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Ready, Steady, Sign
The SAO Toolkit

Under the Senior Accounting Officer (SAO) legislation, the individual responsible will soon be required to personally certify that their company systems are fit for the purpose of reporting taxes. This toolkit is designed to help you plan your next steps.

The legislation requires the SAO to fulfil two duties:

- **Main duty** – To take reasonable steps to ensure that the business establishes and maintains appropriate tax accounting arrangements; and
- **Secondary duty** – To submit an annual certificate stating whether the business had appropriate arrangements throughout the financial year and, if not, why not.

For a UK plc with a calendar year-end, the first year to which these rules applied was the year ended 31 December 2010. Such a business will have now entered the second year of the regime with the year one certificate due to be submitted by 30 June 2011.

In our experience, we have found many of our clients are pretty confident about the robustness of their systems for tax purposes – this is backed up by a recent poll where 69% of respondents of 114 tax and finance managers confirmed that their SAOs are intending to file a clean certificate in the first year. We also understand, however, that there are aspects of tax management which do cause SAOs concern, particularly given the absence of a defined standard against which SAOs can benchmark their controls.

What follows is an examination of what we have learned about SAO from discussions with HMRC, our clients and others, both in terms of identifying these causes of concern and responding to them. Hopefully, the practical insights in this toolkit will help your SAO to achieve the appropriate level of confidence to sign on the dotted line in year one and the years to come. Please access the links on the left to get further guidance on the areas that most interest you.

How have companies responded to SAO?

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The main focus for many SAOs is achieving compliance with the new legislation and over 77% of respondents from our recent poll commissioned some kind of review in year one.

Approaches to these reviews have differed depending on the nature of the business and its tax profile but we have found that there are some common steps that most businesses have taken toward achieving compliance.

Step 1: Plan

Understanding the legislation is crucial in determining its impact on the business, so time has been invested by many businesses in getting to grips with the requirements. In doing so, it has become clear that the legislation covers a broad range of taxes and involves people and systems across the business, not just within tax. Assessing the scope of the review to be undertaken, who is responsible for the different areas of tax, the systems and processes involved, the potential areas of risk and an appropriate level of materiality to be applied have been central to the planning stage. See 'In all material respects' for further observations on applying materiality in the context of SAO.

Step 2: Review

To identify and prioritise areas of weakness and risk, businesses have been reviewing existing structures, processes and arrangements in the context of available information regarding HMRC's expectations and industry practice. For higher-risk areas some clients have walked through processes, testing controls and outputs in detail. For lower-risk areas, issues can usually be spotted through discussion with the team involved. Having identified areas for improvement, businesses then look to develop and agree a plan for addressing the gaps, setting out who is responsible and when they need to deliver. See 'Common areas of risk' for more details.

Step 3: Improve

The improvement phase is about rectifying areas of weaknesses and risk identified in the review phase. Improvements undertaken by businesses range from exercises involving key systems, e.g. improving the use of VAT codes within the Accounts Payable process, to simply improving communication between tax and the business through a weekly update meeting. In appropriately addressing these issues HMRC are able to see that existing exposures and errors should not recur.

Many businesses have sought to engage with their Customer Relationship Manager (CRM) throughout these steps and most have reported back to them at this stage regarding the risks identified and actions taken. See 'Engaging with HMRC' for further information.

