
Corporate Criminal Offence: failure to prevent tax evasion

A new corporate offence of failure to prevent the criminal facilitation of tax evasion applies from 30 September 2017.

The offence applies to companies, partnerships and LLPs. It does not apply to individuals, as they can be prosecuted under existing laws. If convicted a business will face an unlimited fine in respect of the acts of its employees.

Circumstances:

- There must be criminal tax evasion under either UK law or foreign law
- It must be enabled by the business' employee, agent or those performing services to the business
- The business must have failed to prevent that person from enabling the crime.

How this will work:

- A business will be liable for the actions of an individual acting on its behalf, irrespective if it gains any benefit from the employee's actions.
- The offence will apply to UK business failing to prevent those acting on its behalf from criminally facilitating a tax loss in the UK or an overseas jurisdiction which has equivalent laws of tax evasion in place.
- The offence will apply to non-UK companies who fail to prevent those who act on its behalf from criminally facilitating a UK tax loss.
- The offence can only be committed by companies and partnerships, not by natural persons.

In its defence the business may claim that:

- It put in place reasonable prevention methods to prevent facilitation by associated persons; or
- It is unreasonable to expect to have such procedures in place.

HMRC's draft guidance includes examples of what would constitute reasonable procedures to take to prevent the facilitation of tax evasion. These include:

- Risk assessments.
- Due diligence.
- Training for employees.
- A commitment from top-level management to create a culture where tax evasion is never acceptable.

Tax evasion includes offences of:

- Cheating the public revenue
- Being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

Self-reporting

As part of HMRC's approach to dealing with this new offence, it has given details of how a company can 'self-report' any acts of criminal facilitation that it has discovered. Self-reporting does not guarantee that the company/partnership won't be prosecuted but it could be taken into account when deciding if prosecution is appropriate and may be reflected in any penalties if convicted.

If you need more information in relation to this please contact us.

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