Taxpayer responsibilities

Tax fraud is draining our very depleted economy. Monty Jivraj reminds business owners of their duties to help prevent it.

Multinational tax avoidance is happening all around us – and it is draining public services of vital funding when they need it the most. HMRC and UK law enforcement agencies continue to lead the fight against all types of tax fraud, and the UK government is attempting to prop up our struggling economy during exceptionally testing times. But what duty do businesses have when preventing all types of tax fraud?

Sadly, some businesses chose to abuse the helping hand that feeds them through the financial turbulence caused by Covid-19. The government granted more than £98bn across the self-employed income support and coronavirus job retention schemes – yet there are currently 29 criminal investigations underway to recover over £15m for fraudulent claims paid across both.

In the Autumn Statement on 17 November 2022, chancellor of the exchequer Jeremy Hunt revealed that £6.7bn had been lost through fraud over the past 12 months. That £6.7bn could have been funnelled into the NHS, housing, social care, education, or any other service in desperate need of financial support.

Mr Hunt also announced that tax rates will rise from 2023, a measure intended to promote stability, growth, and public services against the current backdrop of recession and rising inflation. This news will cause upset among many individuals and businesses across the country, and many will voice their disdain for the decision. However, if you are a business owner who is unhappy with rising taxes, you have the power to make a change.

HMRC continues to lead the global fight against multinational tax avoidance and is cracking down on all types of tax fraud.

To avoid further tax rises, businesses must also do their bit – namely, by thoroughly researching all the people and companies with which they have an association (whether as supplier or customer and regardless of their profession – we will refer to them as 'business partners' hereafter) to ascertain their trustworthiness.

Key points

- Businesses must research all their business partners to ascertain their trustworthiness.
- Business owners must know the potential implications of working with non-compliant business partners.
- The offences of corporate failure to prevent the criminal facilitation of tax evasion or avoidance' (tinyurl.com/2p836u39) came into force in 2017.
- Businesses and tax authorities must work together to ensure the smooth functioning of the tax system but they each have their sphere of activity, limits, and responsibilities.
- It falls upon every citizen to report fraud to HMRC to help identify tax evaders and avoiders and force them out of the market – a process which requires the assistance of taxable businesses.

What are your responsibilities?

Ultimately, you are responsible for assessing your business partners thoroughly. This effort involves conducting a robust research process into your suppliers, contractors, service providers, customers, and other third parties *connected* to your business.

This process will enable you to make informed decisions about your partnerships and ask questions based on the information provided to identify fraud threats. You must also ensure that this information is valid, which can be done by searching in a company registry, HMRC VAT validation checks or using a third-party cloud-based anti-money laundering (AML) solution.

What are the penalties for non-compliance?

As a business owner, you must know the potential implications of working with non-compliant business partners. Not conducting thorough research could put you at risk of legal action if anyone you work with is acting fraudulently.

HMRC has the right to block the deduction or exemption of direct or indirect taxes vitiated by fraud. This right also extends to any business or individual committing or aiding VAT fraud who 'knew or ought to have known' about it.

You may also be held personally liable as a company officer to penalties. The days of liquidating a business and not paying tax or other debts owed to HMRC without a comeback are over.

On 30 September 2017, the offences of corporate failure to prevent the criminal facilitation of tax evasion or avoidance' (tinyurl.com/2p836u39) came into force as part of the Criminal Finances Act 2017. Businesses that fail to prevent representatives acting on their behalf from facilitating types of tax fraud will be sanctioned.

Businesses will be sanctioned if they fail to prevent those who act for, or on their behalf, from facilitating tax frauds, including promoting them. These can be employees, agents, business partners, or service providers acting on your behalf.

As such, you must verify the information provided by any business partners you work with.

Spheres of responsibility

Even though businesses and tax authorities must work together to ensure the smooth functioning of the tax system, they each have their sphere of activity, limits, and responsibilities. The management and collection of taxes remain state tasks and can only be transferred to businesses if the transfer is in line with the principle of proportionality.

As a business owner, the crucial questions you must ask yourself include:

- Is this a 'real' business partner with a business profile and experience in the relevant industry?
- Are the company officers politically exposed persons or persons of interest?
- Are they a VAT-registered legal entity with a valid VAT registration number?
- Does the business partner, or its officers, have a track record of bankruptcy or solvency issues that might threaten the supply chain?
- Are you being asked to make third-party payments to an offshore account or alternative banking platforms?

In these cases, tax evasion and avoidance have become part of businesses' sphere of responsibility which all must meet as part of their day-to-day responsibilities (tinyurl.com/zmb4k6xm).

Why is thorough research so important?

Businesses' obligation to run extensive background checks on all their partners is vital for two reasons. First, it means they must collect and investigate information on matters that might benefit them to remain ignorant about; in most cases of tax fraud, businesses are negligent, wilfully blind, or actively complicit.

If a business is required to gather information, examine it, and ask pertinent questions, it becomes impossible for them to plead ignorance regarding the background of a business partner.

Secondly, this information-gathering process gives HMRC everything it needs. Experience over the past 25 years has shown that imposing research requirements on paper as a box-ticking exercise is not enough. You must devote adequate resources to monitor compliance, conduct sufficient research into your partners, and take reasonable steps to establish the business owner's identity.

What is at stake?

Combating different types of tax fraud is a primary concern of HMRC. Public bodies exist to improve the lives of the citizens they serve and considering the human impact of fraud helps them approach it in the way that is most meaningful to those citizens.

