

GUIDANCE

DUTIES OF SENIOR ACCOUNTING OFFICERS OF QUALIFYING COMPANIES

Overview

This guidance explains the duties of Senior Accounting Officers of qualifying companies liable to taxes and duties in the UK, in ensuring that they establish and maintain appropriate tax accounting arrangements as required by Schedule 46 of the Finance Act 2009.

Contents

	Introduction
	Application
	Senior Accounting Officer
	Main duty of the Senior Accounting Officer
	Certificate
	Taxes and duties covered
	Commencement of legislation
	Tax accounting arrangements in scope
	Appropriate tax accounting arrangements
	Reasonable steps
	Calculated accurately in all material respects
	Tax Compliance Risk Management Process
	Penalties and assessment
	Reasonable excuse
	Appeals
	Annex A FAQs
	Annex B Examples

GUIDANCE

Introduction

1. Schedule 46 of Finance Act 2009 was introduced at Budget '09 to make Senior Accounting Officers (SAO) of large companies liable to taxes and duties in the UK, responsible for ensuring and certifying that appropriate tax accounting arrangements have been established and are maintained. For the purposes of this guidance qualifying companies will mean those large companies within this legislation. The definition of company shall be as set out within Section 1(1) of the Companies Act 2006.
2. All companies have an obligation to deliver correct and complete tax returns but compliance with this obligation can be compromised if the company's tax accounting arrangements – from business transactions through to computing the final tax liability – are not fit for purpose. Given the size of qualifying companies, inadequate tax accounting arrangements can lead to the misreporting of liabilities amounting to very sizeable amounts.
3. Previously there was no requirement on anyone within a qualifying company to ensure that the underlying tax accounting arrangements were fit for purpose. This measure addresses that potential 'accountability gap' by making the SAO of a qualifying company responsible for ensuring that appropriate tax accounting arrangements are in place.
4. This builds upon the work that is already under way with HMRC to improve tax governance. It is not intended to introduce a costly and complex bureaucracy for companies but to link this to HMRC's approach to working cooperatively with large business so that the discussion of the tax accounting arrangements becomes part of the risk review and assessment process and sits within the risk framework put in place following the Review of Links with Large Business.
5. Many qualifying companies already have transparent and open relationships with HMRC via their Customer Relationship Manager (CRM). Many of these will already have robust tax accounting arrangements which we would expect to fulfil the requirements of the legislation and enable SAOs to be confident in certifying their appropriateness. However, there are some qualifying companies which do not have robust systems and processes and which find it difficult to know whether or not the right amount of tax is being paid. This measure makes the SAO accountable for rectifying this.
6. This will allow HMRC to continue its risk-based approach, focusing resources on the most important issues, while reducing burdensome compliance checks where these are not required.
7. There may be some companies who are qualifying companies for the purposes of this legislation but who do not currently have a CRM in these circumstances please contact:
 - For companies that are part of a Public Body; Michelle Parkes: 020 7084 5683, michelle.parkes@hmrc.gsi.gov.uk
 - For companies that are part of a Charity; Mark Houghton: 0151 472 6005, mark.houghton@hmrc.gsi.gov.uk

GUIDANCE

- In all other situations; Russell Swainston: 01642 755 154, russell.swainston@hmrc.gsi.gov.uk

Application

Qualifying company

8. This measure applies to a qualifying company (Sch.46, para. 15 FA 2009). This is a UK incorporated company that in the preceding financial year either alone or when its results are aggregated with other UK companies in the same group, has turnover of more than £200m or has a relevant balance sheet total of more than £2bn.
9. Turnover will be taken to have the same meaning as in section 474. CA 2006 and is the turnover or revenue shown on the face of the statutory accounts:
 - Normally this will be amounts derived from the provision of goods and services falling within the company's ordinary activities after deduction of trade discounts, VAT, and any other relevant taxes.
 - This would include for agents and brokers, commissions or margins charged, as these amounts are included in the turnover line.
10. Because turnover is defined as the figure shown on the face of the statutory accounts, adjustments made in tax computations for the purposes calculating CT, for example, will not be included in the turnover figure, therefore they will not be included in the aggregation.
11. Banks and insurance companies do not normally show turnover on the face of the accounts and therefore the asset test alone will determine whether or not they are a qualifying company for the purposes of this legislation. The relevant balance sheet total for these companies would be as set out in section B, Schedule 1, Parts 2&3 SI 2008/410:
 - Gross assets for banks would encompass those contained in 1-15 inclusive within Schedule 2.
 - Gross assets for insurance companies would encompass those contained in A to G inclusive within Schedule 3.
12. The relevant balance sheet total for companies other than banks and insurance companies would be as set out in section B, Sch. 1, Part 1 SI 2008/410. That is:
 - unpaid called up share capital, plus
 - fixed assets, plus
 - current assets, plus
 - prepayments and accrued income.
13. As mentioned above, when establishing whether or not a company is a qualifying company consideration needs to be given to the aggregated turnover or assets of the company and other companies in the same group. Because the turnover and assets in a group situation are aggregated there is the possibility of some double counting as there will be no adjustments for intra group items.

GUIDANCE

14. The legislation defines group membership by reference to the relationships between “relevant bodies”, (Sch.46, para 18(2) FA 2009). A relevant body, which is a company or other body corporate, will be a member of a group where :-
- it is a 51% subsidiary of another relevant body; or
 - it has a 51% subsidiary .

Two or more relevant bodies are members of a group where: -

- one is the 51 per cent subsidiary of the other; or
 - both are 51 per cent subsidiaries of a third relevant body.
15. Companies which meet the conditions will be covered by the legislation even where their main activities are charitable or mutual in nature. Additionally where the principal company within a group (the “Topco”) is not a qualifying company, i.e. because it is not UK incorporated, this may not preclude subsidiaries being qualifying companies if they are UK incorporated and meet the turnover or asset tests.
16. If a qualifying company ceases to meet the size criteria, then it will no longer be subject to this measure. There is no formal notification to HMRC in these circumstances, however we would expect this to form part of the normal communication with the CRM.

Partnerships (LLP’s, LLC’s and general partnerships), Crown Estates and public bodies

17. These bodies are not within Section 1(1) of the Companies Act 2006 and so do not fall within the definition of a qualifying company.
18. Additionally, where a partnership is within a group of companies the same principle applies and it will not itself be encompassed within the legislation.

