[2017] UKFTT 601 (TC)

TC06043

Appeal number: TC/2016/01544

PENALTIES – senior accounting officer regime in Schedule 46 FA 2009 – whether reasonable steps taken to establish and maintain appropriate tax accounting arrangements – failure to undertake selective testing to determine accuracy of VAT returns for a partially exempt business – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

KREESON THATHIAH **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE SARAH FALK

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 20 July 2017

The Appellant in person

Andrew Macnab, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. This is an appeal against two penalties assessed on the appellant under the Senior Accounting Officer ("SAO") regime contained in Schedule 46 to the Finance Act 2009 ("Schedule 46"). HMRC's case is that the appellant breached the "main duty" under paragraph 1 of Schedule 46 which, in summary, requires an SAO to take reasonable steps to ensure that a company establishes and maintains appropriate tax accounting arrangements. I understand that this is the first appeal to be heard by the Tribunal in relation to the SAO regime.

Background

2. At the relevant time the appellant was the finance director of the Lenlyn group of companies, a privately owned group the members of which included International Currency Exchange plc ("ICE"). The group's activities included the provision of currency exchange and other financial services. ICE was the representative member of a VAT group which included a number of other Lenlyn group companies. The group was partly exempt for VAT purposes and operated a partial exemption special method ("PESM") for determining recoverable input tax.

3. As discussed further below the SAO regime requires an SAO to be appointed in relation to each "qualifying company" and for the SAO to certify to HMRC whether the company had appropriate tax accounting arrangements in place for the relevant financial year. The appellant provided this certificate in respect of each of the years ended 28 February 2011, 29 February 2012 and 28 February 2013 in respect of a number of group companies, including ICE.

4. The appellant ceased working for the Lenlyn group in March 2014, although his employment did not formally cease until 1 May 2014. Following his departure KPMG made an error correction notification on behalf of ICE, providing details of errors that KPMG considered had been made in ICE's VAT returns between March 2010 and January 2014. KPMG's estimate of the overall net error totalled around £1.36 million.

5. The appellant met with representatives of HMRC in January 2015 at their request. The penalty assessments were made on 3 June 2015 in respect of the years ended 29 February 2012 and 28 February 2013, in the amount of £5,000 each. HMRC rely heavily on what was said at the meeting in January 2015 in support of the penalty assessments.

6. The appellant appealed against the assessments and further correspondence followed between June 2015 and 18 February 2016, when HMRC's decision was confirmed on review. The appellant appealed to the Tribunal on 14 March 2016.

7. The appellant is unrepresented. It is also apparent that he has received no assistance, information or other support from the Lenlyn group in relation to this appeal. Concerns within HMRC in relation to taxpayer confidentiality also appear to

have been the cause of the appellant not receiving any details of the contents of KPMG's error correction notice until it was provided as an exhibit to a witness statement during the course of the appeal. No additional detail in relation to the VAT position of the ICE VAT group or the final outcome of the error correction notice has been provided to the appellant, beyond some limited comments in oral evidence and submissions at the hearing.

8. It is also worth noting at this stage that, although the size of the penalties is relatively modest, their potential impact on the individual in terms of reputation and, potentially, employment prospects, could be more significant.

Schedule 46

9. The relevant provisions of Schedule 46 are set out in the Appendix to this decision. Under s 93(2) Finance Act 2009, Schedule 46 has effect in relation to financial years beginning on or after the day that the Act was passed. For Lenlyn group companies this meant that the regime first applied in respect of the financial year ended 28 February 2011.

10. Paragraph 20 to 23 of the Explanatory Notes to s 93 and Schedule 46 explain the provisions in the following way:

> "20. Large companies make a major contribution to the Exchequer. Inadequate tax accounting arrangements within such companies (or groups) can lead to misreporting of tax liabilities of very large amounts.
>
> 21. Currently, there is no legal obligation on any particular director or company officer to ensure that the company has appropriate tax accounting arrangements. This section and Schedule will make the senior accounting officer of a company personally responsible for doing so.
>
> 22. Ensuring appropriate tax accounting arrangements are in place is no more than compliant companies will be doing already. The requirement on senior accounting officers to take reasonable steps to ensure appropriate tax accounting should in most instances merely underpin that good practice.
>
> 23. Where large companies have not established appropriate tax accounting arrangements to enable accurate tax reporting, tax is at risk. Senior accounting officers of such companies will be required by this section to take appropriate action to remedy that situation."

An Impact Assessment signed by the responsible Government Minister in April 2009 included the following:

> "**What are the policy objectives and the intended effects?**
>
> To provide a clear point of accountability within a company for ensuring that systems and processes are sufficient to ensure that an

> accurate tax return is made or to identify that there are areas that require improvement within internal systems. A requirement to certify personally that adequate controls to prepare accurate tax computations were in place would make that responsibility clear and transparent. The clarity of the obligation would help Senior Accounting Officers to be sure of their responsibilities and would protect tax yield."

11. Paragraph 3 of Schedule 46 requires qualifying companies to notify HMRC of the name of its senior accounting officer (or officers if more than one) for each financial year. The concept of qualifying company is defined in paragraph 15 and broadly applies to companies with a turnover of more than £200 million or balance sheet assets of more than £2 billion, and to groups of companies whose aggregate turnover or assets exceed either of those amounts. For group companies paragraph 16(2) provides that the SAO is the group director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.

