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## ACCOUNTING

### Personal Penalty on Senior Accounting Officers

ACCOUNTING

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A summary of the important points.

Michelle Sloane, a solicitor at The Khan Partnership, summarises the incoming reporting duties for Senior Accounting Officers of large companies

Budget 2009 announced surprising new legal obligations on Senior Accounting Officers ("SAO") of large companies.

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#### Who is affected and when do the changes occur?

The draft legislation was published at the end of April 2009 and defines 'a large company' to be one which is so for the purposes of the Companies Act 2006 (meeting two out of three of the following criteria: turnover greater than £25.9m.; balance sheet total greater than £12.9m; more than 250 employees). It appears that companies incorporated outside the UK or other large UK bodies corporate (such as LLPs) will not be caught. The new obligations are to be taken into effect for accounting periods beginning on or after the date the Finance Bill 2009 receives Royal Assent.

#### The Changes

A company affected by the new obligations will be required to identify an officer who has overall responsibility for its financial accounting arrangements and name that SAO to HM Revenue and Customs ("HMRC"). This is likely to be the Chief Financial Officer or the Finance Director. The SAO will be personally responsible for taking reasonable steps to ensure the company and its subsidiaries establish and maintain accounting systems that are appropriate for the purposes of accurate tax reporting. The SAO must also certify annually to HMRC that the accounting systems for the company and its subsidiaries are appropriate for the purposes of accurate reporting of all taxes and duties. If they are unable to do so the SAO will have to specify the nature of the inadequacies and confirm to HMRC that these have been notified to the company's auditors.

## Penalties for non-compliance

Penalties of up to £5000 are to be levied personally on the SAO for failure to meet these obligations or if their certificates contain a 'careless' or 'deliberate' inaccuracy. SAO's should not be held liable for flaws in the accounting systems before the legislation is passed, although failure to correct these flaws after the legislation is passed may result in penalties in later periods. The company is also liable to a penalty if it fails to notify HMRC of the name of its SAO.

## Response

These new obligations have caused considerable concern amongst those affected, particularly surrounding their scope, effect and the increased costs of compliance. HMRC have met with those impacted in order to try to address these concerns and there are a number of proposed changes which have been debated by the Commons Committee. The key changes expected is that the population caught by the new legislation will be reduced by amendments to the 'large company' definition so that those affected will be limited to companies with a large business relationship with HMRC and the SAO will not need to report to the company's auditors. These changes go some way in addressing concerns, however, the key concern surrounding personal liability of the SAO remains.

## Conclusion

These proposals undoubtedly place a greater compliance burden on companies and radically extend HMRC's powers. The lack of prior consultation for such a significant change is unfortunate. Aspects of the new obligations remain unclear due to the lack of detail in the new legislation and it is difficult to know exactly what the implications are on companies affected. Consultations with interested parties are continuing and it is hoped that many of the uncertainties will be made clear in the final legislation and the guidelines produced by HMRC. Clarification on what an SAO will need to do to demonstrate that 'reasonable steps' have been taken is particularly awaited. At a minimum, companies impacted should give early attention to assessing tax risks, reviewing accounting systems, checking the adequacy of controls and they should put in place a plan to address any deficiencies. It is clear that Finance and Tax Departments will have to work much more closely together to agree accountabilities and responsibilities for preparing tax returns.