PKF FRANCISCLARK

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Being part of a ‘large’ corporate group

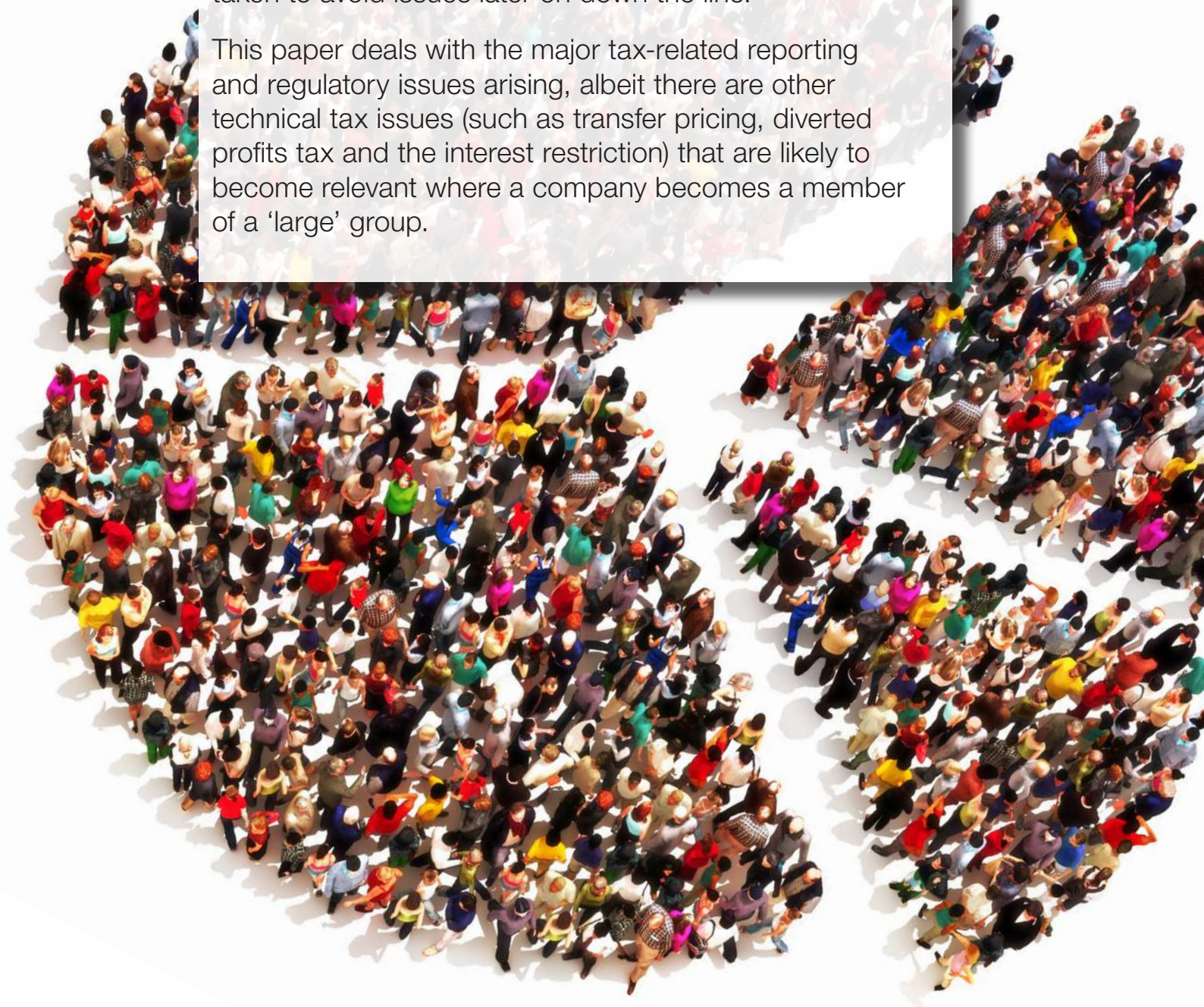
supporting you and your business

Introduction

Many companies will become part of a much larger corporate group as a result of an acquisition, or perhaps as the only UK element of a much larger overseas corporate group which is looking to expand into the UK marketplace.

