

Extract from ICAS Newsletter - Criminal Finances Act 2017

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From 30 September 2017 facilitating “corporate” tax evasion became a criminal offence under the Criminal Finances Act 2017 (CFA 2017). Corporate includes corporate bodies, partnerships and associates. The penalties can be severe.

The CFA 2017 is some 59 clauses and five schedules long. It covers a wide number of areas including:

- unexplained wealth removal orders
- disclosure orders
- changes to the anti-money laundering rules; civil recovery procedures and enforcement powers
- corporate offences of failure to prevent facilitation of tax evasion.

How is tax evasion defined?

UK tax evasion is defined in section 45 of the CFA 2017 very widely, but for these purposes section 45(4)(b) can be quoted, which states that tax evasion is “an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of tax”.

There is a fine line between “avoidance” and “evasion”: according to Denis Healy, former Labour Chancellor of the Exchequer, it is the thickness of a prison wall! However, criminal activities cannot be sanctioned, whether morally or by professional bodies.

The new rules also target employees and associates who knowingly facilitate or turn a blind eye to tax evasion, whether it takes place in the UK or overseas.

What counts as dishonesty?

The legislation on dishonesty already was very wide. It is generally accepted that it is the taking steps with a view to, or to be knowingly concerned in tax evasion that is the criminal offence. Those actions are not purged by the fact that no tax is successfully evaded. For example, evading tax for two years and then paying said taxes in year four does not mean that a criminal offence has not arisen.

HMRC has been both much more litigious and public in evasion cases. This can be expected to increase post 30 September 2017.

Six measures to put in place

Professional bodies have begun producing guidelines on these new rules, as of course have HMRC. Of particular note readers should take comfort from HMRC’s words that if “reasonable prevention procedures” are in place then criminal “prosecution is unlikely”. Just what these words actually mean is another matter.

The rules apply to bankers, accountants, solicitors as associated persons even if matters were structured during their regular course of work. So we all need to be aware of what is going on.

The HMRC guidance notes on this matter set out examples for low/medium risk; higher risk; dealing separately with examples of a car parts manufacturer and a bank.

HMRC wishes to see that there has been put in place in organisations:

1. risk assessment procedures
2. proportionality (of the procedures)
3. senior management's commitment to not being involved in evasion
4. due diligence procedures, effectively acted upon
5. communication and training within the organisation
6. monitoring and review functions.

Whoever lands with the above control burdens of this legislation will also have to make themselves aware of the rules – [the Facility of Tax Evasion \(Guidance About Prevention\) Regulations 2017](#) – which came into force on 30 September 2017.

Downloaded from HMRC's website on 20 October 2017

Corporations [which includes partnerships] could be prosecuted if they fail to prevent staff from criminally facilitating tax evasion under a new HMRC law that comes into effect this weekend.

It is already a crime to evade tax, or deliberately help another person to do so, but on behalf of the majority of taxpayers who pay what is due, the UK government is now taking an even firmer stance on corporate fraud in a move designed to drive a change in corporate culture.

From today, the Criminal Finances Act 2017 introduces two new criminal offences - one applying to the evasion of UK taxes and one applying to the evasion of foreign taxes.

The offences hold corporations and partnerships criminally liable when they fail to prevent their employees, agents, or others who provide services on their behalf from criminally facilitating tax evasion. This is a significant change from existing law under which they can only be found liable for criminally facilitating tax evasion if the most senior members of the organisation – typically the board of directors - are aware of the facilitation.

The Financial Secretary to the Treasury, Mel Stride MP said:

“Tax evasion is a crime and takes away from the money we need to fund our vital public services

“The vast majority of businesses play by the rules but we must ensure that those that don't are accountable for their actions.

“The new offences will ensure that companies doing business in the UK take reasonable steps to prevent their staff from facilitating tax evasion.”