



HM Revenue
& Customs

Tackling tax evasion: legislation and guidance for a corporate offence of failure to prevent the criminal facilitation of tax evasion

Consultation document

Publication date: 17 April 2016

Closing date for comments: 10 July 2016

Subject of this consultation:	This consultation considers draft legislation and guidance for the new corporate criminal offence of failure to prevent the criminal facilitation of tax evasion, as outlined in HMRC's response document of 9 December 2015
Scope of this consultation:	This consultation seeks stakeholder views on draft legislation and guidance for a new corporate offence of failure to prevent the criminal facilitation of tax evasion to ensure that the offence is both effective at meeting the stated objectives and not unduly burdensome.
Who should read this:	We would like to hear from any interested party, including those corporations who provide services which, where used inappropriately, may be seen to facilitate tax evasion
Duration:	This consultation runs from 17 th April to 10 th July 2016.
Lead official:	Jennifer Haslett, HMRC Centre for Offshore Evasion Strategy
How to respond or enquire about this consultation:	Responses can be submitted via email to: consult.nosafehavens@hmrc.gsi.gov.uk Or via post to: Jennifer Haslett HMRC Centre for Offshore Evasion Strategy Room 1C/26 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	Please contact the lead official if you are interested in meeting to discuss this paper.
After the consultation:	We aim to publish the resulting guidance before the commencement of the new offence.
Getting to this stage:	This consultation follows an earlier consultation at stage 2 of the consultation process, Tackling offshore tax evasion: a new corporate criminal offence of failure to prevent the facilitation of evasion, which ran from 16 July – 8 October 2015.
Previous engagement:	Previous engagement has been undertaken as part of the earlier consultation mentioned above.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

Background

- 1.1 At the March 2015 Budget the Government announced that it would introduce a new criminal offence to apply to corporations who failed to prevent their agents from criminally facilitating tax evasion. A public consultation ran from July-October 2015.
- 1.2 The consultation response document was published on 9 December 2015. The Government announced that it will be legislating for the new offence and consulting on draft legislation and guidance at the beginning of 2016.

Policy objectives of the new offence

- 1.3 The new corporate offence aims to overcome the difficulties in attributing criminal liability to corporations for the criminal acts of those who act on their behalf. Whilst this consultation refers to the application of the new offence to “corporations”, the draft legislation refers to a “relevant body” to encompass the broad range of legal persons to which the new offence will apply¹.
- 1.4 Attributing criminal liability to a corporation normally requires prosecutors to show that the most senior members of the corporation were involved in and aware of the illegal activity, typically those at the Board of Directors level. This has a number of impacts:
 - In large multinational organisations decision making is often decentralised and may be taken at a level lower than that of the Board of Directors, with the effect that the corporation can be shielded from criminal liability. This also makes it harder to hold such organisations to account compared to a smaller organisation where decision making is centralised.
 - The existing law can act as an incentive for the most senior members of a corporation to turn a blind eye to the criminal acts of its representatives in order to shield the corporation from criminal liability.
 - The existing law can act as a disincentive for internal reporting of suspected illegal activity to the most senior members of the corporation.
- 1.5 The cumulative effect is an environment that does not foster corporate monitoring and self-reporting of criminal activity. The criminal law currently renders corporations that refrain from implementing good corporate governance and

¹ “Relevant body” is defined within section 1(2) of the new draft clauses.

strong reporting procedures hard to prosecute, and offers no incentive to invest in such procedures. It is those corporations that deliberately turn a blind eye to wrongdoing and preserve their ignorance of criminality within their organisation that the current criminal law most advantages.

Purpose of the consultation

- 1.6 This consultation seeks views from interested parties on how the new corporate offence outlined in the HMRC response document of 9 December 2015² is best expressed in statute and guidance. To allow stakeholders time to consider how the policies outlined in the response document could be reflected in legislation, the Government published draft clauses within the response document.
- 1.7 Feedback from stakeholders during the consultation stressed the importance of guidance for the new offence and welcomed the opportunity to comment on the draft legislation and the draft guidance in tandem. The Government recognised that stakeholders may have comments on the new offence that are more relevant to the guidance than the legislation. It is therefore important that the draft clauses and the draft guidance are considered together. Draft guidance is included at in Chapter 3.
- 1.8 This consultation is not seeking feedback on the policy of introducing a new corporate criminal offence, which was covered in the previous round of consultation, which ran from 16 July – 8 October 2015³.
- 1.9 In the previous round of consultation some stakeholders offered real life examples of how the offence would impact their organisation and its interactions with their existing obligations. These real life examples are particularly helpful and the Government welcomes further input from stakeholders, particularly on how they currently approach due diligence in relation to the acts of those providing services on their behalf.

Guiding principles of legislation

1.10 The government believes that legislation should be

- clear
- coherent
- effective

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483367/A_new_corporate_criminal_offence_of_failure_to_prevent_the_facilitation_of_tax_evasion_-_summary_of_responses_7011.pdf

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445534/Tackling_offshore_tax_evasion_-_a_new_corporate_criminal_offence_of_failure_to_prevent_facilitation_of_tax_evasion.pdf

1.11 It is with these criteria in mind that the draft clauses have been created.

1.12 The Government welcomes input from stakeholders on changes that can be made to the guidance which stakeholders believe will bring it more in line with these guiding principles.

