

Corporate Criminal Offences

For the failure to prevent
the facilitation of tax evasion

Criminal Finances Act 2017

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The Corporate Criminal Offences introduced by the 2017 Finance Act are intended to make organisations accountable if those acting on their behalf criminally facilitate the evasion of tax.

The legislation applies to all corporations and partnerships (together 'organisations') irrespective of their size and the business sector that they are in.

HMRC have set out 6 guiding principles which are expected to form part of an organisation's reasonable procedures.

The offences

There are three stages to the offences:

1

Criminal tax evasion by a taxpayer under the existing law.

2

Criminal facilitation of this offence by an "associated person" of the corporation i.e. anyone who performs services for or on behalf of the organisation.

3

The organisation failed to prevent its representative from committing the criminal act at the second stage above.

Reasonable procedures

HMRC's guidance indicates that reasonable procedures should be informed by 6 principles:



Risk assessment.



Proportionality of risk-based prevention procedures.



Top-level commitment.



Due diligence.



Communication (including training).



Monitoring and review.

Consequences

- The consequences of a CCO failure include a criminal conviction for the organisation, with the associated negative publicity, potentially unlimited financial penalties, and other commercial consequences, including potentially losing the ability to secure government contracts.
- The only defence the organisation has in the event that an offence occurs is that it had reasonable procedures in place to prevent the facilitation of tax evasion, or that it was not reasonable for that organisation to have such procedures.



If a relevant body can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates its tax evasion facilitation risks, then prosecution is unlikely as it will be able to raise a defence."

HMRC government guidance September 2017

How can KPMG help

The nature and extent of the work required to put in place reasonable procedures will depend upon the circumstances of each organisation, but the key stages are typically:

- 1** Determine who should be involved - ownership, implementation and Subject Matter Experts.
- 2** Carry out a risk assessment to understand the nature and extent of the inherent risks facing the business.
- 3** Evaluate existing controls and establish the extent of any gaps that need to be addressed.
- 4** Introduce additional controls, as required, to address these gaps, setting and communicating the appropriate tone from the top.
- 5** Provide accessible training to staff, in sufficient detail as required by their role.
- 6** Introduce ongoing testing and monitoring procedures.

KPMG has been working with organisations since before the legislation was introduced to help them respond appropriately to the legislation, and review the procedures that have been put in place.

CCO Training

One of the key principles that should underpin the “reasonable procedures” required under the CCO regime is that staff and other relevant associated persons receive training so that they are able to identify any areas of concern.

KPMG has developed an e-learning module which provides a simple introduction to the CCO regime, examples of what the criminal facilitation of tax evasion might look like in practice and instructions as to the actions necessary should the participant have any cause for concern.

Benefits

It provides accessible and proportionate learning to staff who are not in high-risk roles. Those in higher risk roles and key decision makers are likely to require a more detailed understanding of the CCO regime.

The content can be hosted either on an existing Learning Management System or via the KPMG Learning platform, which offers tracking and reporting Management information.

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Document Classification: KPMG Public CREATE: CRT163319A | September 2025