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Step 4: Certify

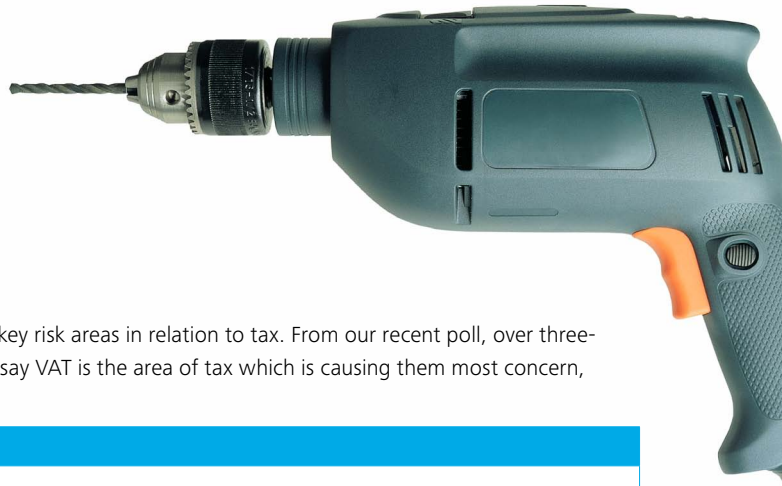
Clients are now pulling together the outputs from the first three steps and looking to report back on progress to their SAO, along with recommendations as to the content of the final certificate. One business is revisiting its original risk analysis and testing the outputs of each of the improvement projects to ensure that the key issues identified are now being effectively addressed. Another client has worked through all the issues identified in step two and considered for each whether it is something significant which will need to be disclosed in the certificate, important enough to discuss separately with their CRM but not included in the certificate, or simply noted for follow-up internally. See 'The SAO certificate – what you may wish to include and how much to disclose' for further detail.

Step 5: Sustain

Those clients that have got to this point are focused on achieving ongoing compliance. They are drawing on the work of the first year to establish a framework of controls and processes which support the completion of annual certification. Some groups are seeking to develop a process which sits alongside existing sign offs, such as the management representation letters on the statutory accounts, and enables SAO compliance without significant additional administrative hassle. See 'Beyond year one – ongoing monitoring and assurance' for further discussion.

We have found that just over 20% of groups have not undertaken such a review. This could be due to a high level of confidence in the existing arrangements, although more commonly it is down to other pressures, leaving no resource for the work. If your company falls into this category visit our 'If you do nothing else before submitting the certificate' section for some practical suggestions on the key steps to take now and consider undertaking a review as part of your monitoring activity in year two.

Common areas of risk



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Key risk areas

From our work with many organisations across numerous industries we have identified the below as key risk areas in relation to tax. From our recent poll, over three-quarters (77%) say they undertook a review of their reporting systems and nearly half (46%) of firms say VAT is the area of tax which is causing them most concern, followed by PAYE (32%), corporation tax (11%) and excise & duties (8%).

Tax type	Key risk areas
VAT	• Poorly managing exemption/partial exemption analyses. • Self-billing – requiring finance, tax and legal to work together to ensure VAT coding and supporting documentation handled appropriately. • Periodic testing of VAT determination at transactional level to identify patterns of errors. • Reliance on out of date counterparty and transactional data in underlying accounting systems.
Employment Tax	• Ad hoc or complex situations, e.g. termination payments, employment status and pensions. • Share-based payments – managing the complexities of getting the tax right (in particular where internationally mobile staff are involved). • Quality of data – managing data risk issues such as reviewing accuracy and completeness or the tax sensitisation of expenses systems, especially where key data is sourced from different systems/jurisdictions.
Corporate Tax	• Reliance on key personnel – information regarding key positions/risks not known by anyone other than the return preparer. • Statutory accounts finalised so late that there is insufficient time available for inadequate CT return process. • Ensuring historic positions and identified planning risks are managed and appropriately treated in the CT return. • Percentage based claims for Capital Allowances, and Research & Development expenditure, where the basis for the original % no longer remains valid due to changes in the business.
Customs	• Reliance on freight forwarders to complete declarations. • Lack of clarity and ownership over responsibilities. • Failure to monitor and control compliance tasks. • Highly administrative processes leading to manual errors.

See the 'Appendices' for further consideration of risk areas by tax type.

Common control failings

If any of these key risk areas resonate with you, they are most likely to have crystallised due to a few common control failings. We've found these to be:

- Lack of appropriate documentation around processes, policies, roles and responsibilities. See 'Getting your documentation right' for some helpful do's and don'ts.
- Infrequent, unstructured training – both of tax and non-tax staff (e.g. Accounts Payable staff coding transactions).
- IT systems not sufficiently sensitised for tax.
- Manual processes increasing the risk of errors.
- No testing of key controls by internal audit or others.
- Lack of clear communication channels for tax within the business, finance, shared service centres etc.