12. Under paragraph 1 of Schedule 46 an SAO must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements, and in particular take reasonable steps to monitor those arrangements and identify any respects in which they are not appropriate tax accounting arrangements. This is described as the "main duty". Paragraph 14 defines "appropriate tax accounting arrangements" as accounting arrangements that enable the company's liabilities to specified taxes, including VAT, to be calculated accurately in all material respects. Under paragraph 2 of Schedule 46 the SAO must provide a certificate for each financial year stating whether the company had appropriate tax accounting arrangements and, if not, giving an explanation of the deficiencies. Paragraph 4 provides for a £5000 penalty for failure to comply with paragraph 1 at any time in a financial year. Paragraph 5 provides for a separate £5000 penalty for failure to provide a certificate, or for providing a certificate that contains a careless or deliberate inaccuracy. (There is a separate penalty on the company under paragraph 7 if it fails to provide the name of the SAO, but that is not relevant to this appeal.)

13. Penalties charged under Schedule 46 are levied at a flat rate and there is no statutory power to mitigate them. Paragraph 8 does however provide (subject to caveats) that no penalty will arise for a failure to comply with Schedule 46 if the SAO satisfies HMRC or (on appeal) the Tribunal that there is a reasonable excuse for the failure.

14. Paragraph 10 deals with appeals. Paragraph 10(3) provides that, on an appeal notified to the Tribunal, the Tribunal "may confirm or cancel the decision". It is clear from this, and Counsel for HMRC accepted, that the Tribunal has full appellate jurisdiction to determine whether the conditions for a penalty to arise are satisfied, as well as whether there is a reasonable excuse.

15. Counsel for HMRC also accepted, again correctly in my view, that in line with the normal approach to penalties the burden of proof is on HMRC to demonstrate that the conditions for a penalty to arise have been met. In this case this means that HMRC

must demonstrate that the appellant failed to take reasonable steps to ensure that the relevant company established and maintained appropriate tax accounting arrangements at any time in the relevant financial year (paragraphs 1 and 4(1)). If this test is satisfied then the burden of proof is on the appellant to demonstrate whether there is a reasonable excuse. No submissions were made about the standard of proof, and I have proceeded on the basis that the normal civil standard applies, being the balance of probability (see in particular *Khawaja v HMRC* [2013] UKUT 353 (TCC), [2014] STC 150).

16. There is one further matter I should address this stage, namely time limits. Paragraph 9(2) of Schedule 46 provides that a penalty assessment may not be made:

> "(a) more than 6 months after the failure … 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."

I interpret this as meaning that a penalty assessment may not be made if either of the periods specified has elapsed. The period referred to in paragraph (b) has clearly not elapsed. As regards paragraph (a), HMRC's position was that the relevant failure first came to HMRC's attention at the meeting held with the appellant in January 2015, and the penalties were assessed within six months of that date. This is consistent with HMRC's overall case, which focuses on alleged failings which they say emerged at that meeting rather than on the existence of the matters disclosed in KPMG's error correction notice, and I have therefore proceeded on the basis that the assessments were made in time.

Evidence

17. Oral evidence was provided by Timothy Murphy, an officer of HMRC who has acted as the Customer Relationship Manager for the Lenlyn group since January 2014, and by the appellant. Mr Murphy also provided a witness statement. In addition to correspondence between the parties and a note of the meeting in January 2015 the documentary evidence included the error correction notice dated 25 September 2014, together with an earlier letter dated 7 April 2014 from KPMG to HMRC alerting them to the possibility of historic inaccuracies in VAT accounting and explaining that KPMG had been instructed to conduct a review and make any required disclosures. Copies of SAO notifications for the three financial years for which the appellant was responsible were also provided, together with notifications for the following financial year.

18. I accept Mr Murphy's evidence as to matters of fact. Mr Macnab (Counsel for HMRC) challenged aspects of the appellant's evidence as raising points that Mr Macnab considered had not been raised at an earlier stage. He suggested that the appellant had embellished his evidence.

19. In my view it is not appropriate to draw any adverse inference, as Mr Macnab sought to do, from the appellant's failure to provide full details of his evidence in advance of the hearing. Mr Macnab referred to the fact that HMRC had provided a detailed Statement of Case to which the appellant had not replied. However, there is no general provision in the Tribunal rules for such a reply where an oral hearing is contemplated, and no direction was made that required one. Mr Macnab also referred to directions issued by the Tribunal in August 2016 pursuant to an unchallenged HMRC application. The relevant direction requested by HMRC provided that "each party shall send or deliver to the other party any statements from all witnesses on whose evidence they intend to rely at the hearing setting out what that evidence will be". Although Mr Macnab suggested at the hearing that these directions required a witness statement from the appellant that is not how I read them. This is strongly supported by the closing paragraph of HMRC's application seeking the directions, which notes that the appellant is a litigant in person and that it would be "in the interests of the parties and the Tribunal for the Appellant to be given the opportunity to set out his evidence in writing, as well as sufficient time before the hearing to consider the Respondents' evidence", and states that the direction "has been worded flexibly to ensure the appellant is not penalised should [he] choose not to take up the option of written evidence".

20. Mr Murphy's witness statement was provided in response to this direction. The appellant emailed the Tribunal in November 2016 following receipt of it stating that he had chosen not to provide a witness statement and continuing as follows:

> "The events outlined in the Respondents statement is sufficient for me to provide a clear challenge on how a financial penalty was levied on me.
>
> The penalty levied were for a financial period some three to four years ago and it is difficult for me to remember what actions I took at the time.
>
> I will rely and piggyback on the witness statement provided by the Respondent as part of my defence."

21. Mr Macnab drew particular attention to the second paragraph quoted above, suggesting that that cast doubt on some of the points raised in oral evidence.

22. Although the appellant did not provide a witness statement or a reply to the Statement of Case he did of course set out some details of his case in his grounds of appeal to the Tribunal. In addition the appellant raised a number of issues in correspondence with HMRC following the penalty assessments which in my view are consistent with the appellant's oral evidence. The points raised by the appellant at the hearing that are not reflected in the correspondence relate to the content of the error correction notice, which the appellant only received at a much later stage with Mr Murphy's witness statement.

