Draft High Level Guidance (for HMRC and Customer use)

Introduction

The legislation sets out the requirement for large businesses to prepare and publish their tax strategy.

This guidance explains:

Chapter 1: Scope.

Chapter 2: Publication.

Chapter 3: Contents of a large business tax strategy.

Chapter 4: Penalties for failure to comply with the legislation.

Throughout this guidance, the term "business" is used to refer to any entity which may qualify.

Please note this guidance is draft. Further detailed guidance will be published in due course.

Chapter 1: Scope of Legislation

What is a qualifying Large Business?

Broadly, although not exclusively, Large Businesses in scope will be those which are administered by the Large Business at HMRC and which have Customer Relationship Managers (CRMs). However, any large entity may be in scope. This will depend on the nature and structure of the entity.

There are qualifying conditions to be met and generally these tests are based on the position at the end of the business's previous financial year.

Entities not headed by a UK company will also be included within the scope of this legislation if they satisfy the qualifying conditions in their own right.

If an entity not headed by a UK company does not satisfy the conditions in its own right, the entity may still qualify if they satisfy the OECD CbCR framework threshold of a global turnover of more than €750 million.

It is up to a business to determine whether it qualifies.

What are the qualifying conditions?

A business must be: a company, a partnership, a group (which may be a UK group or a UK sub-group) or a multi-national enterprise (MNE) group.

Companies, partnerships, and groups must also meet the qualifying conditions on turnover and / or balance sheet total.

Qualifying Companies

The legislation uses the meaning of "company" set out in the Companies Act 2006.

It does not include:

- Open-ended investment companies (as per section 613 of CTA 2010); or
- Investment trusts (as per section 1158 of CTA 2010).

A company must be incorporated in the UK in accordance with the Companies Act 2006.

A company is in scope if it satisfied **either of** the balance sheet and turnover conditions on the last day of its previous financial year. These are that the company's turnover was more than £200 million or balance sheet total was more than £2 billion.

It should be noted that companies that are a part of a UK group or a UK sub-group at the end of the head of that group's previous financial year will not be considered as "qualifying companies".

Qualifying Partnerships

The legislation uses the following three meanings for "partnership":

- A partnership as per the Partnerships Act 1890;
- A limited partnership as per the Limited Partnerships Act 1907; or
- A limited liability partnership (LLP) incorporated in the UK under the Limited Liability Partnerships Act 2000.

A partnership is in scope if it satisfied **either of** the balance sheet and turnover conditions on the last day of its previous financial year. These are that the partnership's turnover was more than £200 million or balance sheet total was more than £2 billion.

Qualifying Groups

A qualifying group comprises two or more relevant bodies where one or more relevant body in the group is the 51% subsidiary of another relevant body in the group.

The meaning of 51% subsidiary is as per Chapter 3 of Part 24 of CTA 2010. This is that if body corporate A owns more than 50% of body corporate B's ordinary share capital, then body corporate B is a subsidiary of body corporate A.

A group is in scope if it satisfies **either of** the balance sheet and turnover conditions on the last day of its previous financial year. These are that the group's aggregated turnover was more than £200 million or aggregated balance sheet total was more than £2 billion.

What is a UK group?

A UK group is a group which is headed by a relevant body incorporated in the UK.

What is a UK sub-group?

A UK sub-group is a group in which the UK members of the group are part of a larger group which is headed by a relevant body outside of the UK.

What is a relevant body?

A relevant body is any company or body corporate, except for limited liability partnerships.

A relevant body that is not a company will not qualify on its own. However, a relevant body that is not a company, but that is part of a group comprising at least two companies may qualify as part of the group.

A group is in scope if it satisfies either or both of the balance sheet and turnover conditions on the last day of their previous financial year. These are that the group's aggregated turnover was more than £200 million or aggregated balance sheet total was more than £2 billion.

Companies in a group that do not have the same financial year end

Where:

- A group needs to aggregate its turnover or balance sheet total; and
- One or more of the relevant bodies in the group do not have the same financial year end,

the group must aggregate the figures from the end of the previous financial year for the head of the group.

The group must establish which relevant bodies were within the group in question at the end of the preceding financial year. They must then aggregate the turnover/ balance sheet total of the company in question for its preceding year with the turnover/ balance sheet total of the other company or other companies for the financial year ending last before the end of the preceding financial year of the company in question.

