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ASSOCIATION OF FINANCIAL MUTUALS

TAX GOVERNANCE UPDATE

JUNE 2024

AGENDA

01
BACKGROUND

02
BRR+ & CCM RELATIONSHIP

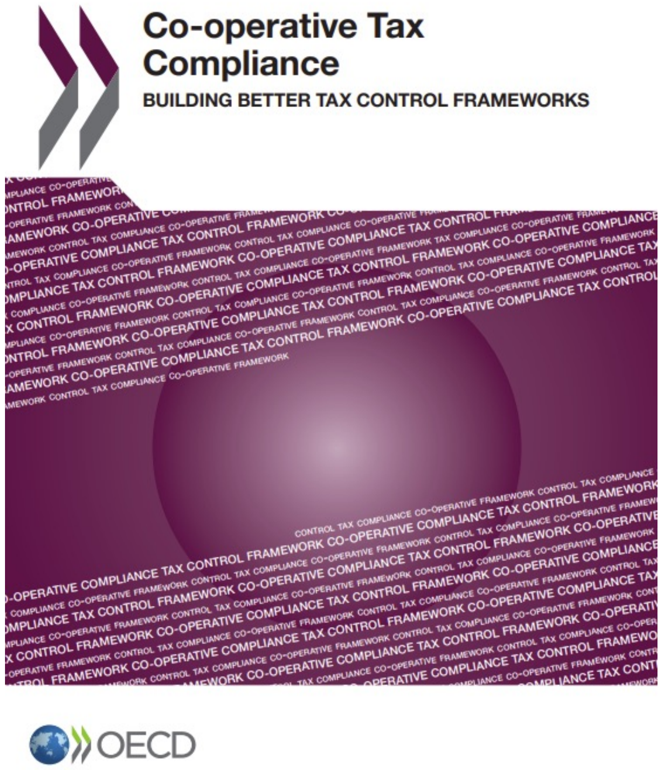
03
CCO UPDATE

04
Q&A

01
BACKGROUND

BACKGROUND

OVERVIEW



Essential building blocks of a TCF

Six principles or essential building blocks were identified. They are consistent with existing enterprise-wide models of internal control such as COSO, and can be summarised as follows:

- **Tax Strategy Established**: This should be clearly documented and owned by the senior management of the enterprise, i.e. at Board level;
- **Applied Comprehensively**: All transactions entered into by an enterprise are capable of affecting its tax position in one way or another, which means that the TCF needs to be able to govern the full range of the enterprise's activities and ideally should be embedded in day to day management of business operations;
- **Responsibility Assigned**: The board of an enterprise is accountable for the design, implementation and effectiveness of the tax control framework of that enterprise. The role of the enterprise's tax department and its responsibility for the implementation of the TCF should be clearly recognised and properly resourced;
- **Governance Documented**: There needs to be a system of rules and reporting that ensures transactions and events are compared with the expected norms and potential risks of non-compliance identified and managed. This governance process should be explicitly documented and sufficient resources deployed to implement the TCF and review its effectiveness periodically.
- **Testing Performed**: Compliance with the policies and processes embodied in the TCF should be the subject of regular monitoring, testing and maintenance.
- **Assurance Provided**: The tax control framework should be capable of providing assurance to stakeholders, including external stakeholders such as a tax administration, that tax risks are subject to proper control and that outputs such as tax returns can be relied upon. This is accomplished by establishing the entity's "risk appetite" and then by ensuring that their Risk Management Framework is capable of identifying departures from that with mechanisms for mitigating/eliminating the additional risk.

LARGE BUSINESS REGULATIONS

THREE KEY REQUIREMENTS IN THE UK

- A suite of measures aimed at ensuring that large corporates take responsibility for their behaviours, their internal tax governance and approach to their compliance obligations. Measures include:
  - Requirement to publish a UK Tax Strategy (introduced by FA2016)
  - Senior Accounting Officer regime (introduced by FA2009)
  - Corporate Criminal Offences legislation (regarding the facilitation of tax evasion (introduced by CFA2017)
  - HMRC Business Risk Review (refreshed as BRR+ in October 2019)

- SAO; part of Finance Act 2009
- Tax Strategy; part of Finance Act 2016
- CCO; part of Criminal Finances Act 2017

All included in HMRC's Business Risk Review.

