



# Criminal Finances Act 2017

Failure to prevent the facilitation of tax evasion

**Audit / Tax / Advisory / Risk**

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## Could your organisation be affected? Yes it can

Any corporate entity (including partnerships) can be criminally liable under the Criminal Finances Act 2017 when its employees, contractors or any associated persons are seen to be facilitating tax evasion by a taxpayer, for example a client, customer or supplier.

The offence, effective since 30 September 2017, applies to all taxes and all organisations irrespective of their size or industry sector and non-UK companies will also be caught if the tax evaded is UK tax.

### **Has your organisation complied with the legislation?**

At Crowe, we work with our clients to ensure compliance with HMRC requirements and to protect them against these offences.

**See page 10 for more on how we can help or speak to one of our specialists for professional advice.**

A successful prosecution of an organisation could lead to an unlimited fine as well as the unwelcome public record and significant reputational damage.

# Low levels of awareness but HMRC start to get tough

HMRC's guidance stresses the need for organisations to assess the risk of being exposed to the facilitation of tax evasion by those providing services on their behalf. That said, it is surprising that in a survey carried out by HMRC in December 2018, **only 24% of respondents had assessed their risk and most did not have the risks formally documented.**

Regulated businesses such as law firms also face additional scrutiny and possible further sanctions from their regulatory body, as well as consequent reputational damage.

## Developments in 2019



The Law Society issues guidance emphasising the need for law firms to comply with the legislation and risks of not doing so.

HMRC introduces an online self-reporting facility for organisations to tell HMRC where they have failed to prevent the facilitation of tax evasion. This will give details about the criminal facilitation that the organisation failed to prevent and any tax evasion that may have taken place as a result.

HMRC confirms that it has commenced a number of criminal investigations in respect of this offence.

# What are the key elements under the office?

There are three:

1

Criminal tax evasion by an individual or legal entity - such cases are usually settled by HMRC accepting a monetary penalty by way of punishment (as well as the tax and interest due) so a successful prosecution is not needed.

2

Facilitation of the offence by an employee or other person acting on behalf of the organisation - for example aiding the tax evasion by the taxpayer.

3

The organisation is then automatically considered to have failed to prevent the facilitation of the tax offence, subject to reasonable prevention measures (see page 6).



## What prevention measures can organisations put in place?

An organisation can plead a defence that it has put in place reasonable measures, procedures and safeguards to prevent such facilitation of tax evasion. Prevention procedures must be reasonable in that it may be, for example, for a particular situation it was unreasonable to expect the organisation to have any such safeguards in place.

HMRC regards the following as examples of reasonable steps to prevent the facilitation of tax evasion.

-  **Step 1:** An initial assessment of the risk that the first two elements on page 4 could happen – the organisation should calculate, document and review potential exposure to the risk of any employees or associated persons engaging in activity which could help facilitate tax evasion.
-  **Step 2:** Have an executive commitment to foster an environment where tax evasion is not acceptable under any circumstances.
-  **Step 3:** Implement a training and education programme for employees (and possibly agents).
-  **Step 4:** Conduct risk assessments as part of a due diligence programme for individual projects, particularly in high risk industries or countries where tax evasion may be more prevalent.

