

Criminal Finances Act 2017 - New Criminal Offence Requires Preventive Procedures

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Article By

[Katie L. Clark](#)

[Paul McGrath](#)

[McDermott Will & Emery](#)

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Thursday, October 12, 2017

The UK Criminal Finances Act 2017 (the Act) recently introduced a new corporate offence of failure to prevent the facilitation of tax evasion.

Under the new law, a corporate body or partnership may be criminally liable if it fails to take reasonable steps to prevent an “associated person” (which will include its employees) facilitating the commission of a tax evasion offence.

To Which Organisations Does the New Law Apply?

The scope of the new law is broad. It applies to facilitation of both of the following:

- UK tax evasion by a corporate body or partnership (wherever in the world that entity is incorporated or formed)
- Foreign (*i.e.*, non-UK) tax evasion by a corporate body or partnership either established or doing business in the United Kingdom

Why Is This Important to Employers?

Whilst the Act does not radically change the current law on what constitutes criminal tax evasion, it significantly increases the circumstances in which an organisation may be held liable.

This is due to the Act's broad definition of "associated persons", which is not limited to an organisation's senior officers. It includes employees, agents and other persons performing services for or on behalf of the organisation.

What Is the Potential Liability?

Beyond reputational damage and business disruption, failure to take reasonable steps to prevent the facilitation of tax evasion by employees and other associated persons could expose an organisation, on prosecution, to a significant fine.

Moreover, liability for the offence is strict. It is irrelevant whether the organisation knows that a tax evasion facilitation offence is taking place.

What Will Constitute Reasonable Procedures?

An organisation will have a complete defence to the new offence if it can show that it had in place reasonable procedures to prevent the facilitation of tax evasion by an associated person.

Similar to the defence of "adequate procedures" under UK anti-bribery legislation, this defence will ultimately be context specific and, if ever challenged, will require the organisation to demonstrate that it took all steps which it was "reasonable in all the circumstances to expect".

Government guidance indicates that such reasonable procedures ought to be influenced by six guiding principles:

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

What Should Employers Be Doing Now?

To the extent that steps haven't been taken already, organisations should put in place reasonable procedures now to prevent facilitation of tax evasion by employees and other associated persons.

From an employment perspective, this could include the introduction of a formal policy, communication from senior management and staff training.

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