

Insights

FAILURE TO PREVENT TAX EVASION – HMRC ANNOUNCES 9 LIVE INVESTIGATIONS AND 21 “OPPORTUNITIES UNDER REVIEW”

Feb 17, 2020

SUMMARY

HMRC’s focus on organisations under the Criminal Finances Act 2017 for failure to prevent tax evasion is making steady progress. The revelation, in very broad terms, of the number of investigations and enquires that it is currently undertaking and the wide sectors in which the targets of those investigations and enquires operate serve as a further warning to all organisations, large or small, to ensure that their procedures for preventing tax evasion are both robust and are being diligently followed.

The Freedom of Information (FOI) Release

On 10 February 2020, HMRC published a [FOI release](#) in relation to the number of live Corporate Criminal Offences (CCO) investigations under sections 45 and 46 of the Criminal Finances Act 2017.

As at 31 December 2019 there were:

- 9 live CCO investigations;
- a further 21 opportunities under review.

Those investigations and opportunities under review cover:

- “10 different business sectors, including financial services, oils, construction, labour provision and software development”; and
- “sit across all HMRC customer groups from small business through to some of the UK’s largest organisations.”

It is not clear exactly what is meant by “opportunities under review.” It is not a term that is usually associated with criminal enforcement agencies but appears to represent enquiries at any stage up to a formal designation as a criminal investigation. What represents an opportunity for HMRC represents real jeopardy for the object of that review.

In order to emphasise their activity, HMRC trumpeted that:

“The number and spread of investigations clearly demonstrate that HMRC is actively enforcing the legislation across all tax and duty regimes and across organisations of all shapes and sizes.”

Who does this affect?

HMRC is at pains to point out that any organisation large or small that fails to prevent tax evasion because it has not taken reasonable steps to prevent it can come within their scrutiny.

This is clearly an issue which, not only is a high priority for HMRC but, is one which it may perceive as being a relatively straightforward way of prosecuting companies. Unlike:

- the prosecution of individuals against whom a specific state of mind is required, for example, being knowingly concerned in the fraudulent evasion of the relevant tax; or
- a prosecution of a company which would depend on establishing that the directing mind and will of that company had the necessary intent;

HMRC will be able to prosecute by establishing the fact of an evasion or attempt at evasion, facilitation or an attempt at facilitation coupled with the failure of the organisation to have taken reasonable steps to prevent that conduct.

The landscape for establishing liability for all organisations has been transformed and all organisations need to recognise and respond to that changed landscape.

What to do?

First and foremost, it is fundamental that an organisation complies with HMRC’s [Guidance](#) of 1 September 2017 “Tackling Tax Evasion. Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion”. This sets out, inter alia, the 6 Guiding principles:

- Proportionality of risk-based prevention procedures
- Top level commitment
- Risk assessment
- Due diligence

- Communication (including training)
- Monitoring and review

Some corporates in perceived low risk sectors are understood not to have conducted a risk assessment yet. This must now be a priority.

Having all your policies and procedures in place is just the starting point. As the very recent Deferred Prosecution Agreement in relation to Airbus has underlined, those policies and procedures (even when created by external professionals) are no more than worthless pieces of paper unless the company can ensure that those policies are not ignored or circumvented.

Take careful note of the SFO's Internal Guidance "Evaluating a Compliance Programme" published on 22 January 2020. While centred on considerations relevant to the offence of failing to prevent bribery under section 7 of the Bribery Act 2010, essentially the same considerations apply to sections 45 and 46 of the Criminal Finances Act 2017. In particular keep in mind, and act upon, the following:

"A key feature of any compliance programme is that it needs to be effective and not simply a 'paper exercise'. A compliance programme must work for each specific organisation, and organisations need to determine what is appropriate for the field in which it operates. It is critical that the compliance programme is proportionate, risk-based and regularly reviewed."

Conclusion

An increasing number of companies and organisations are going to find themselves as opportunities for review by HMRC. You can help insulate yourself from becoming such an opportunity but you will need to be pro-active and ensure that your compliance programme is in place, is robust and is being followed.

MEET THE TEAM



Mukul Chawla KC

London

mukul.chawla@bclplaw.com

[+44 \(0\) 20 3400 1000](tel:+442034001000)



Kate Ison

Co-Author, London

kate.ison@bclplaw.com

[+44 \(0\) 20 3400 4488](tel:+442034004488)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.