23. The appellant's evidence is discussed further below, but I should make it clear now that I accept the appellant's evidence as to matters of fact. Overall I consider that

the appellant's evidence was clear and at a level of detail which I would have expected him to be able to recall given the time that has elapsed. The reference in the November 2016 email to difficulty in recalling actions needs to be read in its context, taking account of the fact that the appellant has had no access to information held by the Lenlyn group and is therefore unlikely to have had any means of refreshing his memory about points of detail. It also needs to be borne in mind that the appellant is unrepresented. In my view it is quite unrealistic to expect an unrepresented appellant, and in particular one without access to documentation that might be relevant to his case, to produce a witness statement.

Findings of fact

The Lenlyn group and the VAT function

24. The Lenlyn group of companies is a family controlled, unlisted group. I was not given a clear overall impression of the group's activities, but it includes the provision of currency exchange services, ATMs (automated teller machines) and other cash handling services. The group operates internationally, and during the appellant's time with the group it had around 20 offices globally. There was no dispute that the size of the group is such that its members are "qualifying companies" for Schedule 46 purposes. Beyond that, however, there was no indication of the scale of the group's turnover or assets. HMRC provided no evidence in the form of accounts or other financial information. The appellant's evidence, which I accept, was that the group operated in a very different world to major financial institutions such as well-known banks, and that limited resources were made available for management and administration (the appellant's expression was that it was "run on a shoestring").

25. The appellant joined the group in 2005, initially as group financial controller. He became the group finance director in around 2007. His departure in 2014 related to a disagreement which was unrelated to the subject matter of this appeal. The appellant's evidence was that, whilst with the group, he did what he could to improve resourcing, introduce new systems and controls and seek to ensure that any irregularities could be identified. So far as possible automated solutions were used to ensure that items were correctly categorised. The systems team was substantially increased during his last three years with the group. The appellant readily accepted that more could have been done with additional resource (as to which see below), but his opinion was that the way in which he had managed UK staffing for tax and accounting was pretty strong. Given the scale of the group's international operations he was travelling out of the UK every second week, so he was heavily reliant on his UK team. I accept this evidence insofar as it relates to matters of fact rather than opinion.

26. Following a restructuring in around 2010 to centralise functions, and which the appellant said was designed to increase oversight by senior management, there were two particular individuals that the appellant relied on in relation to VAT. The first was Marc Gil, the tax manager. Mr Gil had a payroll background but was brought into the

group to run VAT accounting rather than payroll. He was sent on a KPMG full tax training package during 2010/11 and was then given a retainer budget of £7,500 per quarter for continuing support following the course from a KPMG team. This budget was normally fully utilised and 70% of calls on the budget related to the group's VAT partial exemption position. The team that provided this support was separate from the team that carried out the annual audit. The appellant's view was that Mr Gil had the skills, training and support he needed for VAT purposes.

27. The second individual that the appellant relied on was Kerry Penfold, an ACA qualified accountant who was originally finance director of the group's Southampton operation but who took over the group financial controller role in 2011 or 2012. She had trained at a big four firm and had experience of working in a large banking business. She is not a tax specialist.

28. Under the system put in place by the appellant Mr Gil was responsible for pulling all the information together for the VAT returns. Ms Penfold was responsible for carrying out checks, and met with Mr Gil to discuss the VAT return figures each month. The appellant had monthly meetings with Ms Penfold to go through information for the period concerned. No new account code (which I take to mean a code for a new type of expense or supplier) could be set up without the appellant's authorisation. The appellant also conducted sense checks, but these were essentially variance checks which compared VAT input tax figures to earlier ones to look for anomalies. He did however carry out specific checks on the largest items, which comprised rent. A check was also carried out on figures in the annual budget, irrecoverable VAT being checked for consistency against earlier periods.

29. The process documentation for completing the VAT return was compiled by Mr Gil and incorporated into a larger document by the appellant. This was one aspect of a set of procedure manuals for financial reporting and management reporting which the appellant had either put in place or reviewed and updated to ensure that they were adequate for FSA purposes.

30. There was a group tax policy document, which was in place at least by December 2012 (the version I saw stated that it was last approved on 5 December 2012). Under this document responsibility for the tax policy was vested in the Board of Lenlyn Holdings plc. The group finance director was responsible for reviewing the policy on an annual basis. Tax risks were recorded in a tax risk register, which formed part of the wider group risk register (see further [46] below). The policy document states that the group tax compliance manager, who reported to the group finance director, was responsible for all taxes apart from employment taxes, and that the finance director had accountability for tax to the Board and to the audit and risk committee. A number of comments are made about objectives, including having a clearly understood policy, paying the appropriate amount of tax at the appropriate time, and implementing and maintaining controls and procedures to ensure that the correct tax was paid, penalties were avoided and SAO certification could be provided. As regards tax authority relationship, the document states that the group maintained an open and honest relationship with a policy of full disclosure of inadvertent errors

and of cooperation. There is specific reference to regular training of the tax compliance manager, facilitated by KPMG, and to day-to-day support from KPMG on material tax issues.

31. The appellant relied on KPMG's annual audit as well. The KPMG audit team performed a full substantive review of VAT calculations as part of the audit, including pulling out and checking sample invoices against the returns. The appellant believed that the sampling work performed by KPMG, in addition to the review work performed by his staff, was sufficient for him to rely on.