Dormant companies

19. Dormant companies which are UK incorporated will be caught and so strictly they will need to be included in any notification and covered by a certificate. However, unless they have assets or income that generate a tax charge there are unlikely to be any tax accounting arrangements that the SAO needs to consider. In this situation an SAO for a company or group of companies may choose to make it clear on the certificate that they are dormant.

Other corporate entities

20. Bodies corporate incorporated under legislation other than the Companies Act 2006 are not covered by the legislation. Examples are Building Societies incorporated under the Building Societies Act 1986 or Industrial and Provident Societies incorporated under the Industrial and Provident Societies Act 1965.

GUIDANCE

Partnerships and private equity structures

21. Many private equity structures include management companies as part of their structure. Where such companies fall within the definition of a qualifying company they will be encompassed within the legislation. It is not however the intention to make such companies responsible for the tax accounting arrangements of any target company or group. Where the target company or group meets the definition in paragraph 15, Sch. 46 it will have its own SAO who will be responsible for meeting the requirements of the legislation.

Foreign companies

22. The legislation only applies to UK incorporated companies and not non-UK incorporated companies as the definition of company is taken from Section 1(1) Companies Act 2006. Therefore it will not apply to the UK permanent establishments of foreign companies, companies incorporated abroad but resident in the UK by virtue of central management and control, or to Controlled Foreign Companies (CFCs).

Foreign branches of UK companies

23. As the legislation applies to UK incorporated companies, it will cover the foreign Permanent Establishments (PE's) of such companies. Foreign PE's will generally be subject to tax in the country in which they are located and the profits of the UK company, which will include the PE profits, will also be subject to tax in the UK with a credit being given for any double taxation. The meaning of reasonable steps is covered in the guidance at paragraphs 64-70 but in this situation we would not expect reasonable steps to include an in depth check of the foreign tax position assuming that such activity has been delegated to reasonably competent and qualified individuals etc. (see para 66 on delegation). However reasonable steps could include checking that the foreign tax has actually been paid.

UK incorporated but non UK resident companies

24. Companies that are UK incorporated but are not resident in the UK will be covered by this legislation only to the extent that they are trading in, or have some taxable activity in, the UK. What will constitute reasonable steps in these circumstances will depend on the facts of the company but, as above, this is unlikely to require any detailed checking of the foreign tax position.

Senior Accounting Officer (SAO)

25. The SAO (Sch.46, para.16 FA 2009), is the director or officer with overall responsibility, as appropriately delegated, for the company's financial accounting arrangements. The company will judge who best fits this definition, and in most cases this will be evident from the established governance arrangements. The terms "director" and "officer" shall be taken to have their Companies Act 2006 definitions (Section 250 CA06 and 1173 CA06 respectively).

GUIDANCE

26. Where a company is a member of a group, the SAO for any one company may fulfil that role for some or all of the UK companies within the group providing they are an officer or director of a group company and do actually have overall responsibility for the company's financial accounting arrangements.
27. A UK-owned group or the UK parts of a foreign-owned group may therefore have one or several SAO's depending on the structure and spread of responsibilities. The location of the SAO, whether resident in the UK or abroad, is immaterial to the obligations imposed by the legislation.
28. Where there is an owner-managed company then the SAO will need to ensure that they have sufficient information and authority to fulfil their responsibilities. In this situation the owner/ manager may actually be the SAO as defined by the legislation.
29. There will only be one SAO at any one time for any given company. Should personnel or responsibilities change during the course of the financial year, it is possible that the company or group will have more than one SAO for the period.

Insolvencies and liquidations

30. As mentioned above the SAO will be the director or officer of the company, or a company in the group, who has the overall responsibility for the company's financial accounting arrangements. Where the company is in administration or insolvent the administrator or insolvency practitioner may not meet this definition and there may be no other person within the company or group who continues to have responsibility for the financial accounting arrangements. In such situations there will in fact be no SAO as defined under paragraph 16 Schedule 46 and the legislation will therefore not apply.

Requirement to give notification of the SAO

31. A qualifying company must notify HMRC of the name of any person/s acting as SAO for each financial year. There is no set form of notification but it should include contact details of the SAO, the period to which the notification relates and the companies for which the SAO is acting. Notification will normally be made to the CRM for the qualifying company and should be filed within the period set out under Companies Act requirements (6 or 9 months after the end of the relevant accounting reference period as appropriate) or within a longer period as agreed with the CRM.
32. Where the same person is acting as SAO for more than one UK group company then the notification can cover all of those companies, but each company should be listed.

GUIDANCE

Main duty of Senior Accounting Officer (SAO)

33. The main duty of Schedule 46 is set out in paragraph 1(1). This requires the SAO of a qualifying company to take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements. The SAO must, in particular, take reasonable steps to monitor the tax accounting arrangements of the company and identify any respects in which those arrangements are not appropriate tax accounting arrangements.

Certificate

34. The SAO of a qualifying company must provide HMRC with a certificate as set out in paragraph 3(3) of Schedule 46 stating whether the company has appropriate tax accounting arrangements or, where it does not, providing an explanation.

35. In many cases the SAO will fulfil that role for a number of UK companies in the group and therefore Schedule 46 paragraph 3(3) allows the SAO to certify the appropriateness of the tax accounting arrangements for more than one company. The certificate should be provided to the CRM for the company or companies covered and the suggested format for the certificate is as follows: -

36. "I..... as Senior Accounting Officer of the qualifying company /companies listed below, hereby certify that to the best of my knowledge and belief throughout the company's or companies' financial year ended [...] the company/companies had appropriate accounting arrangements or to the extent it/they did not an explanation is provided below."

37. The certificate must be submitted no later than the end of the period for filing the accounts for the financial year (or such later time as allowed by HMRC).

Taxes and duties covered

38. Paragraph 16 of Schedule 46 specifies the taxes and duties covered by the legislation. These are: -

- Corporation Tax (including any amount assessable or chargeable as if it were CT)
- VAT
- PAYE
- Insurance Premium Tax
- Stamp Duty Land Tax
- Stamp Duty Reserve Tax
- Petroleum Revenue Tax
- Customs Duties
- Excise Duties (including Air Passenger Duty)

GUIDANCE

39. Some of the taxes listed above whilst strictly the liabilities of a third party fall to be administered by the qualifying company and are therefore covered by this legislation. For Stamp Duty Reserve Tax this will extend to brokerage activities.
40. PAYE in the context of the SAO legislation refers to the Income Tax (Pay As You Earn) Regulations 2003/2682. These regulations are given effect in primary legislation by section 684 Income Tax (Earnings and Pensions) Act 2003. "PAYE" does not cover other employer responsibilities administered by HMRC such as student loans, national minimum wage and National Insurance Contributions. These will therefore be excluded.