If you do nothing else before submitting the certificate …

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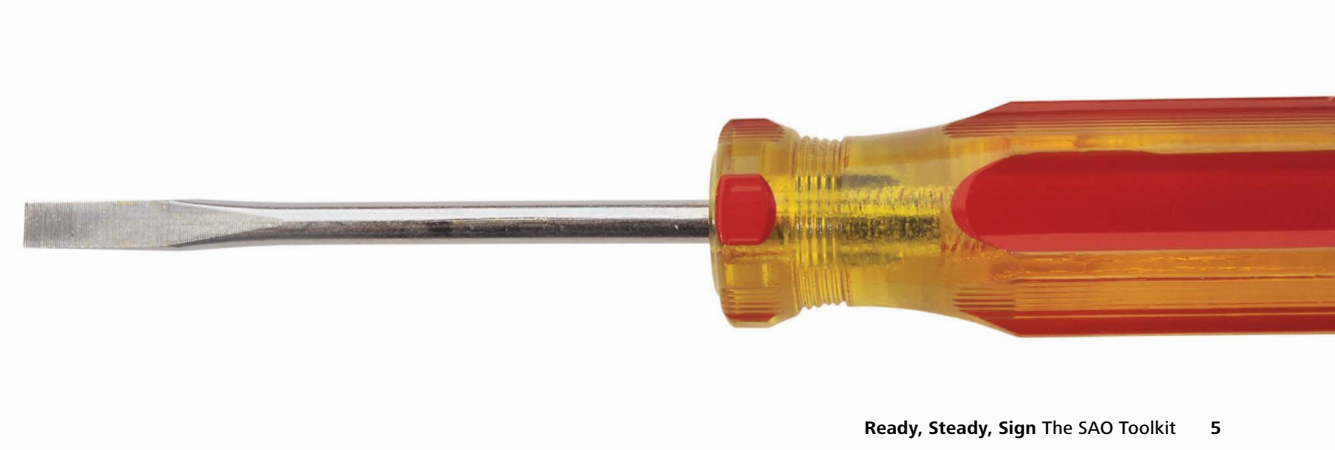
If you have not undertaken a review of your existing tax accounting arrangements, which is the case for 23% of the respondents to our recent poll, then it may be wise that as a minimum you have at least considered taking the following steps:

Firstly, if the SAO previously made the decision not to undertake a review, check that they are still happy with this. It may be that they are now less certain as the prospect of the certificate draws closer, either due to issues that have arisen in the meantime or following discussions with others outside the business who have identified issues and are doing more. Furthermore, the SAO may be exiting the business or leaving their current role; will the new SAO take the same view? If the view has changed and further work is needed, this should be done now.

Secondly, if you and your SAO remain happy that no action is needed, you should document this decision and the rationale that supports it. This does not have to be a treatise on the art of tax management but does need to cover the sources of confidence that the SAO has drawn on, in reaching the conclusion that they have taken 'reasonable steps.' Such sources might include: a strong compliance record with few/no disclosures, penalties etc; a low risk rating from HMRC; comfort provided by outsourced providers of tax; and an experienced and well resourced tax team. Your SAO should consider the facts before deciding that they are happy to sign-up to this view and it should be retained to evidence that appropriate consideration was given to the matter should an issue arise in the future. You may want to consider testing this thinking with HMRC to see if they would expect otherwise in your particular circumstances.

Finally, if there are issues you strongly suspect to be materially undermining your arrangements, you should develop a plan to address these and act on it promptly. It could not only expose the SAO to the financial and reputational penalties of an SAO 'failure,' but could also expose the business to penalties under the company penalty regime.



