

# ***Facilitation of Tax Evasion – A new crime in the UK***

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# ***Criminal Finances Act 2017 (CFA)***

- ***Background to the Act***

- ***s. 45 of the CFA***

  - Failure to prevent facilitation of UK tax evasion offence***

- ***s. 46 of the CFA***

  - Failure to prevent facilitation of foreign tax evasion offence***

- ***Modelled on s. 7 of the UK Bribery Act 2010***

# ***Extraterritorial Impact***

## **Failure to Prevent the Facilitation of UK Tax evasion**

Will apply regardless of whether there is a UK Nexus



## **Failure to Prevent the Facilitation of Foreign Tax evasion**

Will apply if there is a UK Nexus  
- carrying on a business in the UK  
- acts committed in the UK

There must also be dual criminality

# ***Failure to Prevent the Facilitation of Tax Evasion***

**Stage one:** criminal tax evasion by a taxpayer (individual or legal entity) under existing law

**Stage two:** criminal facilitation of the tax evasion by an 'associated person' of a 'relevant body' who is acting in that capacity

**Stage three:** the relevant body failed to prevent its associated person from committing the criminal act

**Defence:** where the relevant body has put in place 'reasonable prevention procedures' to prevent the action at stage two, or where it is unreasonable to expect it to have such procedures

# ***Reasonable Prevention Procedures Six Principles***

- ① Risk assessment**
- ② Proportionality of procedures**
- ③ Top level commitment**
- ④ Due diligence**
- ⑤ Communication**
- ⑥ Monitoring and review**



# Examples

## The UK Tax Offence

A UK-based supplier arranges to supply raw materials to Company A. An employee of Company A knowingly creates a false invoice which enables the supplier to make an inflated claim for VAT recovery.

*The employee is an “associated person” of Company A. Company A would therefore be criminally liable under the new offence in the absence of reasonable prevention procedures.*

## The Non-UK Tax Offence

Company B performs short-term projects in various countries. In order to prevent the need to pay local payroll taxes, a decision is made by an agent acting on behalf of Company B based in country not to register Company B employees with the relevant local tax authorities.

*The agent has facilitated the avoidance of local payroll taxes while acting on behalf of Company B. If both the failure to report local payroll taxes and the facilitation are criminal offences under UK and local law Company B has committed an offence in the absence of reasonable prevention procedures.*