32. KPMG was also engaged to handle the negotiation and agreement of a new partial exemption special method ("PESM") with HMRC. This was formally agreed in June 2010 and led to the group making a substantial VAT recovery. As part of their work KPMG did a detailed review over a six-month period including sampling individual invoices and working out what different costs should be attributed to in VAT terms. They considered all rental costs, which gave rise to the group's most significant input VAT, and reviewed the entire process for the production of VAT returns. The appellant considered that this provided sufficient assurance that the processes were running well. The processes used to recognise and capture transactions for the VAT returns did not change as a result of the agreement of the new PESM, although there was an increased use of automated reports and the content of the returns was of course affected. The appellant believed that VAT returns for periods after the new PESM was agreed were produced using the same method that KPMG had adopted and HMRC had agreed. KPMG also reviewed this for their annual audit. In addition the group's VAT specialist at HMRC requested and was sent detailed partial exemption spreadsheet data on more than one occasion, to ensure that the approach being taken was consistent with the new PESM. The appellant took comfort from this and, when combined with the fact that the tax manager and (presumably once Ms Penfold was in the role) a qualified accountant were reviewing the returns, he thought that there were adequate checks.

33. Over a similar period in 2009/10 a separate KPMG team was asked by the appellant to perform a transfer pricing review. This led to management charges being levied, including charges that were identified in KPMG's error correction notice as not having been correctly subject to the reverse charge. The appellant could not recall being told by KPMG that these charges gave rise to a reverse charge issue.

34. The appellant's evidence, which I accept, was that he made a number of attempts to obtain additional resources so that he could bring in more staff, that he raised the issue regularly with the Board, and that every annual report by KPMG flagged lack of resourcing as an issue. He did have some success in increasing staffing levels and improving processes and controls, and engaged specialist support from KPMG. I also accept the appellant's evidence that he tried to keep an open relationship with HMRC, meeting with Mr Murphy's predecessor around once a quarter.

35. The appellant also engaged KPMG in October 2013 to undertake a full review of all the group's tax arrangements. The primary aim of this work was to provide information to a potential third party buyer of all or part of the group. It was this exercise that ultimately led to the work that resulted in the error correction notice.

36. The appellant provided unqualified SAO certificates in respect of ICE for each of the financial years ended 28 February 2011, 29 February 2012 and 28 February 2013. The SAO certificate provided by the appellant's successor in respect of year to 28 February 2014 was qualified by reference to "one failing in its internal control functions relating to the reporting and recoverability of VAT in respect of specific areas". This letter is undated but from its context it must have been sent at around the end of August 2014.

The error correction notice

37. KPMG's letter dated 25 September 2014 disclosed a number of errors in ICE's VAT accounting, resulting in what KPMG calculated to be a total net under-declaration of VAT of £1,359,558 in VAT accounting periods falling between 1 March 2010 and 31 January 2014. Certain individual errors were identified and quantified on a transaction by transaction basis and others were estimated based on an exercise for a representative period which was extrapolated across the remainder of the disclosure period. Unless otherwise indicated the figures referred to below relate to the entire period from March 2010 to January 2014.

38. The most significant quantified individual error related to the "ICE Direct" currency exchange service, which supplies currency on a retail and wholesale basis. KPMG indicated that all VAT incurred in relation to this service should have been treated as irrecoverable as it related wholly to the making of exempt supplies and so should have been accounted for under "sector 6" of the PESM. However, between January 2012 and January 2014 it was allocated first to the Manchester branch and subsequently to the Luton branch, leading to VAT recovery of between 58% and 88%, a total recovery of around £455,000.

39. The second quantified error related to ATM costs. Under the PESM these should have been allocated to "sector 5", but from April 2013 to January 2014 they were allocated to a head office account code (sector 4) which enjoyed a higher recovery rate. The amount KPMG disclosed as incorrectly recovered totalled approximately £300,000. It is worth noting that this period falls entirely outside the financial years in respect of which the SAO penalties were imposed on the appellant.

40. A further quantified error related to rent prepaid on the Luton site, for which VAT was recovered twice, once (correctly) in July 2011, but again between August 2011 and January 2014. The amount involved was around £87,000.

41. The final set of quantified errors related to the reverse charge not being applied to invoices received in respect of services from two third party overseas suppliers, and/or output tax not being incorrectly charged on onward recharges of these

amounts. The total net amount arising between February 2011 and January 2014 was approximately £55,000. In relation to one of the suppliers (SWIFT) an incorrect approach was taken despite specific clarification from HMRC to Mr Gil that the service was taxable in the UK, although it is worth noting that the net amount involved for that supplier was under £2000 of the total. There was no evidence to explain why HMRC's clarification was not acted on, or any indication that the appellant was aware of that fact.

42. Errors estimated by KPMG were as follows. First, the reverse charge had not been operated in respect of invoices received from ICE Canada in relation to "compliance services" and from the US branch of Lenlyn Limited in respect of software development and maintenance. KPMG based its estimates for these amounts, which it described as management charges, on a review of the services provided for the year 2013/14 the results of which were then extrapolated back to March 2010. KPMG's estimate of the total net error was around £334,000.

43. Secondly, one of the VAT group members, Raphaels Bank, had failed to operate the reverse charge on non-UK costs such as legal fees from local suppliers in respect of its pre-paid card schemes. KPMG reviewed invoices for a 10 month period in the year to 28 February 2014 and extrapolated the results to give an overall net error of around £33,000. Thirdly, KPMG identified occasions where the VAT on an invoice had been treated as a head office cost but the net amount was posted to another area of business, which in KPMG's view generally gave rise to a higher VAT recovery. KPMG's estimate, based on the average recovery achieved by Lenlyn branches, was approximately £26,000. Finally, KPMG also disclosed that because of the way the PESM worked, the recovery percentage for head office VAT was affected by the other disclosures. The amount involved was around £70,000.

