one 'credible' interpretation where HMRC's view is not known is inherently subjective, insufficiently defined and lacks practical certainty. It risks driving over-notification, increasing compliance costs for taxpayers and advisers, and creating new areas of dispute, without clear evidence that it would target the areas of concern. Over-notification is also likely to result in a drain on HMRC resources, with the effect of reducing HMRC service standards in other areas.

1.4. The CIOT supports greater certainty for taxpayers, but we are unclear how the proposed narrowing of the existing exemption from the regime, by requiring the taxpayer to obtain explicit confirmation from HMRC that the uncertainty has been brought to its attention, will work in practice. This risks rendering the exemption unworkable or duplicative of a notification, especially for taxpayers without access to a CCM or equivalent engagement route.

1.5. The consultation does not provide sufficiently robust evidence to clearly justify extending the regime to individuals, trusts or to additional taxes, nor does it clearly demonstrate that existing HMRC powers and regimes could not address the issues. There is a lack of clarity around how key aspects of an expanded regime

would operate in practice, including the transition of a regime designed for large corporates to individual and trust taxpayers, the application of the £5 million threshold and interaction across different taxes and periods, and access to effective taxpayer routes into HMRC for discussing and resolving uncertainty.

1.6. We specifically do not support the expansion to Inheritance Tax (IHT) and Construction Industry Scheme (CIS) obligations. Any expansion of the UTT regime to additional taxpayers and other taxes should be evidence led, proportionate, and supported by clear, workable rules, and a gradual transition following closer evaluation of the impact is likely to be more appropriate.

1.7. We suggest that rather than placing additional obligations on taxpayers to identify and disclose uncertainty there should be stronger commitments from HMRC to reduce legal interpretation uncertainty at source through clearer legislation, timely guidance, more effective processes for obtaining HMRC clearance and effective mechanisms for uncertainty resolution.

1.8. As outlined in this response, we have serious concerns about the inclusion at all of some elements of these proposals but even beyond these elements, we urge government and HMRC to take the time to get right the areas which are taken forward. We would be very concerned to see draft finance bill legislation this summer given the number of issues and need for further consultation on options and the lack of detail of the current proposals. Time is needed to identify how the proposals can be workable and effective, and fit coherently with other existing rules and proposals.

2. Introduction

2.1. We refer to the consultation document on Opportunities to Extend Uncertain Tax Treatment by Large Businesses regime, which was published on 12 March 2026. The consultation seeks views on various proposed extensions to the regime, which currently only applies to certain tax uncertainties of large businesses.

2.2. The government is proposing to extend the UTT regime in various ways, to require more legal interpretation uncertainties to be notified to HMRC, 'thereby improving transparency and ensuring consistent and fair treatment to other taxpayers and taxes'. The proposals are:

- To include individuals and trusts within scope.
- To bring further taxes into scope – Stamp Duty Land Tax (SDLT), NIC, CIS obligations, IHT and Capital Gains Tax ('CGT').
- To introduce a third trigger for notification – where there is more than one credible interpretation and HMRC's view is not known.
- To narrow the existing exemption from the regime.

2.3. Our stated objective for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

2.4. These proposals do not meet these objectives. They lack clarity and the evaluation of the existing regime is not sufficiently developed to support the proposed expansion. In our view, more time is needed to carry out thorough and effective consultation on the detail of the proposals so that any resulting legislation can properly achieve the intended policy aims and can be drafted with sufficient clarity to provide certainty.

2.5. HMRC is obliged through its Charter to help taxpayers with 'getting things right'. If the UTT framework is to place additional obligations on taxpayers to identify and disclose uncertainty, it should also place corresponding responsibility on government and HMRC (in line with the Charter) to reduce uncertainty at source and help taxpayers get their tax affairs right; for example through simpler legislation, clearer guidance, better and more widely available clearance/pre-filing mechanisms and timely clarification of HMRC's view. We would question how 'consistent and fair treatment' will arise without HMRC doing more to counteract uncertainty.

2.6. Firstly we set out below some general views covering matters arising from the June 2026 consultation and wider matters that should be considered. Then, each consultation question is addressed in the Appendix.

2.7. Where relevant, we have drawn on our responses to two previous consultations on the uncertain tax treatment regime submitted on 26 August 2020 (referred to throughout this paper as the 'CIOT August 2020 response') and 4 June 2021 (referred to throughout this paper as the 'CIOT June 2021 response').

Evidence and policy rationale

2.8. There is insufficient publicly available evidence to justify extending the UTT regime. The consultation refers in places to HMRC's legal interpretation tax gap data however it lacks granularity by tax or taxpayer type. Greater openness and transparency about the types of cases that make up the legal interpretation element of the tax gap is needed, as there is currently little understanding of this outside HMRC. Furthermore, there is no detail on how much of the tax gap relates to known areas of disagreement with HMRC as against areas of genuine uncertainty – effectively the balance between cases in which the taxpayer is going against HMRC's published position, rather than there being uncertainty where there could be an alternative view.

2.9. The consultation notes (paragraph 4.1.1) that the legal interpretation tax gap for wealthy individuals is approximately £1 billion but it is not clear whether this includes trusts or whether there are any statistics for trusts at all. The numbers appear to derive from HMRC estimates, although there is no explanation of how HMRC have reached their conclusions. There is no indication of how many wealthy individuals/trusts would be affected based on a threshold requirement of a tax advantage of £5 million.

2.10. Furthermore, CIS is not listed as an issue under the Large Business or Wealthy Individual / Mid-sized Business Compliance tax under consideration statistics, and SDLT does not appear in the top 20 issues. CIS, SDLT and NIC are not currently part of the Senior Accounting Officer regime which might suggest these areas are not considered to give rise to significant tax risk or uncertainty.

2.11. These factors call into question the evidence base for expanding the UTT regime along the lines currently proposed.

2.12. There are several existing regimes, frameworks and powers that could help HMRC to identify legal interpretation issues that appear to be of concern, including (but not limited to) HMRC's normal enquiry and discovery powers and Guidelines for Compliance 13 (GfC13). The Disclosure of Tax Avoidance regime (DOTAS) covers arrangements which, we expect, would also give HMRC information about legal interpretation issues (as well as avoidance). The proposals go beyond what is ordinarily required under the self-assessment system,

including the use of 'white space' disclosures to draw matters to HMRC's attention. Most taxpayers want early certainty and finality over their tax affairs for example through more effective statutory clearance facilities and pre-filing rulings (thus increasing their attractiveness to taxpayers). HMRC has acknowledged this through the introduction of the Advanced Tax Certainty Service for major projects and could consider expanding this to include more taxpayers and circumstances.

2.13. This suite of existing channels raises the question of whether the proposed extensions to UTT, based on limited evidence, are justified. Our preferred route would be for HMRC to focus their resource on the use of the existing channels to provide taxpayers with certainty, and not impose an additional compliance obligation, to ensure that HMRC and taxpayers work collaboratively to tackle uncertainty.

Better evaluation of existing regime

2.14. We note that there is no impact assessment included with the consultation at this stage, so it is not clear how much additional tax is expected to be raised through the proposals, nor what the administrative burdens are anticipated to be. This makes it difficult to assess whether the additional compliance burden we expect to arise if the regime is extended is proportionate to the anticipated additional yield. We hope that this indicates the government will consider whether and how to implement changes to the UTT regime based on consultation responses and that an impact assessment will be produced to allow further evaluation before final decisions are taken.

2.15. Whilst HMRC's July 2025 evaluation of the existing regime concludes that there are early indications that the policy is meeting its objectives of changing businesses' behaviour by increasing transparency and contributing to reducing the legal interpretation proportion of the tax gap, the evaluation also notes it is too early for full assessment because legal uncertainty cases take many years to resolve. In the CIOT June 2021 response (paragraph 4.21), we highlighted concerns around the lack of detail on what happens after notifications of uncertain tax positions are made to HMRC. This is not addressed in any detail in the evaluation, and we remain unclear on this.

2.16. The proposal to expand UTT to additional taxpayers and taxes also requires further consideration from a practical perspective, informed both by the practicalities and challenges of the current regime, but also the differences between large businesses and individuals/trusts which will impact the regime's transition to the latter. It was designed for large businesses subject to statutory accounting standards and related governance frameworks; extending it to individuals and trusts and the additional taxes (CIS, NIC, SDLT, CGT and IHT) risks importing concepts and expectations that do not translate well in practice.

