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SCHEDULES

SCHEDULE 46

Section 93

DUTIES OF SENIOR ACCOUNTING OFFICERS OF QUALIFYING COMPANIES

Main duty of senior accounting officer

- 1 (1) The senior accounting officer of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements.
- (2) The senior accounting officer of a qualifying company must, in particular, take reasonable steps—
 - (a) to monitor the accounting arrangements of the company, and
 - (b) to identify any respects in which those arrangements are not appropriate tax accounting arrangements.

Certificate for Commissioners

- 2 (1) The senior accounting officer of a qualifying company must provide the Commissioners with a certificate for each financial year of the company.
- (2) The certificate must—
 - (a) state whether the company had appropriate tax accounting arrangements throughout the financial year, and
 - (b) if it did not, give an explanation of the respects in which the accounting arrangements of the company were not appropriate tax accounting arrangements.
- (3) The certificate must be provided—
 - (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and
 - (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed).
- (4) A certificate may relate to more than one qualifying company.

Notifying Commissioners of name of senior accounting officer

- 3 (1) For each financial year a qualifying company must ensure that the Commissioners are notified of the name of each person who was its senior accounting officer at any time during the year.
- (2) The notification must be given—
 - (a) by such means and in such form as is reasonably specified by an officer of Revenue and Customs, and

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- (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of Revenue and Customs may have allowed for providing the certificate for the financial year under paragraph 2).

(3) A notification may relate to more than one qualifying company.

Penalty for failure to comply with main duty

- 4 (1) This paragraph applies if a senior accounting officer fails to comply with paragraph 1 at any time in a financial year.
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) A person is not liable to more than one penalty under this paragraph in respect of the same company and the same financial year.

Penalties for failure to provide certificate etc

- 5 (1) This paragraph applies if a senior accounting officer—
- (a) fails to provide a certificate in accordance with paragraph 2, or
 - (b) provides a certificate in accordance with that paragraph that contains a careless or deliberate inaccuracy.
- (2) The senior accounting officer is liable to a penalty of £5,000.
- (3) For the purposes of this Schedule, an inaccuracy is careless if the inaccuracy is due to a failure by the senior accounting officer to take reasonable care.
- (4) An inaccuracy in a certificate that was neither careless nor deliberate when the certificate was given is to be treated as careless if the senior accounting officer—
- (a) discovered the inaccuracy some time later, and
 - (b) did not take reasonable steps to inform HMRC.

More than one senior accounting officer

- 6 (1) This paragraph applies if the identity of the senior accounting officer of a company changes.
- (2) If (but for this sub-paragraph) more than one person would be liable to a penalty under paragraph 4 in respect of a financial year of the company, only the one who became the senior accounting officer latest in the year is liable to such a penalty.
- (3) If a person who is or has been the senior accounting officer of the company complies, or purports to comply, with paragraph 2 in respect of a financial year, no other person is liable to a penalty under paragraph 5 in respect of that company and that financial year.
- (4) A person who is replaced as the senior accounting officer of the company before the last day for compliance with paragraph 2 in respect of a financial year is not liable to a penalty under paragraph 5(1)(a) for failing to comply with that paragraph in respect of that company and that financial year.

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Penalty for failure to notify Commissioners of name of senior accounting officer

- 7 A qualifying company is liable to a penalty of £5,000 if, for a financial year, the Commissioners are not notified of the name or names of its senior accounting officer or officers in accordance with paragraph 3.

Reasonable excuse

- 8 (1) Liability to a penalty for a failure to comply with this Schedule does not arise if the senior accounting officer or qualifying company satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure, and
 - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

- 9 (1) Where a senior accounting officer or a qualifying company becomes liable for a penalty under this Schedule—
- (a) HMRC may assess the penalty, and
 - (b) if they do so, they must notify the officer or company liable for the penalty.
- (2) An assessment of a penalty under this Schedule for a failure in respect of a financial year, or an inaccuracy in a certificate for a financial year, may not be made—
- (a) more than 6 months after the failure or inaccuracy first comes to the attention of an officer of Revenue and Customs, or
 - (b) more than 6 years after the end of the period for filing the company's accounts for the financial year.
- (3) HMRC may not assess a person who is the senior accounting officer of a company (“C”) as liable to a penalty under paragraph 4 or 5 for a financial year (“the relevant financial year”) if—
- (a) at any time in the relevant financial year the person was the senior accounting officer of another company that was a member of the same group as C, and
 - (b) HMRC has assessed the person as liable, as the senior accounting officer of the other company, to a penalty under that paragraph for a financial year that ends on a day in the relevant financial year.
- (4) HMRC may not assess a company (“C”) as liable to a penalty under paragraph 7 for a financial year (“the relevant financial year”) if—
- (a) C was a member of a group at the end of that year, and
 - (b) HMRC has assessed another company that was a member of the same group as C at that time as liable to a penalty under that paragraph—
 - (i) for its financial year ending on the same day as the relevant financial year, or

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- (ii) if its financial year does not end on that day, for its financial year ending last before that day.

Appeal

- 10 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.
- (2) Notice of an appeal must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, and
 - (c) to HMRC.
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) Subject to this paragraph and paragraph 11, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalties

- 11 (1) A penalty under this Schedule must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, or
 - (b) if a notice of appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

Power to change amount of penalties

- 12 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 4, 5 and 7 such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1), in relation to a specified sum, “relevant date” means—
- (a) the date on which this Act is passed, and
 - (b) in relation to that sum, each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to—
- (a) a failure that occurs in respect of a financial year of a company that begins before the date on which they come into force, or
 - (b) an inaccuracy in a certificate that was provided to HMRC in respect of such a financial year.

