



# Criminal Finances Act 2017

## 2017 CHAPTER 22

### PART 3

#### CORPORATE OFFENCES OF FAILURE TO PREVENT FACILITATION OF TAX EVASION

##### *Preliminary*

#### **44 Meaning of relevant body and acting in the capacity of an associated person**

- (1) This section defines expressions used in this Part.
- (2) “Relevant body” means a body corporate or partnership (wherever incorporated or formed).
- (3) “Partnership” means—
  - (a) a partnership within the meaning of the Partnership Act 1890, or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a foreign country.
- (4) A person (P) acts in the capacity of a person associated with a relevant body (B) if P is—
  - (a) an employee of B who is acting in the capacity of an employee,
  - (b) an agent of B (other than an employee) who is acting in the capacity of an agent, or
  - (c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services.
- (5) For the purposes of subsection (4)(c) the question whether or not P is a person who provides services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between P and B.

*Failure of relevant bodies to prevent tax evasion facilitation offences by associated persons*

**45 Failure to prevent facilitation of UK tax evasion offences**

- (1) A relevant body (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.
- (2) It is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—
  - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
  - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing UK tax evasion facilitation offences.
- (4) In this Part “UK tax evasion offence” means—
  - (a) an offence of cheating the public revenue, or
  - (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.
- (5) In this Part “UK tax evasion facilitation offence” means an offence under the law of any part of the United Kingdom consisting of—
  - (a) being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,
  - (b) aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or
  - (c) being involved art and part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
- (6) Conduct carried out with a view to the fraudulent evasion of tax by another person is not to be regarded as a UK tax evasion facilitation offence by virtue of subsection (5)
  - (a) unless the other person has committed a UK tax evasion offence facilitated by that conduct.
- (7) For the purposes of this section “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—
  - (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (8) A relevant body guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction in England and Wales, to a fine;
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

#### **46 Failure to prevent facilitation of foreign tax evasion offences**

- (1) A relevant body (B) is guilty of an offence if at any time—
  - (a) a person commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B, and
  - (b) any of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
  - (a) that B is a body incorporated, or a partnership formed, under the law of any part of the United Kingdom;
  - (b) that B carries on business or part of a business in the United Kingdom;
  - (c) that any conduct constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom;and in paragraph (b) “business” includes an undertaking.
- (3) It is a defence for B to prove that, when the foreign tax evasion facilitation offence was committed—
  - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
  - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (4) In subsection (3) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing foreign tax evasion facilitation offences under the law of the foreign country concerned.
- (5) In this Part “foreign tax evasion offence” means conduct which—
  - (a) amounts to an offence under the law of a foreign country,
  - (b) relates to a breach of a duty relating to a tax imposed under the law of that country, and
  - (c) would be regarded by the courts of any part of the United Kingdom as amounting to being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax.
- (6) In this Part “foreign tax evasion facilitation offence” means conduct which—
  - (a) amounts to an offence under the law of a foreign country,
  - (b) relates to the commission by another person of a foreign tax evasion offence under that law, and
  - (c) would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence (see section 45(5) and (6)).
- (7) A relevant body guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction in England and Wales, to a fine;
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

*Guidance about prevention procedures*

**47 Guidance about preventing facilitation of tax evasion offences**

- (1) The Chancellor of the Exchequer (“the Chancellor”) must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing UK tax evasion facilitation offences or foreign tax evasion facilitation offences.
- (2) The Chancellor may from time to time prepare and publish new or revised guidance to add to or replace existing guidance published by the Chancellor under this section.
- (3) The Chancellor must consult the Scottish Ministers, the Welsh Ministers and the Department of Justice in Northern Ireland when preparing any guidance to be published under this section.
- (4) Guidance prepared and published under this section does not come into operation except in accordance with regulations made by the Chancellor by statutory instrument.
- (5) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Where for the purposes of subsection (5) a copy of a statutory instrument containing such regulations is laid before Parliament the Chancellor must also lay a copy of the guidance to which the regulations relate.
- (7) The Chancellor may approve guidance prepared by any other person if it relates to any matters within the scope of subsection (1).
- (8) Approval under subsection (7)—
  - (a) must be given in writing, and
  - (b) may only be given on the condition that the person who prepared it publishes the approved guidance while it remains in operation as approved guidance.
- (9) The Chancellor may withdraw approval under subsection (7) by a notice given to the person who prepared the guidance.

