Senior accounting officers

The law requires certain UK companies to appoint a senior accounting officer (SAO). The SAO of a qualifying company must ensure that the company establishes and maintains 'appropriate tax accounting arrangements', on pain of a personal financial penalty.

Immediately following the introduction, HMRC took a reasonably relaxed approach to the imposition of penalties. Now that the regime is more established, HMRC appear to be taking a stricter approach. The SAO regime forms part of the company's Business Risk Review (BRR) performed by HMRC. This process has been recently under consultation and the government has concluded that the reformed BRR framework should allow for more consideration of the volume of tax risk management work already required by large businesses, such as the SAO provisions and the publication of tax strategies.

Which companies are within the regime?

The regime applies only to companies incorporated under the Companies Act 2006 ("UK incorporated companies"). So it does not apply, for example, to companies incorporated outside the UK even if they are resident in the UK or operate through a UK branch. In addition, UK open-ended investment companies, partnerships, and LLPs are all excluded from the regime.

The regime is further limited to UK incorporated companies which alone, or with other UK incorporated companies in the same group (broadly a 51 per cent group for these purposes), have annual turnover of more than £200m or a balance sheet total of more than £2bn (called 'qualifying companies').

This test is applied on a yearly basis by reference to the turnover and balance sheet of the previous financial year. Turnover and balance sheet figures are taken from the face of a company's accounts after tax adjustments. When the figures for group companies are aggregated there is no exclusion for intra-group items (other than the value of shares in other UK incorporated group companies), so there will in some cases be double counting. For example, if one UK incorporated company supplies goods to another UK incorporated company in the same group, which then supplies them to a third party, the value of the sales of the same goods is included in the turnover of both UK incorporated group companies. In a group that meets either or both of the turnover or balance sheet tests, each UK incorporated company in that group will be within the regime.

Who is the SAO?

The SAO is the director or officer who, in the company's reasonable opinion, 'has overall responsibility for the company's financial accounting arrangements'. An SAO is not required to be resident in the UK. A person may be nominated as the SAO of more than one company.

For stand-alone companies, the SAO must be a director or officer of that company.

For a company which is a member of a group, the SAO may be a director or officer of the company in question or of another UK incorporated company in the group. The legislation allows a director or officer of a subsidiary to be an SAO if he or she has overall control for the accounting arrangements of the parent company and its subsidiaries.

Obligations of a qualifying company

A qualifying company must:

- notify HMRC of the identity of its SAO for each financial year. A group notification can be made; and
- notify HMRC if the nominated SAO changes during a year.

Obligations of the SAO

The SAO of a qualifying company must:

- take reasonable steps to ensure that the company establishes and maintains 'appropriate tax accounting arrangements';
- monitor the company's accounting arrangements to identify any respects in which they are not appropriate; and
- on or before the last date for filing the company's accounts, provide HMRC with a certificate for that financial year either stating that the company had appropriate tax accounting arrangements throughout the financial year or, if it did not, explaining the respects in which the arrangements were deficient. (Once again, a group certificate can be given which relates to more than one qualifying company.

What are the "appropriate tax accounting arrangements"?
The concept of 'appropriate tax accounting arrangements' is defined as arrangements that enable the company's relevant tax liabilities to be calculated 'accurately in all material respects'.

The scope of 'appropriate tax accounting arrangements' should be taken to encompass all stages of the processes required to produce tax figures, from initial data entry to the final returns – including, for example, producing tax adjustments for routine non-deductible expenses, detailed transfer pricing adjustments and CFC apportionments. The SAO's responsibilities extend to all aspects of the company's procedures, systems and processes for dealing with its tax affairs and managing its tax compliance risks, including appropriate staffing and training, gathering and maintaining relevant records, and internal checks and controls.

Most major UK taxes are relevant for these purposes, including corporation tax (but not diverted profits tax), income tax (but not national insurance) payments collected under PAYE, apprenticeship levy, VAT, and customs and excise duties (including the soft drinks levy). HMRC's guidance confirms that taxes not listed in the legislation are not within the regime. Some of the taxes listed in the legislation are strictly liabilities of a third party rather than the qualifying company but are covered by the regime because they fall to be administered by the company.

The legislation does not define accuracy or materiality. However the SAO regime is intended to be consistent with the company's obligations to submit tax returns that are correct and complete, and does not import the accountancy concept of materiality.

The SAO is required to 'take reasonable steps' in relation to a company's appropriate tax accounting arrangements. What this encompasses will vary from case to case, depending on the nature of the company's business, its personnel and the tax risks inherent in its activities.

Penalties
An SAO may be liable to a penalty of £5,000 if the SAO fails to comply with duties to ensure that the company establishes and maintains appropriate tax accounting arrangements (including monitoring that the arrangements are appropriate), or if he fails to provide a certificate or provides one with a careless or deliberate inaccuracy.

A person who acts as the SAO for more than one company in a group is only be liable for one penalty on each of these grounds for each financial year.

A qualifying company which fails to nominate its SAO in respect of a financial year is liable to a penalty of £5,000 (but again a group of companies is only liable for one penalty in relation to each financial year).

Qualifying companies and SAOs should check the terms of any D&O insurance policy as this may be able to cover the cost of defending penalties

Potential problem areas
The regime applies across many different taxes, which may be managed in different ways by different personnel within a company or group. Practical problems can arise where non-tax staff are responsible for day-to-day tax administration and compliance. For example, operational staff may be responsible for dealing with VAT or customs duties during the normal purchase or sales process; and human resources staff may be responsible for dealing with PAYE issues.

The acquisition of new companies by a group can also present problems. SAOs should not be held liable for flaws in the accounting systems of a new subsidiary before it is acquired, but failure to correct those flaws within a reasonable time after the acquisition could result in penalties. It will be important to identify any deficiencies in the tax compliance processes of target companies in due diligence or through appropriate warranties.

In-coming SAOs should be aware that the general rule is that the last SAO notified in relation to a financial year is responsible for any defaults under the regime for that period. HMRC provide some guidance in this repsect: (i) they would not expect the new SAO to check the work of the predecessor if the tax accounting arrangements appear to be in order, and (ii) if the arrangements were in fact inappropriate and that fact could not have been known by the new SAO, the new SAO would not be liable to a penalty.

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April 2018

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