

Schedule 46 Finance Bill 2009 – personal obligation of Senior Accounting Officers of large companies

Are your systems delivering for tax compliance?

Schedule 46 FB 2009 introduced requirements that the Senior Accounting Officer (SAO) of large companies and groups report to HMRC the adequacy of their accounting systems for the production of accurate tax returns. A careless or deliberate failure to comply with the new requirements will result in a penalty chargeable to the SAO personally, as well as the company.

Since the publication of Finance Bill 2009, it has become clear through discussions with HMRC that it had been surprised by the level of interest generated, as it had assumed that companies would already have the appropriate level of controls in place. In response to this, during debate in the House of Commons on 13 May 2009, it was announced that:

- The scope will be narrowed to companies with a large business relationship with HMRC and a customer relationship manager. This change is to be introduced by amendment to the draft legislation, rather than by regulation.
- Only one type of certificate will be required, on which the SAO will either certify that the tax accounting arrangements are appropriate, or explain the respects in which those arrangements are not appropriate.
- The proposed requirement to notify auditors of any weaknesses identified will be dropped.

There remain significant areas of uncertainty, for which clarification is expected to be provided in the form of guidance. PwC are closely involved in discussion with HMRC on the development of the guidance, the first draft of which is expected by mid-June 2009, in time for the Committee stage of the Bill's progress. One of the aims of the guidance will be to minimise the compliance burden associated with the measures.

The key areas highlighted by the discussions and the Commons debate were:

- **Materiality.** Whilst the draft legislation does not indicate any de minimis limits, HMRC has confirmed that it will adopt a pragmatic approach in the same way that it has in other contexts and on a local basis.
- 'Tax accounting arrangements' include people, process and technology across the whole end-to-end process, not just the accounting system itself.
- HMRC will provide guidance in relation to what it means by 'reasonable steps', but confirmed that it was not intended to be onerous.
- **Who should the SAO be?** The SAO must be the director or officer of the company with overall responsibility for the accounting systems. The Government's view is that this is for the company to determine. In circumstances where a group has no single SAO, HMRC is considering allowing the group to nominate the SAO from amongst peers. In certain circumstances, HMRC has stated that it may accept a non-UK resident SAO (subject to issues of enforcement).
- **What entities are covered?** HMRC stated that the legislation is not intended to apply to LLPs, PE houses/funds, and UK branches of overseas companies, though there remains uncertainty over which entities are included until the amended legislation is published. In addition, non-large UK subsidiaries will not be caught by virtue of the size of their foreign parent.
- HMRC indicated that a certificate reporting system weaknesses will not necessarily be viewed as a black mark, merely an acknowledgment that improvements need to be made. However, HMRC was unable to confirm whether this would result in an enquiry/intervention.

Tax transparency – update

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What should you be doing to prepare?

The majority of companies are comfortable signing their tax returns, having gone through a variety of processes to arrive at the numbers. The starting point for Schedule 46 certification should therefore be whether the SAO could evidence to HMRC the basis on which the returns are signed.

Processes and systems

- Are they documented?
- Do people know what they are?

Risk areas

- Can you articulate what the major risks/risk areas are?

Controls

- Are there controls in place to mitigate key risks?
- What are they and are they adequate?

Monitoring

- Is operation of the controls monitored?
- How and with what frequency?

How can PwC help you?

- We have an integrated team of specialists with expertise in the management of tax within financial systems, risk assurance, technical tax expertise and the management of HMRC disputes. Our specialists have worked together during many projects to develop a review, assessment and improvement approach that can accommodate all relevant taxes.
- Our high level review can be carried out quickly and cost effectively. Our leading benchmarking information surrounding the process of tax (derived from the Total Tax Contribution survey of large worldwide groups), as well as our tax compliance information and experience gained from our work as one of the UK's largest compliance providers helps us to quickly assess and benchmark your processes, identifying risks and appropriate controls.
- The output will equip the SAO to determine what, if any, further work is needed to gain comfort in signing off the certificate. In addition to this, the report can form the basis of a cost benefit analysis of the potential benefits of improving the systems and processes.

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