Taxes, duties and liabilities excluded

41. Any tax or duty not listed above is excluded from the scope of this legislation. This means that for instance reporting in connection with the Construction Industry Scheme and certain Income Tax reporting requirements are excluded, such as tax reported on form CT61 or tax deducted on manufactured overseas dividends and returned on form SX1.
42. Environmental taxes, i.e. Landfill Tax, Aggregate Levy and Climate Change Levy, are also outside the scope of the legislation.
43. Some businesses, mainly financial institutions, operate schemes for relief and deduction of tax at source. Such schemes are not within the scope of Schedule 46. For the avoidance of doubt the following reporting requirements are outside the scope of the provisions: -
 - Sections 16, 17, 18, 25, 26 TMA 1970
 - European Savings Directive
 - Individual Savings Account
 - Child Trust Fund
 - Life Assurance Premium Relief
 - Free standing additional voluntary contributions
 - Chargeable events reporting
 - Unclaimed assets scheme
 - Savings gateway scheme.

Commencement of legislation

44. The obligations imposed by the legislation apply only in relation to financial years beginning on or after 21st July 2009 (date of Royal Assent for FB09). Subject to the guidance below on standing data, the measure is not retrospective, and will not be subject to a transitional period.
45. However any SAO who begins a review of the appropriateness of the tax accounting arrangements during the first financial year **immediately** following the introduction of this measure will be treated as having taken 'reasonable steps' in respect of that period. It follows that in these circumstances the SAO would not be

GUIDANCE

penalised in respect of any failure in that first year. There is still a requirement to submit a certificate and this should fairly reflect the state of the tax accounting arrangements at least to the extent that these have been established during that first period.

46. This “light touch” approach will only apply to the first financial year after the introduction of the legislation. It will not apply to any later period even if a company only comes within the legislation for the first time within any subsequent financial year. For example:

- If a company’s financial year ends on 31st December the first period potentially covered by the legislation will be the year ended 31st December 2010. If a business is a qualifying company within that financial year then the approach set out above will apply.
- However if the company does not become a qualifying company until its financial year ending 31st December 2013 there will be no light touch.

Opening balances, standing data and acquisitions

47. As stated in para 44, Schedule 46 applies to financial years commencing on or after Royal Assent and is not retrospective. However, certain data and information that has been input, collated and/or retained during earlier periods will be used in the calculation of tax liabilities for the periods covered by this legislation. In particular, brought forward balances and standing data will be key in calculating later periods’ tax liabilities. Whilst some level of checking of this data might be appropriate at commencement it is unlikely that companies would generally need to revisit this.

Opening balances – Corporation Tax

48. For Corporation Tax purposes, various opening balances feature in the calculation of a financial year’s tax liability. For example, brought forward tax written down values for fixed assets can have a significant impact on a company’s tax liability. However, the transactions giving rise to those brought forward balances will have occurred over many years.

49. In taking ‘reasonable steps’ to establish appropriate tax accounting arrangements we would expect companies to ensure that the brought forward balances reconcile to the prior year’s computation and that any identified errors from earlier years are properly reflected. We would not expect companies to revisit the value of any opening balances at the date of commencement of these rules.

Opening balances – PAYE

50. Employer taxes are generally calculated on a cumulative basis for a tax year. Given that a tax year is likely to straddle a company’s financial year, some transactions / payments included in the calculation of tax for a tax year may fall before the commencement of these rules. Where this is the case we would expect

GUIDANCE

a company to be able to rely on the cumulative position at the date that the legislation starts to apply. For example where the company has a December year-end it should be able to rely on the calculations and data for the period to December 2009 in calculating the amount payable to HMRC for January 2010 onwards.

Standing data

51. In a number of tax areas, the calculations rely on data held within systems (standing data) that was input some years ago. We would normally expect that, notwithstanding this new measure, companies already have appropriate arrangements in place to ensure that this standing data is correct given that any errors in it are, by definition, systemic. Where companies do not already have such arrangements in place we would expect them to take reasonable steps to determine and implement these from commencement to be able to fulfil the main duty in paragraph 1(1). However this is unlikely to require them to revisit all of the standing data at the start of the first financial year.
52. Some examples covering standing data are included in the annex. These are for illustrative purposes only –the examples are not exhaustive nor are they intended to establish a standard to which all are expected to adhere.

Tax accounting arrangements in scope

53. The SAO has to take reasonable steps to establish, maintain and monitor appropriate tax accounting arrangements for each financial year after commencement. 'Financial year' is defined by reference to the Companies Act definition (s.390 CA2006) and can be taken to be the period of account of the company. As the legislation does not apply to tax accounting arrangements for financial years ending before Royal Assent it does not impose any obligation in respect of the tax accounting arrangements in place for those earlier years. However, it is possible for the tax accounting arrangements in place in say 2011 to have an impact on the calculation of the tax figures for earlier years if some part of that process is undertaken in 2011.

Example

54. Taking an example of a company with a financial year starting on 1 January 2010, Schedule 46 would apply to the tax accounting arrangements in place throughout the year ended 31 December 2010 but not to the arrangements in place for the year ended 31 December 2009.

Corporation tax

55. The tax accounting arrangements (see Para 53. below) in scope for the year ended 31 December 2010 would be those that:
 - Produce any numbers or figures that feed through into the accounts for that year.

GUIDANCE

- Any of the 2010 tax accounting arrangements that have an impact on the calculation of the tax liabilities for 2009 or earlier years. This would include those systems and processes used during 2010 to produce the 2009 CT computation but not those used in 2009 to produce the base figures that go into the computation.
- Any of the 2010 tax accounting arrangements that have an impact on any claims or elections made for earlier years, such as loss carry back.

VAT

56. Using the same dates as above, for VAT the tax accounting arrangements in scope would be those that:
- Produce any numbers or figures feeding through into the VAT returns for the year.
 - Any of the 2010 tax accounting arrangements that have an impact on the VAT figures for a period falling partly in 2009.
 - Any of the 2010 tax accounting arrangements that have an impact on earlier financial years i.e. where there is a review of historic returns for voluntary disclosure purposes.
57. Again, for the avoidance of doubt, earlier years will only be affected to the extent that they rely on, or are affected by calculations that are part of, the tax accounting arrangements in place for 2010.

