

## **Corporate Criminal Offence: three years on**

Sarah Mawson and David Francis of Grant Thornton explain why businesses both large and small must protect themselves against third-party tax fraudsters

HM Revenue & Customs continues to take a more sympathetic position to those suffering business disruption due to Covid-19; however, there is still an expectation that taxpayers meet legislative requirements. One such area is the Corporate Criminal Offence (CCO), which carries the risk of significant reputational damage and an unlimited fine if ignored.

### **What is CCO?**

The CCO was introduced under the Criminal Finances Act 2017. Following an initial apparent lack of action by HMRC, as we pass the third anniversary much has changed. It is imperative that businesses have considered the rules and implement reasonable prevention procedures to defend themselves and their people from potential prosecution.

Historically speaking, if a corporate entity had facilitated tax evasion, either through advice or direct action, the individuals who directly facilitated the evasion would have committed a crime, but the enforcement of any sanctions was difficult. Holding entities to account was very difficult and required prosecutors to evidence that senior management were both involved with, and aware of, any facilitation.

The CFA 2017 introduced two new offences to overcome this. Under the CCO corporates can become liable to prosecution for failing to prevent the facilitation of both UK and foreign tax evasion. There is no de-minimis limit, the CCO applies to all companies, partnerships, and incorporated charities of any size.

### **Engagement**

With no deadline or filing requirement specified within the legislation it appeared the CCO flew under the radar of many companies for some time. In March 2019, HMRC commissioned a study to understand changes in corporate behaviour following the introduction of the CCO. The study utilised a representative sample of UK companies and partnerships across all sectors of the economy.

One year after the introduction of the CCO, the study found that only a quarter of respondents had heard of the CCO, and only 12% knew what these changes meant for their businesses. When asked if their business had assessed the risk of being exposed to the facilitation of tax evasion, six in 10 of all business had not formally documented their risk review process. Of those who had made

formal documentation only 18% had a risk register dedicated to the facilitation of tax evasion.

Together with an apparent lack of activity by HMRC in this arena there has been no real incentive for business to risk review their processes. However, it is clear this is an area of increasing importance for HMRC who are continuing to pool resources into their criminal investigation's directorate.

HMRC has 10 live CCO investigations as of 31 July 2020, with a further 22 live opportunities under review, sitting across all HMRC customer groups and a range of industries.

As part of HMRC's desire to change industry practice, focusing on proactive risk mitigation, the number of investigations will only continue to rise. This is particularly pertinent given the spotlight on CCO within HMRC's internal procedures. Opportunities continue to be referred from civil investigation teams with a new focus on who has facilitated any evasion. Officers receiving these referrals within the Fraud Investigation Service (FIS) now have to undertake mandatory CCO training with CCO becoming part of their day-to-day remit. At a recent raid by FIS officers on the business premises of a company its director was asked what they knew about CCO.

It is therefore no surprise that we have seen an increase in the number of clients receiving enquiry letters specifically relating to CCO. Being prepared and having a process in place to test your current response is increasingly vital.

Unlimited penalties and the reputational damage caused by such an investigation have the potential to cause considerable damage to any business.

### **What can you do?**

CCO is more important than ever and ensuring a proportionate response has been taken will make sure organisations can demonstrate they have complied with the law as part of tax risk management processes. Covid-19 has presented a myriad of challenges, with changes in working practices and personnel, the risk remains high and it is the ideal time to review if any existing framework is still robust.

Specifically, HMRC has set out six 'guiding principles' to ensure reasonable prevention procedures are implemented. These include the completion of risk assessment and identifying the nature and extent of exposure. This is particularly useful for those businesses who have not yet acted on the CCO requirements through an over-confidence that they are low-risk. Using the findings from any risk assessment, proportional risk-based prevention procedures need to be implemented, in line with the identified risks specific to

your business.

All business must be able to demonstrate that they have effective commitment from senior management to implement and maintain any such prevention procedures. Prevention procedures should also include an effective due diligence of the business's customer base and supply chain. An effective training and communications strategy for employees and service providers is vital to allow the business to demonstrate it has disseminated the appropriate knowledge to its people. Finally, the monitoring and review of procedures is crucial to ensure ongoing statutory defence.

Our team is currently experiencing a number of new enquiries related to the CCO. We have performed many detailed risk assessment reviews including a review of the businesses' associated persons and preparation of a traffic light report to prioritise key risk areas. For those businesses with procedures in place we recommend assistance in the review of existing policies and implementation of new controls. Our team has also been providing training to senior management and employees by webinar as part of our recommended prevention procedures.

Three years on from the introduction of the CCO it is increasingly business critical to act on its requirements, particularly given HMRC's interest focus and activity in this area. Businesses need to act now to protect their interest and their people.

If you or your client is concerned about what the CCO may mean for them, please get in touch!

- Sarah Mawson and David Francis, Head of Tax Dispute Resolution, work within the National Tax Dispute Resolution team at Grant Thornton UK LLP. They can be contacted at [Sarah.L.Mawson@uk.gt.com](mailto:Sarah.L.Mawson@uk.gt.com) and [David.Francis@uk.gt.com](mailto:David.Francis@uk.gt.com)