

Corporate Criminal Offence



Origin

The Criminal Finance Act 2017 came into force in September 2017 and with it saw the introduction of the Corporate Criminal Offence (“CCO”).

This legislation provides HMRC with new powers to criminally prosecute and hold corporates accountable for the activities of persons acting on their behalf where they facilitate tax evasion and where they have failed to implement relevant preventative measures.

How does an offence occur?

In order for an offence to occur there are three stages:

1. Criminal tax evasion must have taken place by a taxpayer (which could be in respect of UK or foreign taxes);
2. An associated person (e.g. an employee or agent acting on behalf of the organisation), whilst acting in that capacity has criminally facilitated the tax evasion; and
3. The organisation failed to prevent the associated person from committing the facilitation.

Who is caught by this legislation?

The legislation is aimed at organisations that have been established as companies, partnerships including LLPs. This also includes charities that have been set up as companies limited by guarantee including community interest companies, charities established either by royal charter or as a charitable incorporated organisations.

Associated Persons

This has a deliberately wide definition which captures

any individual that provides services for or on behalf of the organisation. It therefore could include:

- Staff
- Sub-contractors
- Group companies
- Agents
- JV partners
- Corporate trustees

What is the impact of this legislation?

If an organisation is found guilty, under these new powers there would be a public record of the conviction and potential reputational damage. Additionally, they could be subject to any or all of the following:

- unlimited financial penalties;
- confiscation orders or serious crime prevention orders;
- exclusion from public procurement processes; and
- disclosure to professional regulators.

Prevention

For HMRC to bring criminal charges against an organisation; the organisation must have failed to prevent the associated person from facilitating the tax evasion. Implementing suitable prevention measures will become an essential aspect of an organisation’s defence against prosecution under these rules.

HMRC in their guidance have outlined the steps organisations need to implement in order to remain compliant with this legislation. The steps include:

- Undertake a **Risk Assessment** of the organisation to understand where the exposures to tax evasion could occur;

- Introduce controls that are **Proportional** to the risks identified;
- Ensure **Top Level Commitment** from the management to flow throughout the organisation instilling a culture that emphasises that tax evasion is not acceptable;
- Conduct **Due Diligence** procedures as required on persons acting on behalf of the organisation;
- Once policies and procedures are implemented there should be **Communication and Training** to ensure full understanding of the new rules; and
- Organisations should continue to **Monitor and Review** the risks they face and update their policies and procedures as required.

How we can help

Undertaking and documenting a comprehensive risk assessment will form the basis of your defence against prosecution. This should be complimented with the implementation of policies and procedures which demonstrate an organisation's commitment to preventing the facilitation of tax evasion. At PEM we are able to undertake the risk assessment and provide clear written policy documentation to ensure compliance with this legislation.

If you have any further questions regarding any of the issues raised above, please do not hesitate to contact Anil Arora (aarora@pem.co.uk).



Please note that the information contained within this factsheet is not intended to give specific technical advice nor should it be construed as doing so. Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein.



PEM
Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk



A member of Kreston International | A global network of independent accounting firms