Real Estate:UK

Real Estate:UK response to HM Revenue and Customs' Consultation on Opportunities to Extend Uncertain Tax Treatment

Prepared and submitted by
Rachel Kelly
Assistant director (Finance Policy)
E: RKelly@realestateUK.org

Real Estate:UK SPF SCOTTISH PROPERTY FEDERATION RE:Futures UKPropTech ASSOCIATION

Real Estate:UK (RE:UK) brings together global and domestic capital, world-leading expertise and forward-thinking policy to drive growth.

With over 500 member organisations spanning investors, developers, advisers and operators, we represent the full breadth and diversity of the commercial real estate market, worth £950bn to the UK economy.

We connect UK and international investors with the insight, networks and opportunities that make the UK one of the world s most dynamic and investable markets.

Working closely with national governments and their agencies, as well as regional and local leaders, we promote the UK real estate sector as a premier destination for capital. Through direct engagement with ministers, policymakers and advisers, we help shape a regulatory environment that unlocks growth and builds investor confidence.

We support thriving communities across the UK through the homes, workplaces, critical infrastructure such as logistics and data centres, and retail and leisure centres our members build, maintain and operate.

Summary

Certainty and stability are critical for business to make investment decisions. To that end, simplifying the tax system and addressing areas of uncertainty should be a top priority for government in order to better support businesses to invest and grow. However, while these proposals appear intended to allow HMRC to better understand which areas of the tax rules result in uncertainty, they fall short of providing what businesses actually need – namely, for HMRC to remove and minimise areas of uncertainty in the tax system for *all* tax payers.

Our response to the consultation questions are included in the appendix but we would draw out the following key points below.

1. The proposed new trigger should not be introduced: We are strongly of the view that the proposed new trigger should not be introduced. The inherent subjectivity within it adds complexity, leading to greater compliance costs for businesses, which risks damaging productivity and growth. It also has the potential to create significant additional costs for HMRC in dealing with what could be a very material increase in notifications, without any clear evidence that it would be effective in reducing the tax gap - especially in a manner that is proportionate to the increased costs and uncertainty for business.

   In particular, it cannot be right that a trigger for notifying uncertainty is itself uncertain. The word "credible" could be interpreted in a number of ways, and so is inherently subjective. If a third trigger is to be included in the UTT regime, it must be better targeted at the particular "uncertainty" concerns that the Government wants to ensure HMRC is told about, rather than at anything where there may be any number of different possible views.

   Further, areas which are inherently uncertain, or where it is not easily possible to determine where

there is an uncertain tax treatment, should not be brought within scope of the third trigger as the administrative burden for taxpayers would be disproportionate. Instead, in relation to such areas, Government should prioritise providing greater clarity - whether through legislation change or improved guidance. An example here would be the application of section 75A FA 2003 (if SDLT is to be brought into the UTT regime).

Should the Government proceed with its proposals, we recommend that areas like these (and other areas of the tax code where equivalent issues arise) are excluded from the third trigger unless and until the relevant law and/or guidance have been revisited to provide better certainty, with HMRC relying on the existing UTT triggers and its general compliance powers until that has been done

2. Limit the scope of an extended UTT regime
    a. Taxes: We question the inclusion in the UTT regime of each of SDLT and CIS. In relation to SDLT, it is unclear the extent to which legal interpretation issues contribute to the tax gap to justify its inclusion; whilst in relation to CIS, its nature (as a tax collection mechanism) it is not clear to us how feasible it would be to apply UTT to the person responsible for withholding amounts If CIS applies) where the tax advantage (if any) is that of the recipient. We therefore consider that including these regimes in UTT risks imposing a disproportionate administrative burden on taxpayers and so recommend that a different approach is taken to minimise possible uncertainties relating to these taxes.
    b. Trusts - Within real estate, commercial trust structures are commonly used for investment. The extension of the UTT regime to such trusts without the same thresholds and exclusions as apply to companies and partnerships would result in an un-level playing field between different forms of investment vehicles, without any obvious justification. We strongly believe that trusts (such as Jersey and Guernsey property unit trusts) that carry on commercial activities should be subject to the UK turnover and UK balance sheet thresholds (£200m and £2bn, respectively). In addition, the exclusion from the UTT regime of collective investment schemes and alternative investment funds (AIFs) in paragraph 4(2) of Schedule 17 Finance Act 2022 should apply to trusts as it does to partnerships.

3. Improve tax certainty: Extending the UTT regime in order to help resolve uncertainty "after the event" (as it were) is like looking down the wrong end of a microscope. Businesses want a stable and certain tax system. It is therefore disappointing that the proposals in the Consultation make no reference to action to be taken by HMRC to try to reduce the number of "uncertainties" within current UK tax legislation and practice.

    Whilst we recognise that it will never be possible to eliminate every "uncertainty" that may arise under the UK tax system, nevertheless there are a number of steps that can be taken to improve the current position, including looking at how legislation is formulated, improving guidance (and the speed at which it is updated), and better resourcing of CCMs.

Real Estate:UK

Response to Consultation

General comments: policy rationale

1. The UTT regime was enacted in Finance Act 2022 (FA 2022), following two detailed consultations on its scope. At the time of the first consultation in 2020, the government said that the measure was intended to level the playing field as, whilst there were many businesses that were open and transparent in their dealings with HMRC, there was a minority of large business customers that undertook (sometimes aggressive) tax planning that was often undisclosed.

2. The first consultation proposed that the UTT regime would additionally apply to SDLT and certain other indirect taxes. In light of views from respondents (who expressed concern that including such taxes risked creating "an unacceptable compliance burden for businesses"), the government limited the regime's scope to corporation tax, income tax and VAT on the basis that those taxes made up the "majority of the legal interpretation tax gap"[1] - which remains the case today.

3. The second consultation set out seven proposed triggers for notification, which were subsequently reduced to three - and then to the two included in FA 2022. The third trigger - that notification would be triggered where (a) HMRC did not have a known position and (b) there was a substantial possibility that a court of tribunal would find the treatment adopted to be incorrect - was not included as it was seen to be too subjective. In February 2022, the then government told the House of Lords Finance Bill Sub-Committee that "Any decision to include a third trigger in a future Finance Bill would require a good understanding of the needs of large businesses alongside strong evidence it would be effective in tackling the tax gap".[2]

4. Notwithstanding the Evaluation Report published in July 2025, we do not consider that the Government has provided the required "strong evidence" in support of the changes now proposed:

    4.1. First, it appears that the number of formal notifications made since 2022 is low (for example, in 2024/2025, only 7 notifications were made in relation to corporation tax (with none made in relation to VAT and fewer than 5 in relation to income tax).[3] Hence, the Evaluation Report describes evaluating within three years of implementation as "challenging" and states that there is insufficient data to carry out a assessment of whether the policy has met its "Critical Success Factors". As a result, the Evaluation Report itself notes that the timeframe for the evaluation means it is not yet possible to calculate the impact of UTT on the legal interpretation tax gap.

