

The Criminal Finances Act 2017 overhauls the UK anti-money laundering and confiscation regime and makes it much easier for authorities to prosecute tax evasion. This guide provides a general overview of the legislation for those who are new to the subject.

INTRO

AN INTRODUCTION TO UK LEGISLATION | DECEMBER 2017



Criminal Finances Act 2017

INTRODUCTION

The **Criminal Finances Act 2017** (CFA) gives new powers to law enforcement to recover the proceeds of crime and tackle money laundering, tax evasion, corruption and terrorist financing.

This helpsheet primarily focusses on the corporate offences of failing to prevent the facilitation of tax evasion.

WHAT IS THE CFA?

The CFA seeks to overcome difficulties in attributing criminal liability to corporates when their employees, contractors and other associated persons facilitate tax evasion by, for example, a customer or supplier. Under the legislation it is the corporate that is subject to prosecution without the need for prosecution of any individual.

Her Majesty's Revenue and Customs (HMRC) introduced the legislation to bring about a 'cultural change' in how prevention procedures over tax evasion facilitation are embedded within organisations.

OVERVIEW OF THE LEGISLATION

The CFA covers:

- ◆ corporate facilitation of tax evasion;
- ◆ unexplained wealth orders (UWOs) for politically exposed persons (PEPs) or those suspected of serious crime;
- ◆ seizure and forfeiture of the proceeds of crime including

moveable objects and bank accounts;

- ◆ time period extensions for the investigation of Suspicious Activity Reports (SARs);
- ◆ legal protections for regulated companies that share information about suspected money laundering;
- ◆ disclosure orders for money laundering investigations; and
- ◆ extension of the civil recovery regime in POCA to gross human rights abuses or violations overseas.

WHO DOES IT APPLY TO?

The legislation affects all relevant bodies (ie, corporate bodies and partnerships) regardless of size or sector, including non-UK organisations where, for example, they have:

- ◆ UK clients, or
- ◆ a branch in the UK, or
- ◆ employees who travel to the UK for business.

It also applies to charities.

HMRC has identified the legal, taxation and financial services sectors as particularly high-risk so these businesses need to look closely at how the legislation affects them.

CORPORATE OFFENCES

The CPA creates two criminal offences for corporations failing to prevent 'associated persons' (including staff) from facilitating tax evasion:

- ◆ the UK offence (s.45), and
- ◆ the overseas offence (s.46).

For the overseas offence there must dual criminality at both the tax evasion and facilitation

offences stages (ie, the acts must be criminal offences both in the UK and the overseas jurisdiction).

WHEN IS AN OFFENCE COMMITTED?

An offence of corporate facilitation of tax evasion is committed in the following circumstances:

- ◆ a taxpayer criminally evades tax; and
- ◆ an associated person acting on behalf of the corporation is guilty of knowingly aiding, abetting, counselling or procuring the taxpayer's tax evasion; and
- ◆ a corporate failed to prevent the associated person from committing the criminal act of facilitating tax evasion.

If you are ever in doubt about whether conduct falls within the scope of the legislation, always seek appropriate specialist advice.

REASONABLE PROCEDURES TO PREVENT TAX EVASION

HMRC has issued **guidance** to help organisations design reasonable procedures to prevent the facilitation of tax evasion. This is based around six principles modelled on s7(2) of the Bribery Act 2010:

1. top-level commitment
2. risk assessment
3. proportionality of reasonable procedures
4. due diligence
5. communication and training
6. monitoring and review.

Corporations in heavily regulated sectors may well feel they already have sufficient risk

and compliance processes in place. However, HMRC has made it clear that reliance on existing processes will not be sufficient to provide a robust defence. Tax evasion facilitation risks must be considered separately.

INTERNATIONAL CONSIDERATIONS

Corporations with branches in the UK and other jurisdictions need to be aware of the wide geographic scope of the legislation. For example, a US bank with a branch in the UK and a branch in the Far East may well be liable for prosecution if a facilitation offence takes place in the Far East branch, even without the knowledge or involvement of anyone in the US or UK.

THE RISKS OF NON-COMPLIANCE

The key risks arising from non-compliance with the legislation may include the following:

- ◆ criminal prosecution of the relevant body
- ◆ unlimited financial penalties
- ◆ ancillary orders such as confiscation orders or serious crime prevention orders
- ◆ public record of the conviction
- ◆ significant reputational damage and adverse publicity
- ◆ severe regulatory impact including potential loss of licence or restrictions imposed
- ◆ possible debarment from tendering for public contracts.

OTHER PROVISIONS

Unexplained wealth orders

UWOs require individuals whose assets are believed to be disproportionate to their known income to explain the origin of this wealth. UWOs are court orders following an application from enforcement authorities such as the Financial Conduct Authority (FCA), National Crime Agency (NCA), Serious Fraud Office (SFO) or HMRC and may be accompanied by an interim freezing order. The recipient is required to set out the nature of interest and how it was obtained. Non-responses are met with a presumption that property is recoverable. It is a criminal offence to make reckless or false statements with a maximum two-year prison sentence and fine.

In order for a UWO to be issued, the subject of the order must have property valued greater than £50,000 and law enforcement must have a reasonable suspicion that it was obtained illegally (unless the subject is an overseas politically exposed person).

Information sharing and super SARs

Regulated entities can pool intelligence and submit a super Suspicious Activity Report (SAR). If a regulated entity which is suspicious thinks that disclosure of the information they hold to another would help to formulate a richer intelligence package they can notify NCA of their intention to send out requests, potentially to multiple parties. Anyone party to the resulting joint disclosure is treated as satisfying the requirement to submit a SAR.

Further information requests from NCA

In response to a SAR, an NCA-authorized officer may give a further information notice to the person who made it, or any other person carrying on a business in the regulated sector, directing the person to provide further information in relation to anything contained in the original SAR.

Extension of moratorium period for consent SARs

If consent is refused during the seven-working-day notice period, a moratorium period of 31 days starts on the day notice of refusal is received, during which the activity may not be undertaken unless and until the moratorium period expires. If law enforcement agencies have taken no restraining action by the time the moratorium has expired then the activity in question may be continued. The court can approve extensions – in 31 day increments up to a maximum of 186 days – if they are satisfied that an investigation is being carried out and further time is needed.

FURTHER INFORMATION

Available from the [resources](#) section of our website:

- ◆ Money laundering and the proceeds of crime
- ◆ Bribery and corruption
- ◆ Adequate procedures to prevent bribery and corruption

Other resources

- ◆ [HMRC](#)
- ◆ [legislation.gov.uk](#)

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