Anti Tax Evasion Policy

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FUNDHOUSE

EXECUTIVE SUMMARY

Part 3 of the Criminal Finances Act 2017 discusses tax evasion. The following offences are worth noting and they are capable of being committed only by incorporated bodies (like Fundhouse Bespoke Limited):

- The failure to prevent the facilitation of the evasion of UK tax
- The failure to prevent the facilitation of the evasion of foreign tax

What constitutes tax evasion? In addition to the general common law tax evasion offence, which includes any act that results in defrauding the public revenue by failing to pay sums lawfully due, there are also various statutory provisions for tax evasion offences covering all types of taxes. The legislator tries to cover situations where action has been taken knowingly with a view to evade tax. As a dishonest and deliberate action is a pre-requisite for committing tax evasion, situations where the taxpayer is simply non-compliant or engaged in avoidance falling short of fraudulent evasion, the new offence will not be applicable. That means that corporations should therefore focus on the deliberate and dishonest non-payment of taxes generally, rather than specific tax offences.

This new legislation, established in 2017, creates a greater focus on corporations to do more about tax evasion. Tax evasion and its facilitation were already criminal offences, but the degree to which companies like Fundhouse Bespoke are more accountable has changed. The Criminal Finances Act 2017 effectively attributes criminal liability to a relevant body removing the requirement to prove that the senior members of the relevant body were involved in and aware of the illegal activity and introduces the corporate offence of failing to prevent the criminal facilitation of tax evasion.

The new rules do not alter the nature of these criminal activities, but they simply extend the scope of persons who can be prosecuted if tax evasion occurs. Under the new corporate offences, liability for the relevant body can arise, irrespective of whether the senior members of the relevant body had knowledge of or intention to commit the offence or if the relevant body gains any benefit from these illegal actions.

In addition to a criminal conviction for the relevant body that may have an adverse reputational impact, penalties include unlimited fines and ancillary orders such as confiscation orders. Furthermore, for regulated entities, the regulatory authorities may impose disclosure requirements both in the UK and overseas while the relevant body can be prevented from being awarded public contracts.

What are the key considerations for the Firm?

- Service providers and Consultants – the Firm may be liable for the actions of any service providers or external consultants it appoints to the performance of services for or on behalf of the Firm. This is particularly risky where the Firm is conducting business in a foreign jurisdiction. The Firm should ensure that it has policies and procedures in place to ensure that the contracts with all service providers include specific anti-tax fraud clauses.
- Implications of a criminal conviction: As well as unlimited financial penalties, a criminal conviction may affect the regulatory status of the manager, due to potential additional disclosure requirements. This may affect the manager’s ability to carry on business as usual. Reputational risk should also be considered.

What about the liability related to employees? A firm will be liable for the actions of an employee, where it has failed to ensure that it has adequate policies and procedures in place (adequacy of procedures is discussed above).

Could a firm based outside the UK or activities conducted outside the UK be caught by the Criminal Finances Act 2017?

Yes, the new offences have an extraterritorial criminal effect. The UK tax offence can be committed by any relevant body even when established under the law of a foreign jurisdiction. The foreign tax offence can only be committed by a relevant body sufficiently connected to the UK. This includes any relevant body who is incorporated under UK law or carries on a business or other undertaking from within the UK (for example through a branch), but also a relevant body who is incorporated and carries on business abroad but whose associated person is located within the UK at the time of the act that facilitates the evasion of overseas tax. By way of example, a foreign corporate entity may fall within the scope of the Act if it has a UK branch even if that branch was not involved in or even aware of the criminal facilitation or the evasion.

Adherence to this Policy

Employees and persons associated with Fundhouse must at all times adhere to this Anti-Tax Evasion Policy.
It is not acceptable for team members and Associates to:

- Engage in any form of facilitating Tax Evasion or Foreign Tax Evasion;
- Aid, abet, counsel or procure the commission of a Tax Evasion offence or Foreign Tax Evasion offence by another person;
- Fail to promptly report any request or demand from any third party to facilitate the fraudulent Evasion of Tax by another person, in accordance with this policy; or
- Engage in any other activity that might lead to a breach of this policy; or
- Threaten or retaliate against another individual who has refused to commit a Tax Evasion offence or a Foreign Tax Evasion offence or who has raised concerns under this policy;
- An offence under the law of any part of the UK consisting of being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax.