    4.2. Secondly, whilst the Consultation states that a new trigger is needed as "some legal interpretation issues" may not meet the current thresholds, it is not clear as to the basis for this - particularly given that the Evaluation Report indicates that many businesses continue to engage with HMRC in an open and transparent basis and so are likely to be disclosing uncertainties, including any technically outside the current UTT regime, in any event.

[1] HMRC, Notification of uncertain tax treatment by large businesses - Summary of responses (March 2021) at paragraphs 3.11 and 3.14.
[2] Response to FBSC Report into Finance Bill 2021-2022: Basis Period Reform and Uncertain Tax Treatment (February 2022).
[3] HMRC, Large Business compliance: technical note (July 2025).

4.3. Thirdly, the Evaluation Report states that "The proportion of the business population that don't clarify tax uncertainties, nor notify under Uncertain Tax Treatment and do not proactively engage with HMRC appears to be negligible". On this basis, imposing additional administrative burdens on the many (compliant) businesses in order to tackle the very few that are still not regarded as engaging with HMRC appropriately appears a disproportionate response to stated policy objective.

5. We do not therefore consider that the case has been made for such an extensive redrawing of the UTT regime at this time. Instead, the UTT regime should be, for now, left as is until there is sufficient data to assess whether it is achieving its objectives (i.e. the critical success factors listed in the Evaluation Report) - requiring a meaningful sample of cases notified (whether formally or informally) under UTT to be resolved. This would also provide time to assess the impact of the recently published guidelines on disclosure in tax returns (GfC13) of uncertainties around legal interpretation by taxpayers (which appear intended to enhance HMRC's ability to identify legal interpretation issues from returns).[4] More time also allows HMRC to consult fully with stakeholders on their concerns in relation to the specific proposals set out in the Consultation before draft legislation is produced.

6. In the meantime, HMRC has a range of powers that it can engage to try to counter the lack of transparency from businesses identified as high/moderately high risk which HMRC do not consider are engaging with them in an open and transparent way.

7. In addition, in order to support business, we consider that the priority for HMRC should be finding opportunities to reduce the number of uncertainties in existing tax rules (which we discuss next).

General comments: Opportunities to increase tax certainty

8. As referenced above, we consider that HMRC should be taking action to reduce uncertainties in the UK's tax code. Those steps include:

8.1. *Better legislation*: Legislation needs to be clear both in scope and detail. This involves not only ensuring greater precision (and so clarity) in drafting but also allowing "proper time" for review (both internally and through external consultation). This will also reduce the need for retrospective changes at a later date, which would both make the process more efficient in the long run – and minimise further uncertainty and change for business.

8.2. *Better guidance*: At the time the UTT regime was introduced, HMRC acknowledged the need to ensure their published guidance was not only up to date but clearly set out their views. It is disappointing therefore that the Evaluation Report for UTT states that "no guidance changes have been made as yet" in light of notifications received. However, the need for better guidance is not limited to cases where there has been a notification. We are aware that in a number of areas guidance has not kept pace with recent developments (examples include the REIT guidance contained in the Investment Funds Manual where updates for changes made in Finance Act 2022 were first published in 2025; the guidance on section 75A FA 2003 in the SDLT manual, where updates following the 2018 Supreme Court decision in *Project Blue* were first published in 2020; the guidance on foreign entity classification in the International Manual, where updates following

[4] HMRC. Help ensuring documents filed with HMRC are correct and complete—GfC13 (September 2025)

the Supreme Court's decision in *Anson* in 2015 were not published until more than eight years later, in December 2023; and, in relation to VAT, VAT Notice 742 (Land and Buildings) is still to be updated in light of changes relating to self-storage originally announced at Budget 2012. Whilst we recognise that improving guidance is a significant undertaking, "good guidance" published updated on a timely basis is fundamental to ensuring that businesses have sufficient certainty over their tax affairs. To note, guidance updates are needed both to reflect relevant changes in legislation and case law – but equally important, to stay up to date to reflect our modern economy and new way of doing business.

8.3. *Better resourcing of CCMs:* A CCM needs to have time to get to "know" the business of each taxpayer it deals with so that they can better engage on issues that may come up. The Evaluation Report states that responses to the regular Large Business Survey highlight concerns in relation to "timely engagement with CCMs" - concerns which we have also heard from our members.

8.4. *Better timescales for responding to taxpayer queries*: One route open to taxpayers seeking to clarify uncertainties is to apply for a non-statutory clearance. Whilst HMRC state that they will usually aim to reply to non-statutory clearance applications within 28 days, this does not apply where there are "complicated issues".[5] We hear from members that the length of time taken to obtain a response to a clearance application means that seeking certainty by this route may often not be a viable option in practice as timetables for commercial transactions often cannot allow for such delays (especially when it is uncertain how long HMRC will take to respond, and whether HMRC will simply decline to provide a view on the basis that, their view, there is no uncertainty). We recommend that HMRC is better resourced in relation to dealing with clearance applications, with a view to improving response times.

8.5. *Simplification*: Complexity in the system is bad for business, and bad for growth – if Government are serious about supporting business and encouraging growth, a significant program of tax simplification is needed. Following the abolition of the Office of Tax Simplification in 2023, HM Treasury and HMRC have direct responsibility for tax simplification in developing new legislation, but there is no obvious means of holding them to account for delivery on this (for example, tax impact and information notices make no assessment of what has been done to minimise complexity). Given how important simplification of the tax and regulatory system is to the business community, a simplification agenda would be a really cost-effective way to support business.

The Consultation proposals

9. We set out below our views on the specific proposals to extend the notification of uncertain tax treatment (UTT) regime set out in the consultation "Opportunities to Extend Uncertain Tax Treatment" published in March 2026 (the Consultation). Our response focuses on the proposals that are relevant to our membership - in particular (a) the extension of the regime to SDLT and CIS, (b) the inclusion of a third trigger, (c) the proposal to require a single annual notification and (c) the requirement to obtain written confirmation from HMRC as to their awareness of a particular uncertainty if the exemption from notification in paragraph 18, Schedule 17 FA 2022 is to be available.

[5] HMRC, Find out about the Non-Statutory Clearance Service (1 December 2023) https://www.gov.uk/guidance/non-statutory-clearance-service-guidance. This states that VAT non-statutory clearances are taking 12 weeks.

10. Given that the proposed third trigger would apply to any new taxes brought within scope of the UTT regime, we first discuss that. This means that our response does not follow the order of questions as set out in the Consultation and so, for ease of reference, we set out in the appendix a list of the questions in the order they appear in the Consultation with a summary of our response to each (cross-referencing to the paragraphs below where relevant).

The proposed new (third) trigger

11. The proposed new third trigger applies where (a) there is more than one credible interpretation of the relevant legislation and (b) HMRC's view is not known.

