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Global Tax Alert

UK amends mandatory requirement for businesses to publish tax strategy

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Executive summary

Following the recent release of the UK Budget, the Government has published amendments to the mandatory requirement contained in the draft Finance Bill clauses of December 2015, for certain businesses in the UK to publish their tax strategy as it relates to or affects UK taxation. Alongside these amendments, HM Revenue & Customs (HMRC) has published draft guidance on the new rules.

The revisions in Finance Bill 2016 have increased the scope of the legislation to now include certain permanent establishments (PEs) of overseas entities as well as companies and partnerships in the UK.

The first period affected by the legislation will be the first financial year which begins after Royal Assent has been granted to Finance Bill 2016 (expected to be July 2016). The strategy must be published before the end of the financial year. After this, the strategy must be published annually and in any event no later than 15 months after the day on which the previous strategy was published unless the business falls out of the scope of the legislation.

This Alert summarizes the key elements of the Finance Bill 2016 proposals and how they will impact organizations undertaking business in the UK.

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Detailed discussion

Which entities will have to publish a tax strategy?

HMRC has confirmed that businesses in scope for these measures are broadly those businesses which fall within HMRC's Large Business Directorate; however, the scope of the legislation is wider than this population. Specifically, the measures will apply to all businesses that have a UK turnover of more than £200m and/or a relevant balance sheet total of more than £2b for the **preceding** financial year. This is the same threshold set for the Senior Accounting Officer (SAO) requirement. In addition, businesses within the scope of country by-country (CbC) reporting (global turnover of more than €750mn) are also included, regardless of the level of turnover or assets in the UK.

The guidance sets out that the term "business" specifically refers to:

- UK groups and sub-groups (including UK PEs of companies within the group) where the UK group/sub-group's aggregated turnover (including that of UK PEs) is more than £200m or the total of its balance sheet assets (including that of UK PEs) is in aggregate more than £2b in the previous financial year
- Other UK groups and sub-groups (including UK PEs of companies within the group) in respect of which there is a mandatory reporting requirement under the UK CbC reporting regulations (or would be if headed by a UK resident company)
- Other UK companies or UK PEs of foreign entities not part of a UK group or UK sub-group which meet these turnover or balance sheet thresholds or are members of a CbC reporting group as above
- Partnerships that meet the above turnover or balance sheet thresholds

Publication of the tax strategy

The qualifying large business must publish its tax strategy on the internet, on an annual basis, for the period covered by the business's annual report or accounts and before the end of each current financial year. There is no requirement that the strategy be published with or as part of the group's financial statements.

The legislation stipulates that the published tax strategy must cover in relevant, up-to-date detail regarding the:

- Approach of the UK group to risk management and governance arrangements in relation to UK taxation
- Attitude of the group to tax planning (so far as affecting UK taxation)
- Level of risk in relation to UK taxation that the group is prepared to accept
- Approach toward dealings with HMRC

It may also cover other information relating to taxation which adds value, understanding or context.

Penalties for non-compliance

HMRC may assess penalties on a qualifying large business for each financial year that it:

- Fails to publish a tax strategy within the prescribed period that meets the legislative requirements, or
- Fails to ensure that the tax strategy remains accessible on the internet for the prescribed period

The penalty is £7,500 for a failure that continues for up to six months, with a further £7,500 chargeable for every month that the failure continues after six months.

Implications

While it will be clear to some businesses whether they are within the scope of the legislation, the rules are complex and for some it will be less clear how they are affected. This applies in particular to PE's of foreign entities and to partnerships (where the definition of "UK partnership" is far from clear). Businesses should first understand how they are impacted by the legislation and where the obligation to publish falls within the UK.

Once the impact has been assessed, businesses also should consider how they can document an approach to the governance of tax which meets the requirements of the legislation. A published tax strategy could affect the brand of the business and it is therefore important that all stakeholders are involved in developing the published tax strategy. It should also be consistent with other information reviewed by HMRC, such as the business risk review, SAO certification and, in the future, CbC reporting for multinational groups.

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