

Criminal Finances Act Essentials

The Criminal Finances Act came into force on 30 September 2017. Part of the Act means that companies and partnerships can be criminally liable where they fail to prevent those who act for, or on behalf of, the business from criminally facilitating tax evasion.



There is however a potential defence against this offence by the business putting into place a system of reasonable prevention measures. The penalties for the offence include unlimited financial penalties and ancillary orders such as confiscation orders.

The Act doesn't change what tax fraud is, just who may be liable.

An overview

There are three stages that apply to both the domestic and foreign tax evasion facilitation offences. There are additional requirements for the foreign offence but we only cover the UK tax evasion offence here.

- Stage one: the criminal tax (including NIC) evasion by a taxpayer (either an individual or a legal entity) under existing law.
- Stage two: the criminal facilitation of the tax evasion by an 'associated person' of the 'relevant body' who is acting in that capacity.
- Stage three: the 'relevant body' failed to prevent its representative from committing the criminal facilitation act.

Stage one and two do not create any new offences. These are already criminal offences. Only a 'relevant body' can commit the new stage three offence, so it applies to incorporated bodies (typically companies) and partnerships, not individuals. The new offence is a strict liability offence which means that if stages one and two are committed, the relevant body will have committed the new offence (subject to claiming a defence).

So what is the offence?

The new offence created by the new rules is the failure to prevent facilitation of UK tax evasion offences.

A relevant body (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.

Meaning of relevant body

A 'relevant body' is subject to the new rules and this means a body corporate or partnership (wherever incorporated or formed).

And who acts in the capacity of an associated person?

A person (P) acts in the capacity of a person associated with a relevant body if P is:

- an employee of a relevant body who is acting in the capacity of an employee;
- an agent of a relevant body who is acting in the capacity of an agent (i.e. someone that has authority to act for someone else); or
- any other person who performs services for or on behalf of a relevant body who is acting in the capacity of a person performing such services (e.g. a subcontractor).

Is there any defence against such a charge?

It is a defence for a relevant body to prove that, when the UK tax evasion facilitation offence was committed, it had such prevention procedures in place as it was reasonable in all the circumstances to expect it to have in place or it was not reasonable in all the circumstances to expect it to have any prevention procedures in place.

'Prevention procedures' means procedures designed to prevent persons acting in the capacity of a person associated with a relevant body from committing UK tax evasion facilitation offences.

Sanctions under the Act

A relevant body guilty of an offence under these rules is liable a financial penalty, possibly unlimited.

So what does this really mean for my business?

What the law takes a long time to say is that there is a penalty for a company or partnership which fails to prevent facilitation of UK tax evasion offences by employees, agents or persons acting on the business's behalf.

To quote HMRC:

'The legislation aims to tackle crimes committed by those who act for or on behalf of a relevant body. The legislation does not hold relevant bodies to account for the crimes of their customers, nor does it require them to prevent their customers from committing tax evasion. Nor is the legislation designed to capture the misuse of legitimate products and services that are provided to customers in good faith, where the individual advisor and relevant body did not know that its products were intended to be used for tax evasion purposes.'

What procedures do businesses need to implement?

Part of the new rules requires The Chancellor of the Exchequer to publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing UK tax evasion facilitation offences or foreign tax evasion facilitation offences.

This has now been published by HMRC at [goo.gl/8GmyFY](https://www.gov.uk/guidance/goo-gl/8GmyFY)

This guidance explains the policy behind the new offences and is designed to help relevant bodies understand the types of processes and procedures that they can put in place to prevent associated persons from criminally facilitating tax evasion.

Six guiding principles

As can be seen, it is therefore important to follow the spirit of the law and apply the guidance properly. The guidance is designed to

be of general application and is formulated around the following guiding principles:

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitoring and review

HMRC make an interesting point that:

'The prevention procedures that are considered reasonable will change as time passes. What is reasonable on the day that the new offences come into force will not be the same as what is reasonable when the offence has been in effect for a number of years. The Government accepts that some procedures (such as training programmes and new IT systems) will take time to roll out, especially for large multi-national organisations. HMRC will therefore take into consideration the prevention procedures that were in place and planned at the time that the facilitation of tax evasion was committed.

At the same time the Government expects there to be rapid implementation, focusing on the major risks and priorities, with a clear timeframe and implementation plan on entry into force. In addition, HMRC expects reasonable procedures to be kept under regular review and to evolve as a relevant body discovers more about the risks that it faces and lessons are learnt.'

Doing nothing is clearly not an option.

So where does this leave us?

The rules are already operational, so whilst business owners needn't be having too many sleepless nights, policies and procedures need to be established sooner rather than later. The guidance gives some helpful pointers towards what is required, so there is no excuse for not grabbing the bull by the horns and getting the systems in place.

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