12. We have a number of very significant concerns about a trigger cast in this way, given both the level of subjectivity and the practical challenges in identifying if it is met (particularly in relation to having to check against a negative under limb (b)). We set these out below. Overall, our view is that this proposed trigger is too uncertain in scope to be used as a trigger for a notification. In our response to the first consultation on the UTT regime, we said that any trigger should be clear and as objective as possible, so taxpayers are readily able to determine if a notification obligation has arisen. The proposed third trigger does not meet that criteria, and is arguably even more unclear and subjective than the triggers that were rejected in the earlier consultations

13. Further, that uncertainty means the proposed trigger would not achieve the Government's stated objective of ensuring that only "interpretations of real concern" where there is a "meaningful risk of challenge" are brought to HMRC's attention. In addition, whilst the third trigger would undoubtedly increase notifications, it is unclear whether it would (as the Government suggest) "increase certainty for the taxpayer". Absent HMRC taking the action outlined in paragraph 8 above, notification will not by itself improve certainty.

14. As a result, we consider that the proposed third trigger will not only impose a significant additional compliance burden (and cost) for businesses - and other taxpayers - within scope, but will also lead to HMRC receiving potentially a very large number of notifications on matters that, adopting the language in the Consultation, are not of "direct interest" to them. This is not in the interests of the taxpayer or HMRC, or the tax system overall.

What is a "credible" interpretation?

15. The Consultation does not comment on what is meant by "credible". The dictionary definition is "capable of being believed or relied upon". A test of uncertainty based on being "capable of being believed" would set a low bar for notification - particularly when contrasted with the third trigger proposed (but dropped after consultation) in 2021 which referenced a "substantial possibility of being found incorrect". The concept of being "credible" does not itself imply any assessment of whether or not any alternative interpretation would or could ultimately be successful at tribunal; instead it suggests simply that it appears to be arguable.

16. If being "arguable" is intended to be sufficient to make a particular view credible, the trigger would appear to require taxpayers to investigate all possible alternative views on the matter and assess their "believability". This creates another challenge in applying the trigger given that there can be different views as to whether a particular view is "arguable" - not only as between HMRC and taxpayers/advisers,

but also as between different taxpayers and different advisers. In this context, in relation to VAT, there will almost always be two parties, with different advisers - and it seems that any "uncertainty" in the VAT treatment of a particular supply could mean that the third trigger is met where the materiality of the issue means the parties provide (in the agreement governing the supply) for the possibility of a different interpretation applying, regardless of how remote both parties think that is. A taxpayer would generally be expected to look to their own judgment (and that of their advisers) in assessing the merits of alternative views as to how a particular provision should be interpreted. That assessment would shape their view as to whether a notification would need to be made. If HMRC's view is not "known", it may be that HMRC has not as yet had to consider what that provision means - and it is clearly possible that HMRC may have a different view as to "credibility". If HMRC's view, once reached, suggests an alternative credible interpretation that the taxpayer and its advisers had not identified (or, if they did, did not consider "credible"), is the taxpayer liable to a penalty for not notifying? If so, this creates the risk that if, following an enquiry, HMRC identifies what it views as an uncertainty that was not disclosed, as well as any substantive dispute, there will potentially be a live issue as to whether a notification should have been made (and so a penalty is chargeable) even though the lack of notification has not prevented HMRC identifying the issue as part of its normal compliance activity.

17. In this context, another issue arises in relation to the position of arguments raised in ongoing litigation by HMRC. The current UTT guidance makes clear that an argument made by HMRC in the course of litigation is not a "known" view: however, would it be a credible view for these purposes in circumstances where it has been rejected by the relevant tribunal? If not, would that position change if HMRC appealed (pending the outcome of that appeal) or if, at a higher court, a dissenting judgment favoured the interpretation rejected by the majority? An example here would be *Orsted West of Duddon Sands & Ors v HMRC* where the taxpayer was successful at First Tier Tribunal and Court of Appeal, but not at Upper Tribunal and the Supreme Court.

18. Linked to this, the courts increasingly adopt a purposive construction of tax legislation (and not just in the context of tax avoidance): see for example the case of *Sajedi v HMRC* where the judge independently questioned how the legislation should be construed purposively. Whilst a tribunal judgment would suggest a particular view is "credible", it is not clear the extent to which this trigger would require a taxpayer to second guess possible purposive constructions in determining the existence of credible alternatives (noting that a number of tax cases show the inherent uncertainty of purposive construction).

19. Further, whilst in the Consultation the Government states that this new trigger will link to GfC13, there is a lack of clarity in how the two fit together. In Part 3 of GfC13, HMRC distinguish between "finely balanced arguments" (where reference is made to there being more than one "reasonable" view), "novel interpretations" (which focuses on it being more likely than not than it will be upheld by the courts) and "improbable interpretations" (where it is unlikely that a court would agree). There is no reference in GfC13 as to whether a view is "credible". It seems of these that only an "improbable interpretation" could not be "credible": is this correct? If so, a significant burden would be placed on taxpayers seeking to comply with the UTT regime if they need to identify possible "novel interpretations" in the many areas of the UK tax code where a point has not been previously assessed by a court.

20. Whilst we acknowledge that a difference in views (not only between taxpayers and HMRC, but also as between different taxpayers and advisers) is likely to be an issue regardless of what test is used in

relation to the type of third trigger the Government is envisaging, the subjectivity inherent in the proposed third trigger compounds this issue given it appears to imply that a taxpayer needs to assess "credibility" not just by reference to its own view of the position.

21. By way of contrast, the previous formulation of a third trigger referenced the anticipated outcome at a tribunal of the taxpayer's view - such that the subjective assessment focused only on the one interpretation taken by the taxpayer. Whilst that in itself is far from straightforward (and hence that proposal was dropped), an assessment based on likelihood of success does at least bring with it a requirement to look to how an independent third party (the judge) would assess the arguments. Nevertheless, even if "credible" was defined by reference to likelihood of success, it would still be hard for taxpayers to apply the third trigger fairly and consistently - which the Government appears to have recognised by proposing a different test to that put forward in 2021.

More than one credible interpretation

22. Within the UK tax code, there are a number of provisions which have been drafted so broadly that there will almost invariably be more than one credible interpretation. If the third trigger is to be included as proposed, we consider such provisions should be excluded from the scope of regime.

23. An example is section 75A Finance Act 2003, the drafting of which is so broad that there can be uncertainty in applying it even to a simple fact pattern (such that anything but the most basic land transaction could trigger a notification obligation where the £5m threshold is exceeded). This is further compounded by the fact that section 75A is mechanical, which can increase the range of alternative interpretations that may be "credible" even if they do not appear to result in a sensible outcome based on the policy intent. Whilst there is HMRC guidance on the application of section 75A, it is limited and so it is unlikely that HMRC's position in relation to particular fact-patterns that might arise in practice would be known. This is especially acute here because of how chargeable consideration for the notional transaction under section 75A is determined (i.e. broadly, the largest aggregate amount given or received by relevant person(s) as consideration for the "scheme transactions"). As a result, a merely "credible" interpretation as to whether certain actions should be seen as scheme transactions (and so not as "incidental") could make a material difference in the amount of chargeable consideration treated as given for a particular notional transaction.

