

Tackling offshore tax evasion: Update

April 2016

In October 2015 we [reported](#) on the UK's consultation papers outlining HMRC's proposed two pronged approach to tackling facilitators and enablers of offshore tax evasion. Since then [summary responses](#) have been published, draft legislation is now in train, the civil limb (at least) got a brief mention in the 2016 Budget and just last week David Cameron reiterated the UK's commitment to introducing a new corporate criminal offence of facilitating tax evasion.

It may be opportune (possibly opportunistic) to point out that at this stage, as far as we know, the Mossack Fonseca scandal has not unearthed any companies in Guernsey, identified only 8 companies in the Isle of Man and 39 companies in Jersey. It did however reveal 148 Mossack Fonseca connected companies in the UK.

Progress?

Our focus remains on the proposed criminal and civil legislation aimed at tackling the facilitators and enablers of tax evasion.

The 2016 UK Budget announced the Government's intention to introduce new civil penalties for enablers of tax evasion and draft legislation, within the Finance Bill released on 24 March 2016, which is now making its way through Parliament.

Draft legislation for the new corporate criminal offence has been published and a further consultation document is expected in early 2016. It is anticipated that it will be finalised before the introduction of the new international automatic exchange of information arrangements in 2017.

Impact of the consultation?

The consultation has been helpful in narrowing and clarifying the scope of the new sanctions.

Corporate Criminal Offence

Companies will be criminally liable if an associated person facilitates the tax evasion by another. The term "*agent*" has now been ditched and replaced with "*representatives*". Corporations will be liable for all persons who provide services on their behalf (employees, contractors, service providers) but will not be liable for those acting entirely independently.

Civil Sanctions

The consultation has clarified application of the rule against double-jeopardy, in effect individuals or businesses convicted for the corporate criminal offence of failing to prevent tax evasion should not also be subject to the civil sanction for the same offence. However, HMRC made it clear that much will depend on the specific facts of each case whether the rule is at risk of being breached.

What's new?

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It is now clear that those seeking to reduce their risk of prosecution and penalty must have "*reasonable procedures*" to prevent those representing them from criminally facilitating tax evasion. It would seem that the UK Government wishes to incentivise firms to monitor the actions of their representatives.

Proposed Penalties?

As with any incentive (or deterrent), its effectiveness is often linked to the level of likely penalty that can be imposed should a breach occur.

The civil penalty is proposed to start at 100% of the tax evaded and deductions may be applied in certain circumstances. In addition, the enabler may be publicly named (and shamed) where the tax evaded exceeds £25,000 or the enabler has deliberately assisted 5 or more UK tax evaders during a 5 year period (although how the 5 evaders will be calculated is yet to be determined).

Resources?

A little bird has told us that HMRC has an initial budget of £15 million to get tackling offshore tax evasion under the proposed new offences and penalties. This indicates that, initially at least, the limelight is likely to fall on headline-grabbing high profile cases.

What to do next?

Good corporate responsibility is a hot topic that is not going away anytime soon. Firms operating offshore are well advised to get ahead of the game by implementing appropriate procedures.

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