PAYE

58. The same approach applies to employment taxes and the appropriate tax accounting arrangements would cover the monthly calculations undertaken in the year ended 31 December 2010.
59. Returns made in 2010 would include PAYE year-end return form P35 showing total figures for the tax year 6 April 2009 to 5 April 2010. Any monthly calculations made as part of this return, which predate the start of legislation will be outside the scope of these new provisions.
60. Generally with employment taxes, we recognise that there may be an element of “truing up” in the figures from one month to another. Where the tax accounting arrangements give the right result in the end of year return, HMRC would not generally regard the company as having had inappropriate tax accounting arrangements during the year.

Appropriate tax accounting arrangements

61. The legislation covers the arrangements for accounting for transactions and the processes by which the correct figures are produced to enable tax liabilities to be calculated. Tax accounting arrangements are the framework of responsibilities, policies, appropriate people and procedures in place for managing tax compliance

GUIDANCE

risk, as well as the systems and processes which put this framework into practice. Therefore they cover the entire end to end process from initial data input into accounting systems to arriving at the numbers which form the basis for completion of the tax return. This includes the adjustments, data extraction and analysis which enable the completion of the return and all of the people involved in the governance and operation of these various stages. Whether these arrangements are appropriate will depend on factors such as the size, complexity and nature of the business.

62. It is not possible to define in detail what appropriate tax accounting arrangements will mean in any particular context and it is not the intention of this measure to put additional compliance burdens on companies with existing robust tax accounting arrangements. However, whilst recognising that there are various ways of achieving appropriate tax accounting arrangements, they could include the following broad elements:

- a process for gathering and recording data in a systematic way;
- an understanding of the key tax compliance risks in the business;
- designing and implementing control activities to mitigate these risks, for example separation of responsibilities and ensuring that people who undertake delegated activities have the right levels of skill and competency;
- mechanisms for communicating roles and responsibilities; and
- monitoring activities to ensure that controls are operating effectively. The level of monitoring required will vary according to the level of risk present.

Judgement around tax sensitive decisions

63. The application of judgement around tax sensitive decisions is part of 'appropriate tax accounting arrangements' in so far as companies are expected to ensure that those making these decisions base them on reasonable interpretation of accurate information in full knowledge of tax law and having taken appropriate advice. If this is the case, the fact that this judgment may differ from that made by HMRC does not mean that the tax accounting arrangements are inappropriate as demonstrated in the following examples: -

Example 1

A company decides that its interest payments are allowable but HMRC disagrees and its view of the law prevails. As long as the company's decision was based on a sound analysis of the facts and circumstances surrounding the issue, and by someone who is appropriately trained and experienced, or an appropriate adviser, then HMRC would not argue that the tax accounting arrangements were inappropriate.

Example 2

Where a qualifying company uses a transfer pricing model in its calculation of UK tax, then the factual basis of calculations such as the volume of goods and services and the components of cost would be in the scope of the requirement to have appropriate tax accounting arrangements in place. Further, the inclusion of

GUIDANCE

an adjustment to profit in the customer's tax computation – the mechanism for implementing the transfer pricing model and for effecting the adjustment – would form part of the tax accounting arrangements. However, the element of judgement based on that information, say for example the decision to use a cost plus 10% approach, and the decision to use 10% rather than say 5% or 15%, would not be considered in determining failure under this provision.

Example 3

A fundamental process underlying most qualifying companies' tax returns is the way income, expenses, assets and liabilities are captured and correctly coded in the underlying accounting records. Where an individual makes tax sensitive decisions they will again need to be appropriately trained and appropriate tax accounting arrangements are also likely to include things such as written procedures, identification of tax sensitive codes and balances, and monitoring of the adequacy of the data and processes used within the system. The tax department may augment this process by carrying out further analysis of key areas of the underlying records to ensure that tax sensitive items are accurately categorised.

Even where such arrangements are in place, incorrect coding might still occur leading to an error in the tax return despite the reasonable steps taken, perhaps through an isolated example of human or other error. This is unlikely to mean that the tax accounting arrangements are not appropriate. However where such individual errors arise, the business should consider whether they are isolated in nature or indicate a risk of systemic or widespread errors, taking steps to mitigate this risk and amending their systems where necessary. If this does not happen, and the original processes fail on a regular or systemic basis, then a question over the appropriateness of procedures could arise.

Reasonable steps

64. Objectively, reasonable steps could be described as the steps a person in this situation would normally be expected to take to ensure that risks to tax compliance are properly managed and to enable the various returns to be prepared with an appropriate degree of confidence. Such steps could also include consideration of relevant evidence to provide assurance that systems objectives are being met and that the financial accounting systems are fit for purpose and enable correct completion of tax returns.
65. Beyond this there is no single definition of appropriate or reasonable steps as these will depend on the precise context within which tax accounting is taking place. Even within two apparently identical companies what is appropriate and reasonable could vary because of something as simple as the length of service of key personnel. For instance new staff present different risks to tax accounting arrangements than long-serving staff so different controls may be required.

GUIDANCE

66. Reasonable steps will include delegating control and monitoring activities to other people but we would expect this delegation to take place within its own risk management framework to ensure, for example, that people are suitably trained to carry out the delegated activity, that they are themselves subject to appropriate monitoring and control and that they have sufficient time to do the job effectively.
67. It will be for SAOs to decide what monitoring processes are necessary taking into account the level of risk in calculating UK tax liabilities. The circumstances of the business and the impact of particular issues will be relevant factors in deciding how to monitor the arrangements. For example, the type of monitoring needed in relation to infrequent events giving rise to very significant tax liabilities will be different to that necessary for frequent transactions where each has a small impact on the overall tax liability.
68. What is considered appropriate and reasonable will also vary across taxes and duties. For example, the arrangements which need to be in place to deal with a high frequency / high volume transactional tax such as VAT will be very different to those required to calculate a one-off amount such as Stamp Duty Land Tax and an SAO will need to take such factors into account in deciding what is reasonable.
69. As noted in the section on Tax Compliance Risk Model, open discussion with HMRC of a company's tax accounting arrangements, for instance during consideration of a "business risk review" can of itself contribute very usefully to the reasonable steps which might be taken to ensure such arrangements are appropriate.
70. The examples in annex B suggest what might constitute reasonable steps in various specific scenarios. However, they are purely illustrative. They are in no way exhaustive, nor do they provide a prescriptive list of what might necessarily be expected in such scenarios. Some broad principles from the examples are that reasonable steps could include:-
- processes to periodically check and test, as appropriate, systems, controls, process flows, transactions etc;
 - policies and processes to ensure the retention and maintenance of required records (in whatever form);
 - ensuring that staff are appropriately trained and qualified and have the knowledge and experience required to undertake their functions;
 - ensuring that the introduction of new systems and processes, or changes to them, are supported by appropriate planning, risk assessment, implementation and evaluation activities; and
 - processes to ensure compliance with all relevant legal requirements.

