

Tesco announces Deferred Prosecution Agreement

April 6, 2017

It was announced last week that Tesco PLC's subsidiary, Tesco Stores Ltd, has finalised the terms of a Deferred Prosecution Agreement (DPA) with the SFO (subject to court ratification on 10 April 2017). The DPA concludes the SFO's two-year investigation into accounting practices in 2014 that left a £326 million hole in Tesco's accounts.

Under the agreement, Tesco is to pay a financial penalty of £129 million plus costs. The precise terms of the DPA will not be revealed until it has received court approval, so it is not yet known what discount Tesco received as a result of its cooperation. The standard discount is 33%, which is what ICBC Standard Bank received in 2015 in the first DPA to be concluded. However, the subsequent two settlements, with "XYZ Limited" in 2016 and Rolls Royce in January 2017, both involved a 50% discount for reasons including ability to pay and "extraordinary" cooperation. Tesco announced the discovery of the irregularities in September 2014, after a whistle-blower approached the newly appointed CEO, David Lewis, regarding improper accounting practices.

Unlike the fates of Rolls Royce executives, which are yet to be decided by the SFO, it was announced in October 2016 that three Tesco executives would face trial for fraud and false accounting in September 2017. This does not include the chief executive at the time, Philip Clarke, who was interviewed under caution as part of the investigation but is not to face further action.

It was also announced that Tesco has agreed with the FCA to a finding of market abuse in relation to a trading update published on 29 August 2014. The FCA is not imposing an additional financial penalty but Tesco has agreed to establish a compensation scheme for those who purchased Tesco shares and bonds on or after 29 August 2014 and still held those securities when the statement was corrected on 22 September 2014. It estimates the cost of this to be approximately £85 million (before interest). It is the first time the FCA has used its section 384 powers to compensate losses, rather than fine, which will be of interest to listed companies considering future self reports.

The total cost to Tesco of the penalty, the compensation scheme and associated costs is estimated to be approximately £235 million.

Contributors

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