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a fresh look at accountancy

Understanding the Criminal Finances Act 2017

The new Criminal Finances Act came into effect on 30 September 2017, making companies and partnerships criminally liable for failing to prevent their employees or associates from criminally facilitating tax evasion. Here, we outline the basics of the new Act, and highlight procedures you may wish to implement into your business strategy.

Getting to grips with the new Act

Under the Criminal Finances Act 2017, relevant bodies, such as companies and partnerships, who fail to prevent their employees, agents or other associated persons from criminally facilitating tax evasion will be subject to new criminal offences.

The Act makes it easier to prosecute companies and partnerships who refrain from implementing satisfactory corporate governance and preventative procedures. As such, companies, partnerships and relevant bodies are advised to take some time to get to know the new Act, and implement steps as soon as possible to help ensure that they do not fall foul of the rules.

Two new criminal offences

Under the Act, two new criminal offences have been introduced:

- **Domestic fraud offence:** This offence criminalises companies, partnerships and relevant bodies for failing to put into place reasonable prevention procedures to stop their employees, agents or associated persons from criminally facilitating tax evasion.
- **Overseas fraud offence:** The second offence criminalises corporations trading in the UK who fail to implement reasonable procedures to prevent their employees, agents or representatives from criminally facilitating tax evasion in another jurisdiction.

The government asserts that, whilst offshore tax evasion was the 'driving force' behind the creation of the new offences, the rules apply to tax evasion committed both onshore and offshore, and are applicable to all taxes.

Three stages to the offence

Under the Criminal Finances Act, there are three stages that apply to the criminal offence of the facilitation of tax evasion, both in the UK and abroad. The first two stages are already offences under existing criminal law:

Stage one

- A criminal act of tax evasion is committed by a taxpayer (whether they are a legal entity or an individual).

Stage two

- An employee, agent or other person associated with the company or organisation has criminally facilitated the tax evasion.

Stage three

- The organisation in question failed to implement reasonable measures to prevent the employee, agent or associated person from criminally facilitating tax evasion.

Where stages one and two have been committed, a company is deemed to have committed the new corporate offence. Under the Act, only 'relevant bodies' and legal entities, such as companies and partnerships, can commit the new offences. Throughout this factsheet we refer to relevant bodies as companies for ease of reference. The new corporate offences cannot be committed by natural (as opposed to legal) persons.

If a person is an employee, agent or other person who performs services for or on behalf of a relevant body, they can be defined as being 'associated' with that body. The offence is deemed to have been committed if facilitation offences are carried out by someone acting in the capacity of an associated person. An associated person can be either an individual or an incorporated body. The new third offence does not essentially alter what is considered to be a criminal act, but rather focuses on who is held accountable.

Making use of a sound defence

The government states that it 'recognises that any regime that is risk-based and proportionate cannot also be a zero failure regime'. As such, the onus is on the company in question to demonstrate that it has implemented adequate procedures within the business to protect against the criminal facilitation of tax evasion. If the company can prove that it implemented stringent procedures, prosecution will be 'unlikely'.

Whilst the new offences do not require companies to implement 'excessively burdensome' prevention procedures, they do require more than 'mere lip-service' to prevent employees from facilitating tax evasion. In some cases, it may be unreasonable to expect the company to have implemented stringent procedures. For example, ... may have examined the potential risks, and consi... In this instance, the costs of implementing ... be disproportionate in relation to the ri... companies, such as small and med... to make use of 'reasonable pre... HMRC.

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1. Risk assess...

Companies, part... the nature and ex... associates committ...

Organisations should a...

- Do employees have the ... facilitation of tax evasion?
- Why might the facilitation of ta...
- How might an employee criminally fa...

The government suggests that relevant bodies ... employees and those who provide services for them or ... and ask whether they have a motive, the opportunity and the means to criminally facilitate tax evasion offences and, if so, how this risk might be managed.

If employees have the ability to facilitate tax evasion, corporate bodies are advised to take steps to mitigate the risk. Companies are encouraged to continually monitor the evolution of the nature of the risks of the facilitation of tax evasion: for some, the risk may increase, whereas it may decrease for others.

2. Proportionality of risk-based prevention procedures

The second principle outlines the need for a company's reasonable procedures to take into account the nature, scale and complexity of its preventative activities. In order for prevention procedures to be deemed 'reasonable', they must be proportionate to the risks that are faced by the company. Some companies in specific industries may be exposed to more significant risks than others; in such cases, more complex measures may be required.

3. Top level commitment

The third principle urges the senior management of a company to ensure that they are committed to preventing their associates from criminally facilitating tax evasion. The government recommends adopting the stance that the criminal facilitation of tax evasion is never permissible.

Management may wish to adopt a 'zero tolerance' attitude towards ...t of facilitating tax evasion, outline the consequences ...heir employees and prohibit the use of services ...es who do not have reasonable prevention

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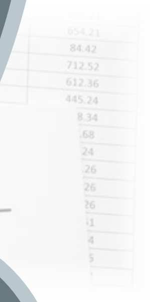

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Penalties for failing to prevent the ... vasion include unlimited fines and ancillary o... crime prevention orders or confiscation orders. ... relevant bodies may also be prevented from being awarded public contracts. Companies in the UK who fail to comply with the Act will be investigated by HMRC.

We can help you to implement effective procedures to help safeguard against prosecution for failing to prevent the criminal facilitation of tax evasion. Please contact us for more information.