



Failure to prevent the facilitation of tax evasion – What you need to do now

As the enforcement date for the new corporate offence of failure to prevent the facilitation of tax evasion is fast approaching, companies are having to take steps to demonstrate that they have ‘reasonable procedures’ in place.

What is the offence?

From September 2017, organisations will be strictly liable if any of their associated persons (including employees) criminally facilitate the evasion of tax either in the UK or overseas. The only defense mechanism companies will be able to use is demonstrate that they have reasonable procedures in place to prevent the facilitation of tax evasion. The deliberately wide scope of the offence will require organisations to have oversight of the risks associated with their customers, employees, third parties and over their downstream activities.

How might your organisation be impacted?

Customers

You may be liable if an associated person of your business knowingly assists a customer in evading tax in the UK or overseas.



Employees

An organisation may be liable for actions carried out by its staff both in their interactions with customers/third parties and in relation to the organisation’s own tax affairs (e.g. PAYE arrangements)



Third Parties

An organisation may be liable for its engagement with third parties such as suppliers, distributors and contractors.



If that third party provides services on your behalf, they may be considered an Associated Person and therefore you will be liable if they facilitate the evasion of tax.

What are reasonable procedures?

The definition of reasonable procedures is modelled on the UK Bribery Act:

- Carrying out a **risk assessment** to identify the specific risks of facilitation.
- Implementing procedures which are **proportionate** to the specific risks identified in the risk assessment.
- Performing **due diligence** of staff, third parties and clients in proportion to the risks that they pose to the business.
- Ensuring that there is a **top level commitment** within the organisation to preventing the facilitation of tax evasion.
- **Communication (including training)** to employees and third parties to ensure procedures are embedded and understood.
- Carrying out **ongoing monitoring** and review of procedures and risk assessment.

Having a clear view of the potential risks across the business

*Key to demonstrating reasonable procedures is carrying out a **risk assessment** to evidence how you have considered the risks of facilitating tax evasion across the business and the mitigating controls.*

For many organisations outside the financial service sector, existing controls may be sufficient to mitigate those risks but, without carrying out a risk assessment, it will be very difficult to evidence to HMRC that you have reasonable procedures in place.

Leveraging your existing economic crime framework

An **integrated approach** to managing economic crime risk across your organisation can help **increase the effectiveness** of your control environment.

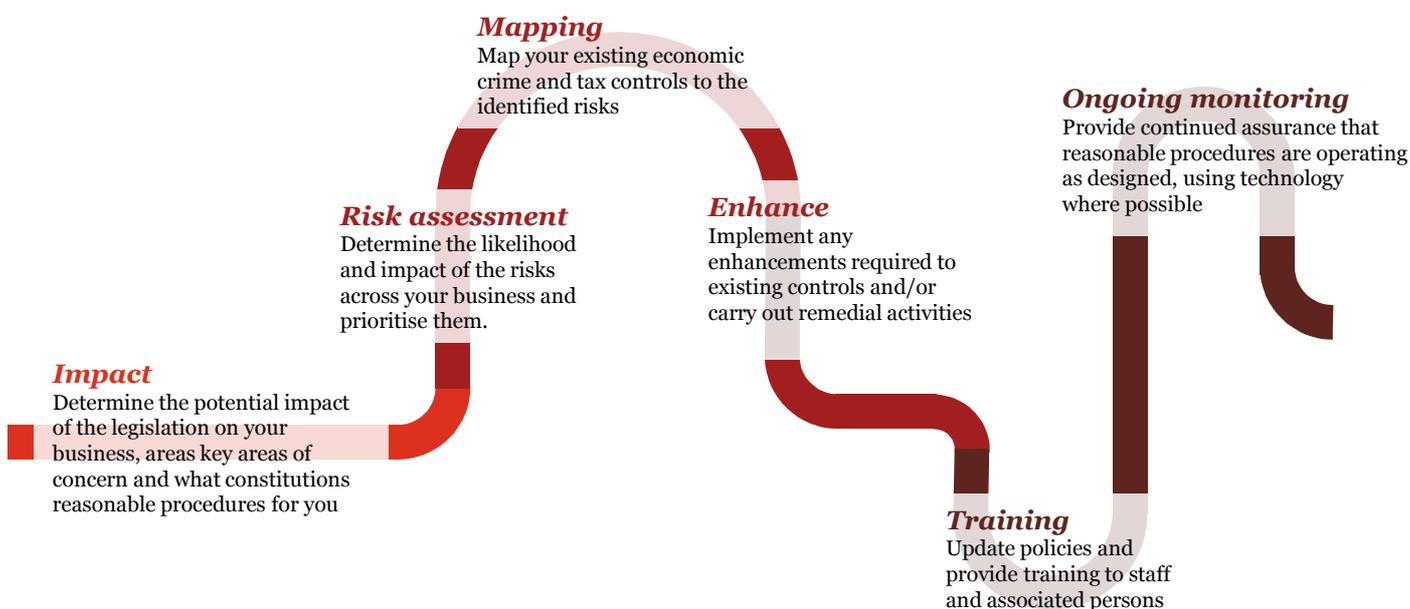
Identifying **areas of overlap** between the risks of facilitating tax evasion and the other areas of your economic crime framework, including the risks of bribery, corruption and fraud, allows you to leverage existing controls thus **driving efficiencies** within your compliance operations.

Efficiencies can also be gained through using your existing risk assessment methodology – For example, that used in completing a bribery risk assessment – To document your risk assessment under the new offence. It may also be a good opportunity to revisit your entire compliance framework to determine if you are successfully managing your economic crime risks.



How can PwC help?

Our team combines experts in tax, financial crime and the wider legal context, offering you the option of working under legal privilege if needed. By bringing together these different skill sets, we can help you to embed a proportionate and sustainable approach to compliance within your business and support you every step of the way to reasonable procedures.



Who to contact

If you would like to know more about this subject and how PwC can help your organisation meet its future obligations under this proposed legislation, please contact:



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