Qualifying MNE Groups

A MNE group is a group that includes two or more bodies which are tax resident in one jurisdiction, but which are subject to tax on business carried out in another jurisdiction. Either of these jurisdictions may be the UK.

MNE groups are in scope if they satisfy the qualifying criteria for the mandatory reporting requirement of section 122 of FA2015 **OR** they would satisfy these criteria if the head of the group was a UK tax resident.

Chapter 2: Publication

How should we publish the tax strategy?

The tax strategy **must** be published:

- on the internet
- as a separate document or a self-contained part of a wider document. (It does not need to be called a "strategy" as some businesses use the term "policy" interchangeably).

The strategy may also be published anywhere else a business feels appropriate. It must also remain accessible to the public, free of charge for the period until the next year's strategy is published.

The strategy may be published on behalf of a group or sub-group by any UK company that is a member of that group or sub-group. The responsibility to ensure preparation and publication rests with the head of the group or sub-group.

When should we publish the strategy?

The strategy should be published for the first time before the end of the first financial year commencing after Royal Assent of Finance Bill 2016. After this, the strategy must be published annually, but not more than 15 months after the day on which the previous strategy was published. The strategy will be deemed "published" when it is first published on the internet. The strategy must remain accessible and free of charge for the period until the next year's strategy is due to be published.

Should I notify HMRC when we have published our tax strategy?

Although this is not a requirement of the legislation, in order for a CRM to assess whether the main duty has been met within the specified time period, it would be helpful of you to notify them of the date and location of publication.

For what period of time must our strategy be published on the internet?

The strategy must remain on the internet until replaced with the following year's version.
If the strategy remains the same, then the content may also remain the same. However, HMRC expects the publication to say that the business confirms that the strategy remains appropriate.

What if my business is no longer within the scope of the legislation?

If your company falls out of scope of the legislation then you will not need to publish a strategy on the internet.

Chapter 3: Contents of a large business tax strategy

What must a tax strategy contain?

The tax strategy must set out the group's, sub-group's, company's or partnership's:

(a) approach to risk management and governance arrangements in relation to UK taxation
(b) attitude towards tax planning (so far as affecting UK taxation)
(c) level of risk in relation to UK taxation that it is prepared to accept
(d) approach towards its dealings with HMRC.

The tax strategy may deal with these matters by reference to the UK group as a whole or to individual members based/located in the UK of non UK headed groups, provided it covers the whole of the qualifying group.

Each section should contain sufficient relevant up-to-date information to provide context and background. To note, the requirement for businesses to publicly communicate their tax strategy is separate to and distinct from the OECD's Country-by-Country Reporting model.

What do we need to publish about our approach to tax risk management and governance arrangements in relation to UK taxation?

Likely content:

- How the business identifies and mitigates inherent tax risk because of the size, complexity and extent of change in the business
- The governance framework the business uses to manage tax risk
- The levels of oversight and involvement of the Board
- High level description of any key roles and responsibilities/ systems and controls in place to manage tax risk.

What do we need to publish about our attitude towards tax planning (so far as affecting UK taxation)?

Likely content:

- Details of any code of conduct regarding tax planning
- An outline of the drivers of tax planning and the weighting given to these in formulating tax strategy
- The group's approach to structuring tax planning
- An explanation of why tax planning advice may be sought externally.

What do we need to publish about the level of risk in relation to UK taxation that we are prepared to accept?

Likely content:

- An explanation of whether internal governance is prescriptive on levels of acceptable risk. If so, is this quantified and how is this affected or influenced by stakeholders?

What do we need to publish about our approach towards our dealings with HMRC?

Though a CRM will have an understanding of the business's approach to dealings with HMRC, this does need to be articulated by the group in the tax strategy. Likely content will be:

- An explanation of how the group works in partnership with HMRC to meet statutory and legislative tax requirements
- How the group is transparent or works with HMRC on current, future or retrospective tax risks, events or interpretation of the law across all relevant taxes and duties.

Can CRMs provide clearances?

CRMs will not provide clearances in respect of these provisions.

Can we include anything else relating to taxation (UK or otherwise)?

Businesses may include further information in their tax strategy that adds value, understanding or context. For example to demonstrate how the tax strategy supports their brand or reputation or to demonstrate how the strategy is being applied in practice.

What about commercially sensitive information?

HMRC would not expect the publication of commercially sensitive information within the tax strategy.

Do we have to say how much tax the group has paid?

There is no requirement for publication of the amounts of taxes paid.

What do we need to publish in the tax strategy if the group is a multinational?