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The SAO certificate

What you may wish to include and how much to disclose

A key question for your SAO is what, if any, of the identified issues during the first year of the regime might be disclosable in the SAO certificate, or indeed, to HMRC generally?

In our recent poll of 114 tax and finance managers:

- **19%** stated that they would be submitting a qualified SAO certificate setting out either errors previously disclosed to HMRC and/or issues identified as part of their review of existing tax accounting arrangements;
- **40%** confirmed that they had identified errors or weaknesses through their reviews or other activity but were comfortable in providing an unqualified certificate (perhaps because the issues were considered immaterial); and
- a further **12%** were undecided as to the nature of their certificate.

Completing the certificate

First the basics. HMRC guidance provides a suggested format and wording for the certificate, which can be found below as well as in paragraphs 34-37 of the HMRC guidance.

"I … as Senior Accounting Officer of the qualifying company /companies listed below, hereby certify that to the best of my knowledge and belief throughout the company's or companies' financial year ended […] the company/companies had appropriate tax accounting arrangements or to the extent it/they did not an explanation is provided below."

The certificate should be provided to the CRM for the company or companies covered and must be submitted no later than the end of the period for filing the accounts for the financial year (or such later time as allowed by HMRC).

What to disclose?

Based on our interpretation of the legislation and currently available tax authority guidance, discussions with HMRC's policy team and understanding of emerging practice, we set out below our thoughts on disclosure. However, you should of course make an assessment on your individual circumstances and seek additional guidance as you feel is appropriate in reaching your own decision.

There are two main issues that we believe should be disclosed within the certificate:

- Identified errors – Where it has been identified that appropriate tax accounting arrangements are not in place throughout the financial year and these have resulted in material inaccuracies in calculated tax liabilities.
- Control weaknesses that are likely to have resulted in an error – Where it has been identified that appropriate tax accounting arrangements were not in place throughout the financial year and these are likely to have resulted in material inaccuracies in calculated tax liabilities although the nature/extent of the inaccuracy may not have been confirmed.

However, where it has been identified that appropriate tax accounting arrangements are not in place but there are 'compensating controls' to prevent a material error, then these may not need to be disclosed. For example, it could be that a company, as part of an SAO review, identifies a risk relating to poor documentation of the corporate tax compliance process. No error is understood to have arisen due to the incumbent team having a good informal understanding of their roles, the underlying systems and the transactions in the year. Thus, they may decide to put some documentation in place in future to manage against the risk of those people leaving and practices deteriorating but, for the time being, the arrangements are sound.

Beyond year one
Ongoing monitoring and assurance

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Once businesses complete the first year and have determined that they have appropriate tax accounting arrangements in place, or made the appropriate disclosures, they need to consider whether they have an appropriate framework and process in place to support monitoring of the arrangements or any required improvements currently being made. If you are responsible for tax, such a framework should enable you to identify controls which are no longer doing their job, new risks which need to be managed and support your SAO in fulfilling their main duty and submitting the annual certificate.

Most businesses that have started to think about how best to do this are looking to build on existing processes, such as Sarbanes-Oxley compliance, for those subject to those rules or periodic management representation letters.

Once the relevant existing process is identified, the following steps should help you in providing ongoing monitoring of the controls and assurance for your SAO:

- **confirm roles and responsibilities** – those responsible for taxes should know who they are and what they are responsible for;
- **provide training and guidance** – depending on their roles they should provide appropriate training to understand the overall objectives of tax management and their part in it;
- **perform periodic internal self-assessment and signoff** – periodically they should then be able to confirm that their objectives have been met and, if not, provide details;
- **review and test controls** – if appropriate, such assertions and the underlying evidence could be subject to independent review by internal audit or others;
- **certify and disclose to HMRC** – the internal sign offs and disclosures can then be collated and used to support the external certificate.

