

CORPORATE CRIMINAL RESPONSIBILITY POLICY

Failure To Prevent The Facilitation Of Tax Evasion

Who is covered by this Policy?

This Policy applies to Michelmersh Brick Holdings PLC, all Michelmersh entities (collectively “**Michelmersh**”) and for work undertaken in all jurisdictions.

Criminal Finances Act 2017

Corporate Offences for Failure to Prevent Facilitation of Tax Evasion

The Criminal Finances Act 2017 creates two new strict liability corporate offences of failing to prevent the facilitation of tax evasion. The offences come into force on 30 September 2017.

The offences can only be committed by corporates or partnerships (including entities within Michelmersh) but not individuals. The penalties for conviction for one of the new offences include unlimited financial penalties for Michelmersh as well as the obvious reputation damage.

The Act in fact creates two new corporate offences of failure to prevent the facilitation of tax evasion in the UK and overseas. The combined effect of the two offences is to criminalise three types of behaviour:

- (a) A UK based body failing to prevent those acting on its behalf (which may include employees, subsidiaries, agents, sub-contractors and representatives, known as the 'associated persons') from criminally facilitating UK tax evasion;
- (b) A non-UK based body failing to prevent those acting on its behalf from criminally facilitating UK tax evasion; and
- (c) A UK based body failing to prevent those acting on its behalf from facilitating tax evasion overseas where such evasion is criminal under local law.

The Strict Liability Corporate Offences

Failure to Prevent Facilitation of UK Tax Evasion Offences

A relevant body will commit an offence if an associated person facilitates a tax evasion offence in the UK, when acting in the capacity of that association. The terminology of this offence can be broken down as follows:

- (a) A “**relevant body**” means a corporate or partnership, whether incorporated or formed in the UK or overseas. The offence cannot be committed by individuals.
 - (b) An “**associated person**” means a person that provides services for or on behalf of the relevant body. This can include, for example, employees (who are presumed to be providing services), subsidiaries, agents, sub-contractors and representatives. It does not matter whether the associated person is in the UK or overseas.
 - (c) “**Facilitation**” in the UK is drafted very widely and includes where the associated person intentionally aids, abets, counsels or procures a UK tax evasion offence by another person.
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- (d) A “**UK tax evasion offence**” means the offence of intentionally cheating the public revenue or being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of a tax.

In order for criminal liability to pass up the chain to the relevant body, then both the associated person and the taxpayer must be criminally culpable. No offence will be committed if either the associated person has no knowledge of the tax evasion or, alternatively, the taxpayer's failure to pay is innocent or accidental.

Failure to Prevent Facilitation of Overseas Tax Evasion Offences

This offence effectively works in the same way as its domestic equivalent, explained above. The principal differences are:

- (a) A “**relevant body**” must be either incorporated or formed in the UK, or carrying on business from an establishment in the UK, or must have an associated person located in the UK at the time that the act of facilitation of overseas tax evasion occurs.
- (b) “**Facilitation**” and also the “**foreign tax evasion offence**” must be criminal offences both in the foreign country in question and in the UK if the conduct happened there, i.e. there is “dual criminality”.

Michelmersh's Position on Facilitating Tax Evasion

Michelmersh has a zero-tolerance approach to the commission and facilitation of tax evasion.

Any staff member found to have facilitated tax evasion will be subject to disciplinary proceedings which may result in dismissal.

Any other associated person (e.g. contractors etc. performing services for or on Michelmersh's behalf) that engages in the commission or facilitation of tax evasion will be immediately terminated.

The Defence of Reasonable Procedures

The offences are subject to a defence of 'reasonable' prevention procedures. Michelmersh must be able to prove that it had in place such procedures, meaning procedures designed to prevent associated persons from facilitating tax evasion offences, as it was reasonable in all the circumstances to expect it to have in place.

HMRC has published non-prescriptive Guidance on those procedures, with businesses advised to take a risk-based approach. The guidance follows a similar format to that published in respect of the adequate procedures defence to the Bribery Act 2010 corporate offence.

In line with the HMRC guidance, Michelmersh has:

- (a) carried out its own risk assessment to identify the areas of the business at greatest risk of the tax evasion offences and agreeing appropriate mitigation action;
- (b) published a memo from its board outlining the new offences and confirming that Michelmersh takes a zero-tolerance approach to the commission and facilitation of tax evasion;
- (c) updated Michelmersh's relevant policies and terms of business to refer to the new offence;

- (d) outlined the necessary due diligence and monitoring required for relationships with associated persons, and added safeguards enabling the termination of those relationships in the event that tax evasion is identified;
- (e) scheduled training for relevant Michelmersh personnel, in order to further advance a culture of zero tolerance on tax evasion; and
- (f) updated its Terms and Conditions with suppliers, contractors and employees as appropriate.

Reporting a Suspicion of Tax Evasion

If you have any suspicions regarding potential tax evasion, you should report it to your line manager, the HR Manager, any Board Director or the Company Secretary.

Further Information

Further information can be found in HMRC's Guidance Note at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642714/Tackling-tax-evasion-corporate-offences.pdf

Alternatively, please contact the Company Secretary.