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Application of provisions of TMA 1970

- 13 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
 - (b) section 114 (want of form), and
 - (c) section 115 (delivery and service of documents).

Meaning of “appropriate tax accounting arrangements”

- 14 (1) “Appropriate tax accounting arrangements” means accounting arrangements that enable the company's relevant liabilities to be calculated accurately in all material respects.
- (2) “Accounting arrangements” includes arrangements for keeping accounting records.
- (3) “Relevant liabilities”, in relation to a company, means liabilities in respect of—
- (a) corporation tax (including any amount assessable or chargeable as if it were corporation tax),
 - (b) value added tax,
 - (c) amounts for which the company is accountable under PAYE regulations,
 - (d) insurance premium tax,
 - (e) stamp duty land tax,
 - (f) stamp duty reserve tax,
 - (g) petroleum revenue tax,
 - (h) customs duties, and
 - (i) excise duties.

Meaning of “qualifying company”

- 15 (1) A company is a qualifying company in relation to a financial year if the qualification test was satisfied in the previous financial year (subject to any regulations under subparagraph (8)).
- (2) The qualification test is that the company satisfied either or both of the following requirements—

1. Relevant turnover	More than £200 million
2. Relevant balance sheet total	More than £2 billion.

- (3) If the company was not a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the company's turnover, and
 - (b) “relevant balance sheet total” means the company's balance sheet total.
- (4) If the company was a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the aggregate turnover of the company (“C”) and any other company that was a member of the same group as C at the end of C's previous financial year, and

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- (b) “relevant balance sheet total” means the aggregate balance sheet totals of C and any such company.
- (5) If the financial year of a company that was a member of the same group as C does not end on the same day as C's previous financial year, the figures for that company that are to be included in the aggregate figures are the figures for that company's financial year ending last before the end of C's previous financial year.
- (6) “Turnover”, in relation to a company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act).
- (7) “Balance sheet total”, in relation to a company and a financial year, means the aggregate of the amounts shown as assets in the company's balance sheet as at the end of the financial year.
- (8) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule.

Meaning of “senior accounting officer”

- 16 (1) “Senior accounting officer”, in relation to a company that is not a member of a group, means the director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.
- (2) “Senior accounting officer”, in relation to a company that is a member of a group, means the group director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.
- (3) “Group director or officer”, in relation to a company, means a director or officer of the company or of a relevant body that is a member of the same group as the company.
- (4) A person may be the senior accounting officer of more than one company.

Regulations

- 17 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Other definitions

- 18 (1) In this Schedule—
 - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
 - “company” has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006) but does not include a company that is an open-ended investment company (within the meaning of [^{F1}section 613 of CTA 2010]) or an investment trust (within the meaning of [^{F2}section 1158 of CTA 2010]);
 - “financial year”, in relation to a company, has the same meaning as in the Companies Act 2006 (see section 390 of that Act);
 - “HMRC” means Her Majesty's Revenue and Customs;

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“period for filing”, in relation to accounts, has the same meaning as in the Companies Acts (see section 442 of the Companies Act 2006);

“relevant body” means a company or other body corporate but does not include a limited liability partnership;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) For the purposes of this Schedule—

- (a) a relevant body is a member of a group if—
 - (i) another relevant body is its 51 per cent subsidiary, or
 - (ii) it is a 51 per cent subsidiary of another relevant body, and
- (b) two relevant bodies are members of the same group if—
 - (i) one is a 51 per cent subsidiary of the other, or
 - (ii) both are 51 per cent subsidiaries of a third relevant body.

(3) [^{F3}Chapter 3 of Part 24 of CTA 2010] (meaning of “51 per cent subsidiary”) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (subject to the modification in sub-paragraph (4)).

(4) It applies as if references in that [^{F4}Chapter] to a body corporate were to a relevant body.

Textual Amendments

- F1** Words in Sch. 46 para. 18(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 721\(2\)\(a\)](#) (with [Sch. 2](#))
- F2** Words in Sch. 46 para. 18(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 721\(2\)\(b\)](#) (with [Sch. 2](#))
- F3** Words in Sch. 46 para. 18(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 721\(3\)](#) (with [Sch. 2](#))
- F4** Word in Sch. 46 para. 18(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 721\(4\)](#) (with [Sch. 2](#))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(4)(za) inserted by [2010 c. 33 Sch. 9 para. 3\(3\)](#)
- Sch. 53 para. 2A-2D and cross-heading inserted by [2010 c. 33 Sch. 9 para. 7](#)
- Sch. 53 para. 6A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 8](#)
- Sch. 53 para. 11A11B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 17](#)
- Sch. 53 para. 14A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 18](#)
- Sch. 54 para. 9B9C and cross-heading inserted by [2010 c. 33 Sch. 9 para. 11](#) (Sch. 54 para. 9B is amended before it comes into force by 2016 c. 24, Sch. 1 para. 66(5))
- Sch. 54 para. 12A12B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 19](#)
- Sch. 54 Pt. A1 inserted by [2010 c. 33 Sch. 9 para. 10](#) (Sch. 9 para. 10 is amended before it comes into force by 2017 c. 32, Sch. 4 para. 182)
- Sch. 55 para. 6(3A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(2\)\(a\)](#)
- Sch. 55 para. 6(4A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(3\)\(a\)](#)
- Sch. 55 para. 17(4)(ba) inserted by [2015 c. 11 Sch. 20 para. 19](#)