



LANCE[®]

WHITE PAPER

The Corporate Criminal Offence

Corporate offence of failure to prevent the
criminal facilitation of tax evasion

EFFECTIVE FROM SEPTEMBER 2017

Background

The UK Government has for some time believed that relevant bodies should be more accountable for preventing those who act for, or on their behalf from criminally facilitating tax evasion. Historically prosecutors have been required to demonstrate to a criminal standard that the senior members of a relevant body were involved in, aware of and may have directly benefited from the illegal activity. Typically, those senior members of a relevant body would be the Board of Directors which for example in a large multinational would be difficult to hold the directors to account when key operational decisions are often delegated to others in the organisation at a lower level. Difficulties in holding larger organisations to account meant that there was an unlevel playing field in comparison to smaller organisations where directors could and have been prosecuted for tax evasion. Similarly, without an existing corporate criminal offence, senior members of an organisation were shielded from risks being escalated in terms of the activities of those who acted for or on behalf of the organisation.

Overview

In 2015 the Government announced they would introduce a new corporate criminal offence of failure to prevent the criminal facilitation of tax evasion which is intended to overcome the previous difficulties of attributing criminal liability to relevant bodies for the criminal acts of employees and those associates who provide services directly or on their behalf. The new offence was introduced from 30 September 2017 and is restricted to tackle crimes by those who act for or on behalf of the relevant body and does not seek to attribute criminality to the organisation or crimes committed by its customers. There will be both a domestic (UK) offence to be investigated by HMRC and an overseas offence the SFO will investigate. This in reality means that relevant bodies may be prosecuted for not only tax evasion in the UK but in certain circumstances any jurisdiction worldwide. The Government recognises the importance of proportionality and has ensured a defence is available based on the relevant body demonstrating it has put in place a system of reasonable procedures that identifies and mitigates its tax evasion risks. It is important to note that the introduction of reasonable procedures will significantly vary depending on the size of an organisation and whether they operate in a high or low risk sector. However, in relying on a defence of reasonable procedures, it will ultimately be the courts which determine whether the reasonable procedures adopted prevent the facilitation of tax evasion taking into account all the facts and circumstances relevant to that particular case.

Penalty

For any relevant body ultimately convicted by the courts for not having reasonable procedures in place, the results can be catastrophic including unlimited fines, confiscation of assets and as important significant reputational damage, this effectively means that not doing something is not an option.

Defence

HMRC has provided guidance on 6 key underlying principles to underpin a defence of having in place reasonable procedures these are;

- Risk assessment
- Proportionality of risk based procedures
- Top level commitment
- Due diligence
- Communication and training
- Monitoring and review

LANCE

LANCE is an online compliance platform designed for offshore structure providers to risk assess liability to UK taxes. Utilising LANCE will make a positive and significant contribution towards the defence of having in place reasonable procedures by meeting a number of the key underlying principles above including proportionality, due diligence and monitoring. It will also identify gaps in training levels and provide a swift analysis of what further training is required.