

**EXPLANATORY NOTE**

**CLAUSE 92: SCHEDULE 46: DUTIES OF SENIOR ACCOUNTING OFFICERS OF LARGE COMPANIES**

**AMENDMENTS: 269-272, 279, 281, 286, 295-296, 299-303**

**SUMMARY**

1. Schedule 46 makes senior accounting officers of large companies and groups of companies liable to taxes in the UK personally responsible for ensuring and certifying that appropriate accounting arrangements are in place to enable the company prepare accurate tax reports are in place.
2. ‘Companies’ can be anything from very small businesses through to the largest multi-nationals. There is a balance to be struck between safeguarding the very significant revenues due from larger companies, and ensuring that this measure does not reach too far down the scale.
3. The Schedule as drafted defines the population of companies within its scope as companies that are ‘large’ for the purposes of the Companies Act 2006. This definition would reach further down the scale than is desirable and it was always the intention that the population of companies within the scope of this measure could and should be limited if appropriate criteria could be found to identify only those companies at which this measure is intended to encompass. These amendments are all aimed at limiting the population accordingly.

**DETAILS OF THE AMENDMENT**

4. Amendment 296 deletes the existing definition of ‘Large company’ at paragraph 17(1) and inserts a new definition of ‘qualifying’ companies. Under amendment 296, a qualifying company is a UK company that has either/or:
  - “turnover” exceeding £200 million;
  - “Balance Sheet Total” exceeding £2 billion, or
  - are part of a group of companies whose combined turnover and/or Balance Sheet Total exceed those amounts.
5. Amendments 299, 300, 301, 302 and 303] insert new definitions in paragraph 20 which are consequential on the new definition of ‘qualifying’ companies introduced by amendment []
6. Amendments 270 and 272 respectively remove the reference to “subsidiaries” in paragraphs 1(1) and 1(2)(a)

7. Amendment 282 inserts a provision at paragraph 4(2)(b) so that a single notification can be used to notify the identity of the senior accounting officer of more than one qualifying company
8. Amendment 291 inserts the word “company’s” into paragraph 11(2)(b) to ensure clarity
9. Amendments 269, 271, 273, 287, 289, 290 and 297 respectively substitute the word “qualifying” for “large” in paragraphs 1(1), 1(2), 3(1), 10(1), 9, 11(1) and 17(2).

### **BACKGROUND NOTE**

5. Through the Review of Links with Large Business many large companies have sought through openness and cooperation to establish a low-risk relationship with HMRC on tax. The result in those cases is fewer follow-up interventions to the advantage of both HMRC and the company. HMRC’s experience is that a factor in those cases is that the top executives have taken a conscious decision to adopt this approach and have backed it up by putting systems in place to ensure the delivery of accurate tax returns.
6. On the other hand, HM Revenue and Customs are aware of large companies whose accounting arrangements are such that it is difficult for either the company or HMRC to know whether or not the right tax is being paid – a problem that can persist for years, in some cases, with no action taken to rectify this problem.
7. The measure reflects what should already be in place – and, in that regard, will not impose excessive additional burdens on those companies who are already getting things right. But it will require the senior accounting executives of companies who do not have appropriate tax accounting arrangements to put matters right.

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**AMENDMENTS: 220 + 274 – 279 + 281**

**SUMMARY**

1. A feature of this measure is to require senior accounting officers of qualifying companies to notify HMRC
  - that the tax accounting arrangements of the company for a financial year were ‘appropriate tax accounting arrangements’;or otherwise
  - give HMRC an explanation of the respects in which those arrangements were not appropriate.

As drafted, the Schedule requires these two possible situations to be notified to HMRC using respectively what the Schedule terms “Type A” and “Type B” certificates.

The amendments seek to allow the same information to be notified using a single dual-purpose certificate, instead of the two distinctly separate certificates.

**DETAILS OF THE AMENDMENT**

2. Amendment 220 removes the references to ‘Type A’ and ‘Type B’ certificates from paragraph 2(3) and paragraph 3(3) and replace this with a single certification requirement.
3. Amendments 274, 275, 276, 277 and 279 amend the definition of the certificate provided in paragraph 3(3) to provide for a senior accounting officer to give a single, dual-purpose certificate, and allow that certificate to relate to more than one qualifying company.
4. Amendments 278 and 281 insert the word “company’s” into paragraph 4(3)(b) and paragraph 4(2)(b) to ensure clarity.

**BACKGROUND NOTE**

5. These amendments will not change the effect of this measure in any material sense whatever. But they will make its operation easier in practice by removing the perception that a stigma would attach to the delivery of a “Type B” certificate.

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**AMENDMENTS: 283 + 285 + 286 + 293 + 299**

**SUMMARY**

1. Paragraph 2 of the Schedule requires the senior accounting officer of a qualifying company to notify the company auditor of any respects in which the tax accounting arrangements of the company were not ‘appropriate tax accounting arrangements’. This requirement is being removed. This explanatory note explains the necessary consequential.

