Understanding the implications of HMRC's profit diversion compliance facility

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With you today

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Agenda

1. **What is the Profit Diversion Compliance Facility (‘PDCF’)?**
2. **HMRC risk indicators**
3. **Key considerations**
4. **Next steps**
5. **Any questions?**

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What is the PDCF?

Key features and background

- Enables MNEs to bring tax affairs up to date where not already under HMRC investigation
- Profit Diversion not just Diverted Profits Tax (‘DPT’) – so relevant to any business with (related party) cross border transactions e.g.
  - Transfer pricing arrangements
  - Company residence
  - Permanent establishments
  - Withholding taxes
  - Indirect taxes
- Detailed HMRC guidance with wide relevance

Why has HMRC launched the PDCF?

— Continued wide lack of BEPS compliance identified e.g.:
  - Incorrect assumptions made
  - Failure to reflect 'what is actually happening on the ground'
  - Implementation failures
  - Failure to update TP policies

— Time limits for DPT Preliminary Notices

— Co-operative Compliance preferred

HMRC's plans

— High risk MNEs identified in a variety of sectors

— Investigation programme across Large Business and Mid-Sized

— Fraud Investigation Service involvement

— ‘Nudge’ letters to some but not all

HMRC's risk indicators

HMRC risk indicators

General

- Contractual allocation of risk inconsistent with control over risk.
- Fragmentation of valuable integrated functions in the pricing model.

Sales, marketing and distribution

- Important regional functions taking place in the UK with associated profits routed overseas.
- UK entities performing key account management functions.

Supply chain

- Supply chains with entities in low tax territories.
- Payments made to procurement or sourcing hubs with limited functionality or for group synergies.

R&D

- Valuable R&D functions described as low value.

Intangibles

- Accumulation of residual profits in a (low tax) IP holding entity with low value functions.
- UK entities performing key functions related to IP.

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Key considerations

Setting the scene

Profit Diversion investigations:

— Our recent experience

Detailed PDCF Disclosure Report requirements e.g.:

— Employee interviews

— Contemporaneous communications and documents e.g. e-mail review

— Analysis of behaviours and conclusions on penalties

How does the PDCF differ?

Other important considerations

Do you have sufficient **resources** to commit to an accelerated process?

Costs: tax, interest, (potentially) penalties, and cost of preparing the disclosure report?

The disclosure report will require **a broad scope**, covering all tax risks.

Whilst HMRC expects to accept most proposals, there are **no guarantees** against further investigations.

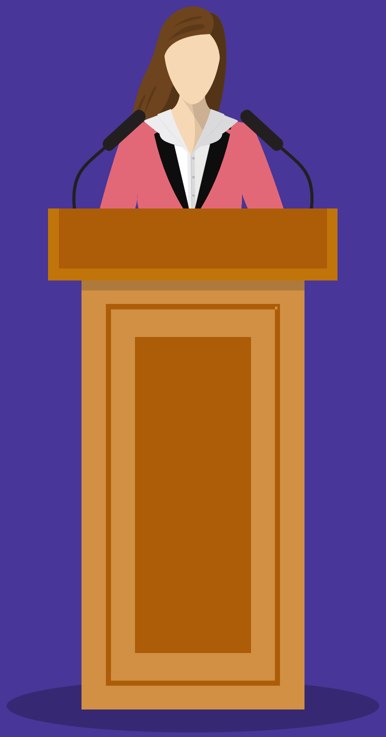
Could the PDCF guidance result in a mismatch between taxpayer and **HMRC expectations?**