24. Also, whilst legal interpretation is distinguished from avoidance in HMRC's assessment of the tax gap, the Taxes Act include a number of TAARs that incorporate "main purpose" tests. In addition, there are various deeming provisions where the extent of the fiction created by the deeming is often not made clear in the legislation, leading to the possibility of there being (potentially) a large number of "credible" interpretations (for example, in the recent decision in *CATS North Sea Limited* [2026], there appear to have been at least eight competing interpretations of how the relevant provisions should apply). The nature of such provisions means that there is an intrinsic uncertainty - and the nature of HMRC guidance in these areas again means that the likelihood of a "known" position in relation to particular facts is remote.[6] As the Consultation states that legal interpretation uncertainties include "differences in interpretation of facts (primary facts or secondary deductive facts for example status) affecting whether and how the law is applied", such provisions would appear to be potentially in scope of the third trigger - yet the "uncertainty" involved in the application of a broadly drafted TAAR is of a different nature to

[6] See for example the section "Factual uncertainties" at UTT13200.

that in other provisions (with "avoidance" and "legal interpretation differences" resulting in different compliance responses as a result). This further illustrates the compliance burden and costs that would be created by the proposed new trigger, and why in our view it should not be introduced. However, if despite those impacts, the proposed new trigger is taken forward, we consider that, at a minimum, inherently uncertain areas – such as "main purpose" tests (e.g. the loan relationship unallowable purposes test, the transactions in land rules and equivalent provisions), deeming provisions (and equivalent provisions that apply a statutory fiction) and section 75A, are excluded from the third trigger, - with any obligation to notify in relation to such provisions being (as now) determined by reference to the two existing triggers.

25. Finally, under the current rules, the identification of the amount of a tax advantage is based on a single alternative position (referred to as the "expected amount" in Schedule 17 FA 2022). The Consultation does not identify how the value of a tax advantage is to be identified where the proposed third trigger applies - if there is one credible alternative view, it seems reasonable to assume that the expected amount would be based on that. But, if there is more than one credible view, how is the tax advantage to be calculated - particularly as it may be possible for one credible view to give rise to less tax being payable and another would give rise to more tax? Absent an element of "realism" as to the alternative views to be taken into account, there is a clear risk that a taxpayer may have to notify simply because on one possible view there may be (material) additional tax payable, even if that particular credible view is very much an outlier.

Whether HMRC view "known"

26. As a general comment, whilst identifying whether there is a "known" HMRC view may itself be challenging in practice (and hence the inclusion of commentary on this with specific examples at UTT13200), a test based on identifying a lack of a view is even more so. The Consultation makes no reference as to the steps taxpayers would be expected to take to identify if HMRC's view is "unknown" - with reference to UTT13200, not being able to locate a known view does not necessarily mean that there is no known view.

27. In some cases, HMRC have a "known" practice that is not reflected in published guidance or any of the other sources listed in the UTT manual. Whilst currently there is no notification requirement where a taxpayer follows (or indeed does not follow) that practice, it appears that the third trigger would nevertheless be engaged where the existence of the (unpublished) practice indicates that there is an uncertainty with the lack of any published guidance would appear to mean it is "unknown" for UTT purposes, despite being known in general terms. Yet, in reality, HMRC is aware of the uncertainty and could publish guidance on the point if it had a firmly held view.

28. Although not referenced in the Consultation, should the third trigger be proceeded with, the definition of a "known view" in paragraph 10(4) of Schedule 17 FA 2022 (and related guidance) will need to be revisited - for example, to confirm that the current approach in relation to contradictory guidance (where the most recent published statement is taken as the "known" view) will continue. In our view, this would need to be consulted on with stakeholders ahead of proposing any amendments to the existing provisions. Similarly, the current notification criteria (referenced in UTT15100) will need to be adapted to apply to the third trigger - for example, should the reference to notifying "alternatives to the tax treatment" mean that the taxpayer is to disclose the analysis under each credible alternative interpretation? As this is material to the compliance burden (and therefore the proportionality) of the

proposals, it would have been helpful if the Consultation had given an indication of possible consequential changes to the existing rules (particularly given the Consultation is said to be a Stage 2 consultation covering detailed policy design). It is particularly disappointing that this is not addressed in the Consultation given the commitment made in 2022 to ensure the needs of large businesses were understood before a third trigger was added to the existing regime. The lack of such detail, as well as the lack of an impact assessment, makes it difficult to assess whether the additional "costs" for businesses (particularly in relation to the additional compliance obligations that we expect to arise from the inclusion of this third trigger) are proportionate to the perceived benefit from the extension in the regime - in our view, such a cost/benefit analysis is necessary if the needs of businesses are properly to be understood.

29. In addition, our members have raised a number of specific concerns relating to the application of a trigger based on HMRC's view being unknown.

New legislation

30. Whilst, ideally, (final) guidance would be published by HMRC in advance of new legislation coming into effect, this may not always happen - particularly where the legislation is complex. In such circumstances, HMRC may often be working with stakeholders on proposed guidance (with those involved receiving advanced drafts and benefiting from discussions which will make clear how HMRC interprets the new rules). Such drafts are not in the public domain as such, which means HMRC's view is "unknown". However, in some cases, the guidance remains in draft for a substantial period of time (including in some cases over a year) - such that for those involved in the working groups (which would generally include representatives from the leading firms that advise in that area and from relevant businesses) HMRC's view is "known" (at least in the ordinary sense of the word) but still have to notify pending HMRC formally publishing the relevant guidance.

31. In some cases, HMRC may publish draft guidance such that it is available to all (recently this was done in relation to the transfer pricing reforms and was also the case for the capital loss restriction and the hybrid rules). Where this happens, is HMRC's view known or unknown? Certainly, if the proposed third trigger were to be proceeded with, how draft guidance should be regarded would need to be made clear.

32. Generally, given that absent guidance, HMRC's view would generally be unknown, we consider that HMRC should commit to publishing guidance relating to new legislation before that legislation comes into effect to minimise the need for notifications simply because the guidance is not yet in the public domain. Similarly, where a court or tribunal decision rejects or contradicts a view expressed by HMRC in its guidance, HMRC should commit to updating its guidance as soon as reasonably practicable (which we would hope would be a matter of weeks, or possibly months, but not years – in order to minimise future uncertainty) - particularly where the relevant decision is binding as a precedent.