44. KPMG's letter also briefly discussed the PESM and proposed to implement a revised method to deal with certain areas identified, on the basis that certain elements of the existing method did not necessarily now fully reflect day-to-day operations at some sites.

45. The letter then went on to discuss processes and controls, noting that both the finance director and tax manager were no longer working for ICE and that the finance director left before KPMG's appointment. The letter described KPMG's understanding of the position based on accessible files and its existing knowledge from KPMG's own files. It stated that VAT returns were prepared in the first instance by the tax manager based on data and reports from the accounting system. A draft return and accompanying partial exemption workings would be prepared for review by the finance director. Once reviewed and any amendments had been made the return would be submitted to HMRC. KPMG were asked for specific support on several occasions. Amongst other things they assisted with the submission for the current PESM and were recently engaged to carry out a VAT compliance review including process mapping and recommendations around controls. This process had commenced but was suspended while work on any disclosure was completed. (I infer that the

review referred to here was the engagement the appellant arranged in October 2013: see [35] above.)

46. KPMG stated that the work undertaken before the project was suspended (which included draft process maps based on interviews with staff) demonstrated that there were controls in place but that they were not necessarily documented. For example, the tax team carried out a review of new supplier information prior to the details being set up in the accounting system, and reviews were also carried out by the tax team on exceptional invoices. The draft process map for the VAT return process also showed the checks carried out by the tax team and the finance director's review. Copies of the current risk register and tax risk register as at the time of KPMG's appointment were enclosed with the letter. These refer to three potential areas of VAT non-compliance, being returns containing incorrect data, incorrect treatment of VAT for "specialist cases" including the reverse charge, and allocation of VAT to the appropriate PESM sector. (The appellant's evidence was that there was only one line for tax before 2011/12 but it was then updated to include three lines of VAT risks.) The commentary against the first of these states "Four eyes checking, as well as random spot checking. All VAT figures reconciled on monthly basis prior to return submission." The commentary against the second refers to KPMG VAT being engaged as external advisers, as well as using HMRC Large Business Service to provide rulings, and the commentary against the third refers to the need for sign off of any new invoices received. The main risk register also refers to KPMG being engaged to advise on all new business revenue streams.

47. KPMG concluded from the risk registers that although the ICE Board took responsibility for business risks, overall tax risk was delegated to a large degree to the finance director. The letter stated that the finance director and tax manager were key controls, that the Board placed great weight on the finance director particularly and were "disappointed" with the errors that had taken place. KPMG noted that the core finance team at ICE "is a relatively small one, but the VAT issues in a business of this type are often very complex". The letter acknowledged that more formal documented processes and controls would have provided a greater level of risk management and that KPMG understood that "this project was underway immediately prior to our appointment".

48. The appellant's evidence was that if he had seen the error correction notice at the time of his meeting with HMRC in January 2015 he would have challenged a number of the conclusions reached and raised some very different points at the meeting. At the time the work was done the appellant's successor as finance director had only been at the group for a short period, and in fact only stayed at the group for six months. The appellant did not believe that whoever instructed KPMG, or those doing the work at KPMG, had a sufficiently in-depth understanding of the business, including the detailed work done in connection with the PESM, and did not engage properly with the business and how it worked. The costs relating to ICE Direct were primarily rent on a mothballed site, which the appellant considered had been justifiably allocated to Manchester and then Luton because of the way that incoming

calls to ICE Direct's call centre could be diverted to Manchester and, subsequently, Luton. ATMs were purchased well in advance of being used, and costs needed to be allocated before it was known where they would be located. In relation to the Raphaels card schemes, the appellant's evidence was that the bank had its own finance director and team, and the appellant believed that they had obtained legal advice on the precise point raised by KPMG which reached a different conclusion.

49. I accept the appellant's evidence that he would have challenged some of the conclusions reached if he had seen the error correction notice before the January 2015 meeting, and that it would have affected what he said at that meeting. It was also apparent from the appellant's evidence that he was familiar with a number of the points raised, and in particular those relating to ICE Direct and ATMs. This was not a simple question of lack of supervision or checks by the appellant, such that he was unaware of any of the issues. Some other issues, however, such as the failure to operate the reverse charge on intragroup charges from Canada and the US and the double recovery of input tax on prepaid rent, were clearly just not picked up.

The January 2015 meeting

50. The appellant's meeting with HMRC in January 2015 was attended by Mr Murphy, the appellant and another HMRC representative. The HMRC attendees prepared a note of the meeting which the appellant confirmed was factually accurate.

51. It is clear from the meeting note that it was explained that the purpose of meeting was to determine whether there had been a breach of the SAO rules. Prior to the meeting the appellant had tried and failed to obtain details of the error correction notice. Mr Murphy gave an outline of it, to the effect that it involved misallocation and over recovery of input tax and failure to calculate reverse charges, including in one case where there had been specific correspondence with HMRC on the point.

52. Most of the meeting note covers a discussion of the processes and personnel involved in the VAT function, which has been addressed above. The key points on which HMRC rely are that the appellant accepted at the meeting that the checks he carried out of VAT return figures were limited to variance checks against earlier periods and querying any unexpected differences with Mr Gil. In other words, if the figures appeared similar to or consistent with earlier ones it was assumed that they were correct. The appellant accepted at the meeting that this would not pick up regular errors of the same amount and type, and that it would have been prudent to test selectively that the figures were correct. (I should note at this point that the following paragraph in the meeting notes records the appellant as saying that the KPMG annual audits were checks of both the processes and the figures.)

