HMRC’s desire to ensure large businesses are held publicly accountable for meeting their UK tax compliance obligations shows no sign of abating.
WHAT'S NEW: A REQUIREMENT TO PUBLISH THE BUSINESS’ TAX STRATEGY

Large businesses will be required to publish their tax strategy on the internet as a separate document or self-contained part of a wider document. The tax strategy must set out the organisation’s:

- approach to risk management and governance arrangements in relation to UK taxation;
- attitude towards tax planning;
- level of UK taxation risk that it is prepared to accept; and
- approach towards its dealings with HMRC.

In summary, the measure is aimed at promoting greater transparency of an organisation’s approach to tax risk and how this is managed through its governance and internal control environment. It ensures tax remains firmly on the boardroom agenda by ensuring that the tone from the top and approach to governance processes are clear for all to see.

HMRC has provided high-level guidance regarding the content it would expect to see in the strategy document, but this perhaps raises more questions than it answers. It is clear that there cannot be a one-size-fits-all approach.

Examples of likely content suggested by HMRC include:

- how the business identifies and mitigates inherent tax risk borne from the size, complexity and extent of change in the business;
- the governance framework the business uses to manage tax risk;
- details of any code of conduct followed regarding tax planning;
- an outline of the drivers of tax planning and the weighting given to these in formulating the tax strategy;
- an explanation of whether internal governance is prescriptive on levels of acceptable risk and, if so, how this is quantified and affected or influenced by stakeholders; and
- an explanation of how the group works in partnership with HMRC to meet statutory and legislative tax requirements.
WHO IS IMPACTED?

The following businesses will be within the scope of the rules.

- Standalone companies incorporated in the UK with annual turnover of more than £200m and/or a balance sheet total of more than £2bn on the last day of their previous financial year.
- Partnerships and LLPs meeting the same financial test as for companies.
- UK incorporated companies that are members of a group (including groups headed by a non-UK company) with an aggregate UK turnover and/or balance sheet total that meets the qualifying test above.
- Multi-national enterprise (MNE) groups (in accordance with the OECD definition) with a global annual consolidated turnover of more than €750m that are subject to country-by-country reporting requirements in the UK (or would be if their head of group were tax resident in the UK). This brings within scope some comparatively small UK subsidiaries of large MNEs.

Other businesses, such as those with strong consumer brand values or those heavily involved in public sector procurement, may wish to voluntarily adopt these new provisions.

WHEN DOES THE NEW MEASURE APPLY?

The measure applies for accounting periods beginning on or after the day on which the Finance Bill 2016 receives royal assent. In the first year, the business must publish its tax strategy before the end of the financial year, and thereafter not less than nine months and not more than 15 months from the date of the previous year’s publication.
RISKS ARISING FROM A FAILURE TO COMPLY

If the organisation’s tax strategy is not published or is materially incomplete more than 30 days after the deadline for publication, it may become liable to a penalty of up to £7,500. Further penalties may arise if the deficiency is not addressed within six months of this deadline. However, the potential damage to the business’ reputation with HMRC and the public, given that the press and focus groups are likely to pay particular attention to which organisations have published the content, is likely to be of much greater concern than the financial penalty. Furthermore, a business that is discovered to have made a misleading representation of its strategy and governance capabilities will risk significant damage to its relationship with HMRC.

INTERACTION WITH OTHER COMPLIANCE PROVISIONS

The requirement to publish a tax strategy sits alongside the country-by-country reporting requirement for MNEs that stems from Action 13 of the OECD’s BEPS Action Plan. This plan requires MNEs to report an unprecedented level of detail to meet tax transparency requirements in relation to business activity impacting transfer pricing policies. It is also, in effect, an extension to the existing senior accounting officer (SAO) regime, which is aimed at ensuring that companies have appropriate tax accounting arrangements in place to allow their tax liabilities to be calculated accurately in all material respects.
INTERACTION WITH HMRC’S OPERATIONAL APPROACH TO THE VARIOUS MEASURES

HMRC does not want the new tax strategy measure to be a paper–only box–ticking exercise and expects businesses to be able to evidence that their policies, processes and controls are effective on a day–to–day basis. It expects that the updating of the tax strategy will form part of the annual business risk review exercise that informs its tax compliance risk assessment – a three–stage process involving: 1 evaluating tax governance; 2. evaluating tax delivery; and 3. audit testing where necessary.
WHAT BUSINESSES NEED TO DO

The requirement to publish a tax strategy may be an unwelcome distraction for some businesses. For others, such as consumer businesses and those with government contracts, it may be seen as an opportunity to take the initiative to put out a positive message about their tax affairs.

Whatever view is taken, all large businesses will need to be comfortable with how they communicate their attitude to tax risk, their processes for controlling that risk and their approach to dealings with HMRC, as these elements of their tax strategy will be available for scrutiny by the public and other interested stakeholders.

Key actions for businesses are likely to include:

- identifying and developing the component elements of the tax strategy and supporting governance model, including the message the business wishes to convey;
- forming a clear view as to how the business wishes to portray its approach to tax, in particular tax planning;
- consideration of how much detail the organisation wishes to publish;
- briefing key stakeholders (such as the board, public relations and audit committees); and
- assessing the business’ current position in being able to meet its obligations, ensuring the strategy reflects reality and can be supported, rather than being idealised.
HOW CAN RSM HELP?

RSM can assist by providing advice on:

• preparing an awareness briefing for key stakeholders in the business;
• designing the structure, developing the content and drafting the tax strategy;
• designing a tax control framework to support the governance communicated in the tax strategy and on-going SAO certification;
• benchmarking existing governance processes and controls against good practice; and
• approaches to identifying and classifying risk, including reporting and monitoring tools/templates.
If you would like to find out more information about our services and how we can help you, please speak to your usual RSM contact.

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