Interaction with non-statutory clearance applications

33. The guidance at UTT13200 states that HMRC's known position can be identified from their response to a non-statutory clearance but only in relation to the taxpayer that applied for the clearance. Whilst restriction to the specific taxpayer involved may be appropriate in relation to the existing triggers, it seems counterintuitive to say that HMRC's view is unknown if HMRC has recently provided its interpretation in a clearance obtained by, say, the same adviser for a different taxpayer (possibly on

multiple occasions). Whilst one answer to this would be to require the particular taxpayer to obtain their own non-statutory clearance, the response time may mean this is not feasible - for example if it would present an unacceptable delay to a commercial transaction (which is a common situation). As referenced above, we recommend that HMRC is better resourced in relation to clearances (with greater transparency in relation to its performance being monitored as against specific timescales and other relevant criteria).

34. This is particularly relevant where legislation (and, as noted above, guidance) has not kept up with market developments such that the "uncertainty" could affect multiple taxpayers. Clearance applications will mean that HMRC is aware of the uncertainty. HMRC's view will be well known in the relevant sector - but only because of past clearances. Ideally, HMRC would update its guidance to reflect the view as given in those clearances but that often does not happen for some time: examples here include (a) the treatment of renewable energy assets within the REIT balance of business test (on which the CIOT has recently written to HMRC to ask for the guidance to be updated to reflect what is understood to be HMRC's view based on multiple clearances)[7] and (b) queries around the treatment of rights to light for VAT purposes (which we understand HMRC acknowledge has been an open issue since 2014). It seems that, the absence of providing for the publication of (anonymised) rulings relating to such issues (as is done in other jurisdictions, such as Denmark), HMRC's view would be "unknown" such that a taxpayer has to notify (or risk a penalty), or instead must send in a non-statutory clearance of its own, with no certainty as to when it will get a response, or indeed get a response (as discussed below).

35. Similarly, certain legislation has been deliberately drafted in a general (i.e. short-form or in some cases principles based) style, with reliance placed on guidance to explain the meaning. This approach is often taken in relation to regimes impacting particular markets, where flexibility (not prescription) is needed so that the rules can readily adapt to market developments without legislative amendments being needed. Whilst the approach is adopted for good reason, it can create uncertain legislation and so, in practice, the relevant market relies on HMRC's view as set out in guidance. Whilst that guidance is generally detailed (and often developed with stakeholders to help ensure it covers all material aspects), nevertheless there is the risk that not everything will be covered. As a result, it appears that if such guidance does not cover the exact situation, the proposed third trigger would require a notification (absent a non-statutory clearance given to the particular taxpayer).

36. In addition, members have told us that, in some cases, whilst HMRC may have given clearances in the past, they may later decline to give a clearance on the basis that there is no uncertainty. In this context, the taxpayer has taken the view that the legislative position is uncertain. If the lack of a "known" view (in published guidance) was the reason for making the clearance application, it is unclear that a refusal to provide clearance means that a view has become known. Is there an uncertainty in such a situation that needs to be notified? Here, whilst the section "Clearance requests" at UTT1320 suggests that there is no need to notify, this is in the context of the existing triggers. HMRC's decision not to provide a clearance does not mean that there are no "credible" alternative views. Further, whilst UTT1320 suggests that the application would mean that the uncertainty would have already been brought to HMRC's attention, the proposed changes to that exemption appear to mean that the non-statutory

[7] Chartered Institute of Taxation, Letter to HMRC on Updating HMRC's guidance on Real Estate Investment Trusts (March 2026), https://www.tax.org.uk/ref1647

clearance would need to ask HMRC to confirm specifically that the uncertainty that HMRC do not appear to think exists has been brought to their attention - a rather strange outcome. Instead, if HMRC declines to provide non-statutory clearance on the basis that, in their view, there is no uncertainty, then there should be no obligation to notify an uncertain tax treatment based on the proposed third trigger, if introduced.

37. A particular concern arises in this context in relation to M&A transactions, where the risk of any uncertainty in relation to a tax position taken by the target company/group is factored into commercial negotiations to ensure any risk is appropriately allocated between the parties. The lack of a clear timeframe for a response means that a non-statutory clearance may not be viable within the commercial time constraints. Whilst not intended by the legislation, our members have expressed the concern that imposing a notification obligation because, however "realistic" the view of the seller, there are possible credible alternatives, suggests a likelihood of a potential HMRC dispute that may (in practice) not exist, distorting the parties' assessment of those risks and potentially distorting commercial negotiations.

Extending the UTT regime to SDLT

38. Whilst we agree that legal interpretation issues can arise in relation to SDLT, the Consultation does not comment on what has changed since 2021 (when SDLT was excluded from the regime), particularly given that it does not seem possible to estimate how much of the overall tax gap attributable to legal interpretation issues relates to SDLT. In particular, if existing compliance activity is identifying legal interpretation uncertainties in excess of the £5m threshold, we would question whether bringing SDLT into the scope of UTT is necessary - or whether instead, depending on the uncertainties identified to date, a different approach may be more effective in tackling legal interpretation issues.

39. The reason for querying about the inclusion of SDLT in the UTT regime is because we can see a number of practical challenges in light of some of its provisions. We set out below a few examples.

    39.1. As explained above, section 75A FA 2003 is intrinsically uncertain such that we would anticipate that a significant proportion of transactions where a taxpayer is required to consider if section 75A could be applicable would require notification if the £5m threshold is met (which in and of itself might be complicated to determine for the reasons outlined above).unless a non-statutory clearance is obtained - in relation to which see above. It is for this reason that we consider that, if SDLT were to be included in the scope of the UTT regime, section 75A should be excluded specifically given the broad nature of its drafting (see paragraph 23).

    39.2. In addition, in a number of places, the SDLT legislation does not apply as it should to situations involving nominees within Schedule 16 (for example, sale and leaseback relief requires the same person to be party to both transactions, but the effect of paragraph 3, Schedule 16 FA 2003 is that the person that is party to the sale is not the same as the person party to the leaseback). In practice it is understood that HMRC accepts that relief is available but this is not reflected at SDLT16040. If SDLT was to be included within the UTT regime, we recommend that consideration is given to amending the SDLT legislation to remove the uncertainty (and as a result the guidance) to ensure that the interaction of Schedule 16 with other provisions is clear.

    39.3. Our members have also queried how the UTT regime would apply to land transactions involving partnerships within Schedule 15 given that such transactions are treated as made by

each partner individually rather than by the partnership per se, and with partners having joint and several liability. It is uncertain whether the UTT thresholds would have to be met by the partnership as a whole (including the minimum turnover/balance sheet condition) or whether by a particular partner individually. Where the partnership is mixed, if the latter approach applies, then it could be that some partners (individuals) are within UTT but others are not. If SDLT is brought within scope of the UTT regime, we consider that where a partnership acquires a chargeable interest, the partnership (and not the individual partners) should be the relevant party for UTT purposes, as otherwise that would create disparity compared to the position for other taxes.