Mr Murphy's evidence

53. As previously noted, Mr Murphy became the Customer Relationship Manager for the Lenlyn group in January 2014. He met the appellant only briefly before the

latter's departure from the group, although there was a fair amount of email contact. Mr Murphy emailed the appellant to arrange a three-yearly risk review meeting (which was arranged for a date in May 2014) and separately to request documents to help Mr Murphy understand the group's tax governance arrangements and how the SAO obligations were fulfilled. In response the appellant provided the group's tax policy document (as to which see [30] above) and group risk management policy. The appellant also emailed Mr Murphy in early March 2014 alerting him to the fact that the group's owners were considering selling the different parts of the business, following which Mr Murphy decided to change the focus of the May meeting to concentrate on tax risks relating to the group's dissolution. Due to the changes in personnel at the group the meeting arranged for May did not occur until October 2014.

54. Following the initial notification by KPMG in April 2014 of possible inaccuracies Mr Murphy visited the group with VAT colleagues to discuss the group's and KPMG's emerging understanding of those inaccuracies. This meeting occurred in August 2014, although no details were available to the Tribunal. Beyond a reference to this meeting in Mr Murphy's witness statement there is no indication that HMRC gave any independent consideration to the inaccuracies, and Mr Murphy confirmed in oral evidence that HMRC had undertaken no separate investigation of the matters disclosed by KPMG in September 2014, and had accepted the disclosure as accurate.

55. Mr Murphy's evidence also referred to the internal processes within HMRC that led to the penalties being imposed, which involved obtaining approval from HMRC's "Large Business Penalty Consistency Panel". Following the January 2015 meeting Mr Murphy recommended to the Panel that, of the three areas he had focused on, procedures, delegation and testing/controls, no further action should be taken under the headings of procedures or delegation, but that the appellant's testing/controls had been inadequate. The Panel agreed with Mr Murphy's conclusion and the penalties were subsequently authorised. Mr Murphy's witness statement confirms that the basis for the imposition of the penalties was the appellant's failure to conduct, or have in place any system of conducting, selective testing of figures in the VAT return to ensure that the figures were correct, and excessive reliance on variance testing (comparing figures with figures in previous returns).

56. In cross-examination Mr Murphy explained that he took the approach of focusing on testing and controls rather than on procedures or delegation because he thought that the greatest deficiency was in testing and controls, although it was not the case that he was entirely happy with either procedures or delegation. In Mr Murphy's experience large businesses in the financial sector would have a cycle of testing and controls which would involve performing selective testing of different areas at different times, for example imported services in one year and another type of service in a different year. In response to a question from the appellant about why he could not rely on KPMG's annual review, Mr Murphy responded that he could not comment on that without knowing details of their engagement.

57. Mr Murphy was also asked about the new PESM agreed in June 2010, which the appellant considered had been subject to review and testing with HMRC. Mr Murphy had not been involved in agreeing the PESM but said that typically HMRC's focus would be on whether a PESM was complete and workable, whether it properly reflected the business and was robust. He did not believe that it would be tested following implementation by HMRC. Instead he would typically expect to see testing by the taxpayer continue after a new PESM was agreed, and indeed there would be quite a focus by the taxpayer on whether a new method was being operated properly.

58. Mr Murphy also explained that the first year for which the SAO rules were in force (the year ended 28 February 2011 in the case of the Lenlyn group) was treated as a "light touch" year by HMRC. HMRC's approach was to treat it as sufficient that companies had started a review of the arrangements in place.

HMRC's case

59. HMRC's case is in essence a very simple one. It is that the appellant breached the main duty in paragraph 1 of Schedule 46 by failing to conduct, or have in place any system of, selective or "thematic" testing or sampling of figures in the ICE VAT returns or of individual transactions to ensure that the figures in the returns were correct, and that he instead relied excessively on variation testing, i.e. simply comparing figures with those in previous returns. By not undertaking any selective testing consistent errors will not be picked up and can become embedded.

60. Mr Macnab submitted that the appellant's breach of duty did not depend on the precise quantum or order of magnitude of the financial consequences that resulted from the errors identified by KPMG. However, the persistence and quantum of those errors did indicate the inadequacy of the tax accounting arrangements. In particular, there were regular, consistent and systematic misattributions of input tax and errors in accounting for the reverse charge. The error correction notice was also reliable evidence of those errors: it was prepared by KPMG and it was effectively an admission contrary to interest by ICE. The appellant's contention that there was a lack of resources did not explain why no sampling was done, and there was no suggestion that that approach was ever considered or put to the Board. Delegation could not be relied on in circumstances where the appellant had not put in place a system for sampling to be done.

61. Mr Macnab referred to a number of paragraphs in HMRC's Senior Accounting Officer Guidance (SAOG), published as one of its internal Manuals, in support of his submissions. He accepted that the guidance has no statutory force and simply sets out HMRC's views. The extracts referred to included a statement in paragraph SAOG14310 that it is not possible to define in detail what the tax accounting arrangements should be for any particular company, and paragraph SAOG14320 which refers to the requirement to consider the care and accuracy with which the arrangements are designed, used and monitored, and states that whether arrangements are appropriate will depend on factors such as the size, complexity and nature of the

business (referring to an example of a dormant company) and that if tax liabilities have not been calculated accurately in all material respects that "may" signal a deficiency in the tax accounting arrangements. Other paragraphs referred to included SAOG14335 and 14465, which relate to VAT representative members and indicate that the SAO must ensure that arrangements are in place to enable it to receive accurate information from other group members.

62. Mr Macnab referred to an example in paragraph SAOG14352 which relates to a company making standard and zero rated sales. The example describes the company's processes as including that it conducts "quarterly sample checks of invoices" to ensure accuracy of coding of goods, in addition to providing training to staff in the sales ledger department, providing a company manual which it updates when it introduces new products, and conducting monthly reasonableness checks on the ratio of standard to zero rated goods. The example concludes that there are appropriate checks and controls in place but notes that if there were no checks and controls in place or no mechanism for ensuring the correct coding of new types of goods then HMRC "may be likely to take the view" that there were shortcomings in the tax accounting arrangements. Mr Macnab submitted that this was an analogous example.