Outsourcing

71. Where functions are outsourced to third parties, reasonable steps will include making an assessment of whether the third party is suitably competent, qualified and controlled to ensure that transactions which impact on tax are properly accounted for.

GUIDANCE

Example

For the Lloyd's insurance market, certain functions are provided centrally on behalf of the market, for example the calculation and remittance of UK and other premium taxes due on the risks written by the syndicates to which the members belong.

In this situation where an independent third party provides a centralised function for the whole of the market it may be reasonable to assume that the third party is suitably competent and qualified to undertake that activity.

72. Outsourcing may also arise in an inter-group situation and the principles that apply here are similar to those set out above and to the position where responsibilities are delegated. For instance, where responsibility for tax is delegated to a tax director. In both situations reasonable steps are likely to include consideration of whether the other party is suitably competent and qualified to undertake the relevant activity but are **not** likely to include detailed checking of work once an assessment of suitability and controls has been undertaken.

Mergers & acquisitions

73. Following a merger or acquisition the SAO is likely to be uncertain as to the extent to which the new company's tax accounting arrangements are appropriate. In such cases, we would expect the SAO to take reasonable steps to identify where there may be shortcomings and to have a plan to rectify these. We would expect the certificate to highlight any such shortcomings.
74. We also recognise that following a takeover or merger it may take some time for the SAO to make any changes that are necessary in order to bring accounting arrangements up to the required level. These circumstances will be taken into account in considering what constitutes "reasonable steps" and what might be expected on the certificate.
75. Where a company within the scope of these provisions is the subject of an acquisition or merger it is likely that the SAO will change at the point of acquisition/merger.

Interaction with other countries' requirements

76. HMRC has been asked to explain how the rules for SAO certificates fit with the Sarbanes Oxley rules. Certain qualifying companies within the scope of this legislation will already be required to certify the effectiveness of their internal controls to meet other countries' requirements, such as Sarbanes-Oxley in the US and equivalents such as 'J-SOX' in Japan. This legislation does not require the introduction of SOX-type procedures for UK companies. However, where a

GUIDANCE

company is required to be SOX compliant, then the SAO may find that some elements of the SOX compliance contribute to providing comfort that the reasonable steps required by Schedule 46 are satisfied.

Overseas-based SAO

77. In the context of an overseas-based SAO, reasonable steps will be no different than for a UK-based SAO in that they will be required to apply a level of control and monitoring activity proportionate to the level of risk to tax compliance.

Calculated accurately in all material respects

78. Para 14 of Schedule 46 defines appropriate tax accounting arrangements as accounting arrangements that enable the company's relevant liabilities to be calculated accurately in all material respects.

79. People already make common sense decisions about the level of accuracy required in order to complete and sign off their tax returns and by referring to liabilities "calculated accurately in all material respects" the legislation makes it clear that this has not changed. The new provisions do not introduce a definition of accuracy or of material respects and both therefore take their ordinary meaning. They should not be interpreted as imposing any higher standards than are already required when preparing returns but neither does the phrase "in all material respects" import the concept of accountancy or audit materiality into the legislation.

80. The reference to "material respects" along with the use of the words "appropriate" and "reasonable" within the legislation do however make it clear that the focus is on the significance of the transaction, system or tax and the relative size of these items in terms of the business. HMRC are not interested in small or insignificant errors and this fits with our policy of focusing on significant risks. Therefore where risks and resultant errors are considered to be insignificant, any weakness in the accounting arrangements is unlikely to be regarded as a failure for the purposes of this measure.

81. As a general principle, we would not normally regard isolated individual errors in multiple, low value transactions as significant in considering whether or not appropriate tax accounting arrangements are in place. However, an error in the treatment of a high value, one off transaction could well be regarded as significant. Most importantly, whether an issue is significant for a particular company or group will depend on factors such as the size and complexity of that company or group.

82. Some examples, which are not exhaustive, are set out in annex B

GUIDANCE

Tax Compliance Risk Management Process

83. HMRC's Large Business Service (LBS) has set out a Tax Compliance Risk Management (TCRM) Process which describes the way CRMs will work with large business customers to identify and manage risks to tax compliance. This is consistent with internal guidance for CRMs based in the Large and Complex part of Local Compliance. As such it provides a framework within which the SAO responsibilities introduced by this measure can be discussed. A link to this document is included below.

<http://www.hmrc.gov.uk/manuals/tcrmanual/index.htm>

84. The basic premise of HMRC's approach to large business tax compliance and the underlying concept of the CRM relationship is to encourage customers to work with HMRC to deal with risks to tax compliance in a spirit of openness and co-operation and, wherever possible, in real time. We would therefore expect that any areas of uncertainty about operation of this measure and in particular what might constitute reasonable steps in a given situation will be discussed and where possible resolved as they arise as part of the ongoing discussions about business systems, governance and risk, with the CRM.

85. More generally, where a business has fully and openly engaged with the CRM in discussing the steps they have taken to maintain and monitor appropriate tax accounting arrangements, and no concerns are expressed then this in itself is likely to provide comfort to both parties that the main duty has been satisfied.

86. More specifically, the TCRM process involves three inter-related activities:

- the Business Risk Review (BRR) – the process by which the CRM determines where the customer sits on the compliance spectrum;
- risk Assessment – the process whereby particular sources of information e.g. tax returns are reviewed by HMRC staff to establish whether there is a potential tax compliance risk; and
- risk Working – the process by which possible risks are validated and quantified.

