

The Criminalization of Corporate Facilitation of Tax Evasion: An Overview of the UK's Criminal Finance Act, 2017

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The United Kingdom's Criminal Finances Act, 2017 (the "Act"), which came into force on the 30th of September 2017, is a significant addition to the UK's legislative arsenal designed to tackle the evasion of both UK and non-UK taxes. The Act criminalizes the failure of corporations and partnerships to prevent those acting for or on their behalf from assisting third parties to evade taxes.

Although the Act is UK law, it has been crafted to have extraterritorial effect and thus its impact may well be felt by all corporations and partnerships with a UK nexus, including those in The Bahamas and the Cayman Islands.

Entities Affected

All such companies and partnerships are within scope of the Act irrespective of their place of incorporation or formation. If a corporation or partnership is found to have committed an offence under the Act it may become liable to payment of an unlimited fine upon conviction by a UK court.

The Facilitation Offences

Under the Act, a corporation or partnership commits an offence if it either fails to prevent persons associated with it from: (i) facilitating the evasion of UK taxes or (ii) facilitating the evasion of non-UK taxes, (the "Facilitation Offences").

In the Act, a person associated with a corporation or partnership is defined as an employee, agent or any other person who provides services for or on behalf of the corporation or partnership. An associated person may be either a natural or legal person.

Defences to liability for a Facilitation Offence

The Act provides corporations and partnerships faced with

criminal prosecution for a Facilitation Offence with a defence where it can be shown that:

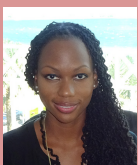
- (i) the corporation or partnership had in place reasonable 'prevention procedures'; or
- (ii) it was unreasonable to expect the corporation or partnership to have in place 'prevention procedures', e.g. due to the size or nature of the business of the corporation or partnership.

Prevention Procedures

In formulating a 'prevention procedure', corporations and partnerships are advised to review the UK Government's published guidance on the Act, which may be found on the UK Government's website (www.gov.uk). This Guidance prescribes that corporations and partnerships take a risk-based approach when formulating, adopting and effecting their prevention procedures.

The UK's introduction of this Act is a prime example of the global shift toward ensuring that institutions, particularly those in the wealth management and financial services industries, proactively assist authorities and regulators to deter tax evasion. Accordingly, institutions engaged in these industries are strongly advised to take heed as this Act may have far-reaching implications for them, regardless of the jurisdiction in which they operate. Institutions should be mindful of the reputational damage that may be suffered for failure to comply with the Act. Furthermore, the extraterritorial aspect of the Act as well as other recent fiscal initiatives by the USA and OECD, seem to foreshadow the future landscape for wealth management and financial services.

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