Employees and associated persons should be aware that in managing this policy:

- We have zero tolerance towards the criminal facilitation of tax evasion;
- The consequence for employees associated with facilitating tax evasion could result in disciplinary action including the termination of a contract of employment;
- Termination of contracts for services where a supplier or client are associated with facilitating tax evasion;
- A commitment to work with business partners who have reasonable preventative procedures in place;
- The process to follow where persons may have concern in relation to the possible facilitation of tax evasion.

Failing to prevent the criminal facilitation of tax evasion

There are three requirements for the criminal offence of failure to prevent tax evasion to be committed:

- First, a deliberate tax evasion by a taxpayer, who can be individual or legal entity, takes place. This includes the evasion of any type of tax, such as direct taxes on income, National Insurance Contributions or indirect taxes e.g. VAT.
- Second, this tax evasion act is enabled by an “associated person” of the relevant body who is acting in that capacity.
- Finally, if stages one and two offences are committed then the relevant body is criminally liable if it is unable to show that it had in place reasonable procedures in order to prevent its associated person from facilitating tax evasion.

Where there is a UK tax evasion facilitation offence it does not matter whether the relevant body is UK-based or established under the law of another country and whether any part of the criminal facilitation took place in the UK.

The foreign tax evasion facilitation offence, however, is slightly narrower in scope, in that only certain relevant bodies “sufficiently connected to the UK” can commit it. This includes “any relevant body who is incorporated under UK law or carries on a business or other undertaking from within the UK, or whose associated person is located within the UK at the time of the act that facilitates the evasion of overseas tax”.

An “associated person”, in accordance with Section 44 of the Criminal Finances Act 2017, includes a person who performs services for or on behalf of the organisation regardless of their capacity. This will generally include employees, agents, subsidiaries and joint venture partners.

It is a defence to demonstrate that, despite the criminal facilitation of tax evasion taking place, the organisation had “adequate procedures” in place to prevent it or that it was unreasonable to expect such procedures.

Defence - adequate procedures

The adequacy of the procedures will depend on the size, complexity, industry focus and risk profile of an organisation. Small companies are not generally required to implement policies as extensive as those of large multi-national organisations and, where no risk of facilitation of tax evasion exists, an organisation will not be required to have any such procedures in place. However, this is unlikely to be the case for most organisations and would be very difficult to prove without the organisation having conducted, and documented, a review of its tax evasion facilitation risk.

Principles

The guidance published by HMRC (“the Guidance”), recommends that organisations adopt a risk- based approach to managing the tax evasion facilitation risk and has established six key principles to assist organisations in developing robust policies and procedures. The principles are as follows:

- Risk assessment – thorough assessments of the risks faced by the organisation should be conducted on an ongoing basis. These assessments should consider both the internal and external tax evasion facilitation risks. It is essential that these assessments are separate from existing policies and procedures such as know your customer or anti-bribery and corruption policies.
- Proportionality of risk-based prevention procedures – the organisation should develop clear and precise formal policies and procedures to reduce the risk of facilitation of tax evasion and take practical steps to implement these policies. The policies and procedures should be proportionate to the risk associated with the size, nature and complexity of the business and its activities as well as the jurisdictions in which it operates and should establish clear reporting lines and methods of escalating any issues identified.
- Top-level commitment - the culture of the organisation should be seen to flow from senior management down. It is therefore important that the top-level management (board of directors, partners, governing body, etc. collectively “the Principals”) takes responsibility for communicating the organisation’s position on ensuring that persons associated with it do not criminally facilitate tax evasion and ensuring that it is adhered to. In addition, in some cases depending on the size of the organisation, the most senior management is expected to be accordingly involved in the design and implementation of such preventive measures.
- Due diligence – where risks are identified, appropriate investigations should be conducted to ensure criminal facilitation of tax evasion by associated persons is not occurring. These will include a review of all associated persons through a risk proportionate process which should be separate and independent of old-procedures tailored to other types of risk.
- Communication (including training) – the communication of the organisation’s policies and procedures is as important as the policies themselves and this should be evidenced. The senior management should ensure that all associated persons are aware of the organisation’s policies and procedures and agree to comply with them, or have adequate policies and procedures in place. Training should also be conducted for all staff initially when they join the firm and then on an ongoing basis as necessary.

- Monitoring and review – the policies and procedures should be reviewed periodically and updated where appropriate, depending on the nature, scale and complexity of the relevant body's activities and resources available to the relevant body. The organisation should also incorporate tax evasion facilitation risk into its internal monitoring programme and record any incidents and actions taken.