Business Risk Review

87. Wherever possible, HMRC seeks to rely upon large business customers' own governance, systems and processes to manage risks to tax compliance. As part of the Business Risk Review the CRM will therefore evaluate how these factors mitigate the inherent risks to tax compliance within the business. Increasingly they will do this by applying HMRC's new approach to governance and delivery which is set out in Annex K of the TCRM guidance. The legislation in Schedule 46 is entirely consistent with this approach – and emphasises its relevance. The certificate provided by the SAO will be an important factor to take into account but will not be the sole determinant of where a business sits on the compliance risk spectrum and whether or not there is a low risk relationship.

GUIDANCE

Risk Assessment /Risk Working

88. The CRM will also consider the certificate provided by the business as part of their ongoing risk assessment. Where the certificate identifies areas where tax accounting arrangements were not appropriate then the CRM will want to discuss the implications of this with the customer.
89. Where the CRM identifies a possible tax risk as a result of the analysis of tax returns or through other risk assessment activity, the CRM will make the usual judgements about whether, in the context of a particular business, the amount of tax potentially at risk is sufficient to justify raising this with the customer. If it is then the CRM will discuss this with the business and where the risk is connected to a potential problem with the tax accounting arrangements then they will discuss the steps that were in place to prevent this risk from happening. If these steps were reasonable then the SAO will have fulfilled the main duty notwithstanding the fact that an error has been identified in the return.
90. In other words, not all tax risks will be connected to issues with systems or processes (see para. 63) but even where they are, an error will not automatically lead to the presumption that an SAO has failed to satisfy para 1(1) of Schedule 46 as an error in a tax return will not necessarily mean that the accounting arrangements are inappropriate. In fact the discovery and disclosure of such an error by a customer may be indicative of effective monitoring arrangements and we do not want this legislation to inhibit customers from disclosing errors.

Penalties and assessment

91. The objective of this legislation is not to raise tax compliance yield through the assessment of penalties but to encourage companies to have an open dialogue with their CRM's about systems and governance, leading to improvements in the systems and processes where those are necessary.
92. However the obligations placed on the company or an SAO by Schedule 46 can trigger penalties where the obligations are not met.
93. Schedule 46 has three penalty provisions: -
- there could be a penalty of £5000 assessable on the SAO if they fail to comply with the main duty - paragraph 1 (1);
 - there could be a penalty of £5000, again assessable on the SAO, if they fail to provide a certificate in accordance with paragraph 2 or if they provide an incorrect certificate; or
 - there could be a penalty where a company fails to notify HMRC of the name/s of the person who was the SAO throughout the financial year in accordance with paragraph 3.

GUIDANCE

Penalty where the SAO fails to comply with para 1(1) or para 2

94. An incorrect certificate will only be liable to a penalty where it contains a careless or deliberate inaccuracy on the behalf of the SAO.
95. If the SAO changes during the year only one person is liable to a penalty for either failing in the main duty or for failure to provide a timely/accurate certificate. In relation to the main duty only the last SAO to have failed in that duty for the financial year is liable to a penalty. As regards the certification requirement, if an SAO is replaced before the time limit they cannot be liable for a penalty for failing to supply a timely certificate although they could be liable to a penalty if they have already submitted a carelessly or deliberately inaccurate certificate. Where the outgoing SAO has not delivered a certificate that duty passes to any successor in post before the time limit for supplying the certificate.
96. Where an SAO covers more than one company within a group of companies then they will only be required to provide one certificate covering those companies and therefore will only be liable for one penalty in respect of the accuracy and/or timeliness of the certificate. Equally, the SAO is only liable for one penalty in respect of the main duty i.e. to take reasonable steps to ensure the company and any other company for which it acts as SAO establishes and maintains appropriate tax accounting arrangements.
97. Where a group chooses to have more than one SAO for companies within the group each SAO would be liable for one penalty in respect of the accuracy and/or timeliness of the certificate for the companies for which they are responsible. Equally each SAO would be liable for one penalty in respect of the main duty.

Reasonable excuse

98. Paragraph 8 (1) provides that liability to a penalty for a failure by the SAO to comply with the requirements of this legislation will not arise if:
 - they have a reasonable excuse for not doing so, and
 - they put right the failure without unreasonable delay after the excuse ends.
99. Generally there will be a time when a reasonable excuse has lapsed. Where that happens and the issue has not been corrected then HMRC would seek a penalty.
100. What is a reasonable excuse will differ from person to person depending on their particular circumstances and abilities.
101. In cases of failure to fulfil any of the requirements of this measure, HMRC can consider the reasons for the failure and decide whether the taxpayer has a reasonable excuse. If it decides not to accept that the person has a reasonable excuse, the person can appeal to the Tribunal.

GUIDANCE

What is a reasonable excuse?

102. A reasonable excuse is likely to be an unforeseeable, exceptional event beyond the person's control. The following are some examples of what might be acceptable as a reasonable excuse for failure to provide a certificate on time: -
- the death of a close relative or domestic partner just before the time the person should have provided the certificate;
 - communications problems where a certificate was lost or delayed in the post because of an unforeseeable exceptional event disrupting the postal service; or
 - sudden serious illness or sudden deterioration of an existing condition, of the person (or of a close relative) just before the time the person should have provided the certificate will be considered as a reasonable excuse.
103. An excuse will not necessarily be accepted because it seems to fit into one of these categories; it depends on the individual circumstances of each case. The onus is on the person to satisfy HMRC that they have a reasonable excuse.
104. Where an SAO changes during the year we would not expect a new SAO to go back and check the work of his predecessor where the tax accounting arrangements appear to be in order. If they are later found to be inappropriate and that fact could not have been known by the new SAO he would not have been careless or have deliberately provided an incorrect certificate and would therefore not be liable to a penalty.

What is not a reasonable excuse?

105. There are some situations which HMRC will not normally accept as a reasonable excuse.
- lack of information; or
 - ignorance of basic law.
106. In addition some situations are specifically excluded by the legislation at Paragraph 8 (2) from being a reasonable excuse.

When does a reasonable excuse end?

107. Where a person has a reasonable excuse for not providing a certificate, they must remedy that failure without unreasonable delay once the excuse ends. Provided that there is not an unreasonable delay in providing the certificate, HMRC will treat the excuse as continuing until the date the failure is remedied.

Time Limits for assessing penalties

108. Penalties can be assessed no later than 6 months after the failure or inaccuracy comes to the attention of an HMRC officer, or not more than 6 years after the end of the period for filing the company's accounts for the financial year.

