Governance *in brief*

Publication of your UK tax strategy

Headlines

- All multinational businesses with UK operations and consolidated turnover in excess of €750 million, or UK registered companies, partnerships and permanent establishments with turnover in excess of £200 million or gross assets in excess of £2 billion are required to publish their tax strategy in relation to UK taxation.
- The legislation applies to financial years commencing on or after the date of Royal Assent to the law. For December year ends this will mean publication of the UK tax strategy before the end of December 2017.
- Businesses are expected to follow the internal approval processes they would normally follow for public statements, including approval by the Board.
- The vast majority of businesses affected believe that this new legislation will lead to additional work for them.

Background

The 2016 Finance Bill includes revised legislation on tax transparency which requires large businesses within its scope to publish their tax strategy in relation to UK taxation on their website before their financial year-end. At the end of June 2016, HMRC published its final guidance on areas to consider when drafting the UK tax strategy.

This is part of a trend of ever-increasing demands for transparency of the tax arrangements of large businesses. In December we published **Governance *in brief*: The Global Tax Reset and the Reporting of Tax in Annual Accounts**. This examined some of the approaches being taken worldwide to tax transparency.

In the UK, the disclosure of UK tax strategy is part of an ongoing drive for greater transparency in this country, demanded by government, regulators, the media and the public. In January 2016 George Osborne, the Chancellor of the Exchequer, called for agreement for the country-by-country reporting of taxation to be made publicly available. In addition, the FRC, in its current review of the quality of disclosure around tax, is encouraging ever-greater levels of clarity and explanation in the management discussion, in accounting policies as well as in the detailed notes to the financial statements on both uncertainties and other factors affecting taxation.

In Europe, on 12 April 2016 the European Commission proposed measures to introduce requirements for public country by country reporting for the largest companies operating in the EU.

Who must comply and by when?

The legislation applies to financial years commencing on or after the date of Royal Assent of Finance (No. 2) Bill 2016, which is not expected until July 2016 at the earliest, and could be deferred into the autumn. For December year ends this means publication of the UK tax strategy before the end of December 2017, in line with the timing of the publication of the first country by country tax reporting to tax authorities for affected businesses and adding to the compliance burden.

All multinational businesses with UK operations and consolidated turnover in excess of €750 million, or UK registered companies, partnerships and permanent establishments with turnover in excess of £200 million or gross assets in excess of £2 billion are required to publish their UK tax strategy annually on their websites, either as a seperate document or as a self-contained part of a wider document. The strategy information must be made available to the public free of charge until the following year's strategy has been published.

The scope requirements for the UK tax strategy reporting can be complex; in many ways they align with the scope of the Senior Accounting Officer regime, but there are key differences, particularly for foreign owned businesses. There remains some inconsistency between the legislation and the published HMRC guidance. Care should also be taken to understand the scope extension to UK partnerships and branches.

You don't need to publish your tax strategy if you are an open-ended investment company or an investment trust.

What is the disclosure requirement?

The minimum information which must be made publicly available in relation to the group, sub-group, company or partnership is:

- the approach to risk management and governance arrangements in relation to UK taxation;
- the attitude towards tax planning (so far as affecting UK taxation);
- the level of risk in relation to UK taxation that it is prepared to accept; and
- the approach towards its dealings with the UK tax authorities.

The Guidance published by HMRC includes suggestions as to what should be included under each heading, which we expect will be considered when HMRC customer relations managers (CRMs) and others review the contents of the UK tax strategy.

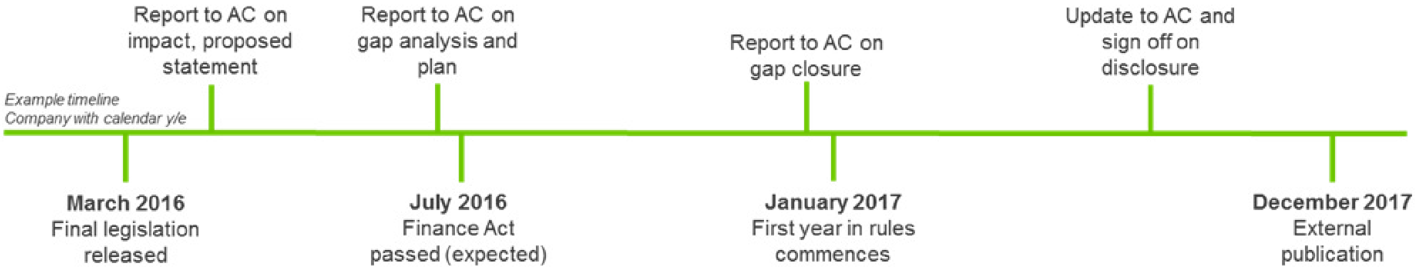
Area of disclosure	HMRC's suggested contents
The approach to risk management and governance arrangements in relation to UK taxation	• How the business identifies and mitigates inherent tax risk because of the size, complexity and extent of change in the business • The governance framework the business 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.
The attitude towards tax planning (so far as affecting UK taxation)	• 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.
The level of risk in relation to UK taxation that it is prepared to accept	• An explanation of whether internal governance is prescriptive on levels of acceptable risk. • If so, is the level of risk quantified and how is risk appetite affected or influenced by stakeholders?
Approach towards its dealings with HMRC	• 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 and past tax risks, tax events and interpreting the law.