Getting the documentation right

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Although there is no specific requirement under the SAO regime to produce process or control documentation, we are seeing it being increasingly developed by those responsible for taxes to improve or evidence controls and also protect against dependency on key individuals. However, before creating masses of documentation it is important to ensure that it achieves the goal of supporting compliance without becoming an unnecessary burden or, at worst, a risk in itself. To get the right balance, we would suggest bearing in mind the following Do's and Don'ts.

Do's

- Think about the target user/audience for the documentation as this will determine the style and content. For example, is the user a corporate tax specialist who needs to focus on key tax risks and historic positions or a finance assistant who needs more detailed guidance around the VAT return process?
- Ensure that the documentation fits with existing materials, group policies and procedures so that, for example, statements around risk appetite are consistent with group level statements.
- Make sure the team are aware of the importance of the guidance and that the latest version is readily available to users. One way of doing this is having a launch event sponsored by the SAO and then publishing the guidance on a website and tasking someone with making sure it is regularly checked as being up to date.

Don'ts

- Don't produce materials that are unwieldy and unlikely to be used or likely to become rapidly outdated. Documentation is just one piece of the puzzle – it doesn't constitute appropriate arrangements in itself. For example, you would also need to consider whether you have appropriately trained and experienced staff in place using the guidance as well as potentially periodically testing adherence with policy.
- Don't miss the opportunity when documenting existing tax accounting arrangements to identify efficiencies/improvements in the current processes.

Engaging with HMRC

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It is clear CRMs have a key role in the SAO regime. As there is no defined standard, CRMs will in effect decide what is reasonable for each business and determine if penalties might be applied. Therefore, early and effective engagement with your CRM is crucial to improving buy-in to your business' approach to SAO, giving the CRM confidence in your business and also providing a possible defence in future if isolated issues are subsequently identified. HMRC has confirmed it is looking for corporates to respond in this manner with the overall expectation being that CRMs will at least be aware if there are any issues prior to SAO certification.

The starting point to build on your relationship with the CRM is having an open and active dialogue about your business' approach to SAO sign off. This could then be extended to include sharing and discussing documentation around tax processes and controls, allowing access to systems in a controlled way, sharing details of identified risks and plans for their improvement and ongoing monitoring.

Demonstrating the steps taken and getting buy-in from the CRM along the way should help them buy in to the overall approach to SAO sign off – and we understand some businesses are seeking to get this agreement in writing. At a minimum, it would be worth documenting discussions you have with your CRM in relation to SAO in case that individual changes over time. Keeping your CRM updated on progress made and obstacles faced when addressing these steps also means that the CRM is involved in the progress a business is making in meeting the SAO requirements. In summary, it is crucial to engage with HMRC early, agree an approach and keep them regularly updated on progress.

In all material respects?
How is this defined for SAO?

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The SAO legislation defines 'appropriate tax accounting arrangements' as ones which enable tax liabilities to be calculated accurately in all material respects. Does this mean the level of materiality used for financial reporting purposes apply? No, HMRC is pretty clear it doesn't mean that.

HMRC has also made clear that they won't be chasing SAOs for penalties for taxes that are not penny perfect every time. So, how do you strike the balance? HMRC's guidance does not establish any 'safe-harbours' but it does provide some useful rules of thumb, each of which should be considered in the context of your relevant tax/business.

For example, where you have a large volume of transactions (e.g. employee expenses, Accounts Payable) it appears that it is accepted that tax treatment of a certain proportion of these may well be incorrect in any given year. To the extent that a business has some preventive controls (guidance for staff etc) and undertakes appropriate sample-based testing and reconciliations of the output data with errors disclosed and rectified, then they will be regarded as having arrangements in place that enable liabilities to be calculated accurately.

In contrast where there is a one-off transaction with significant tax implications, it is expected that the treatment of this will be correct each and every time. Thus, appropriate tax accounting arrangements would require each application of the substantial shareholdings exemption to the gain on the disposal of a shareholding to be correct.

Finally, HMRC is clear that even where an error is relatively small in the context of the volume and value of the transactions involved, as in the first example above, a recurrence of the same error in a later year would not be accepted. So having detected such an error it is crucial that action is seen to be taken to rectify it.