Whichever, once within a much larger corporate group a number of tax-related reporting and regulatory issues - which perhaps were not present before - now need to be dealt with. Experience tells us that group tax functions do not necessarily communicate with local finance directors in these areas and so it is important that local action is taken to avoid issues later on down the line.

This paper deals with the major tax-related reporting and regulatory issues arising, albeit there are other technical tax issues (such as transfer pricing, diverted profits tax and the interest restriction) that are likely to become relevant where a company becomes a member of a 'large' group.



Country by Country Reporting

UK resident parent companies of a multinational enterprise with a consolidated group turnover of €750 million or more will have to file a country by country (CbC) report with HMRC every year. The report will show, for each country in which the multinational carries on business, the amount of revenue, profit before income tax and income tax paid and accrued. It will also show the total employment, capital, retained earnings and tangible assets.

The requirement to file CbC reports applies to accounting periods commencing on or after 1 January 2016 and companies have 12 months from the end of the relevant accounting period to file a report with HMRC.

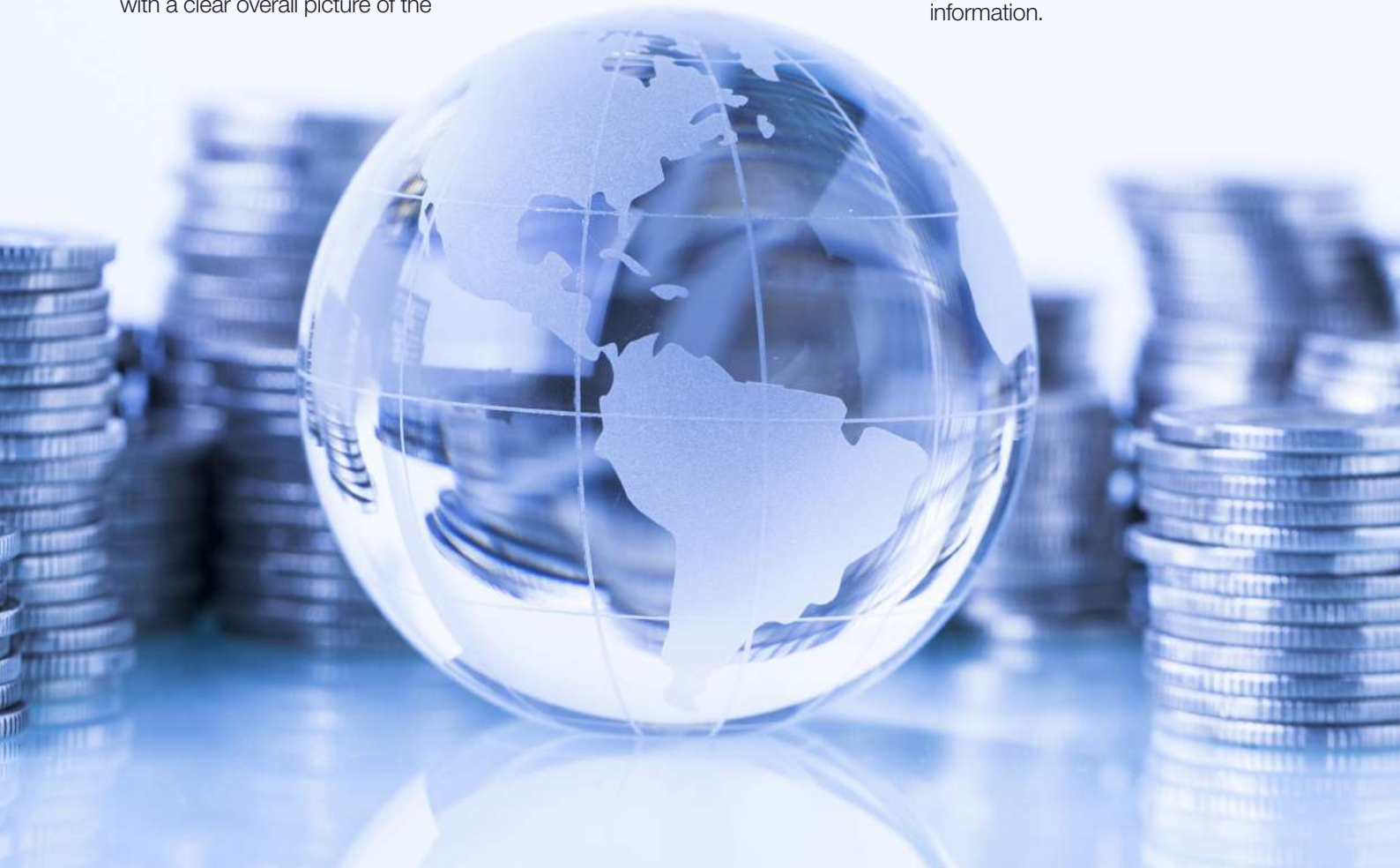
UK entities in multinational groups within the scope of CbC reporting are also obliged to tell HMRC annually which entity in the group will file the CbC report and where. The notification must be made by the end of the period being reported on. HMRC guidance sets out how this notification should be made.

