

Criminal Finances Act

A briefing note

As you know on 30 September 2017, the UK Criminal Finances Act came into force (the CFA), along with its newly-focused corporate criminal offences of failure to prevent facilitation of tax evasion.





UK – Facilitation of tax evasion

The new criminal offence is intended to stop businesses ignoring activities of their staff and other representatives. The Act became effective on 30 September 2017.

In order for it to be deemed a criminal offence, the facilitator of tax evasion must have criminal intent. Businesses can have a defence if they put in place reasonable prevention procedures.

A risk assessment should be undertaken to identify gaps in the business's control environment. Businesses guilty of the offence face unlimited financial penalties not to mention public relations disaster.

Key requirements

There will be two new offences:

- The first will apply to all businesses wherever located in respect of the facilitation of UK tax evasion
- The second will apply to businesses with a UK connection in respect of the facilitation of non-UK tax evasion

There are two stages for the new corporate offences to apply:

- Criminal tax evasion – not avoidance – must have taken place; and
- A person or entity associated with the business must have criminally facilitated the tax evasion while performing services for that business.

If these two stages have taken place the business will have committed one of the new offences subject to the defence of 'reasonable prevention procedures'.

The offences will apply to both companies and partnerships.

Possible defence?

A business will have a defence if it can prove that it had put in place reasonable prevention procedures to prevent the facilitation of tax evasion taking place.

HMRC has published details of 6 guiding principles that businesses should take into account when implementing prevention procedures:

1. risk assessment
2. proportionality of risk-based prevention procedures
3. top level commitment
4. due diligence
5. communication (including training); and
6. monitoring and review

Cost of getting it wrong

A business that commits one of these offences could face an unlimited financial penalty, as well as ancillary orders such as confiscation orders or serious crime prevention orders.

Deferred prosecution agreements can be used which allow a prosecution to be suspended for a defined period as long as the organisation takes specified steps to mend its ways.

Unknown reaction of local regulators, however unlikely, to be viewed negatively with restrictions on license or possible revocation.



What is tax evasion?

Tax evasion is when a party is neither compliant with the law regarding their tax payments, nor with the spirit of the policy. This is distinctively different from avoidance and planning.

Tax Avoidance

Put simply, tax avoidance is the practice of minimising your tax liability through legal means

Tax Planning

The collective term used for practising tax avoidance to minimise your tax liability. Tax planning is being able to take advantage of the opportunities to minimise your tax bill in a way that is encouraged by parliament.

What you need to do

A starting point for businesses in assessing the proportionality and reasonableness of their anti-facilitation measures will be to consider:

- **opportunity** – ie. assess whether associated persons have the opportunity and capacity to facilitate client tax evasion;
- **motive** – ie. as an organisation, is the culture one in which associated persons are dissuaded from committing (alternatively incentivised to commit) a tax evasion facilitation offence?
- **means** – ie. does the organisation promote, offer or hold products and services that are capable of being abused, and what training and monitoring is given to those at risk (theoretically) of abusing those products and services?

How we can help

1. Form internal project team and produce project plan and timeline;
2. Undertaking a risk assessment to assess, identify appropriate stakeholders and prioritise a business's potential exposure. This may include reviewing high risk client instructions as well as general policy and procedures;
3. Implementing proportionate risk-based procedures, including formal policies and practical steps, which will be informed by the nature, scale and complexity of the business. We have developed a 7 point plan to assist businesses to form the required defence which can be tailored to specific needs of any business;
4. Demonstrating top level commitment from senior management to preventing persons associated with the business from engaging in criminal facilitation of tax evasion, which includes fostering an appropriate culture;
5. Ensure scalable approach to due diligence on staff, persons who perform services on behalf of the business and clients is undertaken;
6. Undertaking internal and external communication and training of employees, agents, associated persons and clients, on prevention policies and procedures to ensure that they are culturally embedded within the organisation; and
7. Post implementation review of processes and procedures summarised in a formal report.

For more information or to arrange a consultation please contact:



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