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The UK's Corporate Offence of Failure to Prevent the Facilitation of Tax Evasion

TTN Conference – New York

7 May 2018

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    1.1. UK Government's approach to tax evasion, tax avoidance and non-compliance
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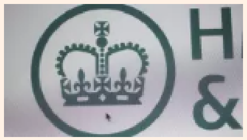
1. Why should I care about the new rules?



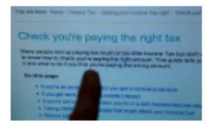
UK Tax

UK tax fraud unit recovers £5.2bn in a year

HMRC prosecutions led to more than 800 years of prison sentences

Source: Financial Times 30 October 2017

Companies aiding **tax evaders** will be criminally liable | Politics | The ...



Mar 19, 2015 ... New **offence** of **corporate** failure to prevent **tax evasion**, and offshore dodgers face 'strict liability' criminal charge.

Source: The Guardian 19 March 2015

Criminal finance legislation to boost fight against tax evasion

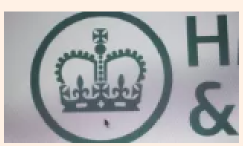
Far-reaching legislation will make companies liable for actions of rogue employees

Source: Financial Times 29 September 2017

HMRC empowered to name and shame **tax evasion** 'enablers ...

Jan 1, 2017 ... A new **corporate** criminal **offence** of failing to prevent the facilitation of **tax evasion** will also be introduced this year, with companies held liable if an individual acting on their behalf as an employee or contractor facilitates **tax evasion**. Previous rules meant a **corporate** criminal prosecution was only possible if ...

Source: The Guardian 1 January 2017



Tax Evasion and Avoidance

HMRC 'shoot first' policy brings in £1.3bn

APN system to crack down on aggressive tax planning 'draconian but effective'

Source: Financial Times 15 September 2017

1. UK Government's Approach

- Increase revenues after the 2008 Global Financial Crisis
- Overhaul of UK tax framework from the UK Government, EU and OECD.

How to increase income revenues?

- Target illegal tax evasion, aggressive tax avoidance and taxpayer non-compliance
- Taxpayer transparency of:
    - internationally mobile individuals
    - multinational businesses operating in numerous jurisdictions
- Placing the reporting responsibility on **taxpayers** and **businesses** to encourage behaviour change.

Consequence

- Penalties for non-cooperation
- HMRC can reduce spending on policing the provisions.

2. The Offence

The Offence

- The offence is committed where a Relevant Body **fails to prevent** an Associated Person **criminally facilitating tax evasion**, regardless of whether the tax evaded is owed in the UK or in a foreign jurisdiction.

If found guilty, a Relevant Body will:

1. receive a **fine** (no maximum fine is specified in the legislation) paid out of the Relevant Body's assets; **and**
2. could be subject to an **ancillary order** (e.g. a confiscation order if profits were made due to criminal activity).

2. What is Tax Evasion in the UK?

Criminal Finances Act 2017 (CFA 17)

A "UK tax evasion offence" at s.45(4) CFA 17 means:

a) an offence of cheating the public revenue; **<u>or</u>**

b) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

'Cheating the public revenue'

- UK common law offence
- Concerns fraudulent conduct that results in HMRC being deprived of money it is entitled to
- Maximum penalty of life imprisonment (or an unlimited fine)
- No need to prove that the defendant caused actual loss.

2. The Offence

What qualifies as a Relevant Body?

- Incorporated companies **<u>or</u>**
- Partnerships (including LLPs).

Who is an Associated Person?

- Employees
- Agents **<u>or</u>**
- Other person who performs services for / on behalf of a Relevant Body and who is acting in that capacity.

2. The Offence

Applicable to the evasion of any type of tax imposed under UK law:

- income tax
- capital gains tax
- inheritance tax
- corporation tax
- stamp duty land tax and stamp duty reserve tax
- VAT
- national insurance contributions.

2.1 The UK Tax Evasion Facilitation Offence

Stage 1

- The taxpayer must commit a criminal tax evasion offence.

Stage 2

- An Associated Person must criminally **facilitate** the taxpayer evasion.