CbC reporting was proposed by the OECD as part of its base erosion and profit shifting (BEPS) project. It is designed to provide tax authorities with a clear overall picture of the global position on profit and tax of the multinational groups operating in their jurisdiction.

CbC reports will be shared automatically by HMRC with tax authorities in those countries named in the report and with which the UK can exchange in accordance with international agreements governing the exchange of information. HMRC will receive information from other countries in respect of the UK operations of overseas headquartered groups. The OECD website sets out the countries between which information exchanges can take place.

HMRC can only use the data it receives from abroad for high level transfer pricing risk assessment, assessment of other BEPS related risks and economic and statistical analysis. HMRC says in its International Manual "HMRC has agreed not to use CbC reporting data as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis."

At present CbC reports can only be accessed by tax authorities. The European Commission is proposing that CbC information should be made publicly available. Members of the European Parliament approved the rules in July 2017. They contain a limited and temporary derogation for companies to allow them to avoid disclosing publicly sensitive information.



Requirement for large companies to publish their tax strategy

The requirement applies to UK companies or UK partnerships with a turnover above £200 million and/or a balance sheet total over £2 billion in their previous financial year.

For groups and sub-groups, it is the combined totals of the UK companies that you use to see whether the thresholds have been reached. UK permanent establishments of non-UK incorporated companies are also within the requirements if the turnover and/or balance sheet thresholds are exceeded.

If a UK company or sub-group does not meet the threshold in its own right, it may still be required to publish its strategy if it is a member of a group not headed by a UK company which satisfies the OECD's country-by country reporting framework threshold of a global turnover of more than €750 million.

The requirement to ensure the tax strategy is published falls on the top company in the group, unless it is not a UK incorporated company (or a UK PE) in which case the liability falls on the top UK company in the group. However, the strategy can actually be published by any UK group member.

What should it contain?

The legislation (schedule 19 FA 2016) states that the strategy must set out:

- the approach of the group to risk management and governance arrangements in relation to UK tax;
- the attitude of the group towards tax planning so far as it affects UK tax;
- the level of risk in relation to UK tax that the group is prepared to accept; and
- the approach of the group towards its dealings with HMRC.

HMRC issued a brief guidance note in June 2016 which gives limited guidance as to what is expected.

In relation to the approach to risk management the guidance note says that the group needs to work out and include tax risks linked to the business's size, complexity and any changes to the business. It states that the strategy should include:

- details on how the business's tax risk is managed;
- a high level description of key roles and their responsibilities;
- information on the systems and controls in place to manage tax risk; and
- details on the levels of oversight of the business's board and its involvement.

