Corporate Criminal Offences – more than just a legislative tool, and why you should care

This article has been written to provide you with material to share with your membership / readership in relation to the Corporate Criminal Offences (CCO). For further details and background regarding the CCO please see the notes at the end of this document.

Back in September 2017, legislation was introduced which can hold a corporate liable if it fails to prevent any associated person from facilitating tax fraud. This is known as the Corporate Criminal Offences (CCO).

It is easy to see how some industry sectors may feel the CCO is more relevant to them than others, based on the services they provide and how that might link to instances of tax fraud. However, in reality, the relevance and impact of CCO is further reaching than you may realise.

No matter the size of your business, or the type of service you provide, if there is a chance someone associated with your business could facilitate fraud through their actions then CCO is something you should know about. HMRC's list of CCO cases demonstrates that. As at 31 July 2020:

- HMRC has 10 live CCO investigations with a further 22 opportunities under review across 10 different business sectors, including **financial services**, **oils**, **construction**, **labour provision** and **software development**.
- These investigations and opportunities sit across all HMRC customer groups **from small business through to some of the UK's largest organisations**.
- COVID-19 has impacted all aspects of society in many different ways, and HMRC and its development of CCO investigations and opportunities is no exception. However, HMRC continues to progress CCO investigations and opportunities wherever it is safe for HMRC and its customers to do so.

HMRC has spoken about the way in which the CCO can change the landscape in the fight against the facilitation of tax crime. But the CCO is not all about investigations and prosecutions, it's about changing industry practices and attitudes towards risk to try to prevent facilitation happening in the first place.

CCO introduced the concept of Reasonable Preventative Procedures (RPPs) – processes which help a corporate to prevent its associated persons from facilitating tax fraud and can be used as a defense against a CCO prosecution.

RPPs are in themselves not a new idea, and many corporates will already have RPPs in place. By embedding, regularly reviewing and adapting RPPs to address tax fraud facilitation risks, a corporate will reduce the chances of its associates facilitating tax fraud, and will ultimately support compliance across their industry sector.

Have you considered how CCO may affect your business? And what do your RPPs look like? These are questions which HMRC is keen you consider, as your approach to CCO and RPPs has the potential to help design out tax evasion risks and reduce fraudulent behaviours. HMRC will continue to pursue those who try to evade paying the tax they owe, as well as those who help them, to ensure businesses and individuals contribute their fair share to our public services, and create a level playing field for those who abide by the rules.

For more information, you can read the government guidance 'Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion' for more detailed information about the legislation.

Background

- The Corporate Criminal Offences (CCOs) for the failure to prevent the facilitation of tax evasion were introduced by Part 3 of the Criminal Finances Act 2017. It has been based on its associated legislation, the Bribery Act 2010
- These offences are committed where a relevant body fails to prevent an associated person criminally facilitating the evasion of tax. An offence can be committed regardless of whether the tax evaded is payable in the UK or in a foreign country.
- The CCOs form part of HMRC's Enablers and Facilitators of Criminality Programme which, in alignment with HMRC's Serious Fraud Strategy, is designed to tackle the enablers and facilitators of tax evasion.
- The offences could impact any group or sector; therefore, they are relevant to all sectors.

The Offences

- For the CCO to be committed:
    - there must first be a criminal offence at the taxpayer level (stage one);
    - the evasion must have been criminal facilitated by an associated person of a corporation (stage 2);
    - and the corporation must have failed to prevent the associated person from committing the stage 2 offence.
- . An *"Associated person"* of a corporation means more than someone with a formal contractual relationship. An "associated person" means employees and agents of a corporation AND anyone else providing services **for** or **on behalf** of the corporation. **A corporation cannot sub-contract out of its liability.**
- A criminal conviction could result in:
    - An unlimited penalty
    - Possible director disqualification
    - Possible exclusion from bidding for public contracts
    - Public record of the conviction (and reputational damage)
    - Severe **regulatory impacts**

Reasonable Preventative Procedures

- Reasonable procedures will differ for all relevant bodies as they must be risk-based and appropriate
- Government guidance lays out a principled-based approach:
- HMRC **cannot** and **will not** give 'sign-off' that procedures are reasonable
- There is a dedicated route for corporates to self-reporting wrongdoing under the offences to HMRC through the corporate self-reporting portal. Self-reporting will be taken into account and viewed favourably when HMRC decides how to deal with any disclosed offence.