2.17. Member feedback suggests there is currently limited practical experience of the notification process to inform the design of a new, expanded system, perhaps because it has only been in place for a relatively short time and perhaps because the current regime sits alongside the CCM framework, which allows businesses to discuss uncertainty such that notification is not ultimately necessary (indeed the 2025 evaluation notes that 54% of the large businesses surveyed felt they were already adequately engaged with CCMs to get certainty). More time should be taken to understand the potential practical impacts and the legislation and guidance that would be needed to make a widened regime operable, particularly in the absence of a widened CCM framework, before a decision is made to implement change.

Additional compliance burden

2.18. The proposed third trigger will impose significant additional compliance burdens on large businesses already in scope. Extending the regime to individuals and trusts would also create new compliance burdens for them, which could be greater than those faced by businesses, given the absence of the governance and risk management processes that large businesses typically have in place to identify and manage potential uncertainties at an early stage.

2.19. The introduction of additional taxes to the regime would also increase the compliance burden for all those that are or come within the regime, not least because of the extra complexity that would inevitably arise when taxpayers are required to consider a wider range of taxes and the resulting impact on notification requirements.

2.20. It does not appear that these burdens have been fully considered. Although HMRC's July 2025 evaluation suggests that the burden and cost of the current regime for large businesses have not been significant, that assessment of burden and cost is based on the existing rules, ie two triggers and an exemption that relies on HMRC having been told about the uncertainty without a requirement to hold confirmation that this is the case. The current regime has resulted in only around 30 notifications, which seems low and this does not provide any insight into the number of uncertainties resolved through the large business CCM structure such that a notification was not ultimately necessary. Nor does it provide any insight into the compliance burden where the taxpayer (and their adviser) goes through the process of considering if they need to notify and concludes they do not (which will often require considering the rules and performing computations). Even for the large business population, a subjective third trigger and narrower exemption, will mean more work and likely professional advice to establish notification requirements.

2.21. We are concerned about the cumulative impact of successive additions to the UK tax compliance framework (for example Senior Accounting Officer, Corporate Criminal Offence, Pillar 2, International Controlled Transactions Schedule, GfC13), which risks creating a fragmented and increasingly complex patchwork of obligations. This, in turn, may undermine the UK's competitiveness and international attractiveness, particularly where there is a perception that existing powers are not always used effectively, yet new obligations and processes continue to be introduced. The practical consequence is that compliant taxpayers are required to do ever more to remain compliant, while those who are deliberately non-compliant may simply choose to disregard additional requirements.

2.22. Introducing an additional trigger which is subjective in nature and in itself creates uncertainty around the requirement to notify (see below), alongside extending the scope of taxpayers and taxes covered, is likely to lead to a material increase in the number of notifications as advisers and taxpayers opt to err on the side of caution where the requirement to notify an uncertainty is unclear. Not only is the compliance burden increased for taxpayers, but we expect the extensions to the regime will require additional resourcing from HMRC. Will additional resourcing be provided to review and action notifications, including seeking to promptly resolve the uncertainties that are notified?

2.23. For large businesses, the proposals in the consultation document (notably the third trigger) would represent a shift from a regime with reasonably clearly defined triggers that identify uncertainties that large businesses can discuss and seek to resolve with their CCM, to one that introduces a significant new burden on them and their advisers to assess whether there are uncertainties that fall within a poorly defined, unclear and subjective new trigger. Moreover, an extension of the regime to individuals and trusts, and especially if the new trigger

is included, would be burdensome for individuals and trusts that do not have a clear route to resolve the uncertainty at an early stage, because they do not have a CCM. It follows that, at the very least, to ensure consistency between large businesses and other taxpayers there would need to be a clear and accessible channel for taxpayers without CCMs, temporary CCMs or equivalent provision to be able to discuss potential uncertainties within scope of the regime.

Extension to individuals and trusts

2.24. Extending the UTT regime to individuals and trusts is qualitatively different from applying it to large businesses, for the reasons already outlined above.

2.25. The 2025 NAO report details that around 15,000 wealthy individuals assessed as presenting the highest levels of risk and complexity have been allocated CCMs; however, we understand that it is less established than the CCM model for large business and member experience suggests that it is too early to assess the benefits of the wealthy CCM model and how well it is working. Member experience also suggests that it can be difficult to reach agreement with HMRC. Pre-filing discussions may not produce binding outcomes, enquiries can be slow to close, and matters may remain open for years or be revisited when HMRC teams change.

2.26. Outside of this group, individuals and trusts do not have access to such a CCM framework. Bearing in mind the stated policy objective of fairness and transparency across taxpayers, this raises issues of comparative fairness, as individuals and trusts may be subject to equivalent notification obligations without access to the same mechanisms for engagement, clarification or resolution and clearly don't have the same governance and risk assessment procedures to identify uncertainty. For these taxpayers, considering tax uncertainty and determining whether notification is required, and making any required notifications, is therefore likely to necessitate professional advice in a wider range of circumstances than is currently the case for large businesses, increasing the overall costs and burden of compliance.

2.27. Given the limited evidence currently available to support expanding the regime to individuals and trusts, as discussed above, we suggest more thought is given to improving the current routes to obtaining certainty (eg binding pre-filing discussions and tax clearances) before any decision to expand the UTT regime. Where necessary, the wealthy CCM model should be adapted to act as a better framework for timely resolution of tax uncertainties for wealthy taxpayers, with HMRC making better use of their existing powers to investigate issues of concern.

2.28. If, however, a decision is made to include individuals and trusts, it is essential that more time is taken to consider how the UTT regime could best be adapted for these taxpayers, rather than a rushed implementation that directly imports concepts from the large business regime without due thought as to how these would translate. We also suggest it makes sense to delay the proposed extension to individuals and trusts until the ongoing review of the personal tax offshore anti-avoidance legislation is complete.

2.29. Given our strong opposition to the proposed third trigger (see below), we suggest that any expansion to individuals and trusts should be on the basis that only the second current trigger of the regime would apply (on the basis the first trigger relating to accounts provisions would not be applicable to individuals and trusts).

Extension to other taxes

2.30. There appears to be limited data or evidence to justify the expansion to include SDLT, CIS, NIC and CGT. Our question responses below highlight the various practical difficulties that may arise for these taxes, with the overall result being added complexity.

2.31. We do not support the expansion of the UTT regime to IHT. There are significant timing difficulties, as many years may pass between the tax planning that could be said to give rise to an uncertainty and the point at which the tax crystallises, resulting in a quantification of a tax advantage and filing position which would be linked to notification of the uncertainty. In our view, this would make the regime unworkable and inappropriate in the IHT context.

2.32. Including CIS within UTT appears to be particularly poorly targeted because the uncertainty often depends on the nature of the work being done, rather than on how the law is interpreted.

Subjectivity of third trigger and HMRC's obligation to resolve uncertainty

2.33. We do not support the third trigger ('there is more than one credible legal interpretation and HMRC's view is not known'). It is too subjective to operate effectively and will create uncertainty around when there is a need to notify. We have outlined our concerns in detail in response to questions 21 to 24 in the Appendix.

2.34. To summarise, the concept of a 'credible' interpretation is undefined, appears inconsistent with HMRC's existing GfC13 framework, and could set too low a threshold, requiring taxpayers to consider and potentially disclose a wide range of alternative interpretations even where they ultimately adopt a well-supported position. The test also depends on whether HMRC's view is 'known' or 'not known', which is often difficult to determine in practice, particularly where guidance is incomplete, out of date, unpublished (either because it relates to new policy or has simply never been published) or is inconsistent with HMRC's known operational approach, or HMRC adopts a position that is different from a previously generally understood position. The proposals also raise concerns around the interaction between notification requirements and legal professional privilege and the interaction with HMRC's current approach to rulings and non-statutory clearances.