Policies and Procedures

Partners and employees may not be involved or knowingly concerned in, or take steps with a view to or aid, abet, counsel or procure the fraudulent evasion of UK or foreign tax by another person.
In the event that a tax evasion event is facilitated by an associated person, any partner/employee who is made aware of the facilitation should report that fact to the Director or Head of Operations unless they are aware that it has already been reported.

Risk Assessment

The Firm is dedicated to ensuring that it adequately assesses and categorises risk appropriately. The Firm maintains a risk matrix detailing the associated persons and risks it is exposed to by reason of a relationship with each associated person. In assessing the risk of criminal facilitation of tax evasion to which it is exposed, the Firm has considered seven key areas of risk.

- Country Risk;
- Sectoral Risk;
- Transaction Risk;
- Business Opportunity Risk;
- Business Partnership Risk;
- Product Risk; and
- Customer Risk
- Country Risk

The Firm assesses each jurisdiction in which it conducts business against their tax transparency score given by the OECD, which assesses whether a country has an effective exchange of tax and financial information system in place on a global level in compliance with the Common Reporting Standard. Activities conducted in jurisdictions with low compliance rating or which do not report taxpayer information at all and as such they are considered as "tax shelters", they are rated as significantly riskier than those conducted in more transparent jurisdictions. The ratings can be found at http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/

Sectoral Risk

Following on from a Country Risk analysis, the Firm then assesses the risk of facilitating tax evasion in the sector in which it operates for the relevant jurisdiction. The guidance defines the financial services, tax advisory and legal sectors as high-risk sectors. The results of the Country Risk and Sectoral Risk analysis are used to determine a base risk rating.

Transaction Risk

The Firm monitors transactions to ensure that riskier transactions are identified and monitored closely for any indications of tax evasion. Examples of activities discussed in the HMRC Guidance as potentially amounting to facilitation are complex tax planning structures involving high levels of secrecy, overly complex supply chains or transactions involving politically exposed persons.
The Firm ensures that all its associated persons are aware that it does not condone any form of facilitation of tax evasion and that any suspicions it may have of tax evasion facilitation will allow the Firm to conduct an audit of that associated person's books and terminate the contract at the Firm's discretion. This is evident from the contracts the Firm enters into and how it conducts its business.

Business Opportunity Risk

The Firm regularly assesses its internal risk of tax evasion facilitation. This is important in particular in high value projects or in projects involving many parties, jurisdictions or intermediaries. In order to minimise that risk the Firm ensures that:

- The Principals actively express a commitment to reducing the risk of financial crime, including facilitation of tax evasion.
- Policies and procedures are reviewed periodically.
- Staff members are provided with relevant, understandable and effective training.
- Checks are completed when recruiting new staff members that are proportionate to their respective roles, for example, DBS checks.
- There is regular monitoring of staff members' fitness and propriety and financial soundness.
- The Firm maintains clear and confidential anti-tax evasion reporting lines.
- Remuneration structures are designed to avoid incentivising staff to gain business through excessive risk taking and through engaging in tax fraud.
- The Risk Register is regularly reviewed by senior management, which includes the Firm's exposure to financial crime risk and the systems and controls in place to mitigate this risk.

Business Partnership Risk

The Firm conducts due diligence on all persons that perform services for the Firm or on the Firm's behalf. In each case, the Firm ensures, prior to transacting any business, that it is satisfied that the associated person will not engage in facilitation of tax evasion.

The Firm categorises associated persons into two categories:

- Lower risk – this includes: regulated firms, firms subject to equivalent local rules (i.e. tax fraud prevention procedures), firms with which it has a trading history, and personal contacts.
- Higher risk – this includes: firms in high risk jurisdictions, organisations with no tax fraud prevention procedures or with known deficiencies in their fraud procedures, unregulated firms, individuals, new start-ups and firms not subject to equivalent local rules.

Product Risk

Certain products carry a risk of being misused by those seeking to evade tax.
The Firm categorises products into two categories:

- Lower risk – this includes: life assurance policies where the premium is low, insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as a collateral, a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme and financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes.
- Higher risk – this includes: private banking transactions, anonymous transactions (which may include cash), non-face-to-face business relationships or transactions and payment received from unknown or un-associated third parties.

Customer Risk

The Firm categorises customers into two categories:

- Lower risk – this includes: other regulated firms, public companies listed on stock exchange and subject to disclosure requirements which impose requirements to ensure adequate transparency of beneficial ownership and public administrations or enterprises.