40. Finally, the Consultation appears to suggest that legal interpretation issues would include differences in approaches to valuation and to apportionment. We do not agree. Determining the market value of land or non-monetary consideration is not a legal question and so such issues should not be within the scope of the UTT regime (as noted at SDLTM80350 this is a matter for a professional valuer). Similarly, where apportionment is required on a "just and reasonable basis" (as for example is required under paragraph 4 of Schedule 4 FA 2003), we do not consider that this should be regarded as a matter of legal interpretation - it's a factual matter, implicitly recognised as such by the lack of prescriptive rules (in contrast with, say, the CGT part disposal rules).

Extending the UTT regime to CIS

41. We do not consider that the UTT regime should apply to the CIS regime for a number of reasons. First, CIS acts as a tax collection mechanism, rather than a tax in its own right. It is not clear to us how feasible it would be to apply the UTT regime in the context of a regime where the withholding tax is applied by one party – but any tax advantage is for the other party to the transaction (i.e. the payee). Including CIS within UTT would place a disproportionate burden on the party applying the withholding tax, especially if the proposed third trigger is proceeded with. There is a real risk that any uncertainty around the need for disclosure on this tax will likely distort commercial behaviours. As we experienced with recent changes introduced for landlord to tenant payments for fit out works (Reg 20A) – where the new rules generated unexpected uncertainty for the sector – many businesses simply choose to take a prudent decision and withhold tax on payments, rather than incur legal costs and significant internal resource to determine whether a gross payment can be supported. Given the cashflow impact of withholding under the CIS can be very material to businesses involved, this could have an adverse impact on the construction industry.

42. In addition, whilst we note that the Consultation states that differences in interpretation of facts can cause a legal interpretation issue, for CIS, the key question as to whether someone has a particular status regarding gross payment or not is purely factual.

43. Finally, linked to the factual nature of the main compliance risks around CIS, the current guidance provided by HMRC is limited in the assistance it provides to taxpayers such that much around it application would be likely to be "unknown".

44. We therefore do not consider that it is right to extend the scope of UTT to CIS until it is established how this could be done in a proportionate way. Furthermore, given the two taxes which CIS covers (income tax and indirectly, VAT) are already within scope of the UTT rules, it is not clear to us that this additional

administrative burden can be justified. Instead, a better approach to resolving uncertainties would be for HMRC to continue to work with stakeholders to improve its guidance, including to ensure it reflects modern construction practice.

Extending the UTT regime to Trusts

45. The Consultation proposes to bring all trusts in scope where the tax advantage exceeds £5m. It states that the turnover/balance sheet tests are not appropriate as "many trusts are not in business in their own right".

46. Whilst the Consultation does not explain what it means by "trust" we assume that the reference to trusts here is directed to "settlements" where there is an element of bounty (and hence the proposal to treat in the same way as individuals). However, within the real estate sector, commercial trusts are commonly used to hold property investments, operating as a form of collective investment vehicle - in particular the use of Jersey and Guernsey property unit trusts is common. We would recommend that if such trusts are to be brought within the UTT regime, they should be treated in the same way as partnerships - and so the turnover/balance sheet tests should apply at the level of the trust. Further, we consider that where the trust is either a collective investment scheme or an AIF it should benefit from the same exemption currently available to partnerships.

Extending the UTT regime to individuals

47. We do not have a particular view on whether there should be additional criteria to identify in-scope individuals, rather than relying on the £5m tax advantage threshold alone. However, we have some concerns about how the UTT regime would apply to individuals, especially given our concerns around the proposed third trigger.

48. First, we consider that an individual should be required to notify only if they themselves make the relevant legal interpretation that results in a relevant tax advantage. For example, where an individual is a participant (as investor) in a tax-transparent fund, if the fund takes a particular position (e.g. it may consider a return to be capital, rather than income, and report to its investors on that basis) the individual may be unaware of any "uncertainty" as to the position. In that context, we do not consider that it would be reasonable to require an individual to notify under the UTT regime.

49. Second, where individuals could be jointly and severally liable for tax liabilities, the value of the tax advantage attributable to the uncertainty should be the amount of the tax advantage attributable to them individually (rather than the maximum amount of tax for which they could be liable on a joint and several basis),

Due date for notifications

50. We agree that having multiple different reporting points for UTT, depending on the tax in question, could create additional burdens for taxpayers. However, we can also see a benefit to linking notification for a transaction relating to a particular tax to the timing of the return that reports the transaction in relation to which the uncertainty arises as at that point the taxpayer's mind would be focused on relevant legal issues in the context of its overall filing approach. We therefore favour a "hybrid" approach - which in our view would distinguish between those taxes that could be described as "ongoing" (such as CT, IT, PAYE, NICs and VAT) and those that are more closely linked relate to

"transactions" (which would include SDLT). As a result we do not consider that an approach based on a "one-size fits all" single notification is appropriate.

51. Therefore, for CT, IT and CGT, we consider that the due date for notification should be the date on which an (annual) tax return (i.e. for individuals, 31 January following the year of assessment and for companies, by reference to their filing date) should be filed which in most cases will be the date on which details of disposals are notified to HMRC: therefore for direct taxes, there would be a single date for individuals as well as for companies. We consider that this same date should apply to disposals in relation to which, under Schedule 2 FA 2019, a CGT return has to be filed at an earlier date (for reasons similar to those referenced in relation to SDLT below). In particular, having the same date for IT and CGT is in our view both sensible and appropriate given that "uncertainties" in this context could include whether something is revenue or capital in nature, whether under general principles or the transaction in land rules.

52. For PAYE, NICs, and CIS, we consider that notification should be by reference to the date on which the last return of the relevant financial year is filed (so basically applying the approach taken for PAYE in relation to NICs and CIS given that they each (to differing extents) represent a form of "withholding" by one person on behalf of a liability of another should they be brought into scope of the UTT regime. The same approach should continue to apply to VAT.

53. As SDLT operates as a transaction tax, we consider that notification should be linked to the date of the relevant land transaction (or, if there are a series of transactions, the last of the series). However, we do not consider that notification should be required at the same time as the submission of the SDLT return: instead we would recommend that taxpayers have a period of at least 3 months after the filing date for the relevant land transaction return in which to file a notification. This still provides HMRC with sufficient time to consider the notification and decide if an enquiry is merited (noting that, depending on the uncertainty in question, the taxpayer may have chosen to disclose the relevant issue within the SDLT return in an event. This extra time (i.e. beyond the 14 days) is necessary given the different nature of the "pro forma return" for SDLT and the requirement to provide an explanation of an "uncertainty" in the context of the UTT regime, particularly given the complexity of the SDLT provisions that are likely to be engaged regarding any uncertainty (for example, in contrast to an SDLT return, the current online form for UTT purposes requires the following: "the reason why you need to notify HMRC; information about the reason for the uncertainty; and any statute, case law or HMRC known position which is not being followed").