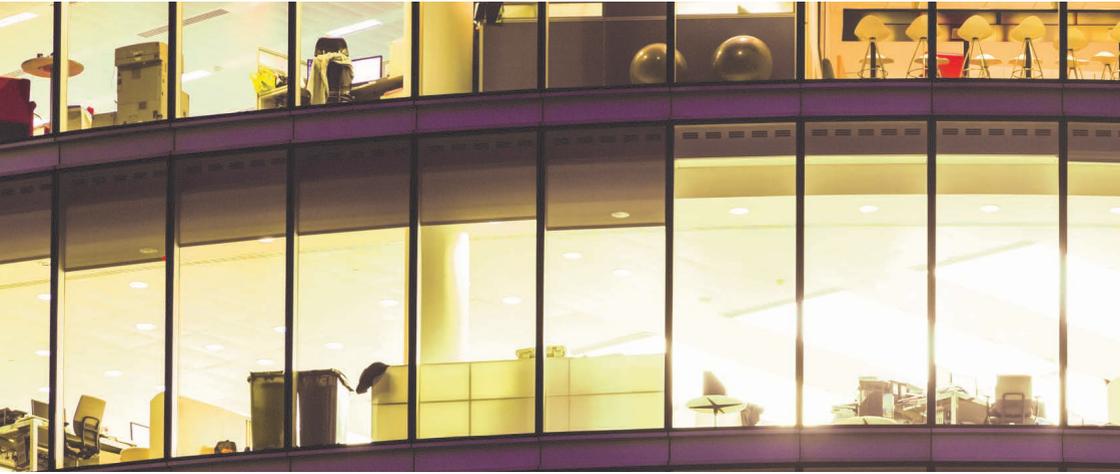
Step 1 is fundamental – an assessment of the potential exposure to the risk of any employees or associated persons engaging in activity, which could help facilitate tax evasion, plays an important role in demonstrating to HMRC that the company has actively sought to put reasonable prevention procedures in place.

The risk assessment:

- involves examining the organisation's operations and procedures to identify where there is vulnerability
- examines mitigating factors for each risk
- helps identify what further action or changes may be needed
- plays a vital role in demonstrating to HMRC that the organisation has actively sought to put reasonable prevention procedures in place.

Organisations should take steps immediately to ensure that their processes and controls are robust.





## **How can a breach occur and who is affected?**

There is real potential for organisations to incur criminal liability in relation to the activities of ‘associated’ persons, which may include contractors over whom they have relatively little control.

Organisations need to consider all the scenarios where a breach could occur. Some practical examples of this are mentioned on the next page.



An employee deliberately raises an invoice to a client's company overseas rather than a UK company so that UK VAT does not need to be charged.

An employee issues an invoice in the name of the company rather than its shareholder/director knowing that there is an intention to recover VAT and not to declare the benefit in kind.

A member of the HR team deliberately completes the paperwork for a person as a self-employed contractor rather than an employee subject to PAYE.

Large amounts of cash are transported overseas by an employee who is aware that the overseas workers being paid will not be declaring the income.

Advice is provided to a client by an employee on an overseas structure that can be used to shield income from HMRC, perhaps also using local overseas experts to create the structure.

An employee pays, or authorises payment, to a contractor in cash knowing that it will not be declared for tax purposes by the contractor.





## How we can help

At Crowe, we have worked with clients to ensure compliance with HMRC requirements and to protect them against these offences.

The measures span across all taxes and our specialists across tax and forensic accounting can provide a joined-up approach to support you in ensuring that your business is protected from both the financial and reputational risks associated with the new offence.

We can provide:

- the required risk assessments, combining our own practical experience with the advanced risk assessment techniques of Europe's premier research unit in this area.
- a scoring system, which assesses areas of vulnerability and the strength of existing controls, which mitigate that risk
- recommendations to address the deficiency where gaps are identified such as:
  - developing new policies and procedures
  - developing new training materials
  - making changes to your organisation's website
  - considering the need for any ongoing review and other follow up actions.

**For more information on the offence and the specialist advice we can offer please contact us.**



## Start the conversation

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## About Us

Crowe UK is a national audit, tax, advisory and risk firm with global reach and local expertise. We are an independent member of Crowe Global, the eighth largest accounting network in the world. With exceptional knowledge of the business environment, our professionals share one commitment, to deliver excellence.

We are trusted by thousands of clients for our specialist advice, our ability to make smart decisions and our readiness to provide lasting value. Our broad technical expertise and deep market knowledge means we are well placed to offer insight and pragmatic advice to all the organisations and individuals with whom we work. Close working relationships are at the heart of our effective service delivery.

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