**DETAILS OF THE AMENDMENT**

2. Amendment 283 leaves out paragraph 6 (the penalty provisions for non-compliance with the requirement in paragraph 2 now being left out).
3. Amendment 285 leaves out reference to paragraph 2 in paragraph 8(5),
4. Amendments 286 and 293 leave out reference to paragraph 6 in paragraphs 8(5) and 14(1) respectively.
5. Amendment 299 leaves out from paragraph 20 the definitions of ‘auditor’ and ‘auditors report’ which become redundant.

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**AMENDMENT: 294**

**SUMMARY**

1. This measure makes senior accounting officers of qualifying companies and groups of companies personally responsible for ensuring and certifying that “appropriate accounting arrangements” were in place.
2. The legislation defines “appropriate tax accounting arrangements” as: *“arrangements that enable the liability to taxes and duties of the company to be calculated accurately”*.
3. There are concerns that the word “accurately” will, if left unqualified, be inferred as requiring a greater degree of precision than that which even the most tax-compliant companies currently work to.
4. This amendment clarifies this to provide reassurance to business.

**DETAILS OF THE AMENDMENT**

5. Amendment 294 changes the meaning of “appropriate tax accounting arrangements” in paragraph 16(1).

**BACKGROUND NOTE**

6. Companies already have an obligation to deliver tax returns in accordance with the law and this measure requires senior accounting officers to take ‘reasonable steps’ to establish ‘appropriate’ tax accounting arrangements that enable the company to do that.
7. The new definition applied by this amendment is intended to make clear that this measure imposes no higher standard of tax accounting arrangements than is currently expected of a tax-compliant company.

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**AMENDMENTS: 284 + 288 + 292 + 296**

**SUMMARY**

1. The legislation as drafted requires that for a group of companies, the senior accounting officer of the parent company will be responsible for fulfilling the requirements of this measure for each company in the group.
2. To assist the operation of this measure this amendment introduces flexibility around who can qualify as the senior accounting officer of a company.

**DETAILS OF THE AMENDMENT**

3. Amendment 298 replaces the wording of paragraph 18 to change the meaning of “senior accounting officer” to provide greater flexibility so that companies can nominate a senior accounting officer as the director or officer of the company who, in the company’s reasonable opinion, has overall responsibility for the company’s financial accounting arrangements. In the case of a company which is part of a group the group director or officer who, in the company’s reasonable opinion, has overall responsibility for the company’s financial affairs.
4. Amendments 284, 288, 292 and 296 respectively make consequential changes to paragraphs 8(3), 9 and 11(2)(b) and ensure that a person who is a senior accounting officer of more than one company within a group cannot attract multiple penalties.

**BACKGROUND NOTE**

5. The ‘reasonable opinion’ test that the amendment introduces will protect against the potential nomination, as senior accounting officers, of persons who plainly do not have the requisite level of responsibility.

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**AMENDMENT: 295**

**SUMMARY**

1. The thrust of this measure is to help sustain fiscal sustainability by making senior accounting officers of the very largest companies and groups (who are major contributors to the exchequer) responsible for ensuring that the company/group has “appropriate tax accounting arrangements” in place to enable the tax and duty liabilities of those companies to be calculated in accordance with the law. As drafted the measure would apply to all liabilities, major and minor, mainstream and obscure.
2. Some taxes which companies are liable to account for are the primary liability of the company or group (e.g. corporation tax). Other liabilities concern what might be termed ‘withholding taxes’ – i.e. taxes withheld from payments made to others (e.g. tax which banks deduct from interest accruing to account holders, and PAYE deductions from emoluments paid to employees).
3. Many ‘withholding’ taxes are already subject to specific audit arrangements that operate outside the scope of this measure. And in relation to minor and non-mainstream liabilities, in some instances the administration burden associated with this measure, whilst not significant in relative terms, might be disproportionate in relation to liabilities those liabilities.