Key area for consideration – internal approval process

HMRC expects that businesses will follow the internal approval processes that they would normally follow for public statements. This means that the main board will need to approve the statement and that boards will be likely to request their audit committees to do the "deep dive" work on the strategy statement.

We conducted a poll of 184 clients in January 2016 - over 76% of affected businesses see the new UK tax strategy transparency requirements as introducing additional work – 36% believe it will require a lot of additional work.

Although many companies will already have confidence in their approach to their UK tax strategy, there is not much lead time to ensure that all elements of the strategy that the board wishes to report publicly are in place. The following diagram illustrates how a December year end company could approach their internal timetable.



Key area for consideration – questions Audit Committees might wish to ask

Audit committees at many companies may already have reviewed a tax policy paper, but they may wish to refresh this and consider the following questions regarding tax strategy for this new reporting:

- Does the board already have the processes in place to be confident that the level of internal governance and risk management they apply provide the right level of oversight and control?

- Is there a clear risk appetite set for tax and can this be applied to the UK tax strategy?

- Is there already a clear internal tax policy? Is this at a level that the UK portion of the policy could easily be reported publicly?

- Have the controls over the tax policy and tax reporting been tested recently and is any remediation work required?

- Is it clear in which circumstances the business would seek external tax planning advice – for example, transactions or new share schemes?

- Has the business determined which stakeholders are important for the purpose of the UK tax strategy and is there already an approach to interacting with those stakeholders?

- How will this interact with the broader tax reporting and communications strategy, for example:
  - Consider whether disclosures in the UK tax strategy will be consistent, in content and in tone, with the disclosures in the annual report.
  - If enhancing annual report detail to meet the FRC's expectations, will this affect the UK tax strategy disclosures.
  - Do additional lines of reporting need to be set up to ensure that tax is in close enough contact with investor relations, other parts of the finance team or with internal audit?
  - How will the difference in timing between approval of the UK tax strategy and approval of the annual report be managed and by whom?
  - Who will author the UK tax strategy report and will it be a stand-alone report or incorporated into another report?

- Who below audit committee level needs to review the UK tax strategy report before it is presented to the audit committee?

- Are there any concerns about the responses of other jurisdictions or stakeholders to the publication of the UK tax strategy and how does management plan to address those?

Failure to comply
Where the strategy is not published before the end of the financial year, there will be a penalty of £7,500, charged again if the strategy remains unpublished six months after the year end and then on a monthly basis thereafter.

However, we expect that the most serious consequences of a failure to comply would arise from the deterioration of the relationship with HMRC, and any media or other public interest in the reasons behind the lack of publication of the UK tax strategy.

For further information

Deloitte View

- **The legislation is quite complex and most companies will wish to work through the guidance with professional support to determine applicability and how to respond.**
- **While the publication date may be a long way off, many businesses that are in scope will feel they have a lot to do before they can confidently state and approve their UK tax strategy statement. Given the broad range of stakeholders involved, complexity of the underlying tax arrangements and subjectivity of the rules, it is important that a timetable is established and planning for this new statement is started as soon as possible, given the relative infrequency of Audit Committee meetings at most companies.**
- **The disclosure of the UK tax strategy is only part of the transparency picture for large businesses and you should consider how this statement fits with your financial reporting of taxes, responsible business reporting and broader corporate communications strategy.**

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Our tax team specialises in providing advice on international tax developments, including global tax regulation and transparency initiatives.

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For further details about the Deloitte Academy, including membership, please email **enquiries@deloitteacademy.co.uk**.

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