Time to think about CCO

Large Corporate | OMB | Professional standards



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Samuel Dean explains the purpose of the Corporate Criminal Offence and how it is helping businesses play their part in tackling tax evasion

Key Points

What is the issue?

HMRC’s Fraud Investigation Service is currently pursuing 13 Corporate Criminal Offence (CCO) investigations and has a further 18 leads under review.

What does it mean for me?

With prosecution and unlimited fines as the sanctions, there is a hefty price to pay for organisations that do not take their responsibilities seriously.

What can I take away?

If your organisation hasn't already considered the implications of the CCO, you should conduct a risk assessment. Even if you put in place relevant procedures, now could be time to review them to ensure they remain fit for purpose.

It's just over three years since the Corporate Criminal Offence (CCO) for failing to prevent the facilitation of tax evasion came into force. Introduced as part of the Criminal Finances Act 2017, the CCO was part of a number of measures – it came into effect alongside the Common Reporting Standard – that were designed to clamp down on tax evasion both at home and abroad.

Corporate criminal liability is not a new concept, of course. Legislation existed that covered circumstances where criminal acts carried out by the corporation's directing mind are attributable to the corporation. However, the two new corporate criminal offences of failure to prevent the criminal facilitation of tax evasion introduced under the CCO gave HMRC, for the first time, specific powers to tackle this threat in relation to tax crime. As such, it has been a game changer for us.

Put simply, the CCO stipulates that if evasion of UK tax occurs and that evasion is deliberately and dishonestly facilitated by somebody acting on behalf of a corporate, then the corporate is automatically guilty of failing to prevent that facilitation. There is a statutory defence of having reasonable preventative procedures in place, or indeed that it was not reasonable for procedures to be in place at the time. However, it is for the corporate to demonstrate the presence of such procedures, not for the prosecutor to prove their absence.

With prosecution and unlimited fines as the sanctions, there is a hefty price to pay for organisations that do not take their responsibilities seriously. Such is the emphasis HMRC is putting on this legislation that it has been incorporated into our Large Business Risk Review – the means by which we assess large companies for tax risks. This means in practice that businesses need to demonstrate their understanding and application of the legislation or accept greater scrutiny of their affairs by the department. Meanwhile, our Fraud Investigation Service is currently

pursuing 13 CCO investigations and has a further 18 leads under active review.

The objectives of CCO

I'm frequently asked about when we will see the first CCO prosecution. The pipeline of cases continues to grow across all businesses and sectors, and it is simply a matter of when, not if. However, investigations into tax evasion and any corresponding facilitation remain complex by nature, and we need to be careful to apply the new legislation appropriately.

I also think it is important to remember that the CCO was never solely about prosecutions. As the then security minister Ben Wallace said when it was being introduced:

> 'It is important to emphasise that, as with the corresponding offence under the Bribery Act 2010, the number of prosecutions alone will not be a true metric of the level of success of the measure. The new corporate offences are not only about responding to wrongdoing but about changing corporate culture and behaviour. True success will lie in changing corporate culture and preventing wrongdoing from occurring in the first place.'

We are seeing success in this goal. What pleases me most is the behavioural changes I've seen across sectors and businesses, showing how increasingly seriously they are taking their responsibilities when it comes to tackling tax fraud risks.

We are now seeing tax experts in organisations linking in with their colleagues in anti-money laundering and anti-bribery and corruption to develop a more robust and holistic approach to the economic crime threat within their business. New roles are being created such as 'head of anti-tax evasion' and 'head of tax transparency', which is indicative of a fundamental culture shift.

It is really encouraging that the CCO has prompted changes within some of the UK's largest institutions. This is important because the new offence was always intended to help tackle the root causes of tax crime.

A broader scope

Those who have not yet engaged with the potential impacts of the CCO on the organisations they lead or advise should do so or risk jeopardising their reputations and joining the list of active HMRC investigations.

These ‘failure to prevent’ offences are also allowing us to tackle tax crime in new and innovative ways, with CCO applying to businesses of all shapes and sizes and all business sectors, giving it the potential to be used in a range of investigations.

