Advance Notice

Corporate Criminal Offences

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At a glance

New Corporate Criminal Offences (CCO) legislation was introduced by the Criminal Finances Act 2017. It is anticipated that all 'relevant bodies' – namely companies, partnerships and LLPs – will be affected from September 2017. The legislation impacts all businesses and covers all taxes.

Two new offences have been created. The first applies to businesses, wherever located, in relation to the facilitation of UK tax evasion. The second applies to businesses with a UK connection in relation to the abetment of non-UK tax evasion.

Tax evasion has always been illegal but under the CCO rules, a business may be held liable where it fails to prevent 'associated' persons from deliberately facilitating the criminal evasion of tax. Associated persons can include employees, contractors and others who perform services for or on behalf of the business, such as suppliers, agents and intermediaries.

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To bring a successful prosecution against a business, the tax authorities must prove that:

- Criminal tax evasion has occurred;
- An associated person knowingly facilitated this evasion whilst acting on behalf of the business; and
- The business failed to put in place reasonable procedures to prevent the associated person from committing the criminal act.

A business may claim in its defence that:

- 'Reasonable' procedures were in place to prevent the facilitation of tax evasion by associated persons; or, rarely
- It is not reasonable in the circumstances to have any such procedures in place.

A successful prosecution could have extremely adverse consequences such as the levying of unlimited fines, public recording of the conviction, significant reputational damage and regulatory sanctions.

Example

Company A contracts with Agency B to carry out services on its behalf. Agency B is considered to be an 'associated person'.

Employees of Agency B evade tax by not declaring all their income for UK tax purposes. Agency B is aware of this evasion and indeed deliberately facilitates it by not putting certain payments through the payroll.

Company A may be successfully prosecuted unless it can demonstrate that reasonable procedures were in place to prevent Agency B from committing the facilitation offence.

Reasonable procedures could include Company A carrying out a risk assessment of the assignment, incorporating specific 'anti-evasion' terms into its contract with Agency B, setting out clear whistle-blowing reporting procedures and performing ongoing reviews.

The six guiding principles

The Government considers that prevention procedures put in place by businesses to stop tax evasion from being committed on their behalf should be informed by six principles:

1 Risk assessment;
2 Proportionality of risk-based prevention procedures;
3 Top level commitment;
4 Due diligence;
5 Communication (including training);
6 Monitoring and review.

The above is based on draft government guidance. We will continue to update you as and when further information is released but please do not hesitate to contact us if you have any queries or concerns.

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Application to SMEs

An SME should undertake a risk assessment of the products and services offered, as well as its internal systems and client data. Various hallmarks of fraud should be examined, for example:

- Are there staff members who refuse to take leave and do not allow anyone else to review their files, or become involved in their client relationships?
- Do existing processes ensure that, for higher risk activity at least, a sample of files is routinely reviewed by a second pair of eyes?

The SME should then consider how existing processes and procedures may be tailored to prevent and detect potential tax evasion facilitation. Key issues could include:

- Demonstrating a commitment to preventing the involvement of those acting on their behalf in the criminal facilitation of all forms of tax evasion by issuing a prominent message from the leadership team;
- Agreeing and documenting an overview of its strategy and timeframe to implement preventative policies;
- Including terms in contracts with associated persons requiring them not to engage in facilitating tax evasion and to report any concerns immediately;
- Providing regular training for staff on financial crime detection and prevention;
- Having clear reporting procedures for whistle-blowing of suspected facilitation;
- Ensuring that the pay and bonus policy/structure discourages pursuing profit to the point of condoning tax evasion;
- Monitoring and enforcing compliance with prevention procedures;
- Undertaking regular reviews of the effectiveness of prevention procedures and refining them where necessary.

Want to find out more?

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