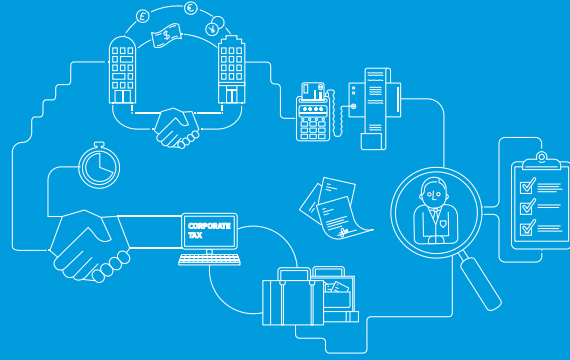


CRACK DOWN ON FINANCIAL CRIME



CORPORATE CRIMINAL OFFENCE OF FAILING TO PREVENT THE FACILITATION OF TAX EVASION

The Criminal Finances Act 2017 introduced what is known as the corporate criminal offences ('CCO') of failing to prevent the facilitation of tax evasion by associated persons.

This is a strict liability **criminal offence**, and a **criminal conviction** can result in an **unlimited fine**.

The CCO is applicable to all UK incorporated businesses, with no *de minimis*, and it can also apply to businesses incorporated outside the UK.

What is needed for my entity to face liability

Stage one: the **evasion** of tax by another entity or an individual (the 'third party'). This includes the evasion of tax outside of the UK for entities with a UK connection.

Stage two: the evasion of tax must be deliberately **facilitated** by an **associated person** of your entity. HMRC is not obliged to prosecute the third party, nor the associated person, in order to commence criminal proceedings against your entity.

In the event HMRC can demonstrate, beyond reasonable doubt, that the offences at stage one and two have occurred, your entity then faces:

Stage three: the failure to prevent the facilitation of tax evasion by the associated person (CCO), subject to the sole available defence.

What are the consequences of failing to prevent the facilitation of tax evasion?

In the absence of establishing the sole available defence, the immediate consequences include:

- a criminal investigation and then prosecution;
- a criminal conviction for the entity and unlimited fines;
- brand, reputational and commercial damage; and
- regulatory consequences, if applicable.

What do I need to do: establish a defence

The sole statutory defence is to have "**reasonable prevention procedures**".

In order to demonstrate the implementation of reasonable prevention procedures, your entity must satisfy HMRC's **six guiding principles**:



What is required will vary from business to business, but HMRC's guidance clearly states a risk assessment is required at the very least, so this is a good place to start.

Your first step: undertake a risk assessment

What risks exist for associated persons to facilitate tax evasion?

Understand the nature of the associated persons and third parties that could pose a risk.

Identify the business functions which pose the greatest risks.

What procedures already exist to mitigate the identified risks?

What gaps exist?

Unique law turning you into police enforcement

This criminal offence hinges upon the tax affairs of a third party. The tax affairs of your organisation have no bearing i.e. your law abiding organisation may be subject to criminal prosecution due to the dishonesty of a third party in your supply chain and by the actions of your employees, directors or third parties who provide services on your behalf.

At present, nothing quite like it exists anywhere else in the world.



How can we help

Our tax risk and governance specialists have extensive experience helping clients understand their obligations under the CCO rules, helping to assess their risks and putting in place reasonable prevention procedures.

1. Undertaking CCO risk assessments, including:

- the education of senior personnel;
- identifying 'associated persons' and the risks they pose;
- assess the business inherent risk factors in the context of key risk areas; and
- reviewing existing policies, procedures and controls.

2. Advising on the design and implementation of controls and processes, including:

- the implementation of recommendations identified during the risk assessment process; and
- suitably worded CCO policies and other internal/external communications.

3. Providing training to associated persons virtually, via e-learning modules or other suitable formats.

We can also provide ongoing support to monitor the effectiveness of reasonable prevention procedures and manage the disclosure of any breaches to HMRC.

For further information, please contact:

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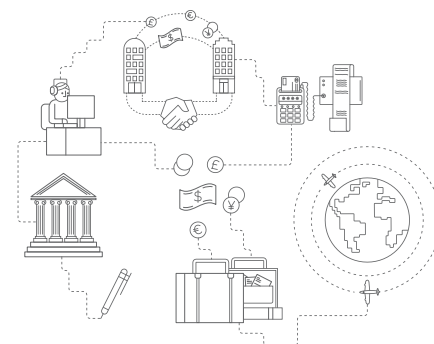
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