

Corporate Criminal Offence Guidance Note

In 2017 a new piece of legislation was introduced, applicable to partnerships and companies, whereby falling foul of the requirements can result in an unlimited penalty being imposed in addition to criminal conviction.

Corporate Criminal Offence (CCO) legislation

With effect from 30 September 2017, companies and partnerships of all sizes (“**relevant body**”) across all industries may be criminally liable and subject to an unlimited financial penalty where they fail to prevent an “**associated person**” from facilitating tax evasion (in the UK or with regard to foreign tax).

The legislation applies to all UK taxes, including Income Tax, National Insurance Contributions, VAT, Capital Gains Tax, and Corporation Tax.

An **associated person** is anyone providing services for/on behalf of the partnership or company. Within the medical profession/practice, this could include:

- Employees and off payroll contractors (locums) including doctors, consultants, nurses, secretaries and administrators
- Suppliers of goods and services including pharmaceutical and medical equipment companies
- Intermediaries such as insurance providers and payroll providers
- Trustees (in the case of incorporated charities)

To whom does the legislation apply?

For the purposes of LMCs and their constituent practices, the CCO legislation applies to LMCs and practices when operated through:

- Limited companies or
- Incorporated and unincorporated partnerships

The CCO legislation applies to companies and partnerships (and by virtue of joint and several liability, the partners), but does not apply to individual employees and practitioners regarding their own personal tax affairs. However, employees will be regarded as “associated persons” as explained above. Therefore, the onus is on the relevant body to ensure compliance with the CCO legislation. To assist relevant bodies mitigate any exposure, HMRC has published six guiding principles which are explained in their [publication](#): *Tackling tax evasion: Government guidance for corporate offences of failure to prevent the criminal facilitation of tax evasion*.

Tax evasion in the medical profession

HMRC is acutely aware that tax evasion does take place within the medical profession. HMRC’s understanding of this was exemplified in 2010 when HMRC launched an “amnesty” called the Tax Health Plan, whereby medical professionals were provided with the opportunity to disclose understated income. The amnesty confirmed HMRC’s suspicions as the campaign raised revenues in excess of £64m for HMRC.

Following the amnesty, HMRC has continued to investigate the affairs of medical professionals, many of which have been highlighted in the public domain. HMRC has access to a variety of information which it can use to cross reference against the tax returns of a corporate entity or partnership. HMRC investigations have identified common areas of concern including:

- Medical practices not declaring all of the income collected in respect of the provision of additional services e.g. charges in respect of the provision of medical information for insurance purposes (in terms of claims and getting cover) and fees paid for the provision of a death certificate.

- Under-declaring benefits associated with enticements from the pharmaceutical industry, for example, benefits received for prescribing specific medication, equipment, or procedures.
- Medical professionals declaring only their income from NHS work, and omitting some/all of the income attributed to private treatments/consultations. In particular, income from foreign patients treated privately and income from issuing private prescriptions.
- Medical professionals incorrectly claiming expenses for the use of home as an office without seeing patients there and/or claiming the cost of travel from home to the practice/hospital/clinic.

With regard to the CCO, however, a medical practice does not itself need to have benefitted from the tax evasion in question. A CCO investigation could be commenced into the affairs of a medical practice as a result of HMRC's routine enquiries and investigations into various matters, for example:

- A routine PAYE enquiry could highlight that there has been tax evaded by an employee/contactor which was facilitated by an associated person of the medical practice or
- HMRC's VAT enquiry into the affairs of third-party supplier could highlight that the evasion of tax by the supplier was facilitated by a medical practice.

Ensuring compliance with the CCO legislation

Companies and partnerships are required to:

- (i) Identify who its associated persons are – *i.e.* who are the people performing services for and on behalf of the relevant entity who could expose it to a liability under CCO legislation?
- (ii) Consider the specific tax evasion risks for each of the identified associated persons. What could each of them do to facilitate tax evasion, and what are their opportunities, motives and means?
- (iii) Put in place “**reasonable and proportionate**” prevention procedures to combat the risks identified at stage (ii).

Ensuring compliance with the legislation does not rest on the shoulders of one person, rather the legislation calls for compliance to be embedded within the entity in its entirety (for example: employees, contractors and suppliers), and for it to be embraced at the top level and cascaded down throughout the workforce.

Impact of the CCO on practices which are merging and/or taking over others

Businesses regularly combine to form larger entities to facilitate, for example, the retirement of one or more principals, or to benefit from trading at scale. The medical profession is no different.

It is crucially in the interests of both the acquiring entity (in the case of companies) or the partners considering a new combined practice (in the case of partnerships) to undertake adequate due diligence to confirm that the entity being acquired or combined with has considered the CCO legislation effectively since 30 September 2017.

This is pivotal because the acquiring company or the reformed partnership will inherit the CCO obligations and liabilities of its predecessor (in the case of partnerships, the existing partners will be jointly and severally liable for any liabilities). Where tax evasion is being investigated, HMRC's powers allow them to assess the position going back 20 years. With the CCO legislation coming into effect in September 2017, any tax evasion that has taken place since can be enquired into for years to come.

Defences

CCO offences are 'strict liability' offences, meaning that practices operating through companies and partnerships could be found liable under the CCO legislation despite not having the intention of facilitating tax evasion.

By way of example, a locum could collude with an employee of a practice, such that the locum asks for his/her emoluments to be paid into an overseas bank account, to enable him/her to conceal that income from the tax authorities. In this case, tax has been evaded by the locum, with the evasion being facilitated by the employee of the practice (i.e. an associated person). Here, the practice could be liable to unlimited penalties in addition to a criminal conviction, despite not having had any intention of assisting anyone to evade tax and not having benefitted from the tax evasion in question.

As mentioned earlier, to have a statutory defence in respect of this legislation, companies and partnerships must either:

- (1) be able to evidence consideration and implementation of reasonable and proportionate prevention procedures i.e. procedures designed specifically to prevent associated persons from committing or aiding tax evasion, or
- (2) be able to demonstrate that it was unnecessary for them to have implemented reasonable and proportionate prevention procedures.

Contact Us

Since the introduction of the Criminal Finances Act in 2017, our dedicated Tax Governance team has supported many businesses across a range of sectors to achieve proportionate and robust compliance that is tailored to their needs. We can assist LMCs and practices in undertaking a risk assessment and implementing reasonable prevention procedures, in accordance with HMRC's guiding principles. If you have any questions or would like to discuss any of the above in detail, please contact a member of the Mazars team directly:

Aude Delechat-Patel

Director - Head of International Corporate Tax
Disputes & Tax Governance

Aude.Delechat-Patel@mazars.co.uk

+44 (0) 758 099 9004

Kam Gill

Senior Manager - Tax Disputes & Tax
Governance

Kam.Gill@mazars.co.uk

+44 (0)75 8074 5532

Mazars, Tower Bridge House, St. Katharine's Way, London E1W 1DD

www.mazars.co.uk