54. The Consultation references possible challenges where a taxpayer enters into a transaction where there are uncertainties in relation to more than one tax. In such a case, taking account of the exemption in paragraph 18 of Schedule 17 FA 2022, we consider that the relevant taxpayer should be permitted to provide a single notification covering all relevant taxes to HMRC - and that the filing date for that should be the later of what would have been the filing dates for individual notification under the relevant individual taxes. We consider this should be optional as whether a taxpayer would want to take this approach may depend on their internal compliance processes.

Exception to obligation to notification

55. The Evaluation Report highlights the importance of the exemption in paragraph 18 of S Schedule 17 FA 2022. It appears from that report that for many businesses the ability to discuss with HMRC possible uncertainties in advance was a significant factor in its finding that "the additional administrative burden of returning timely UTT notifications appears to be minimal" (as those discussions mean no formal notification is required). We are concerned that changing the current exemption to require HMRC to confirm they are aware of a particular uncertainty will limit its availability in practice, particularly taking account of long-held concerns within businesses as to the level of resourcing within HMRC for CCMs and (non-CCM) support for mid-sized businesses. (Though we note that, as the surveys referenced in the Evaluation Report appear to have been limited to large businesses, it is unclear the extent to which mid-sized businesses are able to access this exemption in relation to the existing regime.)

56. In addition, our members are concerned that current resourcing issues within HMRC (both in relation to dealings with CCMs and more generally around response times to non-statutory clearances) will only be exacerbated by expanding the UTT regime, particularly if the proposed third trigger is taken forward.

57. Currently, HMRC's UTT manual (at UTT16200) suggests that taxpayers document any discussions with their CCM. adding that:

> "Where a business (or their agent) approaches HMRC, via the CCM or the MSB Customer Support Team, to provide information and discuss an uncertain tax issue, HMRC will confirm in writing when the general exemption has been met."

58. The Evaluation Report does not comment on whether this is happening in practice (and assuming it is the time taken for HMRC to confirm). If this guidance is followed in practice, then HMRC written confirmation is given as a matter of course such that there would not appear to be an issue here. The benefit of the current position is that, if an individual officer fails to respond, the taxpayer is able to evidence the discussion from its own records.

59. The proposed change means that a taxpayer is dependent on HMRC providing a written response within a reasonable time frame. This creates a real risk that, despite disclosure to HMRC, a taxpayer is not able to rely on the exemption - particularly given concerns of businesses about "delays in communication from CCMs" (as per the Large Business Survey). Taking account of this, and also the stated purpose of regime (of encouraging taxpayer dialogue with HMRC), we consider that the exemption should not be restricted as proposed in the Consultation.

60. If the Government were to, however, proceed with this, we consider that there would also need to be a statutory obligation requiring HMRC to provide that confirmation in writing within a specified period (e.g. 14 days). Provisions would also need to address what is required where, say, the issue is raised in an application for non-statutory clearance or other correspondence (as referenced above, would a clearance application need to ask HMRC to confirm that it also acts as disclosure for the purposes of the exemption - whilst the current guidance at UTT13200 states that a clearance application would mean the exemption would apply, a response from HMRC would not necessarily provide an express confirmation that the uncertainty had been brought to its attention).

61. Finally, members have queried the position where a taxpayer has, in past dealings with HMRC, agreed a particular approach to an uncertainty which continues to apply. If the exemption were to require explicit HMRC confirmation, would this mean that the taxpayer would need to contact HMRC to get confirmation of that practice anew in writing if it is to rely on the exemption. If so, this seems to impose an unnecessary and disproportionate burden.

Other comments on the UTT regime

62. Whilst not part of the Consultation (or the Evaluation Report), our members have highlighted concerns relating to the definition of "tax advantage" as it applies to VAT. This is because the tax advantage tests look 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. This can produce counter-intuitive results. For example, buyers can be treated as having a tax advantage even where they are worse off or indeed 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 on individual VAT outcomes rather than the net impact.

63. To illustrate this, assume a business is uncertain whether the VAT liability of a supply is standard-rated or exempt. If the value of the supply is £60m, the standard-rated output VAT would be £12m, and so the tax advantage (based on output tax) exceeds the UTT threshold. However, looking at output tax alone ignores the reality of how VAT works - in that were the supply to be taxable, the supplier is able to recover any input VAT that is directly attributable to that supply. For this example, if the input VAT were £8m, this means that the overall "tax advantage" resulting from the uncertainty would be £4m (when comparing with the position were the supply exempt).

64. The definition of tax advantage in the UTT rules however means that, notwithstanding the "net" advantage is less than £5m, the supplier nevertheless has to notify as (a) if the supplier treats the supply as exempt, there is a tax advantage of £12m (being the output tax that is not then accounted for) and (b) if the supplier treats it as taxable, then there is a tax advantage of £8m in relation to input tax that can then be recovered (which would not be possible if it were exempt).

65. In addition, the definition appears to work counter-intuitively where for example the "alternative" position relates to timing only: assume that a taxpayer enters into a transaction where the taxpayer (the supplier) considers that the time of supply is February, whilst HMRC's position is that the tax point should be May. Assuming the supplier has quarterly VAT accounting periods, it would report the supply in its VAT return for Q1 (and pay the VAT by the due date for Q1). However, this means that its return for Q2 reports less output tax than (under HMRC's interpretation) would have been the case: a tax advantage, even though the VAT has by then been paid.

66. We therefore ask the Government to revisit the definition of tax advantage in paragraph 13 of Schedule 17 FA 2022 to ensure that it applies sensibly in situations like those referenced above. We would be happy to provide further examples and/or discuss further if that would be helpful.

Consultation questions	
Question 1	**Question: Are you responding to this survey as:** - **a business** - **a representative body** - **an organisation** - **an individual** - **other (please provide details)** Response: A representative body.
Question 2	**Question: Are the views offered in your responses:** **- your own views** **- your organisation s views** **- your members views** Response: The views offered are those of RE:UK's members.
Question 3	**Question: What is your industry sector (such as accounting, finance, software, retail, construction, other)?** Response: The real estate sector (including construction, development and investment). Our membership includes those businesses and investors active in the sector, as well as those who advise them.
Question 4	**Question: To help us determine business size, please provide details on:** **- number of employees in your business** **- annual turnover** Response: N/A.
Question 5	**Question 5: Please provide any further information about your organisation or business activities that you think might help us put your answers in context.** Response: Please see introduction headed "Real Estate:UK" on page 1 of this consultation response.