*Offences: general and supplementary provision*

**48 Offences: extra-territorial application and jurisdiction**

- (1) It is immaterial for the purposes of section 45 or 46 (except to the extent provided by section 46(2)) whether—
  - (a) any relevant conduct of a relevant body, or
  - (b) any conduct which constitutes part of a relevant UK tax evasion facilitation offence or foreign tax evasion facilitation offence, or
  - (c) any conduct which constitutes part of a relevant UK tax evasion offence or foreign tax evasion offence,takes place in the United Kingdom or elsewhere.
- (2) Proceedings for an offence under section 45 or 46 may be taken in any place in the United Kingdom.

- (3) If by virtue of subsection (2) proceedings for an offence are to be taken in Scotland, they may be taken in such sheriff court district as the Lord Advocate may determine.
- (4) In subsection (3) “sheriff court district” is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.

#### **49 Consent to prosecution under section 46**

- (1) In this section “proceedings” means proceedings for an offence under section 46.
- (2) No proceedings may be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions or the Director of the Serious Fraud Office.
- (3) No proceedings may be instituted in Northern Ireland except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office.
- (4) The Director of Public Prosecutions and the Director of the Serious Fraud Office must each exercise any function of giving consent under subsection (2) or (3) personally unless—
  - (a) the Director concerned is unavailable, and
  - (b) there is another person designated in writing by the Director concerned acting personally as the person who is authorised to exercise the function when the Director is unavailable.
- (5) In that case the other person may exercise the function but must do so personally.
- (6) No proceedings may be instituted in Northern Ireland by virtue of section 36 of the Justice (Northern Ireland) Act 2002 (delegation of functions of the DPP for Northern Ireland to persons other than the Deputy Director) except with the consent of the Director of Public Prosecutions for Northern Ireland to the institution of the proceedings.
- (7) The Director of Public Prosecutions for Northern Ireland must exercise personally any function of giving consent under subsection (3) or (6) unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of that Act.

#### **50 Offences by partnerships: supplementary**

- (1) Proceedings for an offence under section 45 or 46 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in the name of any of the partners).
- (2) For the purposes of such proceedings—
  - (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and
  - (b) the following provisions (which concern procedure in relation to offences by bodies corporate) apply as they apply to a body corporate—
    - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980, and

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*Status: This is the original version (as it was originally enacted).*

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- (ii) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (3) A fine imposed on a partnership on its conviction for an offence under section 45 or 46 is to be paid out of the partnership assets.

*Consequential amendments and interpretation*

## 51 Consequential amendments

- (1) In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which investigatory powers etc apply) after paragraph (h) insert—
- “(i) any offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).”
- (2) In Schedule 1 to the Serious Crime Act 2007 (serious offences)—
- (a) in Part 1 (serious offences in England and Wales), in the heading before paragraph 8 insert “etc” at the end and in paragraph 8 at the end insert—
- “(6) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).”;
- (b) in Part 1A (serious offences in Scotland) in the heading before paragraph 16G insert “etc” at the end and in paragraph 16G at the end insert—
- “(5) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).”;
- (c) in Part 2 (serious offences in Northern Ireland) in the heading before paragraph 24 insert “etc” at the end and in paragraph 24 at the end insert—
- “(6) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).”
- (3) In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into) after paragraph 26A insert—
- “26B An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).”

## 52 Interpretation of Part 3

- (1) In this Part—
- “conduct” includes acts and omissions;
- “foreign country” means a country or territory outside the United Kingdom;
- “foreign tax evasion facilitation offence” has the meaning given by section 46(6);
- “foreign tax evasion offence” has the meaning given by section 46(5);

“partnership” has the meaning given by section 44(3);

“relevant body” has the meaning given by section 44(2);

“tax” includes duty and any other form of taxation (however described);

“UK tax evasion facilitation offence” has the meaning given by section 45(5) and (6);

“UK tax evasion offence” has the meaning given by section 45(4).

- (2) References in this Part to a person acting in the capacity of a person associated with a relevant body are to be construed in accordance with section 44(4).