2.35. The government's response to previous UTT consultations (ie not pursuing other proposed triggers) suggests there is an acceptance that triggers should not be subjective and it should be possible to ascertain objectively whether a trigger is satisfied. However, the proposed new test is inherently subjective. The consultation document recognises this subjectivity, but we do not agree that an 'appropriate balance' has been reached 'between clarity and flexibility'. We do not think that tax legislation should introduce this trade off, and in any event, do not agree that the proposed third trigger provides clarity. Moreover, we do not consider 'flexibility' to be an appropriate concept for imposing compliance obligations on taxpayers. The absence of a clear, objective standard makes it difficult for taxpayers to know when the trigger is satisfied, and this risks inconsistent and burdensome reporting obligations.

2.36. The consultation notes at paragraph 4.3 that the proposed trigger is intended to address situations where 'HMRC guidance may not exist for new and novel processes and products'. This raises the question of whether it is reasonable to require taxpayers to identify and disclose those uncertainties themselves, rather than the focus being on HMRC providing timely guidance in new areas. The proposed new trigger could, perversely, discourage timely guidance from HMRC. To reiterate points made in CIOT's previous responses, it is within

HMRC's power (but not taxpayers') to reduce uncertainty by publishing clearer, more comprehensive and more timely guidance.

2.37. Any strategy for reducing legal interpretation issues which includes taxpayer obligations to notify areas of tax treatment uncertainty will not be effective in isolation –arguably more important is HMRC taking steps to actively resolve uncertainty, whether that be through simplifying existing legislation, maintaining clear, accurate and up to date guidance or responding promptly and with clarity to taxpayer clearance or ruling requests. Legal interpretation issues would be less prevalent if the tax legislation was simpler and easier to understand/apply. Making meaningful advances to revise and simplify the most complex aspects of tax legislation could also reduce the legal interpretation tax gap.

2.38. We suggest HMRC should be required to publish their view on the relevant tax position within a defined period after receiving a UTT notification, where notifications have been appropriately made. This would help make HMRC's position clearer, so that only taxpayers taking a different view — where an existing trigger is met — would need to notify under UTT. In turn, this could reduce the administrative burden for both taxpayers and HMRC, improve the likelihood of returns being filed correctly first time, and potentially help reduce the legal interpretation tax gap.

2.39. The potential unfairness of the proposed UTT obligation on taxpayers, without any corresponding obligation on HMRC either to take steps to resolve uncertainties in the tax system or to promptly act on uncertainty notifications it receives, should not be overlooked. This does not align with HMRC's Charter, nor does it effectively support resolving the policy issue of legal interpretation.

Administration

2.40. There is complexity in determining the best notification timeframes where different taxes have different reporting periods. On balance, we believe any notification process should align with existing return filing points for each tax within the regime where possible, rather than introduce a new single notification date for the UTT regime. Detailed guidance would be required on the applicable reporting periods for each tax, and how the £5m threshold should be applied (including how aggregation operates and how different taxes interact).

2.41. The consultation document does not consider penalties, and it is unclear how these would be applied in cases where a tax treatment is subsequently challenged successfully by HMRC. It remains unclear how HMRC would determine, with the benefit of hindsight, that a notification ought to have been made at an earlier stage, or whether HMRC would in practice be able to investigate and take action in relation to alleged non-reporting. This concern would be amplified by a more subjective new trigger. We reiterate the comments made in the CIOT August 2020 response (paragraph 2.4) that the imposition of penalties is inappropriate where notification obligations depend on a subjective test—such as the proposed third trigger—and where any failure arises from genuine uncertainty or a reasonable judgement call on the requirement to notify, rather than careless or deliberate behaviour.

Proposed narrowing of the exemption

2.42. We support clarity and certainty for taxpayers and recognise that confirmation from HMRC that it is already aware of an uncertainty would assure taxpayers that no further notification is needed. However, we are concerned that narrowing the exemption in this way could make it unworkable in many cases. Requiring explicit HMRC acknowledgement could create a separate compliance step that largely duplicates the notification requirement itself. For some taxes, given the timing of returns in relation to transactions (for

example, SDLT), this could make the exemption unworkable and that the result would effectively be that a notification is always required. It would operate particularly harshly for taxpayers without a CCM or equivalent point of contact to discuss a notification requirement, unless there is a specific route to engage with HMRC. It is unclear how the exemption would interact with other forms of disclosure (including correspondence, white space disclosures and statutory/non statutory clearances).

2.43. We suggest that the current exemption works well for large businesses, and it is therefore important that any changes do not undermine the existing CCM framework.

3. Acknowledgement of submission

3.1. We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

5 June 2026

Appendix: consultation questions

4. Q1 to Q5: About CIOT

4.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

4.2. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

4.3. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

4.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

Extension to individuals

5. Question 6: Do you agree that we should focus solely on the 'tax advantage' amount to identify legal interpretation uncertainties of interest?

5.1. Using the quantum of the tax advantage as the sole measure for deciding whether the notification regime applies for individuals would create inconsistency with how the regime applies for companies. It is a positive feature of the current regime that smaller companies below the large business thresholds do not need to consider the rules at all (even if they execute complex transactions giving rise to uncertainty and involving a greater than £5 million tax advantage). This helps to ensure that administrative burdens on smaller businesses are kept proportionate. No comparable exclusion is available for individuals, who may generally have lower-value or less complex affairs but could be brought into scope by a one-off event (for example a business sale).

5.2. The £5 million tax advantage by itself is also arguably too low a threshold to only bring ultra-high net worth individuals into scope, with the potential to catch even reasonably sized unincorporated family businesses or those with property portfolios, particularly if the threshold remains stationary for years or even decades.

5.3. However, a sole tax advantage test is likely to be the only practical option. Alternative measures involving, for example, calculating balance sheet or turnover equivalents or relying on HMRC's estimate of wealth would add further complexity and a higher compliance burden. If a tax advantage amount is the sole marker for bringing individuals in scope, exactly how that is measured needs to be consulted on and the guidance reviewed well ahead of the legislation taking effect.

5.4. As already outlined above, we are concerned that the taxpayer impact, effectiveness and timing of the extension, focused on tax advantage, have not been sufficiently considered. One point that cannot be overstated in the context of wealthy individuals, if the overarching policy aim is to raise funds in a difficult economic climate, is their desire for certainty, stability and finality in relation to their tax affairs. From our members' conversations with clients, we know that there can be a reluctance for taxpayers to take a particular course of action when HMRC's view is unknown or the guidance is ambiguous and overly simplistic. As an

example, we are seeing this with the complexities of the temporary repatriation facility as it applies to trusts, potentially leading to a lower and/or slower take-up of the opportunity than forecast. Our concern is that a notification of UTT, which then takes years to resolve, or is simply not acted on at all, does not effectively provide certainty. This can impact taxpayer behaviour in unexpected and often undesirable ways and could make the UK a less attractive and less competitive destination for international wealth.

5.5. A more proportionate approach would be to allow the wealthy CCM framework to develop and further assess its effectiveness, rather than imposing an additional compliance obligation more widely. Providing individuals with more clearance opportunities and making pre-filing conversations binding (if all relevant facts are disclosed) would better achieve the consultation's goals of reducing legal interpretation tax gap, allowing uncertainties to be resolved at a much earlier stage. Individuals without access to CCMs and with no recourse to non-statutory clearances (which are increasingly rejected by HMRC for insufficient legal or technical uncertainty) need to be supported through a change of approach that encourages HMRC to take a stance on difficult questions and publish views where they have been given to one stakeholder but not others.

5.6. In terms of timing, we note that the government have committed to a co-creation approach to reforming personal tax offshore anti-avoidance legislation[1]. This was introduced in recognition of the existing legislation's significant complexity, and the consequent uncertainty for wealthy and internationally mobile individuals. Given the reform work seeks to remove uncertainties that would otherwise result in notifications under the proposals, we suggest it makes more sense to delay the proposed extension to individuals and trusts until this work is complete.

6. Question 7: Do you agree with how we propose to determine the tax advantage for individuals?

6.1. Quantifying a 'tax advantage' is likely to necessitate additional professional advice for individuals, and further clarity is needed on how the tax advantage should be calculated. For large businesses, this is clearly linked to accounting periods or return periods, generally with no aggregation across taxes. It is not clear from the consultation how this will operate for individuals—for example whether the £5m threshold is applied cumulatively across different taxes and tax years, whether it is assessed on a tax-by-tax basis even where multiple liabilities arise from a single transaction, whether related individuals' tax positions should be amalgamated.