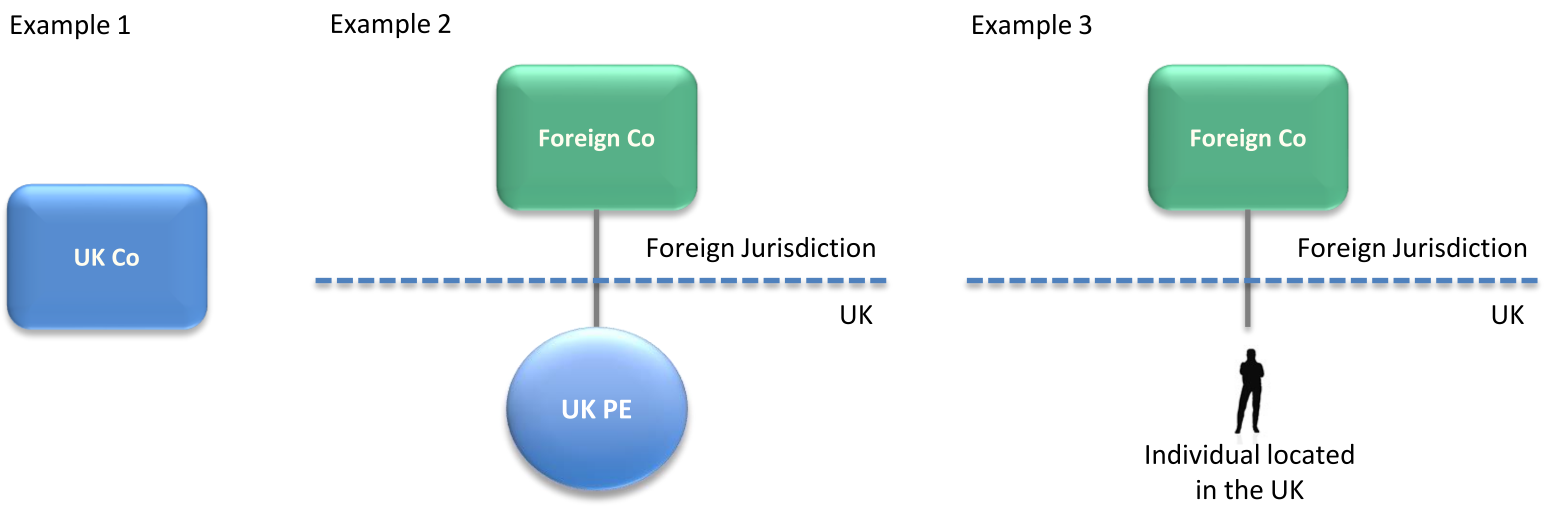
Stage 3

- Strict liability offence
- Offence committed unless the Relevant Body can show it has put in place reasonable preventative procedures.

2.1 The Foreign Tax Evasion Facilitation Offence

A **UK nexus** is a Relevant Body that is:

1. incorporated in the UK;
2. carrying on a business in the UK; or
3. has an Associated Person located in the UK at the time of the offence.



2.1 The Foreign Tax Evasion Facilitation Offence

For **dual criminality,** the overseas jurisdiction must have:

- an equivalent tax evasion offence at the taxpayer level; and
- an equivalent offence covering Associated Person's criminal act of facilitating tax evasion.

Stages 1 – 3 of the UK Tax Evasion Facilitation Offence must also be satisfied

2.2 The Defences

To qualify for the defence:

1. the Relevant Body had put in place **Prevention Procedures**; or
2. it was **not reasonable** in all circumstances to expect the Entity to have such procedures in place.

Self-Reporting

- A Relevant Body can 'self-report' if an offence is discovered
- Self-reporting does not stop a prosecution, but can:
  - form part of a defence; and
  - be taken into account by the investigating body when deciding whether to prosecute.

2.2 Example – Risk Assessment

Risk Assessment

- Motive, opportunity and means to criminally facilitate tax evasion offences
- Size of business
- Nature and complexity of business and trade
- Internal risk
- Customer and/or client risk
- Country risk
- Sectoral risk
- Transaction risk.

2.2 Example – Prevention Procedures

Practical Examples of Prevention Procedures

- Staff training
- Internal reporting procedures
- Zero tolerance for tax evasion policy
- Review and ongoing monitoring.

3. Tax Penalty Regime

Penalty for incorrect returns

- 30% of potential lose revenue for careless action
- 70% of potential lost revenue for deliberate but not concealed action
- 100% of potential lost revenue for deliberate and concealed action.

Offshore Non-Compliance

- Category 1 – up to 100% of potential lost revenue
- Category 2 – up to 150% of potential lost revenue
- Category 3 – up to 200% of potential lost revenue.

Penalties can be reduced for unprompted disclosure.

3. Wider Changes to the UK's Tax Landscape

Common Reporting Standard (CRS)

- UK is an early adopter of the CRS
- First automatic exchange of information took place in September 2017
- More jurisdictions expected to take part in the second round of exchanges in September 2018
- Targets UK resident individuals with overseas interests
- Example of increasing taxpayer transparency through multilateral efforts.

3. Wider Changes to the UK's Tax Landscape

Requirement to Correct Legislation

- Taxpayers are required to make a disclosure of undeclared tax prior to CRS reporting deadline of 30th September 2018
- If the deadline is missed, substantially increased penalties are imposed:

Penalty	Tax Due
Standard Penalty	Equivalent of 200% of the tax liability disclosed to HMRC
Asset Based Penalty	Additional 10% penalty based on the vale of the asset disclosed.
Offshore Asset Moves Penalty	Additional 50% penalty based on the Standard Penalty

Questions?

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- **Taxation Awards 2009**
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- **European Tax Awards 2010 and 2012**
  - *Finalist: Best Newcomer Europe*
- **Corporate International Global Awards 2010**
  - *Winner: Corporate Tax Advisory Award*
- **The Lawyer Awards 2009**
  - *Finalist: Niche Firm of the Year UK*

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