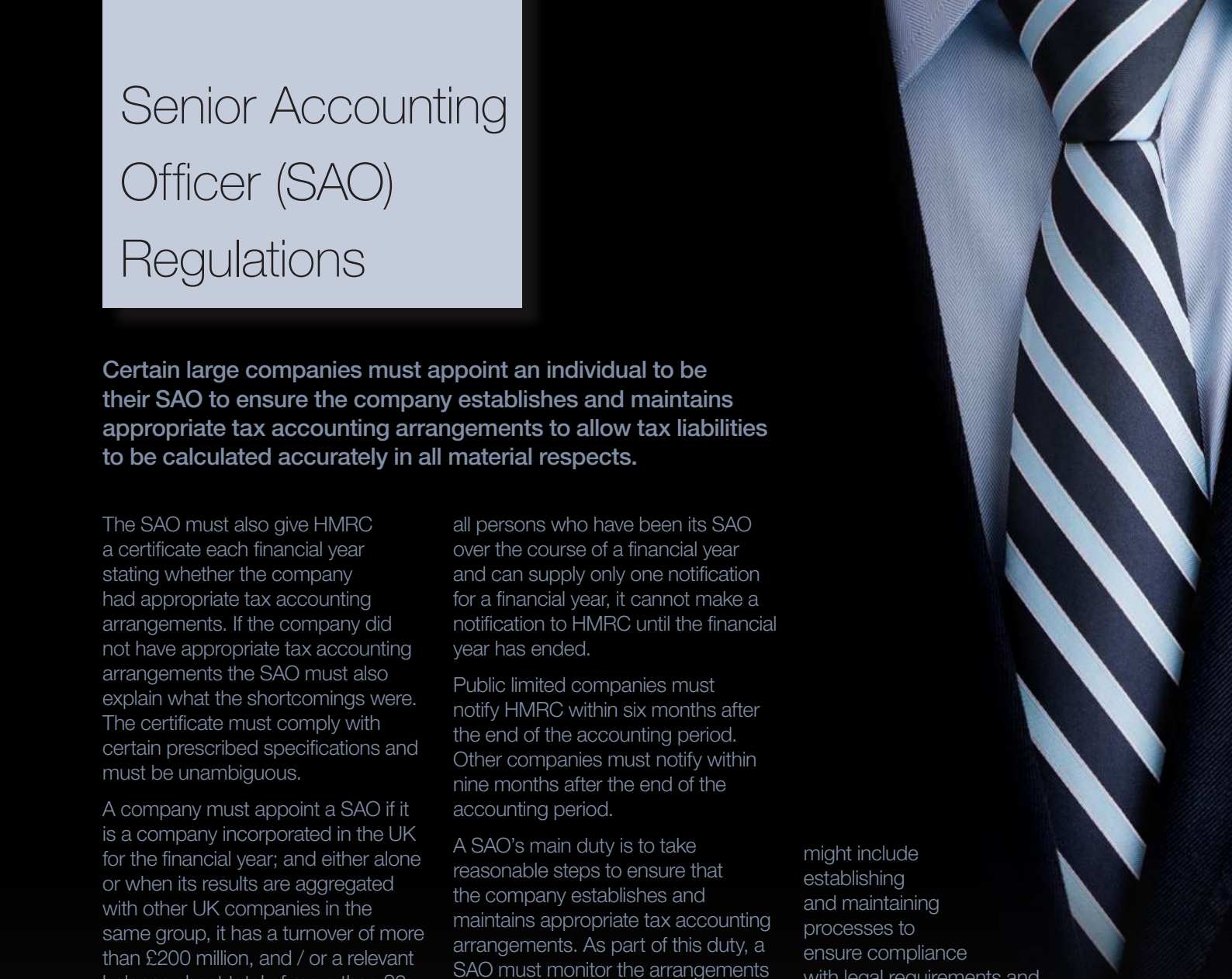
As to the attitude of the group to tax planning, the guidance says that if the business has a code of conduct the strategy should include details of it. The guidance states the strategy should also explain why the business might seek external tax advice (if relevant),an outline of the business's tax planning motives and the importance of each to the tax strategy.

Where the business forms part of either a group or sub-group, the guidance states that the group's overall approach to structuring tax planning should be included.

The strategy must be made available free of charge on the internet, either as a separate document or as a self-contained part of a wider document. It must remain available to the public until the next year's strategy has been published, or for at least a year if there is no requirement to publish the strategy next year.

Financial penalties can be imposed by HMRC on businesses which do not publish a strategy when they are required to, publish something which does not comply with the requirements or do not keep their strategy accessible for the required period.

