

# Risk management



# Liability under Legislative Decree 231

Managing risk through the adoption of organisation models granting exemption from liabilities.

*Legislative Decree n. 231/2001 provides for the administrative liability of legal persons and is applicable to all entities having legal personality and to associations, including those without legal personality.*

Legislative Decree n. 231 provides for significant **penalties**, both interdictory (such as the disqualification from carrying out the business activity and the revocation or suspension of authorisations and licences or the prohibition to bid to work with the public administration or to advertise products and services) and financial (up to 1.5 million Euro, in the most serious scenarios), in case directors, executives and employees commit one of the offences specified, in favour of or for the benefit of the Entity.

The criminal judicial authority is in charge of investigating and prosecuting violations of Legislative Decree 231.

**Tax offences and, fraudulent income tax return preparation through the use of invoices for non-existent operations and VAT frauds**, will soon give rise to administrative liability.

An Entity may **not be held liable** if:

- It has adopted and effectively implemented an Organisation, Management and Control Model (231 Model) apt to prevent the criminal offences above;
- It has set up a Supervisory Board in charge of overseeing the implementation of the Model.

Thanks to our team of professionals with multi-disciplinary skills, having the legal (civil and criminal law), tax and administrative, organisational and IT expertise, our service offer is based on the best practices in the market and can effectively address all aspects related to the development and management of 231 Models.



# Our solutions

## Definition and update of 231 Model

We support our clients in formalising and updating the 231 Model in all its juridical and managerial components, through:

- The identification and evaluation of the areas at risk of crimes under Legislative Decree 231 being committed, for each corporate function;
- Mapping the sensitive activities, with the preliminary identification and evaluation of risk-mitigating measures;
- Comparative analysis of the existing measures and the best practices, also according to the Guidelines provided by the relevant industry associations (Confindustria, ABI – Italian Banking Association, etc.).

Thanks to our specific expertise, also in the design phase, we can assist Entities with the identification and management of the necessary “Action Plans” to implement and/or improve the areas identified during the ongoing monitoring activity.

## Support to the Supervisory Body

We assist the Supervisory Body with the performance of all its tasks, through:

- Specific audits aimed at assessing the correct application of control protocols defined by the Entity;
- Ongoing monitoring of the effectiveness and suitability of the Model;

- Timely reporting on amendments to the 231 regulation;
- Analysis of the potential significance of crimes newly introduced in the 231 regulation, for each entity.

Our qualified professionals can also act as Chairman or members of the Supervisory Body, guaranteeing autonomy, professionalism and independence.

## Training

We assist clients with defining training programmes aimed at directors, top managers and employees operating in risk areas, duly tailored basing on the specific objectives pursued by the Entity and on the type of addresses, through classroom sessions and the provision of up-to-date teaching materials.

## Management of tax risk

As mentioned above, the introduction of the tax crimes of fraudulent income tax return preparation through the use of invoices for non-existent operations and VAT frauds among the range of offences under the 231 regulation makes it necessary - now more than ever before - to implement a 231 Model covering also tax crimes and the subsequent creation of a suitable corporate tax risk control and management system apt to guarantee an efficient prevention of tax crimes.

From an operational point of view, such crimes result also in (i) fraudulent accounting and (ii) self-laundering.

## Assessment of the suitability of the 231 Model

We assist our client with independently assessing their 231 Model, both in case they need to obtain an independent third party evaluation on their existing model and in case of litigations with the competent authorities.

## Typical protocols of the 231 Model:

1. the Code of Ethics;
2. the penalty system;
3. the delegation system;
4. the communication and training plan;
5. the specific procedures for sensitive areas at risk of crimes, with the implementations of control areas and relevant safeguards.

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