6.2. The consultation notes that 'Wealthy individuals often have complicated tax affairs covering multiple taxes. They often have a wide spread of tax liabilities on both their income (in the form of Income Tax and National Insurance) and assets (in the form of Capital Gains Tax, Inheritance Tax and Stamp Duties).' This could be read as implying that HMRC expects aggregation across taxes when applying the £5m threshold, which would be inconsistent with the approach taken in the large business regime and add complexity.

6.3. The legislation should clearly set the parameters through which tax advantage should be calculated for individuals (and trusts), and detailed practical guidance will need to support this.

6.4. We agree with a partner only needing to notify only their own interpretations and not those of the partnership.

[1] Personal Tax: Offshore Anti-Avoidance external engagement - GOV.UK

Extension to trusts

7. Question 8: Do you agree with including all trusts within scope?

7.1. As noted above, the legal interpretation tax gap attributable to trusts is unclear from HMRC's published data. We would urge more clarity over whether the additional complexity and compliance burden associated with extended the regime to trusts is justified based on evidence. However, we do accept that, if individuals are brought within scope it would make sense to also include trusts, given that some wealthy individuals may use trusts as part of their tax planning.

7.2. It could be possible to include a balance sheet-based threshold, similar to the £2 billion asset threshold that applies for large businesses. We would expect most trusts with assets above £2 billion (the comparable asset test for large businesses) to prepare financial statements that evidence this. However, large businesses work within an established financial reporting framework, and their accounts are audited such that balance sheets are prepared on a consistent basis. The same can not necessarily be said to be true for trusts, such that, all things considered, a balance sheet threshold is not likely to be appropriate.

8. Question 9: Can you foresee any practical issues with including trusts within scope of UTT?

8.1. The matching rules for offshore trusts create (sometimes significant) timing differences between transactions at a trust level (or lower level where the trust holds companies) and a UK tax event (for example when distributions are made to a beneficiary). There could well be issues in not only identifying historic instances of a contrary legal interpretation taken by the trustees or their advisers but in calculating the potential tax advantage. For example, offshore trustees making annual distributions to a UK resident beneficiary may take the view that a particular transaction generates a capital gain rather than an income gain for tax purposes. There may be no tax charge arising for the beneficiary until say 10 years later, when calculating the possible tax advantage involves checking a decade of alternative income/gain pools against the personal tax position.

8.2. Additionally, a beneficiary may not be aware of underlying transactions. If all they receive is a statement of their trust income for the year, they may have little cause to investigate beyond a cursory explanation of the source of any significant amounts. Further, they may have limited powers to obtain detailed information, especially from offshore trusts or similar entities, even if they did take on responsibility for establishing a possible tax advantage.

8.3. We set out our thoughts on the expansion of UTT to IHT in question 19. However, it is important to emphasise that trust tax is inextricably tied into IHT, either through the relevant property regime or IHT on death in certain cases (eg qualifying interest in possession trusts coming to an end). If, as we argue, IHT should be excluded from the scope of UTT, it may be practically difficult to decide whether a particular transaction or series of transactions could create a tax advantage. For example, would adopting a position within a trust tax return that a low level of income tax or CGT arises rather than a higher IHT charge, or vice versa, be within scope?

Extension to NIC

9. Question 10: Can you foresee any practical issues with including NICs within UTT?

9.1. While NICs function as a tax they are not, strictly, a tax.

9.2. Although it may be considered that expanding into NIC would not be an issue as Pay As You Earn (PAYE) is already in scope, and NICs must be considered in determining whether the £5 million threshold has been reached, we think imposing an additional administrative responsibility on employers would be problematic. It also appears ill-timed, for example, there remains considerable uncertainty regarding the integration of NICs with payrolling benefits-in-kind — an area where complete guidance from HMRC is still awaited.

9.3. We are not convinced that there are legal interpretation uncertainties that solely involve NICs that would justify bringing NICs within scope of the UTT regime. Most disagreements concerning the tax treatment of earnings involve both PAYE and NICs. For example, a major area of uncertainty is the deemed employment status of workers operating through their own personal service company (PSC). This concerns who is liable to account for PAYE (the end client or an intermediary, where the off-payroll working rules apply, or the PSC, where the IR35 rules apply). A similar example would be the salaried members rules. In these cases the main potential tax loss is employer (secondary) Class 1 NICs.

9.4. However, these uncertainties are already captured by the current regime, because PAYE is included within the current regime. We understand from the large business technical note for 2024-25 that there may have been a very small number of PAYE notifications, but there is no publicly available information on how many and the value of these. Does HMRC have any evidence to suggest there are NICs-only legal interpretation uncertainties that exceed the £5 million threshold? If so, can HMRC publish details to enable a better evaluation of the existing regime to warrant the expansion proposed? We recommend this should form part of the evaluation before decisions are made to expand the regime, for example do notifications indicate a sufficient problem with the uncertain tax treatment of NICs to warrant expansion of the regime to include NICs?

9.5. It would also be rare for any uncertainty over the legal interpretation of NICs to exceed the £5 million threshold. For example, any delay in agreeing or disagreement between tax authorities over whether an exemption/certificate can be issued under an international social security agreement is unlikely to result in the £5 million threshold being exceeded. Even HMRC's recently revised view of the NICs treatment to trailing rewards is unlikely to result in the reporting threshold being exceeded should employers disagree with HMRC's new guidance. Ultimately, the main differences between income tax and NICs are the recovery procedures and the number of past years one has to look back. However, with a regime based on whether the threshold is breached by reference to the financial year (assuming this remains the case), the recovery mechanism differences are unlikely to be in point.

9.6. Greater justification for bringing NICs within the UTT regime is needed, beyond the existing aggregation with PAYE. However, if a decision is made to do so we expect several practical issues would need to be addressed, especially if gaps and delays in guidance continue.

10. Question 11: Do you agree with proposed due date to notify a NICs legal interpretation uncertainty, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

10.1. The CIOT supports a system of UTT being notified by reference to taxes and returns. For NICs, this will be complicated. Unlike PAYE income tax, which is calculated on a tax year basis, NICs are calculated per pay period (except for directors) and it is very unlikely the £5 million threshold would be breached in any one pay period on NIC uncertainties alone. Hence, reporting should not be tied to each Full Payment Submission (FPS) submitted by employers. Integration with the existing PAYE UTT reporting obligation would therefore seem most appropriate.

10.2. While the current regime is linked to the financial year, and the consultation also proposes to link NICs reporting to the financial year, we think it should be by reference to the tax year, because that is also the timeframe over which a payroll is run (and that the deadline should take account of post-tax-year end filings such as P11Ds and PAYE Settlement Agreements (PSAs)).

10.3. Any uncertainty regarding the tax treatment is likely to involve both PAYE income and NICs, so it is unlikely an employer would know whether the threshold would be breached until the end of the year. Since the tax treatment for PAYE and NICs purposes may have other tax affects (eg allowable deductions for corporation tax purposes etc or obligations to make CIS deductions), consideration should be given to aligning reporting with UTT reporting requirements for the relevant accounting period in which the tax year ends.

Extension to CIS

11. Question 12: Do you agree with the due date for notification involving CIS deductions to be the last CIS return due in an accounting period, or do you prefer a single due date for all UTT notifications (refer to section 4.4)?

11.1. If CIS were to be included within the UTT regime (and we do not think it should be – see answer to Question 13) the notification date should be tied to the CIS monthly returns and the wider income or corporation tax returns for the relevant accounting period, rather than introduce an overall UTT notification filing date.

12. Question 13: Can you foresee any practical issues with including CIS within UTT?

12.1. It should be recognised that CIS is not a tax but a method of payment on account (withholding) of income tax and/or corporation tax where a subcontractor within scope of CIS does not hold gross payment status. Therefore, where there is uncertainty as to whether the CIS applies, the person who would be penalised for failure to apply the CIS (the contractor) is not the person who actually suffers the tax liability. Hence, where there is uncertainty, there is a strong incentive for the contractor to make a voluntary disclosure to HMRC (in order to protect their own position) without the need for mandatory disclosure under UTT.