02

BRR+ & CCM RELATIONSHIP

BUSINESS RISK REVIEW +

- The 'new' BRR process took effect in October 2019. The resulting risk rating, which is based on various criteria, determines the level of attention that HMRC will focus on that business.
- In summary, large businesses will be assessed under three behavioural headings, namely: Systems & Delivery, Internal Governance and Approach to Tax Compliance. Under these headings a total of 24 'low risk indicators' have been identified against which businesses will be measured. The greater the number of these behavioural indicators that a business is unable to demonstrate, the higher the risk rating that will be assigned to the business.
- Ultimately a business will be categorised into one of four categories:
  - Low risk,
  - Moderate risk,
  - Moderate high risk or
  - High risk.
- The greater the risk rating a company is awarded, the more scrutiny they can expect from HMRC.
- It is clear for this that HMRC wants more sight of businesses' approach to tax risk management, together with their supporting processes and documentation (such as SAO reviews, process testing and risk registers).

Benefits of low risk

Interactions with HMRC will, in general, be driven by customers rather than HMRC.

Enquiries instigated by HMRC will be the exception rather than the rule.

HMRC will trust low risk businesses to manage their tax affairs without the need for intervention, meaning reduced costs associated with such interventions for the business.

Businesses will have more certainty over their tax liabilities.

Low risk businesses will only be subject to BRR+, once every 3 years (the regularity of these reviews for the three higher risk ratings will be more frequent, with HMRC's factsheet stating that this will usually be annually).

03
CCO UPDATE

THE CRIMINAL FINANCES ACT 2017

> “…the legislation seeks to bring about a ‘cultural change’ in how prevention procedures over tax evasion are embedded in an organisation… from top level commitment downwards.”

CORPORATE CRIMINAL OFFENCES - HMRC ACTIVITY

HM Revenue
& Customs

FOI release

Number of live Corporate Criminal Offences investigations

Updated 5 February 2024

As at 1 January 2024:

- HMRC currently has 11 live CCO investigations - no charging decisions have yet been made
- a further 24 live opportunities are currently under review - to date we have reviewed and rejected an additional 94 opportunities
- these investigations and opportunities span 10 different business sectors and sit across all HMRC customer groups - sectors include software providers, labour provision, accountancy and legal services and transport
- we've always been clear that these numbers will go up and down as part of the normal criminal investigation process - not every opportunity will lead to an investigation and not every investigation will lead to a charge
- in some cases, following investigation we have been satisfied with explanations provided and have not established deliberate facilitation - but those investigations have found other tax and regulatory offences that are being pursued
- as we've always said, investigations are not the sole measure of success – the legislation was introduced to drive behavioural change and for organisations to put in place preventative procedures that reduced the opportunity for facilitation to occur in the first instance

HMRC – Common questions

1. How did XXXX decide to approach their risk assessment to deal with their obligations under CCO legislation?
2. What steps did XXXX take in order to identify your organisation's associated persons?
3. What steps does XXXX take in order to identify risks?
4. How frequently does XXXX review their CCO risk assessment and update their risk register? Also, who within XXXX is responsible for doing this, and what is their position within the organisation?
5. What mandatory training has XXXX provided to all of your existing members of staff and also any subsequent new members of staff about CCO and the legislation?
6. What happens if the mandatory training is not completed by a member of staff?

HM Revenue
& Customs

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HMRC – Specific review of client's CCO position

Monitoring & Review:
Following your initial CCO review and risk assessment completed in 2017/18, I note no further review of CCO, your risk register or procedures was conducted until 2023.

As highlighted in BDO's summary document, regular monitoring and review of your CCO risk assessment and risk register must take place, ensuring you follow up on any issues / recommendations identified from the review.

Whilst I do not consider a period lapse of 5 years between 2018 and 2023 as being 'regular' in terms of this process, I can see from BDO's document that they have recommended you conduct such a review at least every 2 years going forward.

This is more in line with my expectations for this obligation. Can you confirm you will be dealing with the future monitoring and reviewing of your CCO procedures, risk register and general obligations at least every 2 years going forward please, or sooner should you identify any instances where you would be required to self-report a failure to prevent the facilitation of tax evasion?

CORPORATE CRIMINAL OFFENCES

BUSINESS AS USUAL

- We are seeing consideration of CCO Risk being ‘Business As Usual’
- Expect CCO clauses in Supplier contracts, Warranties and Indemnities and other contractual terms
- Also, in the M&A world, we are seeing CCO clauses included in deal documentation and forming part of transaction due diligence

Warning tax evasion policy can foil M&A deal at 'eleventh hour'

By Rachel Mortimer

Inadequate compliance with the taxman's rules on preventing tax evasion can foil an M&A deal "at the eleventh hour", a business advisory firm has warned.

Accountancy and business advisory firm BDO said it had witnessed firms addressing the risk of corporate criminal offences as "business as usual", warning non-compliance could stop an acquisition or merger in its tracks.

04
Q&A

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