

Corporate offences under the Criminal Finance Act 2017: implications for accountants and tax advisors

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Having received Royal Assent at the end of April, the Criminal Finances Act 2017 (the "Act") is expected to come into force this autumn. The Act will introduce two new corporate offences designed to ensure that companies and partnerships take adequate precautions to prevent employees facilitating tax evasion. Allied with the introduction by HMRC of fines and penalties for those involved in failed tax avoidance schemes, the Act marks another attempt by the government to clamp down on attempts to avoid or evade the payment of taxes.

The new offences of 'failure to prevent the facilitation of tax evasion' in the UK or overseas are committed if a person associated with the company/partnership facilitates tax evasion, and the entity does not have in place reasonable procedures to prevent such facilitation occurring. A person is associated with the company/partnership if s/he performs services for or on behalf of it whilst acting in that capacity; typically, but not exclusively, this will mean a company's or partnership's employees and agents. The Act does not apply to employees acting in their personal capacity.

The UK offence can be committed by both UK registered and non-UK registered entities, whereas the overseas offence can only be committed by UK registered companies and partnerships.

The Act applies to all companies and partnerships but is likely to be most relevant to those whose business includes the provision of tax advice. It is for this reason that accountancy firms need to be particularly aware of the new risks that the Act imposes. This is particularly the case given that the new offences are ones of strict liability, and thus a company/partnership may still be guilty of an offence under the Act even if its directors or management had no idea, and no reason to suspect, that the facilitation was taking place. This leaves accountancy practices extremely vulnerable to the acts and omissions of their employees and agents; particularly as those found guilty of one of these new offences can potentially face an unlimited fine, a criminal record and reputational damage.

Comment: The Act is aimed at eradicating financial crime by seeking to beat tax evasion as close to the source as possible. Tax advisers will now be wise to scrutinise the actions of their employees more closely and, if they fail to do so, they could pay a heavy price. Prudence dictates that immediate steps to prepare for the coming into force of the Act later this year should be taken. The defence available under the Act for both the UK and overseas offences is for an entity to show that, when the tax evasion facilitation offence was committed, it had reasonable preventative measures in place. It is expected that the Chancellor will shortly provide guidance on those measures; draft guidance was published by the Government in October 2016, the focus of which was risk assessment; due diligence; communication; training; monitoring and review. It seems likely that the Chancellor's guidance will be similar and, if they have not already done so, accountancy practices may wish to start their review with current policies in these areas.

It is noteworthy that the Tory manifesto, published last week ahead of the General Election, commits an incoming Conservative government to increase the pressure on professional advisors to close the 'tax gap'. Accountants and tax advisory firms will be targeted and we can expect to see 'a proactive approach to transparency' and legislation enforcing a 'tougher regulation of tax advisory firms'.

Authors



Ross Risby

London - Walbrook
+44 (0)20 7894 6910
rrisby@dacbeachcroft.com



Sarah Crowther

London - Walbrook
+44 (0)20 7894 6254
scrowther@dacbeachcroft.com