12.2. While there are no published statistics on the size of individual contracts or transactions, very large CIS payments do occur but would normally relate to major infrastructure projects, large public sector works, and large house projects. These will concern Tier-1 (‘large business’ end client to ‘large business’ main contractor) and Tier-2 (‘large business’ main contractor to ‘large or medium-sized business’ direct sub-contractor) contractor payments. These businesses usually hold Gross Payment Status, so no CIS deductions would be due anyway. Additionally, these payments also represent a very small proportion of all CIS transactions, which are dominated by much smaller, labour-only and SME payments.

12.3. The main compliance issue with CIS is not legal interpretation but contractors (and sub-contractors) not being aware that they are within scope of CIS. However, these businesses are very unlikely to be involved in contracts where the tax at issue is anywhere near the £5 million threshold.

12.4. The consultation document states there are legal interpretation uncertainties around whether a contractor is within scope of CIS. In our view while there can be uncertainties as to whether a business is a contractor for CIS purposes (that is, whether they meet the turnover test for deemed contractors or are undertaking constructions operations for the ‘normal’ contractor test) this is not the main compliance issue. The main issue affecting compliance is whether a particular transaction or contract includes construction operations that are within scope of CIS.

12.5. In our view, it is the lack of published guidance in many areas to help businesses reach decisions as to whether particular work is within or outside the scope of CIS (and the knock-on effect on application to the VAT Domestic Reverse Charge) that gives rise to uncertainty rather than interpretation of the legislation. A better approach would be to update the legislation and associated guidance so that CIS definitions do not override commercial intuition and are more closely aligned with modern construction methods.

12.6. A particular example of uncertainty with the scope of the legislation is the recent introduction of Regulation 20A (of the CIS Regulations) where there is continued discussion as to the circumstances when this exemption applies despite considerable consultation (and agreement) prior to the legislation being introduced.

12.7. Overall, including CIS within UTT does not appear to be a well targeted measure, and is likely to give rise to practical issues where uncertainty regarding whether transactions fall within scope of the CIS legislation that turn on what type of work is being undertaken should be viewed as disputes over the legal interpretation of the legislation. Our preferred approach is that CIS is left out of the expansion to the UTT.

Extension to SDLT

13. Question 14: Do you agree with the due date for notification involving SDLT to be when a return covering that transaction would otherwise be due, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

13.1. HMRC has already taken effective action to reduce the tax gap in relation to SDLT by tackling the use of aggressive (and ineffective) tax schemes. The estimated tax gap attributed to SDLT (£275m) is relatively small compared to that attributed to the other taxes being considered – it would be helpful to have further information on the number of transactions within that estimate involved SDLT 'savings' in excess of £5m. It is also worth noting that HMRC already has information available, from HM Land Registry records of transactions that allow HMRC to specifically target transactions involving high value land where insufficient SDLT may have been paid, rather than using the blunt instrument of UTT notifications.

13.2. Notwithstanding this, we have noted elsewhere in our response that we generally favour notification dates being linked to returns rather than a single due date for all UTT notifications. However, the notification point for SDLT being on or before the SDLT return due date is a concern, given that the return is due only 14 days after the effective date. While we would expect any genuine uncertainties to have been identified and considered well before the transaction completes, this remains a relatively short window and may be challenging —particularly where uncertainty arises late in the process or from information that only becomes available close to completion.

13.3. There is also a requirement for a separate notional SDLT return where the anti-avoidance provision in FA 2003 sections 75A-C apply, the effective date of which is the last date of completion for the scheme transactions or, if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed. Determining the timing of notification of the notional transaction gives rise to practical difficulties such as at what point scheme transactions are completed or substantially performed. Would the UTT notification apply to scheme transactions and/or to the notional transaction?

14. Question 15: Can you foresee any practical issues with including SDLT within scope of UTT?

14.1. The anti-avoidance provisions in sections 75A-C are complex and prescriptive (there is no motive test) with potential and uncertain application to multiple different fact patterns. HMRC's guidance confirms that it is possible to make a non- statutory clearance on some aspects of s75A. As we note in our response to question 25, the interaction of non-statutory clearances and UTT notification exemption requires clarification.

14.2. Establishing liability to SDLT involves multi factorial tests in key areas such as what constitutes 'suitable for use' as a dwelling (and therefore whether non-residential/ residential rates apply) and whether there is a commercial element to a residential acquisition to make it mixed (non-residential) use. As we note in our response to question 23, if a third trigger were to be included along the lines proposed, there will be a need to distinguish clearly between uncertainty about the legal interpretation of the relevant statutory provisions and uncertainty about how those provisions apply to the particular facts of a case – will the trigger exclude the latter?

14.3. Finance Act 2003 Schedule 4 Paragraph 2 states that the chargeable consideration for a land transaction shall be taken to include any VAT chargeable in respect of the transaction (other than VAT chargeable by virtue of an option to tax made after the effective date of the transaction). Will uncertainty in relation to the VAT element of the consideration be taken into account for the £5m threshold for SDLT?

14.4. In addition, many SDLT returns are filed by conveyancers on behalf of taxpayers; HMRC would need to take this into account when designing the process, publishing guidance and communications, and raising awareness of any changes affecting SDLT.

Extension to CGT

15. Question 16: Do you agree with the due date for notification involving CGT to be when a return covering that transaction would otherwise be due, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

15.1. We agree that if CGT is brought within scope of UTT, the notification should be tied to the annual personal tax return covering that transaction. We suggest that the separate return covering CGT on property should be specifically excluded from the notification requirements. Our comments above about the practical difficulties of such a short deadline for SDLT apply equally here. Additionally, the property return reflects only a 'best guess' of the tax position, which cannot be finalised until the tax year has ended, and is therefore inappropriate as a means to provide details on all linked transactions and the amounts involved.

16. Question 17: Can you foresee any practical issues with including CGT within scope of UTT?

16.1. We do not foresee any specific practical issues with including CGT within scope of UTT; the issues for CGT will come from its interaction with multiple other taxes. Many transactions can result in either income or capital tax treatment depending on the facts (for example, certain distributions from companies or trusts), and capital transactions often give rise to CGT at the same time as, eg SDLT, VAT or IHT. It is therefore important that, as we highlight in response to question 7, any new legislation clarifies exactly how any tax advantage should be calculated in terms of amalgamation across taxes, connected parties and multiple transactions.

16.2. Guidance would need to make clear whether a tax advantage should be calculated based on the actual tax position or the hypothetical tax position excluding capital losses. In other words, if the amount of capital gain changes based on a legal interpretation but would be covered either way by capital losses in the current tax year, should account be taken of the advantage of the additional losses carried forward?

Extension to IHT

17. Question 18: Do you agree with the due date for notification involving IHT to be when the IHT return is due, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

17.1. We do not agree that IHT should be within scope of UTT at all. Unlike annual corporation tax or self-assessment tax returns, IHT returns may only be due where there is determined to have been an IHT event (eg a chargeable lifetime transfer, a non-exempt/excluded death estate, etc.) As set out in more detail below, estate planning often takes places years if not decades before a charge arises, and so in many cases the details cannot realistically be notified.

18. Question 19: Do you foresee any practical issues with including Inheritance Tax within the scope of UTT, particularly regarding the timing difference between when a legal interpretation is made and when notification would be required? If so, how do you think these issues could be overcome?

18.1. We envisage there would be significant practical difficulties in including IHT within the scope of UTT. Any IHT is unlikely to crystallise until many years after the tax planning was implemented, at a point at which you may be unable to call on the knowledge of the taxpayer (if deceased) and there may be limited details of the tax advice given and interpretation uncertainties.

19. Question 20: Are there specific scenarios where applying UTT would be inappropriate, duplicative or unnecessary? If so, how could an approach be designed to avoid unnecessary notifications while still capturing relevant legal uncertainties?

19.1. This question has been included in the IHT section of the consultation document, but it is unclear if it is intended as a wider question. The comments below cover IHT matters.

19.2. There seems little justification for including IHT given the inherent difficulties mentioned in the consultation paper and bearing in mind that the total legal interpretation tax gap relating to IHT is only estimated to be £300m, which is approximately 0.66% of the total tax gap.