Given that the legislation does not import its own definition of materiality for taxes, we may assume that the same standard of care applies as under pre-existing tax law. You will have developed your own sense of what was 'material' in the context of voluntary disclosures to HMRC and it makes sense to extend this to apply to SAO. Your CRM will be key in applying SAO requirements to your business and, as you engage with them around SAO and broader compliance, you may wish to try and agree a mutually agreed level of 'materiality' by tax.

The interaction with other HMRC regimes
The view from Counsel

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Tax Counsel has considered the interaction of SAO with other measures, specifically the duties of Directors under the Companies Act and the company penalty regime in relation to filing complete and accurate tax returns. Nikhil Mehta of Gray's Inn Tax Chambers has two key observations:

Interaction with company director legislation

Broadly, where the SAO is a Director, the SAO legislation does not add to their existing duties under the Companies Act. Therefore any SAO that is exercising reasonable care, skill and diligence to the level that would be expected of a company director is likely to satisfy the SAO main duty. The Courts are likely to look to existing case law around the expectations of Directors when considering SAO failures and Counsel believes that this will centre on an evaluation of how they have fulfilled their supervisory duties. This suggests your SAO should consider the direction they give to their tax teams and the resources they make available rather than focussing on their involvement with day-to-day tax activity. Counsel believes that given the similarity of the measures, there is a risk that in future an SAO failure could lead also to a Companies Act failure.

Company penalty regime

There is an interaction between the SAO legislation and HMRC's penalty regime which includes a penalty for a failure to take reasonable care when preparing and submitting a tax return. Although the two use similar language, such a penalty should not necessarily always indicate a supervisory failure of an SAO and lead to a failure in SAO duty. However, in both HMRC's penalty regime and the SAO legislation, the identification of errors and weaknesses is crucial. A reoccurrence of a known error or weakness, even if relatively small, could lead not only to an SAO penalty but also to the company being exposed to a 'deliberate understatement' penalty of between 20% and 70% of the tax at stake.

Appendices
The Corporate Tax perspective

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As the corporate tax compliance process already depends on the quality of the source data, as well as the preparation and submission of the tax return, it could be said that this tax is perhaps the one in best shape for SAO compliance. In addition to this, corporation tax processes are generally centrally controlled by the tax team and they have more time to rework data in the period between the original transaction and the filing of the return, whereas the timeframe for Customs and VAT is much shorter.

With this in mind, many companies are preparing for SAO from a corporate tax perspective by 'kicking the tyres', and checking that their systems and processes remain in good working order. For example, checking the tax sensitisation of the chart of accounts, or checking that agreements with HMRC around percentage disallowances of legal and professional fees are still appropriate.

However, SAO has heralded a new, high profile change to the tax landscape. New CFOs will need to examine the state of SAO compliance activity and documentation of the company that they are joining. For existing CFOs, providing their personal sign off that reasonable steps have been taken, may lead to them requesting further work to ensure compliance.

Loss of key personnel is one issue to consider from a corporate tax perspective. If no contingency plans are in place, one person may hold the keys to a process, and this may not be documented. This would be seen as not taking reasonable steps under SAO.

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The Employment Tax perspective

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Businesses are increasingly operating in overseas jurisdictions, implement and run more complex reward structures, and payrolls are increasingly operated offshore. In addition to this, the regulatory environment is tightening with more demands on employers to report and disclose around employment taxes functions. All this makes the basic management of employment taxes compliance more complex than it may have been in the past.

To add to these challenges, employment taxes processes and functions are often spread across various parts of an organisation. It can therefore be difficult to identify roles and responsibilities for employment taxes obligations, and a lack of clarity around this can lead to increased compliance risk. Furthermore, if the systems in place are not capable of supporting the employment taxes function from both a process and risk perspective, this can increase the level of that compliance risk, leading to compliance failures.

