Corporate Criminal Offence: What Next?

Implementing reasonable prevention procedures

September 2017

Building a better working world

Renewed focus on transparency, evasion and controls

Globally, tax evasion is coming under increasing scrutiny from tax authorities, regulators and the public. These pressures are leading to a renewed focus on the tax affairs of customers, and increasing responsibilities for financial institutions to understand their customer’s tax affairs.

Tax as a pillar of financial crime

Tax authority initiatives to tackle tax evasion

Tax crime is a growing risk

Regulators are changing their approach

Focus on transparency

Corporate criminal offence (CCO): what is it?

A taxpayer has committed **tax evasion**

…… that was **criminally facilitated** by an **associated person** of …

… a **relevant body** …

… without **reasonable prevention procedures**

A criminal offence (not tax avoidance) under the laws of the UK.

This requires an element of dishonesty or fraud, it cannot be committed by accident

Employee

Agent

Service provider

Any entity for UK tax, or for non–UK tax if:

1. The financial institution is incorporated in the UK,
2. The financial institution has a place of business in the UK, or
3. Any aspect of the offences occur in the UK.

HMRC have issued draft guidance in the form of **six principles** that corporations must consider:

Risk assessment	Due diligence
Proportionality	Communications
Top–level commitment	Monitoring and control

Extraterritoriality

- **UK branches of overseas groups**
- **Global relationships**
- **Employees travelling through the UK**
- **Distribution through overseas companies**

Where are the key challenges for compliance?

It's about facilitation

Unlike existing AML controls, the CCO is focused on facilitation risks, and therefore on the actions of dishonest employees or third parties. Financial institutions will need to consider how resistant controls are to circumvention and where associated persons may be able to facilitate evasion despite new measures.

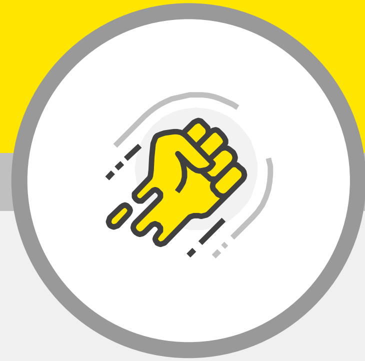
Managing third parties

Like the Bribery Act, organisations will need to consider how the rules apply to third parties over whom they may have little control. Identifying associated persons risks is likely to be a key component of any risk assessment, and ensuring that controls cover all associated persons will be a substantial challenge.

Ownership

Complying with the CCO requires a blend of tax and financial crime expertise, along with resources to conduct risk assessments and oversee the implementation of changes. Establishing ownership and accountability is critical but challenging as there is not am obvious place for team to be based.

Leveraging existing controls effectively



Effective compliance will leverage existing controls to address risks, and focus effort on the areas of highest risk to deliver effectively. At the same time, the risk assessment and implementation planning must be robust and honest, to ensure that risks are adequately addressed.

Implementing reasonable prevention procedures

After completing the risk assessment, organisations must rapidly implement any changes needed to address risks identified across the business, and to put in place key controls identified by HMRC including top-level commitment, training and due diligence on employees and third parties.

Pre-September 2017	Tactical response	Business as usual	
Risk Assessment *Conduct risk assessment across th business, identifying higher risk are and assessing controls*	**Communicate** *Communicate with employees, associated persons, and external stakeholders including HMRC*	**Update global risk register** *Supported by policy updates, communications and embedding in BAU risk monitoring*	**1. Risk Assessment**
Top-level commitment *Secure top-level commitment to addressing the risks of facilitation of tax evasion in the business*	**Oversee and embed** *Oversee the implementation of change in the short and longer term and secure buy-in from the business*	**Assign accountable executive** *Not formally required, but assigning overall responsibility and resources key to monitoring compliance*	**3. Top-level commitmen t**
Implementation plan *Secure top-level commitment to addressing the risks of facilitation of tax evasion in the business*	**Due diligence on third parties** *Define approach to updating third party controls, leveraging vendor management functions*	**Embed BAU controls** *Develop common controls including whistleblowing, vendor managemen and wider compliance controls*	**4. Due diligence**
	Define urgent training needs *Rapid training for high risk groups, or where centralised training canno be conducted in a reasonable period*	**Ongoing training strategy** *Include facilitation in ongoing trainir targeted to specific needs, as well a communications and culture*	**5. Comms and training**
		Future risk assessments *Update risk assessment processes include facilitation risks and controls effectiveness testing*	**6. Monitoring and Control**

The need for a tactical response is driven by the risk assessment and the time taken to incorporate CCO into business as usual operations.

Monitoring for future developments

The UK has a number of other measures under consideration designed to tackle tax evasion and avoidance including:

- Penalties for enablers of aggressive tax avoidance
- Measures targeting the hidden economy
- Making Tax Digital

The OECD has launched a reporting portal aimed at weaknesses in CRS, making future changes more likely

Use of data by regulators to identify tax evaders and other criminals, putting greater pressure of financial services to provide data

Countries introducing targeted measures to tackle real and perceived tax evasion without global alignment

Regulator scrutiny on the effectiveness of tax evasion controls as part of AML; is it sustainable to take the view that "Customer's tax affairs are their own business"?

Wider introduction of tax evasion as an AML offence – often triggering historic reviews (Singapore, Luxembourg, Israel)

Global organisations need to establish a holistic approach to addressing tax evasion measures being introduced