19.3. As HMRC point out, there is a disconnect between the time at which any IHT planning takes place and the time when you are likely to know whether a liability arises and, if so, how any inheritance tax return will then be completed. As a result, those responsible for completing the IHT return may have no knowledge of the views taken in the past which may be relevant. It does not seem workable to apply the UTT rules at the point any planning takes place given that much can change between that date and the date when a charge might otherwise arise (most likely to be on the death of an individual). It may be that no IHT would be payable in any event or that the rules are different at the time of death.

19.4. In case the question is being asked more widely, for the avoidance of doubt, we consider that various aspects of the expanded regime would be inappropriate, duplicative or unnecessary and would refer to the points raised in the introduction as well as to each of the consultation questions. We have highlighted overlap and

inconsistency with GfC13 and whether HMRC could make better use of the existing CCM model, clearances, white space disclosures and its powers to resolve uncertainties, rather than seeking to impose an additional compliance obligation. Some areas of tax now require additional information to be submitted before or at the time of submitting the return (for example Research and Development tax reliefs) so it is unclear that there is 'value' to HMRC in also including them in any expanded UTT regime.

Additional notification requirements

20. Question 21: Do you agree that requiring taxpayers to tell us about legal interpretations where there is more than one credible interpretation and HMRC's view is not known, will capture the uncertain tax treatments that it is intended to identify?

20.1. We are opposed to the introduction of the proposed 'third trigger' to introduce an additional notification requirement into the regime.

20.2. We recognise that, as the consultation notes at paragraph 4.3, there are legal interpretation uncertainties not currently covered by the existing two triggers and the intention is to capture these. These may include cases involving new or novel products or processes that are not addressed in HMRC guidance and where no provision is recognised in the accounts. However, this gap should not be addressed by introducing a new trigger that is inherently unclear as to what types of uncertainty this trigger is in fact intended to capture, or would capture in practice, given its subjective nature and the significant practical difficulties it raises. The proposed trigger goes beyond the gap HMRC has identified, by capturing not only new products or processes but also existing processes or products where gaps in HMRC guidance or practice mean that HMRC's position is arguably not known, thereby imposing a new compliance burden on taxpayers in relation to those existing uncertainties.

Credible interpretation

We expect that 'credible' would be difficult to define adequately in legislation, with the result that there would be heavy reliance on guidance. However, broad legislative drafting on the basis that guidance will later narrow its scope is always far from ideal.

20.3. On its own 'credible interpretation' appears capable of encompassing a wide range of views, meaning a potentially wide range of notification circumstances. Another consideration is how the concept of 'credible' would be interpreted alongside the Professional Conduct in Relation to Taxation (PCRT) requirement to take a credible view of the law. Any new test should be consistent with, and align closely to, PCRT.

Interaction with GfC13

20.4. It is unhelpful for HMRC to set a different bar ('credible') from that used in GfC13 ('most likely correct'). While the consultation states that the proposals build on the recent publication of GfC13, the change in terminology risks creating inconsistency in approach and confusing taxpayers. HMRC also frame the overlap with GfC13 as helpful, however arguably GfC13 makes clear HMRC's view of the expectations for taxpayers, and introducing another competing set of provisions with additional reporting requirements adds complexity and more work to consider each set of definitions.

20.5. GfC13 requires taxpayers to adopt the tax position they consider would be most likely to succeed (or be found correct) if tested before the Tribunals or Courts—for example, where prospects are assessed as 60:40, the 60% position should be taken in the return. GfC13 also addresses cases of 'finely balanced arguments', namely where there is more than one reasonable interpretation and no clear position is most likely to be found correct

and makes clear that merely believing a position is arguable is not enough. Against that background, it is unclear what HMRC intends by 'credible legal interpretations': does HMRC mean a position above some minimum likelihood of success (and, if so, what threshold), or does it in substance mean 'finely balanced arguments' as used in GfC13? We suggest that that the language for any new trigger should align with, and not contradict, GfC13.

20.6. The consultation document suggests that HMRC wants to encapsulate 'speculative interpretations that have a low chance of success and do not provide the outcome intended when the legislation was enacted'. We would expect that such an interpretation is unlikely to be a credible basis (under PCRT regulations) and is likely to be an improbable tax position (which should not be submitted per GfC13). Also, the HMRC Standard for Agents (4.2) says that HMRC expects agents to 'avoid including figures in returns or claims which are unsubstantiated or speculative'. Given that Finance Act 2026 will (once the statutory instrument is issued) empower HMRC to suspend a firm's tax adviser registration if it doesn't adhere to the Standard, HMRC should receive fewer speculative interpretations.

Nature of tax advice

20.7. In practice, many issues in respect of which tax advice is sought or received will involve more than one credible interpretation. Indeed, the existence of such interpretative uncertainty is a key reason for the demand for specialist tax advice. In providing advice, advisers will (for completeness) typically consider and comment on all alternative interpretations. It will often be the case that more than one interpretation is available, even where the adviser ultimately reaches a strongly preferred conclusion based on the application of technical judgement. It is difficult to see that the intention of the regime is to create a general obligation to disclose all instances of legal or technical reasoning of this kind. Further, what is credible to one adviser may not be credible to another, due to the inherent subjectivity of the term, demonstrating why this term is not a sensible hallmark.

20.8. Good tax governance requires that taxpayers and their advisers identify and evaluate alternative interpretations of the law as part of a robust decision-making process. A regime which effectively penalises or requires disclosure of that process risks discouraging thorough analysis, which would be an undesirable outcome from a policy perspective.

20.9. Will taxpayers need to identify all possible interpretations, determine which of them might be regarded as credible, and then consider whether they should be disclosed to HMRC? This risks creating a significant additional compliance burden and increasing the need for professional advice.

20.10. Furthermore, would HMRC expect to be notified of circumstances where there are two credible interpretations but both result in the same overall tax treatment, so overall no £5m tax advantage arises? (For example a new VAT exempt service for which two different exemptions could apply, there is certainty that the overall VAT treatment is correct it is just a question of which exemption applies.)This would be extremely burdensome for no benefit to any party, and we would expect that this would not be in scope. But it is an example of the detailed consideration that would be required to implement a third trigger along these lines (in this instance Finance Act 2022 Schedule 17 paragraph 15 which defines 'expected amount').

20.11. It is also unclear how HMRC would determine, in practice, whether there was an alternative credible interpretation such that a notification should have been made. How would this be assessed after the event? It is doubtful whether HMRC would be able to investigate non-compliance with a notification requirement

founded on such a subjective test and this potentially creates a new area of dispute between taxpayers and HMRC.

HMRC's position is not known

20.12. The trigger operates where HMRC's view is 'not known'. This creates some obvious issues in determining whether there is a notification requirement, such as:

- Uncertainties arising where HMRC has never published their view (including cases where it is known that HMRC have a view, but they have not published it at any stage).
- HMRC's view is not known because the legislation or policy is new and guidance has not been published.
- Cases where HMRC has published two different views or has argued against their own published view.
- Clarifications, where it is then unclear whether HMRC have changed their view.
- There is common knowledge that HMRC takes a different view to the one published in guidance.

20.13. The CIOT August 2020 and June 2021 responses discussed extensively the difficulties in determining HMRC's 'known' position. We consider it even more problematic to apply a test that depends on establishing a negative—namely that HMRC's view is not known. Where HMRC's view is not known, it may be impossible for a taxpayer to recognise that there is any uncertainty: the taxpayer (and their advisers) may be confident that the legislation leads to a particular outcome. If they do not know that HMRC takes a different view, they will not appreciate that HMRC may regard the tax treatment as uncertain for the purposes of the regime because HMRC has another view that it considers to be credible. We note that the formulation of the third trigger in the consultation document requires only that there is more than one credible legal interpretation, not who has to hold views about it or be aware of the different legal interpretations. Therefore, is it possible that a notification requirement could arise even where the taxpayer is only aware of one credible legal interpretation if others have an alternative interpretation?

20.14. HMRC's guidance is not always fully up to date and there are occasions where HMRC's operational position differs from that set out in published guidance. There are recent examples of HMRC revising its position or taking positions that appear inconsistent with its own published guidance which underline the practical difficulty for taxpayers in assessing whether a tax treatment is 'uncertain' by reference to HMRC guidance. Often the guidance includes examples that address obvious situations but leave grey areas and uncertainty where tax advisers feel that guidance is really needed, unaddressed. Further difficulties may arise where a taxpayer takes a position that is not based on published HMRC guidance because the taxpayer (or their advisers) is aware that HMRC's position differs from what the guidance states.

