Fairhurst

Accounting for your potential

Failure to prevent tax evasion to become a criminal offence

A major focus of the UK government in recent years has been the elimination of tax evasion. The introduction of accelerated payment notices (APNs) in 2014 has helped collect HMRC over £3bn. The 'Individuals & Small Business Compliance Unit' and 'Wealthy & Mid-sized Business Compliance Unit' specifically target underpaid VAT. These new teams have already carried out many investigations which have netted an additional £3.3bn for HMRC in underpaid VAT.

The crackdown is further intensifying. The government intends that there should be no place to hide for tax evaders and so is increasing the severity of sanctions.

New measures under the Criminal Finances Act 2017, expected to be implemented in September, will mean that businesses will be liable for criminal prosecution if they fail to prevent tax evasion by its employees and agents - even when senior management were uninvolved or unaware of the acts. These measures apply to both UK and non-UK tax.

However, according to law firm Pinsent Masons, 76 per cent of UK businesses are unaware of the new laws. Even 67 per cent of large businesses, which are more likely to be caught out due to their complex operating structures, are unaware of the new offences. Businesses therefore need to plan ahead in order to minimise the risk of criminal prosecution and implement robust prevention policies and procedures. Such a prosecution could lead to an unlimited fine and badly tarnish a business's reputation - even leading to its closure, especially for those who operate in markets such as financial services, accounting or the legal sector. Jason Collins of Pinsent Masons also stated that "Businesses which pay large sums to consultants, do cross-border business, engage casual or itinerant labour and contractors, or handle goods and services where organised fraud is a risk are at high risk of falling foul of the new legislation."

Businesses should carry out a risk assessment by reviewing the business operations (as well as suppliers and contractors) to find out where there is high-level risk, although even low-level risk may still have the potential to facilitate tax evasion. A business must have 'reasonable' procedures in place, which are cross referenced against the guidance published and also any sector specific guidance.

HMRC does not anticipate businesses to become paranoid, but does expect them to implement reasonable prevention procedures in order to protect themselves from the risk of prosecution. Businesses need to make themselves aware of the new legislation by 31st

August. Although the final HMRC guidance is not yet available, there is an updated draft on www.gov.uk found by searching ‘tackling tax evasion’.

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