

Enablers, facilitators and non-preventors of offshore tax evasion

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Tackling tax evasion was a hot topic during the 2015 UK election. Buoyed by its success at the polls and the strength of public opinion, the UK government recently announced four consultations as part of its publication: [Tackling Evasion and Avoidance](#).

- a new criminal offence for offshore evaders
- civil deterrents for offshore evaders
- **civil sanctions for enablers** of offshore evasion
- a new **corporate criminal offence for failure to prevent** the facilitation of evasion

The last two piqued our interest and are particularly relevant to anyone who works in or is associated with the finance industry.

The key words here are: "enabler" and "failure to prevent". Whilst the purpose seems clear, i.e. criminalising offshore tax evasion, HMRC in its wisdom, is sending more than a warning shot across the bows of our finance industry.

If you work in finance you will need to ask yourself if:

1. you could be an enabler
2. your organisation could be liable for failure to prevent the facilitation of evasion.

The tests are set out in the consultation documents [here](#).

Anyone unfamiliar with the workings of the offshore world could be forgiven for thinking that HMRC has recently stumbled on a spate of scandalous and nefarious activities. The examples cited by HMRC are simplistic and frankly a little insulting. However they are worth reading if only to see how far these offences could stretch.

Essentially, HMRC looks to criminalise (1) those who assist or enable, and (2) those who fail to prevent it happening. The former generally requires intention and knowledge; the latter can be committed by omission, i.e. a failure to maintain proper systems and checks within the organisation.

So far so good.

The papers take the liberty of illustrating five examples of offshore evasion cases where **enablers** are involved. Self-interest, and that of our trusted local legal friends and colleagues, led us to be drawn to example 4: Paula (it runs across both papers). In a

nutshell, the scenario is that a Guernsey lawyer in a Guernsey partnership has assisted Paula, an Australian resident in the UK since 1970, in total secrecy, to set up a network of companies meaning that Paula has never contributed to UK taxes. HMRC's conclusion being that the lawyer in Guernsey **actively** and **deliberately** assisted Paula to evade tax and, consequently, the Guernsey partnership would be criminally liable and subject to civil penalty.

We just don't get it. We don't get what in total secrecy means: is it (a) not disclosing to HMRC or any other interested party that he or she has been instructed by Paula to set up a network of companies, and in doing so running the risk of breaching their own professional codes of conduct, or (b) is the HMRC implying dramatic middle of the night cloak and dagger activity of knowingly assisting with tax evasion (which in such an event, Guernsey has its own robust money laundering sanctions)? Is the expectation now that Guernsey lawyers must advise their clients on UK tax matters and explore to the nth degree the potential UK tax implications of acting on the clients instruction or risk facing criminal and/or civil sanctions? In our view, that always has been and firmly remains the job of their UK financial affairs advisors.

The mention of Channel Islands also draws our attention to example 2: John. HMRC will have us believe that there are individuals like Michael (John's business contact) who would take the money in a suitcase to the Channel Islands and deposit it in John's bank account, and, more importantly, that there are banks on our Islands that accept stuffed suitcases.

Our view is that these proposals are populist and headline grabbers, crafted to fuel the anti-tax haven (commonly confused with offshore) feeling. There is no real context to these discussions and no recognition that AML regulations in many of the major offshore jurisdictions are already well established and applied with greater rigour than a number of well-known onshore jurisdictions.

Does HMRC truly believe that chasing such cases is going to raise the big ticket fines to help fill the coffers of the UK government? We are well aware of the strong political agenda at play here. Our concern is that any project (however ill-conceived) driven by HMRC in the current climate would draw sufficient support to move it along to the next stage. We await the next instalment with interest.

If you would like to comment on any of the consultation papers, **please note that the DEADLINE is 8 October 2015.**

For more information please contact:



Nin Ritchie

Group Partner *† // Guernsey

t: +44 (0) 1481 734273 // **e:** nin.ritchie@collascrill.com