

Have you heard?

New Rules for Senior Accounting Officers of Large Companies



Introduction

The Chancellor announced measures in the 2009 Budget which were designed to impose **personal liability** on **senior accounting officers** ("SAOs") of **large companies** in respect of their tax accounting arrangements. These rules have created widespread concern and have caused many large groups to consider what changes, if any, need to be made to their accounting systems to ensure compliance with these rules.

Since the initial announcement, significant changes have been made to the proposed parameters of the SAO obligations. These changes are included in amendments proposed by the Government on 18 June. This note sets out a summary of the revised position.

Is there a transitional period or do the rules take effect immediately?

The proposed amendments will apply to accounting reference periods beginning on or after the date that the 2009 Finance Bill receives Royal Assent. This means groups with accounting periods commencing on or after mid-July are likely to be the first which are caught by these rules.

What are the primary obligations?

The rules will require a large company to identify an SAO who will take responsibility for the company's tax affairs, and to notify HMRC accordingly. The SAO will usually be the director or officer of a company who has overall responsibility for a company's financial accounting arrangements. The SAO will have personal liability for these arrangements and will be obliged to produce an appropriate certificate to HMRC in respect of them.

Which companies are covered?

Only large **companies** are obliged to provide an SAO. Whether or not a company is large is considered in the paragraph overleaf. There is also a specific definition of **company**.

Company covers UK incorporated companies but excludes:-

- Investment trusts
- Open ended investment companies
- Foreign incorporated but UK tax resident companies
- Foreign companies with UK branches/permanent establishments
- Limited liability partnerships

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What is a large company?

Only large companies have an obligation to provide an SAO. The original Budget announcement suggested that even relatively small companies would fall within these new rules. However, under the proposed amendments, a company will be treated as large if it satisfies either of the following tests:-

- Turnover more than £200m; or
- Balance sheet more than £2billion

How about groups?

If a **company** is a member of a group then each **company** within that group will be treated as large if:-

- the aggregate turnover of all the UK companies in the group exceeds £200m; or
- the aggregate balance sheet totals of all the UK companies in the group exceeds £2billion.

It should be noted that the "aggregate" turnover test is a simple aggregation of the turnover of each **company** within the group. This will often be different from consolidated group turnover and, for example, could lead to double counting on intra-group transactions.

Grouping will now be determined by ownership of 51% of ordinary share capital. This is a change from the previous draft under which grouping was tested by reference to Companies Act definitions.

No need for single SAO for the entire group

In a further change from the initial drafting, the new language would entitle a group which wishes to do so, to provide different SAOs for each UK company. This is a welcome change from the initial drafting which would have required a single SAO to be responsible for all companies within the group.

Under the proposed amendments, the SAO will be a director or officer of any member of the group, who in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.

If a company is large, what are the responsibilities of the SAO?

The SAO must take reasonable steps to ensure that the company establishes and maintains **appropriate accounting arrangements**. A company will have appropriate accounting arrangements if they enable the company's relevant tax liabilities to be calculated accurately in all material respects.

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Which taxes are covered?

The proposed amendments now specifies that the following taxes are covered:-

- Corporation tax
- VAT
- Amounts due under PAYE regulations
- IPT
- SDLT / SDRT
- Customs and Excise duties
- PRT

What are the notification requirements?

The company must notify HMRC of the name of each person who is its SAO at any time during the financial year. This declaration must be given, at the latest, by the statutory date for filing the company's accounts for the relevant financial year.

The SAO must provide HMRC with a certificate for each financial year stating either that the company has appropriate accounting arrangements or providing an explanation if the accounting arrangements are inappropriate.

What are the penalties for failing to comply with the rules?

The company can incur a £5,000 penalty if it fails to notify HMRC of the name of its SAO.

An SAO can be personally liable to pay a penalty of £5,000 for failure to comply with the main duty or failure to provide a certificate.

The levying of a penalty could create reputational damage for an SAO although the quantum of the penalties is small of itself and is not a criminal matter.

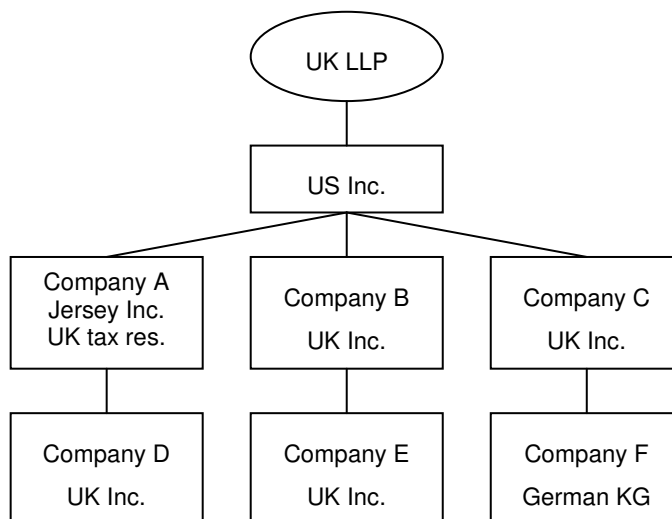
An SAO who suffers a penalty under these provisions is not at risk from the proposed measure under which HMRC can name and shame deliberate tax defaulters

Who will bear the cost of this penalty?

Most companies will have D&O insurance cover which will cover the risk of such a penalty being invoked. SAOs may also consider seeking indemnities from their employing companies against this liability. However, on the basis of the proposed amendments, it is unclear whether such an indemnity could lawfully be given by a UK company under the Companies Act 2006.

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Case Study



Under this structure:-

- UK LLP is not within the group as it is not a "relevant body".
- US Inc and its direct and indirect subsidiaries are grouped as they are 51% subsidiaries of each other.
- Although the existence of US Inc creates the group relationship, US Inc is not a **company** which is obliged to provide an SAO.
- Companies B, C, D and E are **companies** and must provide an SAO if they are large.
- In determining whether B, C, D and E are large, they must aggregate together all the turnover/assets of each of companies B, C, D and E. The turnover/assets of US Inc, Company A and Company F are not included as they are not **companies**.
- If they are large on this test Companies B, C, D and E must each select an SAO. The SAO does not need to be the same for each.
- Companies A and F have no responsibility to provide an SAO as they are not **companies**.

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How to find out more

If you have any questions or would like to know more about how these issues may be relevant to you, please contact

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T +44 (0)20 7295 3000
F +44 (0)20 7295 3500

www.traverssmith.com



Kathleen Russ
kathleen.russ@traverssmith.com
+44 (0)20 7295 3230



Simon Yates
Simon.yates@traverssmith.com
+44 (0)20 7295 3414



Simon Skinner
simon.skinner@traverssmith.com
+44 (0)20 7295 3242



Richard Stratton
Richard.stratton@traverssmith.com
+44 (0)20 7295 3219

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