SFO to scrutinise tax records in bribery probes

The recent announcement by Richard Alderman, director of the Serious Fraud Office (SFO) that the SFO plans to scrutinise accounts of companies and individuals facing charges under the Bribery Act 2010 to check if they have claimed tax deductions on known bribes heightens the anti-bribery and corruption compliance risks for all accountants. Such companies found to have claimed deductions for known bribes can be referred to HMRC for an additional charge of false accounting.

As reported in the Financial Times of 5 September 2011, Mr Alderman who also happens to be a former HMRC director expressed the following views:

“We want to see what evidence there is of the identification of bribes . . . companies therefore need to appreciate that we are going to be asking for the relevant parts of their tax calculations.”

Although some legal commentators have questioned how this approach will work in practice given that companies who are intent on concealing corrupt payments can disguise the invoices for such payments to make them look legitimate, it is important for members in practice to appreciate the interlink between bribery and corruption offences and the primary offences under the Proceeds of Crime Act 2002 (POCA).

To illustrate this interlink, if a client has been involved in corrupt payments and subsequently faces a charge under the Bribery Act 2010, it is possible as part of the investigation that the tax records will come under scrutiny leaving the accountant who prepared such returns facing the risk of investigation for the primary offence of entering into an arrangement to facilitate money laundering under section 328 of POCA as the tax savings made will now be considered as criminal property.

The only defences under POCA to a primary offence are that a SAR has been filed or there was a reasonable excuse for not filing a SAR. In order to rely on either defence, there must have been compliance with the requirements of the Money Laundering Regulations 2007 to identify the issue in the first place. This includes having adequate risk assessment measures in place, applying a risk based client due diligence policy, keeping adequate records of client due diligence and transaction related documents, undertaking regular training and if necessary filings SAR report.