



Corporate Criminal Offence

Failure to prevent the facilitation of tax evasion

HMRC introduced Corporate Criminal Offence rules in September 2017 that apply to all corporate entities, including partnerships and charities, that fail to prevent the facilitation of UK or foreign tax evasion by associated persons. The legislation is no longer new and HMRC expects businesses to have in place reasonable procedures as a defence to the CCO.

An associated person is defined as an individual or entity performing services for or on behalf of the entity when the facilitation takes place. This could include, amongst others, employees, subcontractors, consultants, agents and suppliers.

Three steps must exist for an offence to be prosecuted:

Stage 1
Tax evasion offence
 Criminal tax evasion by a taxpayer (either individual or entity)

Stage 2
Tax evasion facilitation
 Criminal tax facilitation of this offence by “associated person” of the corporation

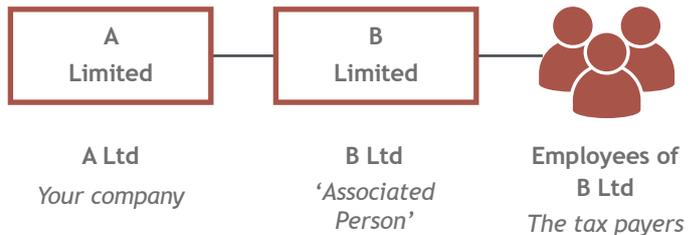
Stage 3
Failure to prevent facilitation
 The entity failed to prevent its representative from committing the criminal act at stage 2.

Potential penalties

If prosecuted, penalties for corporate entities are severe, including but not limited to:

- Potentially unlimited fine;
- Implications for regulated entities such as losing licenses;
- Potentially prevented from bidding for public contracts;
- Reputational damage.

Example:



- A Ltd engages with Contractor B for the provision of UK services.
- Employees of Contractor B deliberately fail to declare their income for UK tax purposes.
- Contractor B does not put employee payments through the payroll.
- A Ltd needs to demonstrate that it has reasonable procedures in place to prevent the facilitation of tax evasion by B Ltd.

HMRC's six guiding principles for compliance

HMRC have stated that it will rarely be reasonable not to have carried out a risk assessment, and their guidance includes the following six principles that businesses should use when considering compliance.



What action should businesses take?

All businesses should undertake a risk assessment to identify:

- The organisation's associated persons,
- The opportunity, motive and means that associated persons may have to facilitate tax evasion
- Existing policies and controls that may act as part of the organisation's prevention procedures
- Any gaps in existing procedures that need to be addressed

Following the risk assessment, businesses must implement reasonable prevention procedures and ensure appropriate documentation is retained to evidence these procedures.

For more information

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How can we help?

We have supported businesses with all elements of compliance with the CCO rules, framing it around HMRC's six guiding principles. The main areas of focus include:

• Risk assessment

We have supported businesses of all sizes and across a range of sectors with their risk assessment process, from financial services to property and construction through to media and technology.

We provide context to what is likely to be considered "reasonable", by benchmarking your procedures against those of other similar businesses.

• Training

Just undertaking a risk review and implementing/documenting procedures does not guarantee compliance; companies must also ensure that there is appropriate training in place.

We have developed a bespoke e-learning course that has been designed to address the training requirement set out by HMRC. The e-learning module takes about 15 minutes to complete and can be easily uploaded to your existing Learning Management System for roll-out to staff, or we can provide a platform through which you can distribute the training.

• Ongoing monitoring and review

Businesses need to regularly review their risk assessment, particularly if the business activities change or expand significantly, for example operating in a new market or territory or working with a different type of customer.

We can undertake periodic reviews of business risk assessments to determine the reasonableness of the risk assessment and prevention procedures in place.

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HMRC Tax Year 2020/21



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