Naturally, people’s minds may jump to professional and financial services which, of course, are relevant. In truth, though, the scope of CCO is far broader with industries such as haulage and warehouse services, software developers and many more in scope. Put simply, any third party that provides assistance or a service which results in an offence being committed against HMRC’s functions could be considered a facilitator. Historically, where some investigations may have stopped at the customer or facilitator level, we can now hold the whole organisation to account for not doing what was reasonable to stop criminality occurring.

The Joint Money Laundering Intelligence Taskforce

It’s not just within individual organisations that we are seeing change. The CCO is complementing and supporting an increasingly sophisticated approach to tackling fraud more broadly. Working through sector specific forums, such as the Counter Fraud Banking Forum and the Counter Fraud Insurance Forum, we are building much stronger and practical links with the private sector. This is an approach that we will look to expand in other areas. Perhaps more important is how HMRC and the private sector have worked together to create a tax evasion focused sub-group of the well-established Joint Money Laundering Intelligence Taskforce (JMLIT).

Launched in 2019, the JMLIT Tax Evasion Expert Working Group meets regularly and consists of tax and fraud experts from HMRC, the National Crime Agency (NCA) and 12 of the largest UK banks. This public-private partnership provides the resource and scope to collaboratively work on tax evasion and wider illicit finance trends, improving our real time picture of risk and source intelligence for intervention opportunities.

The group aims to reflect HMRC’s highest priority risks from across various directorates and teams, including organised crime, illicit finances, anti-money laundering supervision, enablers and offshore evasion. The key outputs are risk indicator educational products (in the form of NCA Amber Alerts) which are

published by the NCA and UK Finance to help identify both upstream and downstream intervention opportunities through collaborative approaches to risking and insight. As of September 2020, the group has published products on Missing Trader Intra Community fraud, Common Reporting Standard avoidance and payroll company fraud.

International efforts

International cooperation is key in tackling the most complex tax crime risks. Increasingly, fraudsters are creating intricate, deliberate and artificial webs of transactions using the banking system, property purchases, corporate structures and other methods to obscure beneficial ownership, such as trusts and powers of attorney. They mix domestic with international methods using foreign exchange businesses, pre-paid cards, complex structures and transaction chains, and trade or service-based approaches. Tax crime is not confined to international boundaries and therefore nor can our response be.

Back in November 2017, the UK hosted the Organisation for Economic Co-operation and Development Forum on Tax Crime in London. I was delighted to be asked to present on the UK's approach to tackling enablers of criminality, the need for international cooperation and to explain how the CCO would help us to do that. In his closing speech at the forum, Simon York, director of HMRC's Fraud Investigation Service, emphasised the international call to action.

> 'Tax evasion is a serious issue. As well as the harm it causes to society, we know that it is closely linked to money laundering, organised crime, corruption and terrorist financing. This Fifth Forum is a central part of how we put in place the cooperation and international responses that are needed to tackle these threats.'

This forum led to the creation of a new global alliance of tax administrations called the Joint Chiefs of Global Tax Enforcement. Known as the J5, the group sees us working with our counterparts in the US, Australia, Canada and the Netherlands to combat international and transnational tax crime and money laundering. Crucially, it has a specific focus on those who enable international tax crime.

More data has been shared between the J5 agencies in one year than the previous ten combined. We are collaborating on a significant number of investigations, some

of which involve incredibly sophisticated international enablers of tax evasion. Earlier this year, our teams came together as part of a coordinated day of action centred around a financial institution and its intermediaries, which are suspected to have helped taxpayers to hide their income and assets around the world. The suspected tax evasion and money laundering in the UK alone is to the tune of £200 million.

Our commitment to international cooperation is clear and the CCO has been a vital tool in supporting that. I have personally trained and upskilled the investigators of other J5 tax authorities in the application of the CCO, with some even considering whether similar legislation would be possible in their jurisdiction.

If your organisation hasn't already considered the implications of the CCO, I would urge you to conduct a risk assessment – one of the key reasonable prevention procedures in the government guidance. Even if you've completed a risk assessment or put in place some procedures, now would be a good time to review them, update that assessment and satisfy yourselves that they remain fit for purpose.

For further information, on the CCO see: bit.ly/30Z37yu.