**DETAILS OF THE AMENDMENT**

4. Amendment 295 lists at paragraph 16(3) those taxes and duties to which this measure will apply.

**BACKGROUND NOTE**

5. The taxes and duties covered by this measure are:
  - (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.

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**SCHEDULE 46**

Mr Stephen Timms	<b>269</b>
Schedule 46, page 338, line 34, leave out ‘large’ and insert ‘qualifying’.	
Mr Stephen Timms	<b>270</b>
Schedule 46, page 338, line 35, leave out ‘and each of its subsidiaries (if any)’.	
Mr Stephen Timms	<b>271</b>
Schedule 46, page 339, line 1, leave out ‘large’ and insert ‘qualifying’.	
Mr Stephen Timms	<b>272</b>
Schedule 46, page 339, line 3, leave out ‘and its subsidiaries (if any)’.	
Mr Stephen Timms Mr Mark Hoban Mr David Gauke Mr Greg Hands	<b>219</b>
Schedule 46, page 339, line 8, leave out paragraph 2.	
Mr Stephen Timms	<b>273</b>
Schedule 46, page 339, line 18, leave out ‘large’ and insert ‘qualifying’.	
Mr Stephen Timms Mr Mark Hoban Mr David Gauke Mr Greg Hands	<b>220</b>
Schedule 46, page 339, line 19, leave out ‘Type A or Type B’.	
Mr Stephen Timms	<b>274</b>
Schedule 46, page 339, leave out lines 21 to 25 and insert—	
(b) The certificate must—	
(a) state whether the company’.	
Mr Stephen Timms	<b>275</b>
Schedule 46, page 339, line 28, leave out ‘giving’ and insert ‘if it did not, give’.	

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Mr Stephen Timms	<b>276</b>
Schedule 46, page 339, line 29, leave out ‘and its subsidiaries (if any)’.	
Mr Stephen Timms	<b>277</b>
Schedule 46, page 339, line 30, leave out from ‘arrangements’ to end of line 32.	
Mr Stephen Timms	<b>278</b>
Schedule 46, page 339, line 36, after third ‘the’, insert ‘company’s’.	
Mr Stephen Timms	<b>279</b>
Schedule 46, page 339, line 38, at end insert— (b) A certificate may relate to more than one qualifying company.’.	
Mr Stephen Timms	<b>280</b>
Schedule 46, page 339, line 40, leave out ‘large company must notify the Commissioners’ and insert ‘qualifying company must ensure that the Commissioners are notified’.	
Mr Stephen Timms	<b>281</b>
Schedule 46, page 340, line 3, after third ‘the’, insert ‘company’s’.	
Mr Stephen Timms	<b>282</b>
Schedule 46, page 340, line 6, at end insert— (b) A notification may relate to more than one qualifying company.’.	
Mr Stephen Timms	<b>283</b>
Schedule 46, page 340, line 14, leave out paragraph 6.	
Mr Stephen Timms	<b>284</b>
Schedule 46, page 340, leave out lines 37 to 40.	
Mr Stephen Timms	<b>285</b>
Schedule 46, page 341, line 6, leave out ‘2 or’.	
Mr Stephen Timms	<b>286</b>
Schedule 46, page 341, line 7, leave out ‘6 or’.	

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- Mr Stephen Timms **287**  
Schedule 46, page 341, line 11, leave out ‘large’ and insert ‘qualifying’.
- Mr Stephen Timms **288**  
Schedule 46, page 341, line 11, leave out ‘it fails to notify the Commissioners of the name’ and insert ‘, for a financial year, the Commissioners are not notified of the name or names’.
- Mr Stephen Timms **289**  
Schedule 46, page 341, line 16, leave out ‘large’ and insert ‘qualifying’.
- Mr Stephen Timms **290**  
Schedule 46, page 341, line 30, leave out ‘large’ and insert ‘qualifying’.
- Mr Stephen Timms **291**  
Schedule 46, page 341, line 40, after third ‘the’ insert ‘company’s’.
- Mr Stephen Timms **292**  
Schedule 46, page 341, line 41, at end insert—
  - HMRC may not assess a person who is the senior accounting officer of a company (“C”) as liable to a penalty under paragraph 5 or 7 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.
  - HMRC may not assess a company (“C”) as liable to a penalty under paragraph 9 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
      - (ii) if its financial year does not end on that day, for its financial year ending last before that day.’.
- Mr Stephen Timms **293**  
Schedule 46, page 342, line 25, leave out ‘6.’.



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- (1D) 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.
- (1E) "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).
- (1F) "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.'

Mr Stephen Timms

**297**

Schedule 46, page 343, line 17, leave out 'large' and insert 'qualifying'.

Mr Stephen Timms

**298**

Schedule 46, page 343, leave out lines 20 to 22 and insert—

- "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.
- "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.
- "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.
- A person may be the senior accounting officer of more than one company.'

Mr Stephen Timms

**299**

Schedule 46, page 343, leave out lines 29 to 32.

Mr Stephen Timms

**300**

Schedule 46, page 343, line 35, leave out from "company" to end of line 36 and insert '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 section 468A of ICTA) or an investment trust (within the meaning of section 842 of ICTA);'.

Mr Stephen Timms

**301**

Schedule 46, page 343, leave out lines 39 and 40.

Mr Stephen Timms

**302**

Schedule 46, page 344, line 2, at end insert—

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

- Mr Stephen Timms **303**
- Schedule 46, page 344, leave out lines 3 to 5.
- Mr Stephen Timms **304**
- Schedule 46, page 344, line 7, at end insert—
- (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) Section 838 of ICTA (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 section to a body corporate were to a relevant body.’.