While the direct financial loss of fraud is borne by public bodies, behind every story of fraud, there are real-life individuals: families and communities whose lives have been impacted, or even destroyed, causing financial, physical, or mental damage. Opportunistic individuals and organised crime groups target public bodies, including programmes designed to assist vulnerable people, with little regard for the victims of that fraud.

> "Opportunistic individuals and organised crime groups target public bodies, including programs designed to assist vulnerable people."

All too often, victims of fraud already face the most challenges in their day-to-day lives. It falls upon every citizen to report fraud to HMRC to help identify tax evaders and avoiders and force them out of the market.

This process requires the assistance of taxable businesses, which play an integral role in the tax system. They are not only 'helpers' in collecting tax, but also crucial persons in the smooth functioning of the tax system and in supporting the state to prevent fraud – that's why enforcing the research process when selecting business partners is crucial.

Equally, to prevent other businesses and individuals from being exposed to the threats that fraudsters pose, HMRC and other law enforcement agencies must act on such reports as timely and effectively as possible.

What are your duties?

As a business, you must act in good faith and take every reasonable measure asked of you to ensure you are not participating (knowingly or unknowingly) in tax fraud.

If there are indications of an infringement or fraud, you may be obliged to enquire about your business partners to ascertain their trustworthiness. Although, this depends on the circumstances of the case.

When determining your specific research duties, you should focus on whether your partners operate an average circumspect and diligent business comparable to one activity within the field.

Focusing on the area of responsibility and the proximity of proof, you must take information regarding tax frauds committed by a business partner into account if this information becomes part of your sphere of influence – for example, when checking the validity of their VAT number in the event that it is hijacked.

After undertaking an overall assessment of a business, it is HMRC's right to refuse or quickly remove businesses from the VAT register under the quick reaction mechanism if there is an inherent risk of tax fraud. They will take this action where there is sound evidence that the business has not conducted thorough research and there is potential for fraudulent activity.

When are you obliged to act?

If you have performed all the necessary research and spotted significant indicators of infringement or fraud, you might be wondering what next steps to take. You will need to further ascertain your partner's 'trustworthiness', and I recommend considering the following points to do so:

1) Companies House is responsible for storing information on all limited companies operating in the UK. It is possible to check the details of a UK company on the Companies House website. For a fee, you can sign up for the Companies House monitoring system, which emails you every time a document is filed.
2) Always check the details of another EU company on the European e-Justice Portal (tinyurl.com/e-Justice).
3) Review and accurately cross-check all company information. It must match all relevant business information or documents provided to you, such as directors, addresses, shareholders, automatic worldwide Sanction and PEP screening. For a fee, you can use a third-party cloud-based anti-money laundering (AML) solution designed to help businesses maintain compliance and verify the information.
4) Always check a business partner's international bank account number (IBAN) to make sure that the code numbers are correct.
5) Inspect your business partner's sort code number to ensure it is correct.
6) Check VAT numbers for companies within the UK before and after the transaction.
7) Check VAT numbers (tinyurl.com/EUVATValidation) for companies within the EU before and after the transaction.
8) Always review the principal business address of the partner.
9) Take notes of meetings with your business partners.
10) Visit the business partner's website and perform location web searches.
11) If a business partner provides identification or company documents in a language other than English, you should use an accredited translator to translate them into English.

When is the research process complete?

You must conduct reasonable enquiries into your partners. However, if these enquiries show that the facts are economically justified, then you have completed all the necessary research and can proceed with the partnership.

If there is no evident economic justification, you must refrain from concluding a contract with this fraudulently acting business or risk being sanctioned. This process helps to drive tax evaders, promoters, and avoiders out.

This obligation must be consistent with the principle of proportionality. If the fraudulent conduct is easily visible to a business, it is reasonable – but if the business concludes the contract notwithstanding such visible facts, they risk sanctions.

When entering a contract with a partner you're aware is partaking in fraudulent conduct, you are free to refrain from concluding the contract, thereby impeding the tax evader from obtaining profits from it.

“If you ought to have been aware of tax evasion or avoidance at the specific date of entering the contract, then you should have known about the fraud committed by your business partner.”

If you ought to have been aware of tax evasion or avoidance at the specific date of entering the contract, then you should have known about the fraud committed by your business partner.

In the case of long-term business relationships, the rights of deduction and exemption are not exercisable in the period following the time when you gained direct knowledge of the fraudulent conduct.

Governmental responsibilities

While it is your duty as a business owner to conduct thorough research into your business partners, I would like to reiterate that this responsibility is not yours alone.

HMRC and law enforcement agencies must also fulfil their duty of uncovering, investigating, and sanctioning those that are found to be acting fraudulently. Moreover, they must do this as promptly as possible to prevent further damage to the economy and ensure these vital funds are channelled into our struggling public services.

All types of tax fraud are severe. Every business is an active target for fraudsters, but they do not always consider this when conducting their activities. What's more, many find it hard to define, measure and articulate the problem without guidance. ●

Author details

Monty Jivraj is a chief executive officer of Pioneering Solutions Limited and can be contacted at PSLTD1@outlook.com.

FIND OUT MORE
On Taxation.co.uk

- Reasons to protect the term 'tax adviser': tinyurl.com/3sxkmjxf
- Crossing the line from avoidance to evasion: tinyurl.com/22rkan3n