



New Corporate Offence of Failure to Prevent the Facilitation of Tax Evasion

Summary

From 30 September 2017 it is a criminal offence if a business fails to prevent its employees or any person associated with it from facilitating tax evasion. Penalties include unlimited fines and confiscation orders.

Businesses need to take action now to minimise their risk of exposure under the new rules.

The only defence mechanism businesses will be able to use against the offence is to demonstrate that they have reasonable procedures in place to prevent the facilitation of tax evasion.

What has changed?

The legislation creates two new offences. The first offence applies to all “relevant bodies”, broadly all companies and partnerships wherever located, in respect of the facilitation of UK tax evasion. The second offence applies to businesses with a UK connection in respect of the facilitation of non-UK tax evasion. All that is required for an entity to fall within the scope of the second offence is for a company or partnership to have a part of its business in the UK.

There are two requirements for the new corporate offences to apply:

1. Criminal tax evasion (not tax avoidance) must have taken place; and
2. A person/entity who is associated with the business must have criminally facilitated the tax evasion whilst performing services for or on behalf of that business. Associated persons include employees, agents and other persons who perform services for or on behalf of the business, including contractors, suppliers, agents etc.

The new offence does not radically alter what is criminal, it simply focuses on who is held to account for acts contrary to current criminal law.

Recommended Prevention Procedures

A business will have a defence against the new offences if it can prove that it had put in place reasonable prevention procedures to prevent the facilitation of tax evasion. HMRC has recently published guidance in which it sets out six principles that support the defence of having reasonable prevention procedures:

- Risk Assessments;
- Monitoring and reviews;
- Proportionality of risk-based prevention procedures;
- Due diligence;
- Top level management commitment; and
- Communication and training.

The full text of the guidance can be found under the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642714/Tackling-tax-evasion-corporate-offences.pdf

Risk assessments, monitoring and reviews

Risk assessments are regarded as key part of the process of preventing the facilitation of tax evasion and procedures must be documented and kept under review.

The risk assessment documentation will provide evidence of the decision making process and reduce the risk of exposure to the new offences. Risk assessments should be reviewed periodically based on changes to the nature of the business and/or the customer base etc.

Proportionality of risk-based prevention procedures

Reasonable procedures will be proportionate to the risk that persons associated with a company or partnership will facilitate tax evasion. This will depend on the nature, scale and complexity of the relevant body's activities. The new offences do not require relevant bodies to undertake unduly onerous procedures to eradicate all risk, but they do require meaningful action to prevent the criminal facilitation of tax evasion, which means more than simply paying lip service to the new rules.

What does the top-level commitment to prevention mean?

The top-level management of a business must be committed to preventing persons associated with it from engaging in criminal facilitation of tax evasion. They should foster a culture within the organisation in which the facilitation of tax evasion is never acceptable.

Staff training requirements

Any organisation should ensure that its prevention policies and procedures are communicated, embedded and understood throughout the organisation, through internal and external communication, including training. This should be proportionate to the risk to which the organisation assesses that it is exposed.

If you would like to know more about this subject and how Claritas Tax can help your organisation comply with the new rules, please contact us on 0121 726 1717.

This factsheet has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The factsheet cannot be relied upon to cover specific situations and you should not act upon the information contained therein without obtaining specific professional advice.