63. Paragraph SAOG14410 covers the concept of "reasonable steps". It notes that what steps are reasonable will depend on the particular circumstances but refers to examples which include establishing and maintaining processes to "periodically check and test systems, controls, process flows and transactions", ensuring compliance with legal requirements, supporting the introduction of new systems and processes appropriately, maintaining records and ensuring appropriate training of staff. Paragraphs SAOG14420 and 14430 refer to a need for an SAO to consider whether existing processes to support tax accounting (which may have been in place for a long time) are sufficiently robust and whether to enhance or replace them, and to decide what monitoring processes are needed and their suitability and efficiency. Paragraph SAOG14450 refers to tax coding of supplies for VAT purposes, and an expectation that where companies have no means of ensuring that the codes are correct reasonable steps will be taken to rectify this. Mr Macnab again drew an analogy, commenting that the partial exemption position for financial services businesses is notoriously complex (for example, reverse charge issues will arise) and deserves attention accordingly. Mr Macnab also drew a distinction between paragraphs SAOG14480 and 14490, which deal with "tax sensitive judgments", submitting that there was no indication of any such judgment being required here. There were no contentious technical issues, but basic errors. The appellant simply needed to make sure that sampling would be conducted by someone with appropriate expertise.

Discussion

64. It is clear from the January 2015 meeting notes and the correspondence that followed the meeting that the appellant had not at that stage been given a clear idea of the errors notified by KPMG. He also had no access to information from the Lenlyn group. In those circumstances I do not consider that the appellant was in a position to

address the issues properly at the meeting, and therefore that what he said (and did not say) at the meeting needs to be considered in the light of that.

65. Much of HMRC's approach, both before and at the hearing, focused on whether the appellant had a reasonable excuse. However, as HMRC clearly accept that is not the correct starting point. The first, and key, question to ask is whether the appellant failed to comply with the main duty in paragraph 1 of Schedule 46. The test in paragraph 1 is whether the appellant took "reasonable steps" to ensure that ICE established and maintained appropriate tax accounting arrangements, and in particular whether he took reasonable steps to monitor those arrangements and identify any respects in which they were not appropriate: see paragraph 1(1) and 1(2) of Schedule 46.

66. The test in paragraph 1 is not an absolute one. It is not the case that the existence of even material or repeated errors necessarily signals that the main duty has been breached. Such errors may well indicate that "appropriate tax accounting arrangements" do not exist, because the definition of that concept in paragraph 14 refers to arrangements "that enable the company's relevant liabilities to be calculated accurately in all material respects". If tax accounting arrangements do not, in fact, enable that to happen for whatever reason, then those arrangements are not appropriate. However, for a breach of the main duty to be established HMRC must show that there has been a failure to take "reasonable steps" to ensure that the company establishes and maintains appropriate tax arrangements. This is not an absolute duty to ensure that those arrangements exist.

67. Although the appellant challenged some aspects of the error correction notice he did not challenge all aspects, in particular in respect of the reverse charge and double input tax recovery. I have concluded from the evidence available that the tax accounting arrangements were not "appropriate tax accounting arrangements" as defined in paragraph 14. However, the question I need to address is whether the appellant took "reasonable steps".

68. The question of whether the appellant took "reasonable steps" is clearly an objective one, which in my view must be determined by reference to all the circumstances. As indicated in SAOG14320 there is no "one size fits all". The matters to take into account will include the size, complexity and nature of the business, but in my view must also include matters more closely related to the role of the individual in question, such as the resources available to that individual and his or her authority to bring about any required change (albeit taking account of the fact that, under paragraph 16 of Schedule 46, the SAO will by definition have a senior role in the business).

69. It is clear that the appellant had made a number of improvements in processes and controls during his time at the group. He was responsible for establishing the team comprising Mr Gil and Ms Penfold and he took steps to ensure that Mr Gil was trained, and subsequently supported by KPMG, to a level that HMRC could not justifiably criticise. He increased automation in an effort to reduce errors, expanded

the tax risk register and introduced a comprehensive tax policy document. The section on processes and controls in the error correction notice confirmed that there were controls in place, including in relation to new supplier information and exceptional items. Detailed process maps were in the course of production, although I have found that some process documentation already existed (see [29] above). The overall impression is one of gradual improvement, against a background of limited resources and repeated requests by the appellant for additional resource. It needs to be borne in mind that the group is privately owned, and in those circumstances the reality is that even an individual with as senior a position as group finance director may well have less real ability to control matters and ensure adequate resource than his or her equivalent in a publicly owned group.

70. In my view HMRC were correct not to seek to justify penalties on the basis of defects in procedures or delegation. Within a team of the size in question it was in my view not inappropriate to rely on a tax manager who had received full training and had access to ongoing support from KPMG, supervised by a non-VAT specialist but clearly experienced accountant. The error correction notice confirmed that there were procedures in place, although they were not necessarily formally documented. Whilst formal documentation is doubtless desirable, when operating with a small team their absence is not necessarily problematic provided that the procedures are well understood by those involved.

71. This leaves the question of whether HMRC are right to say that, by not performing or arranging for selective testing, the appellant failed to take a "reasonable step". The appellant's case is that he did what he could with the resources available. He delegated the VAT work to Mr Gil, supervised by Ms Penfold, and only undertook a light touch review himself, comparing figures with those in earlier returns. He relied on KPMG's detailed work in agreeing the new PESM and on the checks they made as part of the annual audit. He also took comfort from the information requested and received by HMRC's VAT specialist in connection with the operation of the new PESM.

