

Criminal Finances Act 2017

Corporate Criminal Offences

The Corporate Criminal Offence of failure to have procedures in place to prevent the facilitation of tax evasion is the latest weapon in the global fight against tax evasion. It is expected to commence in September 2017.

As part of the fight against tax evasion, the Criminal Finances Act 2017 introduces two new wide-ranging corporate criminal offences of failure to have procedures in place to prevent:

- the facilitation of UK tax evasion; and
- the facilitation of overseas tax evasion.

Both offences are wide-ranging and have significant extra-territorial impact. The consequences of conviction on a company are severe, and can result in:

- an unlimited fine;
- severe reputational damage; and
- sanctions from other regulators, both in the UK and overseas.

The new offences are expected to “go-live” from September 2017 following a Commencement Order.

HMRC's view

This legislation is about a “cultural change” in embedding procedures to prevent tax evasion throughout an organisation. HMRC have confirmed that this should flow from a “top-level commitment through to the front-line where the decisions are made that matter”.

Our Services

How can organisations protect themselves?

A company would need to prove that, on the balance of probabilities, that they had reasonable procedures in place that would prevent the facilitation of tax evasion by someone acting on their behalf.

What should organisations be doing now?

The first stage is to undertake an initial risk assessment and secure the Board's engagement. This will then determine the key priorities for due diligence. This is in line with each bank's agreement with HMRC under the Code of Practice for Taxation of Banks.

What should organisations do if they identify someone acting on their behalf who may have been facilitating Tax evasion?

Professional advice should be sought at the earliest opportunity. There is the facility for self-reporting and negotiating a deferred prosecution agreement. If this is properly managed, it will help to significantly help to mitigate the financial and reputational risks.

Steps to compliance

Step 1

Initial Risk Assessment

Board mandate

Step 2

Development

Governance

Communication and training to Boards and front-line teams

Developing reasonable procedures

Remediation programmes

Advising and preparing self-disclosures in the event of breaches being identified

Negotiating deferred prosecution agreements

Step 3

Transition to Business as Usual

Our Team

Ali Kazimi – Managing Director

Ali has extensive experience of working with Board of Directors and Senior Management teams to help them articulate their response to the challenge of international tax transparency. His career, spanning over 25 years, includes leadership roles with leading financial groups and the Big-4 consulting firms.

Chris Orchard – Senior Principal

Chris, formerly the HMRC policy lead responsible for the cross-border exchange of information, draws on his experience of developing the reporting for HMRC and the New Zealand tax authority, together with his work with other governments through the OECD and EU committees. Chris's experience of having worked with the international special investigations team at HMRC provides our clients with the assurance that their approach meets the regulator's expectations.

Rob Smith – Senior Consultant

During Rob's 15 years at HMRC and subsequent 10 years' private practice (legal and consulting), he has worked with financial institutions to ensure that their information reporting to HMRC is complete and accurate through developing audit testing regimes that fit legislative requirements. He sits on the OECD Industry Working Group and TISA Pensions Committee.



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