



Compass Chambers

Criminal Finances Act 2017

Corporate responsibility post
Mossack Fonseca

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Government Policy

“Make it a crime if companies fail to put in place measures to stop economic crime, such as tax evasion”

- **Conservative Manifesto 2015**
- *“We will legislate this year to hold companies who fail to stop their employees facilitating tax evasion criminally liable” (12/4/16)*
- **Prime Minister’s statement to the House**

Tax loss

- HMRC estimate of the value of the hidden economy to UK tax gap in 2014/15 to have been £6.2 Billion, evasion £5.2 Billion and avoidance £2.2 Billion
- Public outcry against industrial scale tax dodging
- Big corporate names tarnished by tax cheat claims
- Professional advisors now targeted to help HMRC stem the flow of such losses

Change of Focus

- Taxpayer responsibilities unchanged
- Corporate advisors now targeted
- Responsibilities and liabilities extended to actions of corporate body's employees, agents or service providers

Offences

- Criminal Finances Act 2017
- S 45 - Failure to prevent facilitation of UK tax evasion offences
- S 46 - Failure to prevent facilitation of foreign tax evasion offences

New Offences

- Commission of an offence requires -
- A tax evasion offence to be committed
- An “associated person” of the relevant body to facilitate that evasion.
- That the “relevant body” failed to have in place “such prevention procedures as it was reasonable ... to expect” them to have in place.

S 45

- Directed at failure to prevent the facilitation of UK tax evasion
- Includes activity outwith the UK which is designed to achieve UK tax evasion
- Taxpayer evasion —activities which are already criminalised by the existing tax or common law

UK Tax Evasion Facilitation

- Concerned in fraudulent evasion of UK tax by another
- Aiding or abetting commission of UK tax evasion
- Art and part in being concerned in the fraudulent evasion of UK tax

Professional Advisors

- Examples of facilitation could occur in the provision of —
- Banking services , company formation , off shore trust formation or management , financial management or tax planning, transfer or shielding of funds, provision of legal or accounting services

Conviction

- For the offence to be complete no conviction in relation to evasion is required –
- of the Taxpayer
- of the Associated person



S 46

- Failure to prevent facilitation of foreign tax evasion offences
- UK incorporated body or partnership
- Carries on business, in whole or part, in UK
- Associated person carries out any conduct forming part of foreign tax evasion facilitation from within UK

Foreign tax evasion offence

- Requires conduct which-
- Amounts to an offence under the foreign country's law
- Relates to a breach of duty relating tax due there
- Would be regarded by a court in the UK as being knowingly concerned in the fraudulent evasion of that tax

Dual Criminality

- Requires —
- An offence involving a breach of duty relating to tax imposed by the foreign law which would be regarded in the UK as amounting to the fraudulent evasion of a domestic tax.
- No offence is committed if the taxpayer or associate's conduct is lawful in the UK even if it is criminal in the foreign country and vice versa.

Statutory Defence

- Both sections provide that it is a defence for the corporate body to prove that in all the circumstances it had in place -
- Such prevention procedures as was reasonable
- Or
- It was not reasonable to expect the body to have any prevention procedures in place

Statutory guidance

- S 47 of the Act provides for the Government to publish guidance to bodies as to steps they can take to prevent employees committing offences.
- Scope for regulatory or professional bodies to provide tailored guidance to members
- Training, supervision, risk assessment and management procedures are obvious first steps

Prosecution and penalties

- Unlimited fines on conviction on Indictment
- Statutory maximum on summary complaint (seems an unlikely forum)
- Deferred prosecution agreements available in England
- Self reporting an option
- As with Bribery Act – inevitable adverse publicity. Loss of licences, banned from public contracts

Action

- Identify your firm's activities and where the act might engage with you .
- Identify any reasonable prevention procedures
- Risk assess activities; Supervision; Review;
- Educate; Train and Monitor staff or associates
- Identify relevant clients and advise them on these provisions



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