Senior Accounting Officer (SAO) Regulations



Certain large companies must appoint an individual to be their SAO to ensure the company establishes and maintains appropriate tax accounting arrangements to allow tax liabilities to be calculated accurately in all material respects.

The SAO must also give HMRC a certificate each financial year stating whether the company had appropriate tax accounting arrangements. If the company did not have appropriate tax accounting arrangements the SAO must also explain what the shortcomings were. The certificate must comply with certain prescribed specifications and must be unambiguous.

A company must appoint a SAO if it is a company incorporated in the UK for the financial year; and either alone or when its results are aggregated with other UK companies in the same group, it has a turnover of more than £200 million, and / or a relevant balance sheet total of more than £2 billion for the preceding financial year.

The SAO is the director or officer of a company who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.

Each qualifying company must identify who its SAO is. Where a group of companies is involved, there may be a different person who acts as SAO for each company, a single person who acts as SAO for all the group companies or several different persons who act as SAOs for different parts of the group. The role of the SAO cannot be filled by an agent.

Each financial year a qualifying company must notify the name of its SAO to HMRC and must do so separately from the SAO Certificate. Only one person can be SAO at any one time, but the company may have more than one SAO over the course of a financial year. As the company must notify the details of all persons who have been its SAO over the course of a financial year and can supply only one notification for a financial year, it cannot make a notification to HMRC until the financial year has ended.

Public limited companies must notify HMRC within six months after the end of the accounting period. Other companies must notify within nine months after the end of the accounting period.

A SAO's main duty is to take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements. As part of this duty, a SAO must monitor the arrangements and identify any respects in which the arrangements fall short of the requirement.

Tax accounting arrangements are the framework of responsibilities, policies, appropriate people and procedures in place for managing the tax compliance risk, and the systems and processes which put this framework into practice.

The tax accounting arrangements must allow for the tax liabilities of the company to be calculated accurately in all material respects.

Reasonable steps are the steps a person in this situation would normally be expected to take to ensure awareness of all taxes and duties for which the company is liable; ensure that risks to tax compliance are properly managed and enable the various returns to be prepared with an appropriate degree of confidence.

The steps that are reasonable will depend on the particular circumstances. Reasonable steps might include establishing and maintaining processes to ensure compliance with legal requirements and periodically checking and testing systems, controls, process flows and transactions.

A SAO would probably be expected to ensure that the introduction of new systems and processes, or changes to them, are supported by appropriate planning, risk assessment, implementation and evaluation activities.

Reasonable steps for a SAO to take would include ensuring the maintenance and retention of required records. A SAO would also be expected to ensure staff and any third party to whom responsibilities are delegated are appropriately trained, have the necessary guidance, qualifications, knowledge and experience needed to carry out their functions.

The SAO must perform the main duty throughout the period of their responsibility. It is not something that they can merely give attention to at the end of a year.

The SAO obligations apply in respect of corporation tax, VAT, PAYE, insurance premium tax, SDLT, SDRT, petroleum revenue tax, customs duties and excise duties including air passenger duty and bank levy. Note that they do not apply in relation to national insurance contributions.

A penalty will be chargeable on a qualifying company if it fails to notify the name of its SAO within certain timescales.

A penalty will be chargeable on the SAO personally if they fail to meet their main duty, fail to give HMRC a certificate within the required timescale, or they provide a timely certificate that contains a careless or deliberate inaccuracy.

Each of these penalties is a fixed amount of £5,000.

A person is not liable to a penalty for a failure to notify details of the SAO, a failure to carry out the main duty, or a failure to provide a certificate on time, if they satisfy HMRC that they have a reasonable excuse for the failure, and they put right the failure without unreasonable delay after the excuse has ended.

A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the person's control, and which prevents the person from complying with an obligation under the SAO provisions. Reasonable excuse does not apply to a careless or deliberate inaccuracy in the SAO certificate.

HMRC Customer Relationship Managers (CRMs) will consider whether and how the company/group and the SAO have complied with the SAO provisions as part of the Business Risk Review to determine the company or group's risk rating.

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