



FOCUS ON

# Corporate Criminal Offences

Now, for tomorrow

# Introduction

Since 30 September 2017 it has been possible for companies and partnerships to face prosecution for facilitating tax evasion. Tax evasion and the facilitation of tax evasion are already criminal offences; however, it had historically been difficult to attribute criminal liability to a corporation where such instances occur. Since the introduction of these rules, it is the corporate that will be subject to prosecution without the need for prosecution of any individual with successful prosecutions potentially leading to unlimited fines, public record of the conviction and significant reputational damage.

This Focus On sets out the scope of the new offence and provides contact details for businesses considering next steps to protect themselves against criminal liability.

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## Who is affected?

All companies and partnerships, regardless of size and sector are affected. While risk of prosecution rests firmly on the business, it is the actions of 'associated persons' that will trigger the events leading to a corporate criminal offence (CCO). Associated persons are any person (individual or corporate) who provides services for or on behalf of a business such as employees, contractors and agents.

## The Offences

A business will be guilty of an offence if an associated person commits a UK tax evasion facilitation offence. A tax evasion facilitation offence consists of any of the following:

- Stage 1 - criminal tax evasion by a taxpayer under existing law
- Stage 2 - criminal facilitation of this offence by an "associated person" of the corporation i.e. anyone who performs services for or on behalf of the business
- Stage 3 - the corporation failed to prevent its representative from committing the criminal act at Stage 2.

There does not need to be a conviction for either Stage 1 or Stage 2 for the third stage to apply.

The legislation applies to evasion of both UK taxes and non-UK taxes where there is a UK aspect. Dual criminality is required in respect of overseas tax evasion offence. In other words, the underlying evasion is an offence in the country where it is committed, and it would have been a criminal offence if the activities took place in the UK. It is what is called a strict offence meaning that the business is guilty if Stage 3 is breached. Indeed, it does not matter that the management of the business have no knowledge at all of the underlying offences.

The law does give the organisation involved the defence that it had reasonable procedures in place to prevent the Stage 2 action, or that it was not reasonable for that organisation to have procedures in the first place.

The following example demonstrates how the offence works in practice. It must be understood the rules apply equally effectively to offshore and onshore evasion and both to professional and commercial business.



## Case Study

Smith and Jones Building Experts Ltd (S&J), with a turnover of over £25 million specialises in complex extensions of existing properties for both residential and commercial properties. They have branches in several towns. They do a lot of work for Fry and Delight Ltd (F&D), who have a chain of shops. F&D's Managing Director asks their local S&J branch to do an extension on his house but invoice F&D to 'help with the VAT'. The extension is built and invoiced to F&D as requested. After a VAT compliance visit at F&D, the Managing Director admits that he has deliberately done this to evade the VAT on the extension.

Stage 1 is satisfied. Stage 2 has also been satisfied as the branch facilitated the tax evasion by deliberately invoicing the company knowing that VAT fraud was in point.

For Stage 3 a review would need to be undertaken to see if S&J had reasonable procedures in place to prevent their branch from facilitating the tax evasion.

## Why it matters

### A business can be subject to:

- An unlimited fine
- Public record of the conviction
- Significant reputational damage and adverse publicity

### As of July 2023, HMRC has:

- 9 live CCO investigations, a further 25 under review and reviewed and rejected an additional 83 opportunities.
- The investigations and opportunities span 10 different business sectors and sit across all HMRC customer groups. Sectors include software providers, labour provision, accountancy and legal services and transport.
- Completed a number of office dawn raids. Included was to interview staff to see what they know of CCO, what actions they are aware the business is taking in response to CCO and to see if personnel know what to look out for to identify tax fraud.

## What procedures must be put in place?

In formulating procedures, the Government considers that businesses should focus on six key principles:



Risk assessment



Proportionality of risk-based prevention procedures



Top level commitment



Due diligence



Communication and training



Monitoring and review



# Conclusion

The Criminal Finances Act brought the criminal offence for all businesses which are not sole traders.

The Government has confirmed that they do not want to hinder how industry works but rather put in place a revised culture in this country which will lead to making tax evasion, like bribery, a thing of the past. Whilst the rules will be policed with a gentle touch initially, it is expected in the fullness of time that prosecutions will arise where not only the financial cost could be high but so will the reputational risks as well.

# Contact us

Our team is used to assessing risk and is ready to help you start the process of understanding where the risks lie in your organisation and then assist in providing solutions.



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