

Criminal Finances Act 2017 – What is it and what does it mean for your firm?

Background

Tax evasion is already a criminal offence in the UK. However, the Criminal Finances Act 2017 introduces a new **corporate** criminal offence of failing to prevent the facilitation of tax evasion. This creates two new offences: one related to UK tax evasion and one to foreign tax evasion.

UK Tax Evasion

There are three components to this and each must be satisfied:

- (1) Criminal evasion of tax by the taxpayer (either an individual or a legal entity). This means **dishonestly** taking steps with a view to, or being “knowingly concerned in” the fraudulent evasion of tax.
- (2) Criminal facilitation of tax evasion by an “associated person” of the relevant body who is acting in that capacity. An “associated person” is an individual or corporate body which performs services for or on behalf of the relevant body and includes agents, sub-contractors and employees. The offence requires deliberate, dishonest action; therefore assisting unwittingly (even if negligently) is unlikely to be caught by the offence.
- (3) Failure by the relevant body to prevent facilitation. A “relevant body” is defined as “a body corporate or a partnership”. This is a strict liability offence which means the relevant body will be liable unless it can show it had in place reasonable preventative measures, which is a defence (discussed below).

There is no requirement for the relevant body to have benefitted from the facilitation to commit the offence.

The Foreign Offence

Further to the above, the foreign offence also requires the following to be established:

- (1) **UK Nexus:** this is satisfied where the relevant body is incorporated under UK law, conducts business in the UK, and where the conduct which facilitated the foreign tax evasion takes place in the UK. An example would be an overseas company with a UK branch.
- (2) **Dual Criminality:** this is satisfied where the actions of the taxpayer and of the facilitator would be a UK offence and an offence in a jurisdiction with equivalent offences at the taxpayer and facilitator level. The offence cannot be committed where the act is not illegal in the UK.

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What Do You Need to Do?

You need to show that **'Reasonable Prevention Procedures'** were in place to comply with the new legislation. These can be summarised as follows:

- (1) **Risk assessment:** the relevant body must risk assess its exposure to facilitating tax evasion. It should analyse whether those who act for or on its behalf have the motive and means to facilitate tax evasion and how that risk can be managed.
- (2) **Proportionality:** prevention procedures should be proportionate to the risks the company faces, and this will depend on the nature and complexity of its activities. It should take into account the level of control the company has over a particular person and the proximity of the person to the relevant body.
- (3) **Top level commitment:** top-level management should be committed to preventing the facilitation of tax evasion. Those at the most senior levels should foster a culture where such actions are unacceptable.
- (4) **Due diligence:** a company should take a risk based approach to identify the risk of criminal facilitation by associated persons.
- (5) **Communication:** there needs to be effective training and policies on how concerns can be escalated e.g whistleblowing procedures, details of how advice can be sought.
- (6) **Monitoring and review:** The organisation must monitor and review its prevention procedures and makes improvements where necessary.

This legislation requires you to consider your existing policies and procedures as well as a review of the company's existing governance framework to ensure compliance. As with all legislation and compliance rules it is important that such prevention procedures are well documented and reviewed on a regular basis. A lot of legislation focuses on the accountability of the individual. Management needs to be aware of the following:

- What are my responsibilities under the new legislation?
- How can I discharge them?
- How are procedures implemented and documented?
- And how often are they tested?

Timeline

The Criminal Finances Act 2017 came into force on 30 September 2017. Therefore, companies must consider their internal policies and procedures to ensure they are compliant.

How we can help?

Lawson Conner has worked extensively with its clients to assess the impact of regulatory change. We would be delighted to discuss how we can help support your organisation to meet these new regulatory challenges.

"....an update of existing policies and procedures as well as an audit of the existing governance framework is key to reduce risks and ensure compliance"

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As a reliable and trusted partner, we create long term value by working with passion, expertise and unparalleled commitment to the industry and our clients.

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