72. The absence of selective testing can certainly lead to errors becoming embedded, and so in principle such testing must be desirable. But the question here is whether selective testing was a reasonable step in the particular circumstances of this case. Taking all the evidence into account I am not satisfied that HMRC have established a breach of the main duty in failing to ensure selective testing.

73. I accept Mr Macnab's submission that the partial exemption position of a business of the kind carried on by the ICE VAT group is complex and requires careful attention. However, in my view it is significant that KPMG undertook detailed work, including reviewing invoices and processes, in order to agree the new PESM in June 2010. The periods in respect of which HMRC are seeking to impose penalties are the years ended 29 February 2012 and 28 February 2013, that is within the three year period following the PESM being implemented. Taking the results of KPMG's work as a starting point and undertaking variance testing from there, combined with checks of major expenses, a specific procedure for new items and testing by KPMG as part of

their audit work, does not appear to me to amount to a failure to take reasonable steps for a business that, so far as I can tell, was of a very different scale to (say) a major bank, and in circumstances where limited resources were available. I also do not think that it was unreasonable for the appellant to take some comfort from the involvement of HMRC's VAT specialist in requesting, and presumably reviewing, additional information for periods after the PESM was agreed.

74. It is apparent to me that, in recommending the penalties, Mr Murphy had not appreciated some of the points now raised by the appellant. In particular, Mr Murphy was not involved in the discussion or agreement of the new PESM, and there is no indication that Mr Murphy had discussed the penalties with HMRC's allocated VAT specialist in place at the time the PESM was implemented and first operated (who I infer was no longer in that role by the date of the January 2015 meeting). It is also clear that there was no proper discussion at that meeting of the work that KPMG did as part of their annual audit. As already discussed, it did not help that the error correction notice was not made available to the appellant at an earlier stage, since it would undoubtedly have led to a more useful discussion at the meeting.

75. Given my conclusion that HMRC has not established that the appellant breached the main duty it is not necessary for me to determine whether the appellant had a reasonable excuse within paragraph 8 of Schedule 46, and I do not propose to do so.

Additional observations

76. Aspects of HMRC's approach to this case have caused me some concern, and I think it appropriate to make the following additional observations:

(1) Although I appreciate that HMRC may have had concerns about taxpayer confidentiality, the effect of those concerns in denying the appellant any real understanding or knowledge of the errors identified by KPMG until a late stage in the appeal appears unfair to the appellant. Placing such heavy reliance on what was said by the appellant at a meeting for which he had no real chance to prepare, and in particular in circumstances where he had not seen the error correction notice, also inevitably meant that the evidence that HMRC wished to rely on from that meeting had to be treated with caution. Particular care should also have been exercised where, as here, the HMRC personnel at the meeting had not in fact dealt with the business for the periods in question and had apparently not involved the relevant HMRC specialist who had had that responsibility.

(2) It is not clear to me that HMRC made sufficient allowance for the fact that the appellant is unrepresented and has had no access to support or information from the Lenlyn group. Whilst there is no evidence to suggest that the appellant was being "singled out" for penalties, it is clearly important that HMRC's approach is not only fair, but is seen to be fair.

(3) HMRC's evidence and submissions did not really draw any distinction between different sizes of partly exempt financial services businesses. Effectively it was assumed that any such company or group over the threshold in paragraph 15 of Schedule 46 should be held to the same standard, because it was a large business. HMRC failed to produce any evidence of the size of the Lenlyn group or any clear evidence as to its nature. But in my view there is a significant distinction between a company with a small finance team that is just over the qualifying company threshold and (say) a major financial institution with a large tax department, where the SAO may well have a more significant degree of control over resources, and systems and controls can be expected to be sophisticated.

(4) As already indicated, HMRC focused to a significant extent on the question of reasonable excuse rather than "reasonable steps". This led, for example, to an assumption that a lack of resources was not relevant because of the caveat in paragraph 8(2)(a) of Schedule 46 (which provides that an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control). As discussed above the question of "reasonable steps" is a critical one. Moreover, it is not at all clear to me that an SAO would necessarily be prevented from rely on paragraph 8 where it can be established that he or she has tried, and failed, to obtain access to additional resources to address the relevant shortcoming.

Disposition

77. I allow the appeal and cancel the penalties under paragraph 10 of Schedule 46.

78. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

SARAH FALK
TRIBUNAL JUDGE

RELEASE DATE: 03 AUGUST 2017

APPENDIX

SCHEDULE 46 FINANCE ACT 2009

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-

5 (*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 for providing the certificate for the financial year under paragraph 2).

10 (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.

15 (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

20 (*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.

…

Reasonable excuse

25 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
30 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
5 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

10 (*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

15 (*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-

20 (*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.

25 …

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--

30 (*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.

5 (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.

10 …

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-

15 …

(*b*) section 114 (want of form), and

…

Meaning of "appropriate tax accounting arrangements"

14 (1) "Appropriate tax accounting arrangements" means accounting arrangements
20 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--

25 (*a*) …

(*b*) value added tax,

…

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 sub-paragraph (8)).

(2) The qualification test is that the company satisfied either or both of the
5 following requirements-

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

(3) …

(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
10 other company that was a member of the same group as C at the end of C's previous financial year, and

(*b*) "relevant balance sheet total" means the aggregate balance sheet totals of C and any such company.

(5) …

15 (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.

20 (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) …

25 (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.

5 …

Other definitions

18 (1) In this Schedule-

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

10 "company" has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006) …;

"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;

15 "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
20 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

25 (*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) 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 Chapter to a body corporate were to a relevant
5 body.