GUIDANCE

Appeals

109. Paragraph 10 provides that any SAO has the right of appeal against a penalty assessed on him/her under this legislation. The appeal should be made to an officer of HMRC, which in practice will be the CRM within 30 days and will be treated for procedural purposes in the same way as appeal against an assessment to tax.

GUIDANCE

ANNEX A

FAQs

How does the measure apply to customers who already have a ‘low risk’ relationship with HMRC?

The measure applies equally to customers who enjoy a low risk relationship and those who do not. The certificate and any discussion around it will be part of the open and transparent relationship that we have with low risk customers. The certificate alone will not determine the risk status of a customer but will be one factor in that process. Equally, the current risk status of the customer does not necessarily determine the nature of the certificate an SAO provides at the end of the accounting period.

Will highlighting areas where the company did not have appropriate accounting arrangements be regarded as something to be held against that company?

Certificates are intended to be an open reflection of the position as regards the company’s tax accounting arrangements so highlighting these areas will not in itself be regarded as something to be held against the company. However, in the course of our normal discussions with customers we would expect SAOs to be able to explain what action they are taking to rectify matters and will take this into account as part of our overall risk assessment.

How can an SAO possibly know if everyone in the company is doing what they are supposed to within the tax accounting arrangements?

We do not expect an SAO to know that everyone in the company is doing what they are meant to within the tax accounting arrangements. In reality SAOs will delegate responsibility for many tasks or processes. SAOs will however be accountable for ensuring that people to whom they delegate are competent for the task in hand and, where someone is found not to be following procedures, that there is a process in place for correcting that.

It will be for SAOs to decide what monitoring processes are necessary taking into account the level of risk to be able to accurately calculate UK tax liabilities. The circumstances of the business and the impact of particular issues will be relevant factors to take into account in deciding how to monitor the arrangements. For example, the type of monitoring needed in relation to infrequent events giving rise to very significant tax liabilities will be different to that necessary for continuous transactions where each has a small impact on the overall tax liability

How many penalties could a Senior Accounting Officer incur?

An individual SAO can receive maximum total penalties of £10,000 for any financial year if there is a failure to comply with both requirements i.e. failure to comply with the main duty regarding establishing and monitoring appropriate tax accounting arrangement and failure to provide an accurate certificate within the prescribed timescales. This is irrespective of the number of companies that the individual is SAO for.

GUIDANCE

Can a Senior Accounting Officer be ‘named and shamed’ if they receive a penalty under this provision?

No. The penalties charged under this provision are not relevant for the purposes of publishing details of deliberate tax defaulters.

GUIDANCE

ANNEX B

EXAMPLES

This annex provides examples on a number of areas covered by the guidance. They are intended to be illustrative and not prescriptive or exhaustive as there will be many other scenarios which could be equally relevant and satisfy the provisions of the legislation. Therefore it should not be assumed that these examples set a standard to which a company must adhere.

Standing data

VAT

Accounting systems often have tax codes (VAT rates) ascribed to certain cost ledger codes. Where a company already has appropriate arrangements in place to ensure that tax codes are correct we would not expect them to do anything further as a result of this measure. However, where companies have no means of ensuring that tax codes are correct or have reason to believe that they are incorrect we would expect them to take reasonable steps to rectify this where standing data is used to calculate VAT liabilities for accounting periods covered by the measure. However, this is unlikely to mean that a company /group will have to go back through all their codes and standing data at commencement.

PAYE

Similarly, payroll records contain standing data such as tax codes, dates of birth etc which help determine the relevant PAYE liabilities. Again, any errors identified would need to be appropriately dealt with, but companies should be able to rely on standing data in use at the date of commencement for the purposes of Schedule 46.

Acquisitions

On the acquisition of new companies and groups by a qualifying company, those new companies will be brought within the requirement of these rules from the date of acquisition. Clearly reasonable steps will need to be taken to ensure that the accounting arrangements are appropriate for these new subsidiaries.

However, it is recognised that opening balances and standing data used in the calculation of the whole range of taxes would be used going forward. We would not expect companies to verify all such opening balances or standing data beyond those steps already taken for the purpose of commercial due diligence, but to take a common sense risk based approach to the reliance that they place on those opening balances and standing data.

GUIDANCE

Reasonable steps

Shared Service Centre – (SSC)

A multinational company sets up a SSC based in Eastern Europe to handle aspects of its accounting and administration function across Europe. To ensure ongoing compliance with UK taxation requirements, the UK tax department was involved in the implementation project and trained a number of the SSC staff in relevant aspects of UK tax law to ensure appropriate coding decisions are taken. Links and agreed protocols with members of the tax department are also established so ongoing tax queries can be raised/ resolved by SSC staff with appropriate technical input from the UK. A VAT specialist reviews SSC system to check compliance with UK VAT legislation and the tax return review processes are refreshed to ensure key tax sensitive items are reviewed prior to the tax return being submitted. As this is a completely new process, a review involving a random check of transactions is carried out before the first tax return based on information from the SSC is submitted.

Retailer and VAT codes

A large take-away food retailer supplying standard and zero-rated goods has a high turnover of casual staff in multiple locations. The inherent risk of miscoding sales for VAT purposes is therefore extremely high and the business has decided that in order to mitigate this risk to appropriate levels they should minimise decision-making on VAT rates at the point of sale. They have invested in an off-the-shelf EPOS system where the only decision staff have to take is to identify the product. The standing data files which attribute the relevant VAT rate to each product are populated by people who have a good knowledge of VAT liability and these files are checked periodically by the tax department. As part of their business expansion the retailer has recently taken over another smaller chain of food outlets. In this chain counter staff, who again are largely casual appointees, have to choose whether to standard or zero rate a particular sale. The tax director of the new parent has ensured that his department has been involved in the planning process for the takeover and has recognised that there are significant risks of mis-description in the new outlets. Due to financial constraints, the parent company cannot implement their tried and tested system across the new outlets until the next financial year so the tax director has commissioned a risk assessment of the new outlets and identified some short term actions which can be taken to minimise those risks which are most likely to occur and are likely to have the greatest impact on accounting for the right amount of VAT. He has also developed a plan for implementing the new system across the new outlets once the finance is available.

Customs data on Import and Export declarations

There are a large number of data fields on an Import or Export Declaration, and each of the data items must be created, validated and maintained. A number of the data items will be Customs specific and others will have wider significance. These declarations can be generated by a third party contracted by the business

GUIDANCE

or by different people throughout the business. Exercising reasonable control can involve a wide range of people outside the tax or accounting function.