20.15. To illustrate the point, some recent instances where uncertainty has arisen as to whether HMRC's view is known include:

- Following the banking crisis, the Banking Act gave the Bank of England emergency powers to convert bank bonds to shares in some extreme situations. The question recently arose as to whether those powers therefore made all UK bank bonds into non-qualifying corporate bonds (non-QCBs, with differing tax treatment to QCBs). Such a view would have far-reaching consequences but is arguably unreliable as an interpretation. Nevertheless, we have seen extracts of correspondence that HMRC have had with a foreign company (which provides data feeds to several UK banks) via a UK trade body, where an unhelpfully worded question has led to an unhelpful response. Data feeds have been changed as a result, meaning individuals holding investments with different financial institutions now have divergent tax reporting

information. HMRC have not published their view, but if it is known by some should it be treated as known in the context of a UTT trigger? This example also illustrates the difficulty in establishing whether a view is a credible alternative.

- The rules on taxing foreign income and gains (FIG) remitted to the UK by former non-UK domiciled individuals were widely interpreted by the tax profession as taking the legislation at face value. Section 809P(12) of Income Taxes Act 2007 said that taxable FIG was limited to 'the amount remitted (taken together with any amount previously remitted)'. It was assumed HMRC accepted 'amounts previously remitted' as including amounts remitted but not taxable, though there was no explicit published guidance. When Finance Act 2025 restricted the clause by adding 'the amount remitted (taken together with any amount previously remitted that has been charged to tax)', HMRC justified the change as clarifying what had been their view all along. This suggests taxpayers need to consider possible alternative views to legislation as it exists as well as how it might exist following future clarifications.

- As indicated above in relation to CIS, there are uncertainties regarding HMRC's interpretation of Regulation 20A and HMRC's guidance in relation to condition 1(e) of Regulation 20A is not really 'known' because many practitioners think that HMRC's position, as stated in its guidance, is unclear and believe that there is more than one credible legal interpretation. Furthermore, the issue of whether and when development managers are within the CIS is also unclear and CISR14270 does not help to clarify the position.

- The following passage from CTM61550 is problematic for several reasons. 'It should also be considered in management buy-out situations. In many cases the close company makes a loan to the new owners who then use those funds to pay the outgoing shareholders for their shares. [Whilst this can be a difficult area in which the facts are absolutely crucial, it is exactly the type of arrangement which should be chargeable under Section 455.] The company's own money is being used to buy out the existing shareholders.' Focussing on the commentary in square brackets, HMRC contradicts itself within the same sentence - is it a difficult area in which facts are 'absolutely crucial', or is it definitely caught? Here HMRC appears to express its view of the situation but does not elaborate on the underlying legal interpretation that leads to that conclusion, making it very difficult to glean any wider understanding about HMRC's view of the extent of the relevant provision. So, it is difficult to conclude on the extent to which HMRC's view is known.

20.16. How will HMRC manage cases such as these were there is a clear and unresolved uncertainty? Will these be excluded from the scope of the UTT regime, and if so, how will this be communicated? A wider concern which is perhaps at the more extreme end, is that the proposal may discourage HMRC from publishing timely guidance in new areas and updating existing guidance - instead waiting for UTT notifications from taxpayers, which it uses to open compliance checks or decide where it should focus activity on guidance. This does not help to resolve areas of tax uncertainty in the short term (a policy aim) and may damage trust in the tax system in the long term.

Over notification

20.17. We suggest that the subjectiveness of the proposed third trigger is likely to result in a substantial number of notifications, many of which will relate to routine or low-risk areas of legal uncertainty rather than positions indicative of aggressive or non-compliant behaviour. This is recognised in the consultation document which notes that the third trigger may generate notifications that are not of direct interest to HMRC. This risks diluting the effectiveness of the UTT regime by obscuring genuinely higher-risk issues within a larger volume of

disclosures. The proposal will also impose a potentially significant additional compliance burden on taxpayers (and HMRC who will need to deal with the increased volume of notifications).

Legal professional privilege

20.18. A related concern is the interaction with legal professional privilege. In many cases, the identification and evaluation of alternative 'credible' interpretations will be derived from legal advice that is subject to privilege. It is difficult to see how a meaningful disclosure could be made without, at least in substance, revealing the reasoning underpinning that advice. The proposed trigger therefore risks creating pressure on taxpayers to summarise or characterise privileged advice which in turn may give rise to concerns around waiver of privilege. Similarly, advice from Tax Counsel may have been sought around credible interpretations which may support a decision not to notify – in such cases what evidence can the taxpayer use to defend themselves in the event HMRC contest that a notification should have been made without relinquishing privilege?

20.19. Whilst understanding the need to exclude professional advice protected by legal professional privilege, we have concerns that if such advice falls outside the scope of disclosure requirements, it could distort the market by encouraging taxpayers to favour obtaining legal or Tax Counsel opinions over standard tax advice.

Interaction with requests for rulings and non-statutory clearances

20.20. As highlighted in previous CIOT responses, there is a need to address what conclusion taxpayers should reach when they ask for a ruling or make a non-statutory clearance application, but HMRC say there is no uncertainty around the subject matter of the request, and so will not give a view. This often arises in the context of VAT but also in other areas such as company/group trading status for the purposes of the various tax reliefs such as substantial shareholdings exemption. It would appear to be HMRC's position that no notification would be required around this tax position because they say there is no uncertainty, but from the taxpayer's perspective there is uncertainty, which is why the ruling or clearance was requested. We reiterate our call for this tension to be addressed in light of the proposed third trigger. One solution would be that HMRC are obliged to respond setting out HMRC's view clearly, which would reduce the uncertainty and encourage taxpayers to seek clarification.

21. Question 22: Are there additional triggers that would identify uncertain tax treatments that would not be identified by the proposed trigger, or the existing 2 triggers?

21.1. We refer to the CIOT June 2021 response (paragraph 6.37). While we appreciate the difficulty HMRC faces in seeking to devise objective tests to identify so-called 'unknown unknowns', it is important to recognise that the triggers are, in effect, the definition of what constitutes an uncertain tax treatment for the purposes of the regime. As such, they can only ever capture the types of tax treatment that HMRC intends to identify—namely those which HMRC considers involve sufficient legal interpretation uncertainty to warrant notification. Conversely, it is difficult to see how there could be 'additional' uncertain tax treatments that fall outside the triggers, because it is the triggers themselves that determine the scope of what is treated as an uncertain tax treatment.

21.2. As we have noted earlier in this response, there are other and better routes available to HMRC for addressing uncertain tax treatments. These include publishing clearer, more timely and more comprehensive guidance, improving the effectiveness and accessibility of rulings and clearance processes, and making better use of existing data and enquiry powers to identify cases of genuine concern. In our view, HMRC's resources would

be better focused on these measures, which are more likely to reduce uncertainty at source and support more targeted compliance activity, rather than on introducing additional notification obligations.

22. Question 23: In addition to transfer pricing calculations, are there any other uncertainties that should be excluded from the proposed trigger?

Interpretation of law v interpretation of facts

22.1. If a third trigger were introduced, we envisage a need to distinguish clearly between uncertainty about the legal interpretation of the relevant statutory provisions and uncertainty about how those provisions apply to the particular facts of a case – with the trigger potentially excluding the latter. Similar issues can arise where the meaning of HMRC guidance itself is uncertain—for example, where the guidance gives illustrations of arrangements HMRC considers acceptable or unacceptable, but the facts in question do not align neatly with any example and instead contain features of both. More generally, where the issue is inherently fact specific, it is unclear how a taxpayer could be expected to know what HMRC's view is. Some practical examples of these multi factorial tests include:

- The badges of trade.
- Commencement of trade.
- Trading status for tax reliefs such as substantial shareholdings exemption, business asset disposal relief and EOT capital gains tax relief.
- Employment status.
- Indicators of when earn out consideration is capital or employment income.
- SDLT tests for what constitutes 'suitable for use' as a dwelling and whether there is a commercial element to an acquisition to make the transaction subject to mixed (non-residential) rates.
- Capital allowances – with the case of Orsted West of Duddon Sands (UK) Limited v HMRC being a very recent example of uncertainty around HMRC's view in light of the court judgment.
- Whether interest has a UK source.