Benefits of using the PDCF

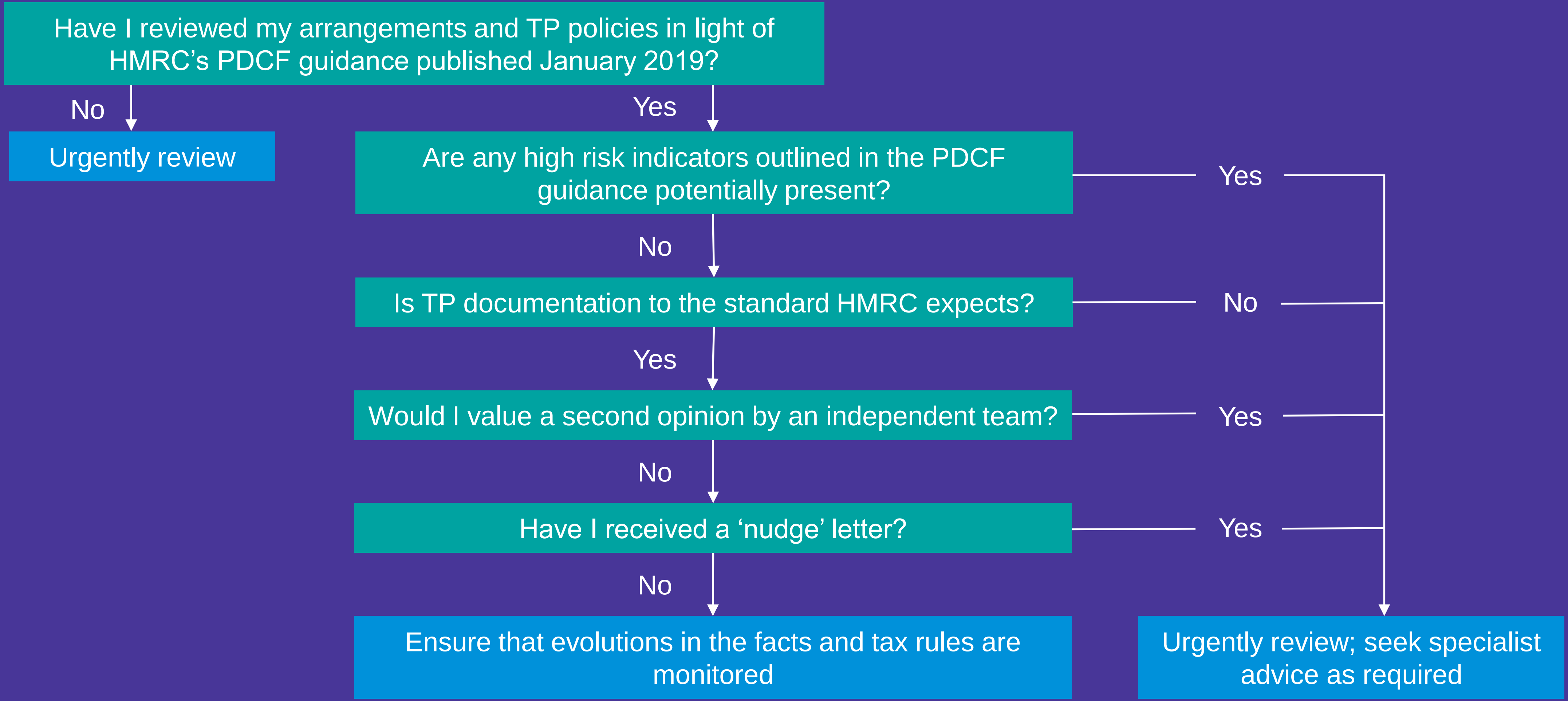
PDCF

- **Prevention of an HMRC investigation**
- **Control**
- **Efficiency**
- **Speed**
- **Penalty mitigation**
- **Certainty**
- **“Without prejudice”**
- **Potential reduced risk of DPT**

Next steps



Considerations: Decision Tree



Options for taxpayers

Range of options, dependent on specific fact and risk patterns e.g.:

BEPS compliance risk assessment	Design and implement BEPS compliant tax models	Obtain advice on potential exposures	Advance pricing agreements and mutual agreement procedures	Proactively engage with HMRC	Register for the PDCF

KPMG can assist with all of the above options, and services can be provided under **legal advice privilege** where appropriate.

Next steps

— Review your own fact pattern

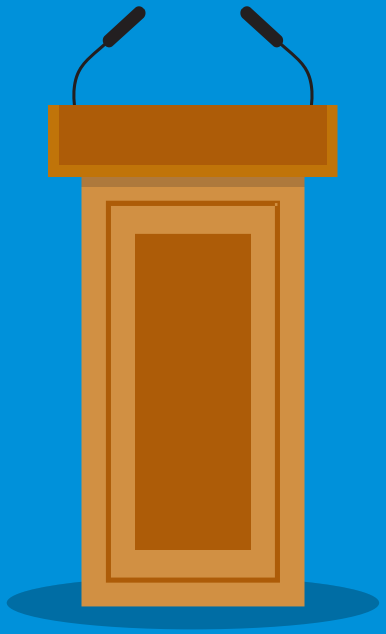
— Assess your options

— Discuss and obtain buy in from key (internal) stakeholders: CFO, General Counsel, C-Suite

— Consult with appropriate external stakeholders: your advisors, (potentially) your HMRC customer compliance manager

Any questions?

Thank you



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