Reasonable steps could include the following:

- obtaining assurance about the validation process for all data items to confirm that they are declared correctly, completely and in accordance with the law, as well as of the maintenance processes for the data via regular review of standing data;
- clearly documented and tested security and access levels allowing staff or third party personnel to generate or change data;
- ensuring that staff are appropriately trained for their role or that third parties are appropriately qualified and experienced to undertake any activities;
- obtaining assurance about the process for classifying goods for Customs purposes and maintenance of correct classification of products according to current Tariff information; and
- documented procedures for the classification of goods for import and export purposes, Valuation of Goods For Customs Purposes, etc.

Customs Freight Simplified Procedures (CFSP)

The process involves two declarations, an initial declaration (Simplified Frontier Declaration) containing information necessary to clear the imported goods through port inventory and Customs systems followed, at a later date, by a second declaration (Supplementary Declaration) to provide the full declaration for Customs purposes. The goods may move into a different regime where the customs taxes are paid at a different time. These declarations can be produced by a third party or by different people throughout the business. Reasonable steps could include the following:

- obtaining assurance about the validation process for all data items to confirm that they are declared correctly, completely and in accordance with the law, as well as of the maintenance processes for the data via regular review of standing data;
- clearly documented and tested security and access levels allowing staff or third party personnel to generate or change data;
- ensuring that staff are appropriately trained for their role or that third parties are appropriately qualified and experienced to undertake any activities;
- review of the Authorisation document to ensure that correct legal entity etc remains authorised and no impacting systems changes have occurred;
- obtaining assurance about reviews of the declarations to confirm completeness of payment, accounting and Customs Declaration in accordance with the law;
- evidence of accounting for Customs Duty payments or refunds; and
- evidence of documentation – CFSP Authorisation from HMRC, FSD/SD schedule or reconciliation as appropriate, etc.

How reasonable steps may differ across taxes

A bank has little liability to VAT in its normal course of business but has opted to tax a building for VAT purposes in order to claim the input tax. The potential value

GUIDANCE

of the VAT to be claimed and declared is significant to the Exchequer but small within the context of the business compared to the current level of CT they pay. The business has assessed the risks of the VAT being mis-declared or mis-claimed as relatively low due to their very specific and controlled nature i.e. they relate to that specific building and by the nature of the normal procedures will be received and processed by one person in the tax department who has a good knowledge of VAT. In contrast, the business operates very sophisticated remuneration schemes involving share options and internationally mobile employees. The business has assessed the risks to tax being incorrectly declared in respect of these and judged that one of the most likely risks which will have a significant impact if it materialises is that individuals' status, benefits and location are not adequately tracked over time. They have therefore built capability to identify and track affected individuals into their ERP system and have ensured that those making decisions around remuneration are adequately trained and kept up-to-date with changes in regulations. Back record conversion has been carried out for individuals who need to be tracked. The process is audited periodically by the Internal Audit function.

What is appropriate in terms of tax accounting systems is therefore clearly very different across the two taxes with the remuneration systems presenting the bigger potential risk.

Accurately in all material respects

Example 1

A company employs members of staff who regularly travel for business purposes. The accounting system allows members of staff to claim their expenses electronically, each month a sample of the expense claims is checked back to original receipts and journey details for accuracy with all errors found being corrected and the reason followed up with the relevant employee. Total expenditure is reviewed quarterly against historic spend and for large and unusual items. Errors were discovered from the sample checks and corrected. This was discussed with the CRM and an appropriate adjustment made in the tax computation. Within the context of this company the system is clearly robust and contains reasonable checks and levels of monitoring as is capable of ensuring that expense claims are dealt with appropriately. Therefore the error found would not result in the system failing this particular measure.

If a weakness is regarded as insignificant in the year in which it is identified it is unlikely that as a result of that weakness alone the accounting arrangements will be considered as inappropriate. However if no action is taken to change the position, for instance by additional training, or enhanced controls being put in place and the error is repeated, becoming significant over time, then the accounting arrangements may fail this measure in later periods

GUIDANCE

Example 2

A company has a system in place to distinguish between allowances taxable on employees under PAYE and expenses which should be paid without tax. The two types are coded differently and the members of staff inputting the expenses onto the system are given comprehensive guidance on which code should be used. A member of staff is responsible for reviewing the amounts entered as part of the month end procedures. Despite these arrangements a small number of inaccuracies occurred as a result of coding mistakes. Because the accounting arrangements are appropriate to the circumstances of the organisation the SAO would be unlikely to have failed in the main duty. If, however guidance given to those making the entries was not kept up to date, or there were no checks and controls in place then the inaccuracies could be evidence that the SAO had failed in the main duty.

Example 3

A company has sales which are both standard and zero rated. Staff in the sales ledger department have had training in the coding of goods and there is support through a company manual, regularly updated for changes to classifications. Reasonableness checks are conducted monthly on the ratio of standard to zero rated goods entered onto the system and sample checks of invoices to ensure accuracy of coding are conducted quarterly. As there are appropriate checks and controls in place, the miscoding of a small number of invoices through human error would be considered insignificant. If, however, there were no checks and controls in place or accountability for ensuring the correct determination of codes to new types of goods, then incorrect allocation of a tax code (for example, zero rated) to a particular income ledger code may be evidence of failure to put in place appropriate tax accounting arrangements.

Example 4

A company builds a hotel with the intention of operating it as part of their ongoing hotel ownership and management business. The business employs a trained specialist to analyse the expenditure, code it appropriately and provide information and analysis for the capital allowances computation. This information is checked by the tax department. Due to the sums of money involved, the agreed policy is that items costing less than a set amount are not reviewed in detail but estimation, based on past experience and an appropriate sampling exercise is made by the trained officer and used for coding. The basis of this estimation technique has been discussed and agreed with the CRM. There are appropriate tax accounting arrangements in place that allow a reasonable estimation of accuracy in line with the circumstances of the business and therefore incorrect treatment of a fixed asset below the set amount for the purposes of the capital allowances claim would be regarded as insignificant. However, if there wasn't an appropriately trained and experienced person involved in the consideration of the purchase, no system of review of reasonableness of the outcome of the estimation technique used to determine treatment of items under the set amount leading to a large aggregated error, the tax accounting arrangements would be likely to fail this measure.