Question 6	**Question: Do you agree that we should focus solely on the tax advantage amount to identify legal interpretation uncertainties of interest?** Response: N/A [See paragraphs 62 to 66 in relation to tax advantage for VAT].
Question 7	**Question: Do you agree with how we propose to determine the tax advantage for individuals?** Response: See paragraphs [48 to 50].
TRUSTS	
Question 8	**Question: Do you agree with including all trusts within scope?** Response: We consider that the Government should more clearly define the types of "trusts" that it envisages as within scope of the extended UTT rules. For certain "trusts" (particularly those that operate as "commercial businesses" - which in a real estate context would include property unit trusts), if they are to be brought within UTT, we consider that the same turnover/balance sheet test that applies to companies: see paragraph [47].
Question 9	**Question: Can you foresee any practical issues with including trusts within scope of UTT?** Response: See paragraph [47].
NICS	
Question 10	**Question: Can you foresee any practical issues with including NICs within UTT?** Response: N/A

Question 11	**Question: 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)?** Response: We favour an approach that distinguishes between "ongoing" taxes (like CT, IT and NICs) and those that relate to "transactions" (including SDLT) in terms of notifications: see paragraphs [51 to 55]. We therefore consider the notification process for NICS should be the same as for PAYE currently.
CIS	
Question 12	**Question: 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)?** Response: Neither, as we do not consider that CIS should be brought within the scope of the UTT regime: see paragraphs [41 to 45]. If the Government proceeds with including CIS within scope of the UTT regime, we consider there should be a stand-alone notification obligation solely for CIS as at the date of the last CIS return due for a financial year, as is the case for PAYE: see paragraphs [51 to 55].
Question 13	**Question: Can you foresee any practical issues with including CIS within UTT?** Response: Yes: see paragraphs [41 to 45]. In our view, the UTT regime should not apply to CIS given both the nature of the CIS regime and the types of uncertainty that can arise in practice in its operation.
SDLT	
Question 14	**Question: 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)?** Response: As per our response to question 11, we favour an approach that distinguishes between "ongoing" taxes (like CT, IT, CGT, NICs and VAT) and those that relate to "transactions" (such as SDLT) in terms of notification: see paragraphs [51 to 55].

Question 15	**Question: Can you foresee any practical issues with including SDLT within scope of UTT?** Response; Yes: see paragraphs [38 to 40] in which we highlight particular challenges that arise from the nature of certain aspects of the SDLT regime - including partnerships, nominees and s75A FA 2003.
CGT	
Question 16	**Question: 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)?** Response: We consider that the due date for notification should be the date on which an (annual) tax return (i.e. 31 January following the year of assessment) should be filed, which in most cases will be the date on which details of disposals are notified to HMRC. We consider that this same date should apply to disposals in relation to which, under Schedule 2 FA 2019, a return may need to be filed at an earlier date (for reasons similar to those referenced in relation to SDLT at question 14 above): see paragraphs [51 to 55].
Question 17	**Question: Can you foresee any practical issues with including CGT within scope of UTT?** Response: N/A. (For companies within the charge to CT, the UTT regime already applies to corporation tax on chargeable gains.)
IHT	
Question 18	**Question: 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)?** Response: N/A

Question 19	**Question: 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?** Response: N/A
Question 20	**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?** Response: N/A
PROPOSED THIRD TRIGGER	
Question 21	**Question: 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?** Response: No: see paragraphs [4 to 7] and [11 to 37].
Question 22	**Question: Are there additional triggers that would identify uncertain tax treatments that would not be identified by the proposed trigger, or the existing 2 triggers?** Response: No. Our concern is that the highly subjective nature of the proposed third trigger means that matters will be notified to HMRC that are not within the intended scope. We consider that HMRC should look at other ways of minimising uncertainties - in particular, looking at better legislation, better guidance and better resourcing of CCMs: see paragraph [8].
Question 23	**Question: In addition to transfer pricing calculations, are there any other uncertainties that should be excluded from the proposed trigger?** Response: Yes - including section 75A FA 2003 and "main purpose" tests and other TAARs and deeming provisions. See paragraphs [22 to 24].

NOTIFICATIONS	
Question 24	**Question: 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?** Response: As referenced in our response to question 14, we consider that whilst an annual notification should apply for "ongoing" taxes (like CT, IT, VAT and NICs), for a tax that is charged by reference to transactions (i.e. SDLT) notification should be no later than 3 months after the transaction. For CIS, as referenced above, if it is included within UTT, we consider that the due date should link to the timing of CIS returns: see paragraphs [51 to 55].

Question 25	**Question: Can you foresee any problems with taxpayers obtaining confirmation from HMRC that the notification has been brought to its attention?** Response: Yes. The "exemption" for treatments of which HMRC is already aware is very important in practice (as the evaluation study recognises). It appears from that study that the ability to discuss with HMRC in advance is likely to be a significant factor in the finding that "the additional administrative burden of returning timely UTT notifications appears to be minimal" as those early discussions mean no formal notification is required. We are concerned that changing the current exemption to require HMRC to have confirmed they are aware of the uncertainty to be rely on the exception will limit its availability in practice - particularly taking account of long-held concerns within businesses as to the level of resourcing within HMRC for CCMs and equivalent for mid-sized businesses. Currently, the HMRC internal manual on UTT states at UTT16200 suggests that taxpayers document any discussions and notes that: "Where a business (or their agent) approaches HMRC, via the CCM or the MSB Customer Support Team, to provide information and discuss an uncertain tax issue, HMRC will confirm in writing when the general exemption has been met." Whilst the Evaluation Report does not comment on whether this is happening in practice, under the current rules, even if HMRC fails to provide that confirmation, the taxpayer can still produce its own evidence as to the discussion with its CCM that shows why no notification is made. The proposal to change this means that the taxpayer is dependent on HMRC providing a response within a reasonable time frame (ie before the notification date).The Evaluation Report references that "timely engagement with CCMs and delays in communication from CCMs has been a recurring issue mentioned in the Large Business Survey across years", saying that this is due to general resourcing issues.

	Our members are therefore concerned that making specific HMRC confirmation a condition of the exemption will, in practice, limit the ability to rely on it in practice - adding to both their, and HMRC's, administrative burdens as it will mean more notifications will end up being filed - including in relation to issues which, with engagement with HMRC, may not have need to have been filed. In addition, mid-sized firms, individuals and trusts will not have a CCM. Given the lack of a direct contact at HMRC, it seems very likely that, taking into account the extended scope of the regime, making this change will limit their ability in practice to rely on the exemption - again meaning an increased administrative burden for them and HMRC. If this were to be proceeded with, there would need to be a positive (statutory) obligation on HMRC to provide confirmation within a specified timeframe of being asked (albeit with an ability to extend that timeframe if there are good reasons to do so). Further, the resourcing of CCMs, the CST and other HMRC teams that will be dealing with UTT relating to SDLT, IHT, CGT and CIS (whether for companies, individuals or trusts) would need to be revisited to ensure that HMRC can properly support taxpayers wanting to engage with them on possible uncertainties.

End of response