Our recent survey found that around one third of the respondents were most concerned about employment taxes in the context of their SAO sign off. Through our experience, we've identified some of the employment taxes risk indicators that may impact your SAO certification:

Inherent risk

- A business with a divisionalised group structure where there is no central employment tax management or oversight.
- Rapid growth businesses where the employment taxes compliance infrastructure has not been able to keep up with the speed of growth in the business.
- Mature businesses with an internationally mobile workforce and complex remuneration structures.

Process risk

- There are no documented employment tax policies and procedures in place.
- Staff inputting data are not adequately trained to understand the tax impact of data being incorrectly classified.
- No central control framework – no one person taking responsibility for overall compliance across the entire spectrum of employment taxes.

Systemic risk

- Lack of automation in the payroll process and lots of manual input required.
- IT systems are unable to provide sufficient functionality e.g. a new accounting, or payroll system not being tax sensitised.
- No monitoring or oversight of systems, and no ongoing review of systems against legislative changes.

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The VAT perspective

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Generally speaking, indirect tax managers may have been feeling more comfortable regarding their contribution to SAO compliance, as many have been through the process of Sarbanes-Oxley compliance in the recent past. However, it is worth noting that for the purposes of Sarbox, VAT and other indirect taxes may have been scoped out as it was deemed immaterial. In any case, being Sarbox compliant is no guarantee that a company is SAO compliant for VAT purposes.

From our conversations with clients around SAO, we have drawn together a list of common VAT areas that could demonstrate weakness in SAO compliance:

- VAT figures are generated straight from the accounting system and there is often less oversight from the tax team on the actual numbers as opposed to, for example, corporate tax where the in-house tax teams are hands on. In addition, VAT has to be dealt with on a real time basis meaning there is little time to review and amend the accounting figures.
- Often indirect tax managers have little control over the numbers; accuracy can depend on Accounts Payable staff correctly inputting and classifying invoices. There is often a disconnect between what the indirect tax managers think should happen and what actually does.
- VAT can often be coded, apportioned or reclaimed incorrectly; however errors are generally more quickly identified both by the in-house teams and HMRC.
- Foreign currencies can often present problems, for example, where supplies are priced in dollars but VAT is paid in sterling, the wrong currency may be input into the accounting system.
- Often issues can arise because corporate tax and VAT personnel do not communicate e.g. regarding transfer pricing or property transactions but also vice versa, if for example a VAT structure is not run past the corporate tax team.
- Shared service centres (SSC) may be responsible for numerous countries and currencies, so there is a challenge in keeping the SSC employees' understanding up to date, especially when there are frequent changes in the tax rules and SCC personnel.

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The Customs perspective

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Customs duty is often the 'forgotten' tax as there is confusion around who is responsible – is it finance, logistics or tax? Equally, customs is frequently bundled with VAT in the accounting system, so it is not separately identified despite customs duty being a bottom line cost.

From a customs perspective, there are a number of other circumstances that could make SAO compliance difficult. Customs is often outsourced to an agent, usually a freight forwarder, who will complete the customs declaration. The importer/exporter however remains fully liable for the accuracy of customs declarations made in its name, and risk may increase as visibility and control of the declaration process are given to third parties. Often companies have no agreement in place with their forwarder in terms of compliance management or key performance indicators, and occasionally they may have no contractual relationship at all with the agent, so there is little or no recourse if a mistake arises. Also, procurement of goods can be a few months before shipping and duty is only levied on import, so there is often a time lag in appointing agents.

What are potential areas of weakness around customs that could cause problems for SAO compliance? Speaking to our customs specialists, we identified the following:

- No customs policy, or inadequate processes or procedures in place.
- No customs training for staff.
- No customs-related roles and responsibilities defined and agreed.
- Not knowing which department is responsible for customs.
- Lack of control over third party service providers.
- Duty invoices are not checked for accuracy.

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Alan MacPherson
Partner
020 7007 0707
acmacpherson@deloitte.co.uk

Mark Kennedy
Director
020 7007 3832
markennedy@deloitte.co.uk

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