22.2. There is a difference between factual and legal uncertainty. As a matter of general principle, as this measure is concerned with the 'legal interpretation' gap, only matters of legal uncertainty should be caught by the trigger.

22.3. We continue to support the exclusion of transfer pricing issues from the scope of the regime. On a similar basis we suggested that uncertainties arising from valuation matters should be specifically scoped out of the regime.

22.4. As highlighted in the CIOT August 2020 response, there are also many other areas of the tax legislation which are inherently uncertain, for example the categorisation of an asset for capital allowances, the VAT liability of a supply, VAT partial exemption and the corporation interest restriction. Consideration should be given to further exclusions for these difficult areas that are already addressed by the tax system in a variety of ways, to reduce the burden of the UTT extension proposals. We suggest that at the very least HMRC should be keeping a running list that can be updated as new areas come to their attention as part of them taking steps to reduce uncertainty.

22.5. If the regime is widened to include individuals, trusts and other taxes, then in line with our past comments we suggest there should be an explicit exclusion for historic transactions and positions prior to commencement of the regime and would urge that reporting periods and commencement dates are clearly set out.

Notification process and exemption

23. Question 24: Do you think that having a single annual notification due date would make it easier for taxpayers to comply with the UTT obligation? If so, what date or timing would you consider most appropriate?

23.1. The CIOT has previously favoured separate notification dates for corporation tax, PAYE and VAT and we continue to favour this over a single annual notification, albeit either option presents challenges around timing and complexity, particularly if the scope of the regime is extended.

23.2. As a general principle, we consider it would be simpler, and more effective in practice, to require notification of any uncertain tax treatment by reference to the return to which the treatment relates rather than through a separate, stand-alone UTT notification spanning multiple taxes. It is at the point the relevant return is being prepared that the taxpayer (and the relevant, appropriate adviser) will be focused on the technical analysis and will be best placed to identify any uncertainty; the return itself can also prompt consideration of the requirement. By contrast, a separate UTT notification date introduces an additional, parallel compliance process and increases the risk that notifications are missed or overlooked.

23.3. Having a single annual notification date could complicate reporting when the position alters between that date and the filing of the return to which the treatment relates. For example, uncertainty might only arise after the single annual notification date passes due to new HMRC guidance or the publication of a view.

23.4. Linking notification to the relevant return would also avoid introducing yet another compliance date. In our view, the most sensible approach is therefore to align any notification deadline with existing taxes and filing deadlines: for individuals and trusts, the filing deadline for the personal tax return (which covers income tax and capital gains tax – we do not think that IHT should be brought within the regime); and for businesses, the filing deadline for the profits return (the corporation tax return or partnership return), since preparation of those returns should encompass all transactions in the relevant accounting period.

23.5. We would expect complexities around notification timings for the other 'non-annual' taxes in particular for reasons outlined earlier in this response but would suggest these are tied to existing filing deadlines as far as possible (please see earlier responses for more detail).

23.6. If the regime is expanded, it would be essential that HMRC provides further detail on the notification process and reporting periods applicable to each tax and clarifies how different taxes interact when considering the £5 miillion threshold for notification. For example, HMRC's current guidance indicates that the threshold is considered on a stand-alone, tax-by-tax basis (ie without aggregation across taxes), but that 'related amounts' (transactions with similar treatments within the same reporting period) should be aggregated. As more taxes and taxpayer populations are brought within scope, the risk and complexity of overlap will increase, and detailed, practical guidance will be critical.

23.7. Further clarity is also needed on rules around the extension of the notification date for non-annual returns, where for example an accounting provision for an uncertainty is made at a later date. We note existing guidance does address this with reference to the taxes currently in scope (see UTT15200), but how would this work in respect of additional taxes proposed to be brought in scope? For example, if a provision with regards to an SDLT uncertainty is subsequently made, is the SDLT notification deadline extended to a date by reference to a corporation tax return – this is not clear.

23.8. Finally, further detail is needed on the content of any notification under the proposed third trigger. It is unclear whether taxpayers would be expected to set out the alternative credible interpretations in full, or simply indicate that more than one such interpretation exists. This is important to understanding the likely compliance burden of the proposal.

24. Question 25: Can you foresee any problems with taxpayers obtaining confirmation from HMRC that the notification has been brought to its attention?

24.1. We assume this question is incorrectly phrased and is asking about confirmation that the uncertainty (rather than notification as the question says) has been brought to HMRC's attention.

24.2. Our view is that requiring a taxpayer to hold explicit confirmation from HMRC that the uncertainty has been brought to HMRC's attention somewhat undermines the principle of self assessment, and would impose an unnecessary and potentially disproportionate burden.

24.3. The practical impact is also likely to differ significantly between taxpayers that do have CCM and those that do not. For large businesses, the CCM model could provide an effective channel to discuss uncertainties and agree whether the exemption applies if the CCM is empowered to provide the relevant confirmation in a timely manner, where appropriate. It will be important that any tightening of the exemption does not undermine the established process, and relationship between businesses (and relevant individuals) with their CCM which can be an effective mechanism to discuss and resolve uncertainty.

24.4. By contrast, large businesses and (the majority of) individuals and trusts that do not have a CCM (or equivalent) are likely to find it harder to obtain an acknowledgement, and may simply opt to notify, which would be a perverse outcome. In fact, a requirement to do so is likely in practice to render this exemption worthless because if the taxpayer has to write expressly to HMRC seeking confirmation about the uncertainty, it may as well wait and provide the information that is likely to be required to obtain the confirmation in a notification.

24.5. Further detail is also needed on what taxpayers would be required to provide in order to rely on the proposed narrowing of the exemption. If the information required is substantially the same as that required for a notification, the exemption may in practice offer little or no benefit.

24.6. We are unclear how the notification and exemption requirements are intended to interact with 'white space' disclosures made in self-assessment returns. HMRC should clarify whether a white space disclosure is treated as separate from a UTT notification, and whether (and in what circumstances) it is regarded as bringing an uncertainty to HMRC's attention for the purposes of any exemption.

24.7. It is not unusual, for example in SDLT cases where there is uncertainty, for a taxpayer to make a 'Langham and Veltema' disclosure at the time of filing the relevant SDLT return in order to protect against the possibility of HMRC raising a discovery assessment once the usual enquiry period has ended. We understand that it is rare for HMRC to reply meaning that the taxpayer would , we assume, need to both disclose and to notify. HMRC may also need to consider changes to section 29 of Taxes Management Act 1970 to make it clear that UTT notifications are 'information made available'.

24.8. We also assume that a clearance response (including a non-statutory clearance, where given) would constitute evidence that the uncertainty has been brought to HMRC's attention and the existing exemption for

transactions notified under DOTAS would remain in place, without the need for further confirmation from HMRC. However this needs to be confirmed.

25. Other comments - VAT specific issues

25.1. The tax advantage tests can produce counterintuitive results by looking at input and output tax separately, by period, and by registration, rather than at the net economic position. As a result, alternative VAT treatments of the same supply can each be seen as conferring a more than £5 million advantage; buyers can be treated as having a tax advantage even where they are worse off or unaware of any uncertainty; and cautious or conservative timing choices on tax points can trigger apparent advantages despite reducing cash flow or deferring recovery. These outcomes flow directly from the structure of the legislation, which deliberately disallows netting and focuses narrowly on individual VAT outcomes rather than the net impact.

25.2. For example, uncertainty may arise where a business is unsure whether the VAT liability of its supply is standard-rated or exempt. For a supply valued at £50m, the standard-rated output VAT would be £10m, which breaches the UTT threshold. However, when a business makes a taxable supply, it can recover input VAT that is directly attributable to that supply. For this example, if the input VAT is £7m, this means that the overall VAT 'uncertainty' would be £3m.

25.3. Under the current UTT rules that look at separate output VAT and input VAT positions, either outcome in the above example creates a requirement to notify, as a standard rated supply means £7m input VAT can be claimed compared to nil input tax for a VAT exempt supply; a VAT exempt liability on the sale that means £10m output VAT is not declared.