

Tax Evasion and Facilitation of Tax Evasion

INTRODUCTION

The Criminal Finances Act 2017 introduced two new corporate offences, the first applying to the failure to prevent facilitation of UK tax evasion, and the second applying to the failure to prevent facilitation of overseas tax evasion. This legislation took effect on 30 September 2017.

In summary, the legislation is all about businesses such as ours being able to demonstrate that we can prevent the facilitation of tax evasion as part of our day-to-day operations. In the words of HMRC, it's about changing industry practices and attitudes towards risk to try to prevent facilitation happening in the first place.

Specifically, the legislation was developed to overcome the difficulties in attributing criminal liability to corporates for the criminal acts of “associated persons” in the facilitation of tax evasion by anyone providing services for or on behalf of the business (and note, this does include third parties, not just employees of the business).

The legislation applies to all taxes – personal and corporate tax – and includes other taxes such as VAT, Customs Duties, National Insurance Contributions etc.

There is a defence from any potential prosecution under this legislation where we have put in place ‘reasonable’ prevention procedures, aimed at stopping the facilitation of tax evasion by a representative of the business. The key initial step in ensuring such procedures are in place is to carry out a Risk Assessment, the aim of which is to highlight any risks to the business and also the mitigating controls that are already in place.

It is important to respond to this legislation, even in the absence of any known or suspected instances of the facilitation of tax evasion – the penalties for getting it wrong include criminal prosecution and an unlimited financial penalty.

Although we are confident that the risk under this legislation to our business is low, given our zero tolerance for tax evasion and the facilitation of tax evasion, and also the punitive sanctions applicable under the new law, it is important that we all take this legislation seriously.

The purpose of this communication is to let you know what steps have been taken in responding to this legislation and also to ensure that all our employees are aware of the CCO legislation.

WHAT ACTIONS HAVE BEEN TAKEN BY OUR BUSINESS?

There is a defence under the legislation where a business has reasonable procedures in place to prevent the facilitation of tax evasion.

The HMRC Guidance referred to above sets out six principles to demonstrate reasonable preventative procedures:

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.

We have already undertaken a detailed Risk Assessment, which has shown that the business is well placed to comply with the terms of the CCO legislation and have updated our existing control framework.

All employees have undertaken mandatory CCO legislation awareness training via Infosec and the Managed Policy Acceptance Service.

In the meantime, if you do have any questions please contact Karen Boden, Group Credit, Risk & Compliance Director – 0121 313 7523.

Michael Beever
Managing Director
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