

## Corporate Criminal Offence: Failure to Prevent Tax Evasion

### HMRC increase investigations

Recent legislation introduced a new strict corporate criminal offence of failing to prevent the criminal facilitation of tax evasion.

The legislation applies to relevant bodies irrespective of size i.e. companies, partnerships and not for profit organisations.

There are two offences under the legislation. The first relates to the evasion of UK tax and the second to the evasion of foreign tax.

There are three steps to both offences.

- 1** The criminal evasion by a taxpayer (either an individual or a legal entity) under existing law.
- 2** The criminal facilitation of the tax evasion by an associated person of the relevant body who is acting in that capacity. (An associated person is someone who performs services for or on behalf of the relevant body).
- 3** The relevant body failed to prevent a person associated with it from committing the criminal facilitation act.

### The statutory defence

Contained within the legislation is a complete defence against the offences.

In order to benefit from the defence, reasonable preventative procedures need to be in place. This is the only defence allowed under the legislation.

### Sanctions for non-compliance

There are various sanctions for not complying; all are serious and severe:

- Investigations conducted by the Criminal Investigations Department of HMRC; or the Serious Fraud Office (SFO) or National Crime Agency (NCA) in relation to foreign tax offences.
- Potential prosecution by the Crown Prosecution Service (CPS) or SFO.
- Unlimited financial penalties.



### Example:

A construction company is working on various sites within London and has assigned Dave to manage the South London site.

Dave was under pressure to ensure all building work was completed within a very tight deadline.

Dave recruited a number of builders to ensure the works were completed. However, he paid them in cash.

If it can be established that Dave knew that by paying the workers in cash, they would not report the monies to HMRC, then Dave could be criminally liable for facilitating tax evasion.

Additionally, the construction company may be guilty of an offence of failing to prevent the facilitation of UK tax evasion, unless it has reasonable preventative procedures in place.

### How Brebners can help

Brebners has a dedicated Tax Dispute and Resolutions team which can assist you with putting in place reasonable preventative procedures, to act as a defence against the corporate criminal offence.

We can assist you by initially undertaking a risk assessment of your business or organisation, consideration of the risks by reference to their priority, documenting procedures to be put in place, drafting relevant communications to explain the procedures for staff and external suppliers and future monitoring of the procedures.

If you have any questions or wish to find out more about the corporate criminal offence, please contact

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