

Is your business ready for the new rules?



Baker McKenzie.

Under a new Corporate Tax Offence, companies could be found criminally liable if they fail to take reasonable steps to prevent facilitation of tax evasion. Companies found guilty would be liable to an **unlimited fine**.

With effect from **30 September 2017** the Criminal Finances Act 2017 introduces the new Corporate Tax Offence.

Companies must **take action now** to ensure that “reasonable” prevention procedures are in place. These measures will guard against the facilitation of tax evasion and also provide the strongest possible defence in the event of a future problem.

We recommend a four-step approach:



Conduct a thorough risk review to identify how the business might be exposed to committing the Corporate Tax Offence. Consider trading models, past experience, geographic risk and other relevant factors.



Undertake a gap analysis of current compliance policies and procedures and consider whether and how these need to be updated in light of the new offence.



Implement appropriate procedures, including the required compliance updates.



Monitor compliance through periodic reviews of risks and controls. Pay particular attention to new business lines and expansion to new territories and test any potential deficiencies in operation or application.

Frequently Asked Questions

What constitutes an ‘associated person’?

Under the new offence, it will be an offence for a company’s ‘associated persons’ to deliberately assist others in the evasion of UK or overseas taxes. Associated persons is broadly defined and includes employees, agents and anyone else acting on behalf of the corporation, such as distributors, joint venture partners, licensees and subsidiaries.

Companies should therefore adopt a clear plan and timeline for an internal risk review as soon as possible. The longer this process is delayed, the higher the risk of not being able to rely on the “reasonable procedures” defence.

So this is a job for the tax team?

The new Corporate Tax Offence requires practical and strategic considerations that go far beyond just tax principles. You will require multi-disciplinary, multi-jurisdictional specialists who understand how regulators and prosecutors operate.

How important is this in real terms?

The new Corporate Tax Offence, like the Bribery Act 2010, exposes companies to criminal prosecution with the prospect of extremely large fines, reputational damage and interruption to business as usual. The offence will apply to any type of company and in addition to covering UK tax evasion, companies would be criminally liable for any overseas tax evasion offence that would amount to an offence if committed in the UK. It’s vital that companies act now.

Hasn't it always been an offence for a corporation to help others evade tax?

Yes, but only where senior officers of the corporation were complicit. Now it will be much easier for HMRC to prosecute corporations for facilitation of UK tax evasion, or the Serious Fraud Office to prosecute for facilitation of overseas tax evasion.

I have not been able to start a risk assessment by 30th September. What risks do I face?

Although HMRC accepts that it may not be feasible for large multinationals to have completed the whole process by 30th September, in their guidance HMRC states that they expect “rapid implementation, focussing on major risks and priorities.”

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REAL-LIFE EXAMPLES AND THEIR CONSEQUENCES

These can trigger:



EXPOSURE TO CRIMINAL PROSECUTION



EXTREMELY LARGE FINE



REPUTATIONAL DAMAGE



INTERRUPTION TO BUSINESS

VAT CHECKS

Foreign Fashion Ltd is a UK entity that sells its products through Online Co's website. Online Co's employees did not check whether Foreign Fashion was registered for VAT. Foreign Fashion makes £1m of sales on Online Co's website. It is later found by HMRC that Foreign Fashion evaded VAT in the UK.

PAYMENT PROCESSES

Blue Chip Ltd purchases products from a French based technology business, Tech Products SARL. Despite having no operations in any jurisdictions other than France, Tech Products asks Blue Chip for the purchase price to be paid to one of its offshore subsidiaries incorporated in a tax haven. The French tax authorities later discover that Tech Products failed to declare some of the income on the sales to Blue Chip.

INTERNAL TAX CONTROLS

ABC has operations across all of the EMEA territory. Its EMEA tax function sits in the UK and has ultimate responsibility for tax filings in the whole region. Preparation of accounts and tax returns in some countries is left to the local finance team with the help of local tax advisors. It is later discovered that ABC entities (i) failed to file tax returns in some jurisdictions, and (ii) filed returns with deliberate understatements in other countries.

DUE DILIGENCE

As part of its Know Your Client checks, ABC Limited obtains a credit report on XYZ Limited, a relatively new company that is not well known in the industry. XYZ's credit report shows that it has very limited capital available. ABC obtains a guarantee to cover the credit risk and starts trading with XYZ. ABC later finds out that XYZ had been financing its operations by evading tax.