Funding the Future

Memo to the FD: just accept you’re in a new para...

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Financial Director has an article berating the new requirement that a large company keep proper books and records necessary to support a tax return, with finance directors facing personal fines of up to £10,000 if they fail to do so. They say:

[T]he legislation is so loosely worded, according to tax advisers, it remains a potential minefield despite already coming into force.

Advisers have panned the imprecise nature of the wording for senior accounting officers to take "reasonable steps" to ensure the company maintains "appropriate tax accounting arrangements" and in particular, monitors the accounting arrangements of the company "to identify any aspects in which those arrangements are not appropriate tax accounting arrangements".

Businesses must also ensure they establish, maintain, monitor and certify appropriate accounting arrangements for the entire company. This includes identifying "any respects in which those arrangements are not appropriate".

All of this seems to me to be a statement of what might candidly be called "the bleeding obvious". After all section 386 of the Companies Act 2006 says:

386 Duty to keep accounting records

(1)Every company must keep adequate accounting records.

(2)Adequate accounting records means records that are sufficientâ€šÃ„Ã®

(a)to show and explain the company's transactions,

(b)to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c)to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

(3)Accounting records must, in particular, containâ€šÃ„Ã®

(a)entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b)a record of the assets and liabilities of the company.

(4)If the company’s business involves dealing in goods, the accounting records must containâ€šÃ„Ã®

(a)statements of stock held by the company at the end of each financial year of the company,

(b)all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c)except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(5)A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this Part comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

Now, unless I’m very mistaken, tax is an asset or a liability of a company and as such a company has already got a duty to ensure it has books and records to record this liability accurately. All the new legislation does is make failure to ensure systems are in place to do this a tax as well as company law liability. But my old friend John Whiting, one of PWC, now head of tax policy at the Chartered Institute of Taxation has real probelsm, saying:

There’s a hell of a lot of work going on by finance directors and they are saying â€šÃ„Ã²how on earth are we going to achieve this?’

And the head of tax at the IoD added:

FDs will want assurance in detail that the systems meet the standard, and that will mean a lot of work

Both are extraordinary statements. Whiting seems to be saying that companies are at present failing to keep proper books and records. What else can his comment mean?

And the IoD seems to ignore the fact that this is what an audit is already meant to do.

What both are actually saying is, implicitly, something quite different. That is that they resent the fact that the required books and records are meant to show tax compliance where tax compliance is seeking to pay the right amount of tax (but no more) in the right place at the right time where right means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes.

That is what this change really means. And that does not appeal to them at all. But they'll just have to come to terms with the fact that the world has changed, or face the fines. Full marks to HMRC for getting this on right. Now extend it to medium sized companies and all auditors who sign off accounts for companies where the FD is found to be at fault, I suggest.