- Higher risk – this includes: the business relationship is conducted in unusual circumstances, non-resident customers, legal persons or arrangements that are personal asset holding vehicles, companies that have nominee shareholders or shares in bearer form, businesses that are cash intensive, the ownership structure of the business appears unusual or excessively complex.

Proportionality of risk-based prevention procedures

- When considering the proportionality of reasonable prevention procedures, the HRMC Guidance suggests that the following risk factors should be considered.
- Opportunity – could someone facilitate tax evasion?
- Do any associated persons have the opportunity to facilitate client tax evasion?
- Is their work subject to monitoring or scrutiny?
- How likely is the detection of any facilitation?
- Motive – why could it happen?
- Does the reward and recognition system and corporate culture (including sanctions and penalties) incentivise or dissuade potential criminal facilitation of tax evasion, or whistle-blowing when tax evasion is uncovered?
- What are the consequences of wrong doing?
- Means – how could it be done?
- What means of criminally facilitating tax fraud do the associated persons have?
- Are there particular products, services or systems that could be open to abuse and used to criminally facilitate tax evasion?
- Do those in high-risk roles receive regular fraud training and how vigorously is compliance with training evaluated or monitored?

Due Diligence

- Purpose – the purpose of conducting due diligence is to collect sufficient and effective information on an associated person (who will provide services for the Firm or on the Firm's behalf) in order to analyse the risk of tax evasion facilitation from conducting business with that associated person. This due diligence should be used to determine a risk rating for that associated person and the level of monitoring the business relationship requires.
- Controls – the extent of the controls required will vary depending on the risk the associated person presents and the level of control and supervision the organisation is able to exercise over a particular person, but is likely to include: Sanctions check – all relevant information obtained should be checked against the HM Treasury sanctions list. This can be found using the link below: http://www.hm-treasury.gov.uk/fin_sanctions_index.htm
- Due diligence questionnaire – this should be carefully drafted to elicit honest responses with information that the Firm can verify and use. Common questions include:
  - Identifying the beneficial owners of the associated person, senior management and supervisory personnel servicing your account.
  - Identifying where the associated person operates (i.e. does this include any sanctioned countries).
  - Requests for customer references.
  - Onsite visit where possible.
  - Any relevant judicial or regulatory findings.
  - Any connections with government officials.
  - Enquiring into the associated person's controls to avoid tax fraud (see below).

- Research – good sources of independent information include internet searches, local relevant authorities, business contacts, etc.
- Follow up – any information received should be followed up and verified. It is unlikely that a firm, which obtains information but fails to do anything with it will be treated any differently to a firm that does no

due diligence. Examples of good follow-up include checking references, obtaining copies of associated person's anti-tax evasion policies and procedures and examples of employment contract/contractual provisions, etc.

- Commitment to anti-tax evasion – part of good due diligence is determining whether an associated person has a serious commitment to anti-tax evasion. This may, where possible, mean obtaining a copy of the associated person's anti-tax evasion policy, although not every jurisdiction will require firms to have such a policy. You should also enquire about any training individuals receive, governance statements, hiring processes, etc. Again, it is important to verify any information obtained.
- Review – only completing due diligence at the start of a business relationship is insufficient. It should be an ongoing process, reviewed regularly. High risk associated persons will require due diligence on a more frequent basis than those with a lower risk rating. Alternatively, the Firm may assess the risks as being substantial in relation to a particular service provided to a certain group of its clients and so apply considerably greater scrutiny in that circumstance.

Communication and Training

The Firm requires all employees to comply with its policies and procedures. Any breach of such may result in disciplinary action by the Firm and potentially criminal prosecution. The Principals are committed to ensure that the Firm has appropriate policies and procedures in place to prevent the facilitation of tax evasion and have appointed Rory Maguire to take overall responsibility for the implementation and continued monitoring of the Firm's anti-tax evasion policy.

Training is conducted on these regulations alongside the Firms' standard training programme i.e. within 3 months of a new staff member joining the Firm and otherwise annually.

Monitoring and Review

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All employees must report any concerns or suspicions of actual, attempted or suspected facilitation of tax evasion to Rory Maguire. All reports will be fully investigated and reported to the Directors. It is important that you do not discuss your concerns or suspicions with anyone other than Rory Maguire. The only exception is if your concerns relate to these individuals. In these circumstances, you should discuss your concerns with an alternative senior individual.