

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

What has changed since the Budget announcement?

Schedule 46 FB 2009 introduced a requirement that the Senior Accounting Officer (SAO) of qualifying companies and groups take reasonable steps to establish, maintain and monitor the adequacy of their accounting systems for the production of accurate tax returns. The SAO must also provide a certificate to HMRC on the adequacy or otherwise of their systems for each financial year. A careless or deliberate failure to comply with the new requirements will result in a penalty chargeable on the SAO personally.

The measure has generated much debate. As a result, the draft legislation put before the Public Bill Committee on 23 June 2009 contained a number of changes, including:

- Qualifying companies are now defined as UK registered companies whose results in the preceding year, either alone or aggregated with other UK companies in the same group, exceeded either turnover of £200m or gross balance sheet assets of £2bn. It is now clear that UK branches of overseas companies, partnerships, investment trusts and OEICs, charities and public bodies are excluded.
- The list of taxes caught has been reduced to corporation tax, VAT, PAYE, Insurance Premium Tax, Petroleum Revenue Tax, Stamp Duty Land Tax, Stamp Duty Reserve Tax and Customs and Excise duties. Environmental taxes and reporting requirements regarding tax deducted at source are now excluded.
- A concept of materiality has been introduced to the definition of ‘appropriate tax accounting arrangements’. Rather than a requirement to be ‘penny perfect’, the end to end systems and processes should ‘enable the company’s relevant liabilities to be calculated accurately in all material respects’. (NB HMRC are clear that ‘material’ does not import audit or accounting materiality” – see below).

Further clarification is to be provided in guidance, due to be published by the end of July. Key points that have emerged from the guidance discussions with HMRC that will need to be considered by companies include:

- Identifying the SAO: The SAO must be the director or officer with overall responsibility for the company or group’s accounting systems. For many groups, particularly inbounds, the organisational structure may mean that there is no single SAO. HMRC now accepts that where appropriate, a group can have more than one SAO. Similarly, the SAO may be a non-UK resident individual, despite the obvious enforcement issues.
- Materiality. Whilst the draft legislation now includes the concept of materiality, HMRC continues to stress that this is not an accounting or audit level of materiality. The draft legislation does not include any definition of ‘material’ and therefore the word will take its ordinary meaning. The focus will be on the significance of the item in the context of the business and whether the occurrence of errors indicates problems in the systems or processes.
- Reasonable steps. Common sense judgement should be used as to what steps an SAO might normally be expected to take to manage tax compliance risks and what sort of evidence they would need to support the basis on which they are signing the certificate.
- Commencement. It is worth noting that HMRC has said that in respect of the first year (2010 for 31 December year ends), SAOs will be considered to have met the requirement to “take reasonable steps to ensure the company establishes and maintains appropriate tax accounting arrangements” if they have commenced a review before the year end. However, this does not relieve them of the requirement to disclose the fact that such arrangements are not in place in the certificate. It can be assumed that such a disclosure would have adverse risk assessment consequences.
- Which arrangements are in scope? The measure applies to financial years, rather than to the base periods of tax returns. For a December 2010 year end, the accounting arrangements in scope would include the work actually carried out in 2010 on the 2009 accounts but also:

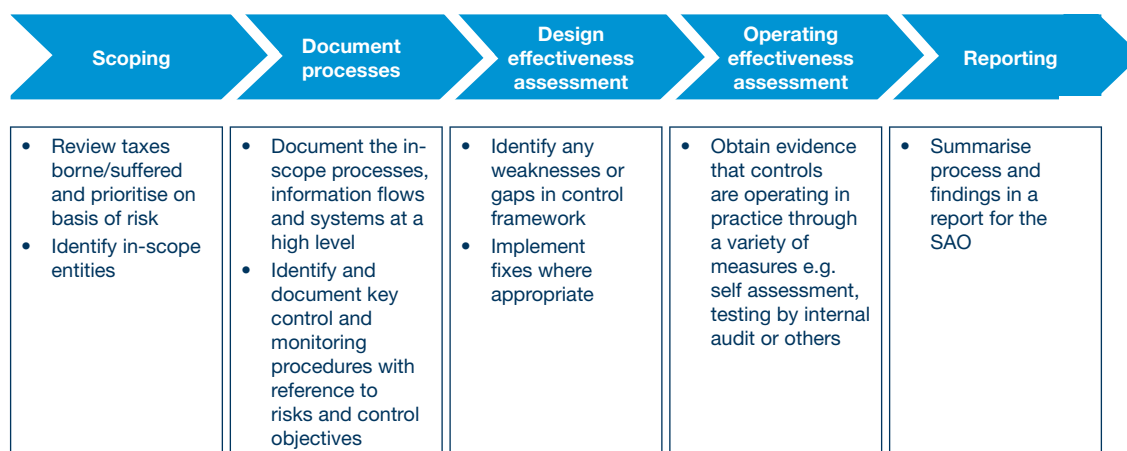
Corporation tax	<ul style="list-style-type: none"> • Work on preparing the 2009 tax return carried out in 2010 • Any 2010 accounting arrangements that impact claims or elections for earlier years
VAT	<ul style="list-style-type: none"> • Calculations carried out in 2010 for periods partly in 2009, for example, preparation of the VAT return for the 31/12/09 quarter
PAYE	<ul style="list-style-type: none"> • Preparation of the P35 for May 2010 covering 2009/10, but excluding monthly calculations pre 01/10 made as part of the return

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 who can help you with any aspect of the process. Our specialists have worked together during many projects to develop a review, assessment and improvement approach that can accommodate all relevant taxes. Our approach is based on helping you find the most efficient and effective way of meeting the SAO obligation.
- 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.

What should I do now?

HMRC has recognised that whilst many companies will have appropriate processes in place, there will be cost associated with providing the appropriate level of evidence. The starting point is whether the SAO could evidence to HMRC the basis on which the returns are signed. To meet the challenge, we suggest taking a logical, top down approach to demonstrating control as illustrated below. Engaging with your CRM as part of this process will also be key.



Companies who want to be able to submit a ‘clean’ certificate for 2010 should be taking the following steps:

- Prior to the commencement of the year, assess whether appropriate tax accounting arrangements are in place; and
- If not, effect any necessary remediation.

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