Criminal Finance Act Policy

The Criminal Finances Act ("CFA") comes into force on 30 September. One of the Government's aims, in introducing the new Act, is to make it much easier to convict companies where their employees have facilitated tax evasion. The CFA is designed to ensure that companies look more closely at their employees' actions and to take responsibility for ensuring that their supply chain is operating compliantly.

Whilst the legislation is not specifically targeted at the temporary labour market there is no doubt that it will be a useful tool to deal with any tax evasion activities linked to the sector.

What exactly is the new offence?

There are two new corporate criminal offences in respect of the facilitation of tax evasion:

- Failure of a company to prevent the facilitation of UK tax evasion by an associated person; and
- Failure of a company to prevent the facilitation of non-UK tax evasion by an associated person.

These are strict liability offences meaning that if there has been the facilitation of tax evasion by a company's employee then the company will automatically be liable for failure to prevent the offence unless the company can prove it took steps to prevent the offence (see later for more details).

When might a recruitment company be guilty?

Firstly, there must have been a tax evasion offence committed by somebody in the supply chain. There have been many reports of contractors using non-compliant schemes to evade tax. HMRC publishes spotlights on its website on what it considers to be non-compliant schemes (e.g. loan schemes, annuities, jobs board schemes) and may well use the CFA as part of its armoury to tackle the schemes.

Secondly one of the recruitment company's consultants (or other employee) must have facilitated the offence. This would need to involve more than simply allowing a contractor to use a scheme. The employee must have known that the scheme was set up to evade tax. Where a scheme advertises '90% take home Pay' or similar then HMRC would no doubt argue that the consultant

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must have known. Where a referral fee has been paid to a consultant then this provides a clear motive for a dishonest referral.

Finally, the recruitment company must have failed to take steps to prevent its employee from facilitating the tax evasion. It will be no defence for the recruitment company to simply say that it was unaware of the referral or the fact that the scheme was non-compliant. To have a defence the recruitment company must show that it has taken positive steps to prevent any facilitation.

As a result of the CFA, recruitment companies will need to carry out effective supply chain checks and to monitor referrals (including PSCs) made to third parties by their recruitment consultants.

So, what can recruitment companies do to protect themselves?

Although the CFA imposes strict liability, there is a "reasonable prevention procedures defence" (like the "adequate procedures defence" contained under Section 7 of the 2010 Bribery Act) available to recruitment companies.

HMRC has published draft guidance as to what may constitute "reasonable prevention procedures" which sets out six guiding principles:

1. Carry out a risk assessment - to identify the specific risks of facilitation e.g. use of offshore schemes.
2. Put in place procedures to help manage risks identified in the risk assessment - e.g. make it a requirement to know the identity of accountants/providers used by all contractors and use internal controls to restrict use of non-compliant suppliers.
3. Make sure those in positions of responsibility are committed to preventing any breaches of the facilitation of tax evasion - there is a strong incentive to invest in preventative procedures and to adopt a zero-tolerance culture towards the facilitation of tax evasion.
4. Carry out due diligence on staff and suppliers - most agencies already do this and have PSLs in place. Adherence to the PSL is even more important and this should be monitored by top management.
5. Communicate and train staff - training on the dangers of referring to those not approved and/or the acceptance of incentives should be rolled out alongside new policies and employment contracts.
6. Carrying out ongoing monitoring and review of procedures and risk assessment - risks can evolve and change over time e.g. - keep an eye on HMRC spotlights.

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The starting point is to carry out a risk assessment. This will be the cornerstone of any "reasonable prevention procedures" defence. Recruitment companies should be able to say how their contractors get paid. They should be clear on the following:

- Are there any contractors paid through offshore schemes?
- Do any contractors use providers that artificially inflate expenses to reduce tax?
- Do any contractors use providers that promote schemes highlighted by HMRC as tax avoidance (see HMRC spotlights)?
- Do our consultants know our policy on referral fees?
- Do our consultants stick to the PSL?

A recruitment company should be able to identify how a contractor is remunerated. Payments to umbrella companies or other providers should be logged. Where a payment is made to a PSC the recruitment company should take note of the accountant supporting the PSC. Full due diligence checks on providers and accountants must continue and should include a review of payslips and expenses policies/procedures.

<u>What happens if a recruitment company is found guilty?</u>

The sanction is a fine. It is not clear what the level of fine may be, but it will clearly be linked to how culpable a court feels the recruitment company has been.

<u>How can Core Finance Management help?</u>

Core Finance Management is well known within the industry for being a compliant provider. We are audited by two well known industry leaders, Professional Passport and Prism. If you have any further questions, please contact your account manager on 0800 211 8121.

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