The group should publish any strategy or parts of strategies which are relevant to the tax affairs of the UK group or other parts of the group in so far as they have are relevant to UK taxation. Where the group has a separate UK tax strategy we would expect at least the relevant parts to be published.

Partnerships

In respect of partnerships we are interested in how the partnership as a business manages its tax affairs, rather than the individual partners.

Chapter 4: Penalties for failure to comply with the legislation

In what circumstances is a penalty chargeable?

Penalties may be assessed on a qualifying company, group, sub-group or partnership for each financial year if it:

- fails to publish a tax strategy that meets the legislated requirements within the prescribed period
- fails to ensure that the tax strategy remains accessible on the internet for the prescribed period.

Penalties for groups and sub-groups will be assessed on the head of the group or sub-group.

Types of penalty:

Should the Tax Strategy not be published within the prescribed period, or meet the legislated requirements, the following penalty regime will apply:

- A warning notice will be issued for non-publication on or after the first day of non-publication. This will allow 30 calendar days for publication, a penalty will then apply from day 31 onwards
- The penalty will consist of a maximum figure, this will be £7,500 (consistent with the Companies House late/non-filing penalties). This shall be applied up to 6 months after non-publication
- Where such a penalty has been issued, and the failure concerned continues for more than 6 months after the required publication date, HMRC will be able to issue a further penalty of up to £7,500
- If such a second penalty has been issued, HMRC will be able to issue further penalties of £7,500 on a monthly basis after that.

In instances where the information published as a Tax Strategy does not remain accessible free of charge for the prescribed period, the following penalty regime will apply:

- A warning notice will be issued for lack of accessibility on or after the first day on which the Tax Strategy is not freely accessible. This will allow 30 calendar days for the business to rectify its publication. A penalty will then apply from day 31 onwards
- The penalty will consist of a maximum figure, this will be £7,500 (consistent with the Companies House late/non-filing penalties). This shall be applied up to 6 months after the first day on which the Tax Strategy is not freely accessible
- Where such a penalty has been issued, and the failure concerned continues for more than 6 months after the required publication date, HMRC will be able to issue a further penalty of up to £7,500
- If such a second penalty has been issued, HMRC will be able to issue further penalties of £7,500 on a monthly basis after that.

What should we do if we are unable to publish?

If you think you are in danger of failing to comply with the legislation, you should talk to your CRM in the first instance with regard to why this may be the case. You can then seek to rectify the situation. If you have failed to publish within the specified period, you will be liable for a penalty.

How will HMRC assess the penalty?

A penalty will be assessed by a Customer Relationship Manager (CRM). If HMRC cannot find the business' tax strategy, or you have not informed them of publication of the business' tax strategy, you may be at risk of a penalty. The CRM will assess the deadline by which the strategy should have been published against when the strategy has been published (or not) and decide if a penalty applies. Once it is decided a penalty applies, a business will be issued with a warning notice and given 30 days to either comply with the legislation or subsequently pay the relevant penalty.

What if I don't agree that I am liable to pay a penalty?

Talk to your CRM in the first instance. Businesses will have recourse to appeal the above penalties, in line with HMRC's existing penalty appeal processes.

Appeals Process:

The appeal must be given in writing to HMRC. It must state the grounds of appeal. An appeal must be made within 30 days of the date on the notice of the penalty assessment.

Reasonable Excuse:

A business will not be liable to a penalty if they have a reasonable excuse for a failure to publish a tax strategy or a failure for ensuring the strategy remains accessible and they remedy that failure without unreasonable delay after the excuse ends.

There is no statutory definition of reasonable excuse, which "is a matter to be considered in the light of all the circumstances of the particular case" (Rowland v HMRC [2006] STC (SCD) 536 at paragraph 18). This was confirmed by the First Tier Tribunal, in Anthony Wood trading as Propaye v HMRC (2011 UK FTT 136 TC 001010), in the judgment released on 23 February 2011.

A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the business' control, and which prevents the business from complying with an obligation under the publication of tax strategy provisions. A combination of unexpected and foreseeable events may, when viewed together, be a reasonable excuse.

It is necessary to consider the actions of the business from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the tax acts.

If the business could reasonably have foreseen the event, whether or not it is within their control then, we expect the business to take steps to meet their obligations.

It is not possible to give a comprehensive list of what might be a reasonable excuse. Each depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the business that has failed. What is a reasonable excuse for one business' circumstances may not be a reasonable excuse for another business in different circumstances.