1.13 Feedback received to date on the draft legislation issued with the consultation response document on 9 December 2015 suggests that stakeholders would find it clearer if the elements of the offence relating to a UK tax fraud and those relating to an overseas tax fraud were separated into separate offences, though both rely on a number of the same definitions. The Government has therefore prepared alternative draft legislation with this change to allow stakeholders to consider and comment on which form of drafting offers the greater clarity. A copy of the amended draft legislation, with additional changes, can be found at Annex B.

2. Areas of consultation

A. The offence

2.1 The offence as outlined in the consultation response document will have three stages:

Stage one: criminal tax evasion by a taxpayer (either a legal or natural person) under the existing criminal law (for example an offence of cheating the public revenue, or fraudulently evading the liability to pay VAT);

Stage two: criminal facilitation of this offence by a person acting on behalf of the corporation, whether by taking steps with a view to: being knowingly concerned in; or aiding, abetting, counselling, or procuring the tax evasion by the taxpayer;

Stage three: the corporation's failure to take reasonable steps to prevent those who acted on its behalf from committing the criminal act outlined at stage two.

2.2 This is reflected in the draft clauses with the following language:

(1) Failure by corporations etc to prevent facilitation of tax evasion offences by associated persons

(1) A relevant body ("B") is guilty of an offence if a person associated with B ("A") commits a tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) It is a defence for B to show that —

- (a) it had in place procedures designed to prevent persons associated with it from committing tax evasion facilitation offences, and
- (b) its procedures were reasonable in all the circumstances.

2.3 This has been amended in the updated clauses to give greater clarity as to the meaning of reasonable procedures. The new clauses read as follows:

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

2 Failure to prevent facilitation of UK tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person associated with B commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) In proceedings for an offence under this section it is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—

- (a) it had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
- (b) that in all the circumstances, it was not reasonable to expect B to have any prevention procedures in place.

(3) In subsection (2) “prevention procedures” means procedures designed to prevent persons associated with the body from committing UK tax evasion facilitation offences.

QA1. Do you believe that the draft legislation, when read with the draft guidance, adequately articulates the offence and defence? The Government would welcome alternative or additional wording for inclusion in the guidance that stakeholders believe adds clarity to the offence and defence.

B. Those for whom a corporation can be liable

- 2.4 The previous consultation document outlined that the new offence would be committed where a person acting on behalf of the corporation criminally facilitated tax evasion. The requirement that the person be acting on behalf of the corporation means that the offence would be committed where an employee, during the course of his work, facilitated tax evasion by a customer of the corporation; but would not be committed where that same individual, outside of his work for the corporation, facilitated tax evasion by advising a member of his family. Such a case would be a “frolic of the employee’s own” and nothing to do with the corporation whatsoever.
- 2.5 The draft legislation simply requires that the facilitation be done by a person acting in the capacity of a person associated with the corporation, defined as “someone acting on its behalf”.
- 2.6 Irrespective of whether the associated person is an employee or a contractor, if the person criminally facilitating the tax evasion is acting on behalf of a corporation, this should suffice for the new offence. Otherwise a corporation could seek to contract itself out of the scope of the new offence by always acting through contractors rather than employees.
- 2.7 The 2015 consultation on the corporate offence proceeded on the basis that a formal requirement of benefit should not be included in the new offence. Therefore, if an employee, whilst at work, facilitates the tax evasion of a client of the corporation, the mere fact that the corporation gains no benefit ought not to prevent the corporation being guilty of the new offence. The fact that the client never pays the corporation cannot mean that the corporation ought not to be guilty of the new offence. The criminal law has many offences that can be committed even where no gain accrues. The question of benefit may however be evidentially significant and may assist in determining whether an act was done on the corporation’s behalf.
- 2.8 This is reflected in the draft clauses with the following language:

1 Meaning of relevant body and associated person

(4) A person (A) is associated with a relevant body (B) if A performs services for or on behalf of B and for this purpose—

(a) the capacity in which A performs services for or on behalf of B does not matter (so, for example, A might be an employee, agent or subsidiary of B), and

(b) subject to subsection (5), whether or not A 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 relationship between A and B.

(5) An employee of B is to be presumed, unless the contrary is shown, to be a person who performs services for or on behalf of B.

QB1. Do consultees consider that this clause, when read with its associated guidance, will enable them to identify when a person acts for or on behalf of a corporation? The Government welcomes suggested case studies from stakeholders for inclusion in the guidance to illustrate when a person can be said to be associated with a corporation for the purposes of the offence.

QB2. Do you believe the draft clauses, when read with the associated guidance, clearly exclude instances where the corporation's representative is acting in a private capacity, rather than providing services for or on behalf of the corporation? The Government welcomes suggested language or case studies for inclusion in the guidance.

C. Definition of a corporation

2.9 The response document stated that the Government intended the new offence to apply to all legal persons, e.g. companies, partnerships, LLPs, regardless of whether they operate commercially or for other reasons (such as charity). We continue to use the word “corporation” as a convenient shorthand when speaking of those entities which can be subject to the offence.

2.10 This is reflected in the draft clauses with the following language:

1 Meaning of relevant body and associated person

(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,
- (b) a limited partnership registered under the Limited Partnerships Act 1907,

or

- (c) a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom.

QC1. Do you have any comments on the draft clause above, when read with the associated guidance?

D. The aspects of non-compliance covered by the offences

Evasion of UK taxes

2.11 The response document stated that the Government believes that corporations should be liable for failing to prevent the criminal facilitation of tax evasion (whatever the tax) by those who act on its behalf. The new offence will be committed by a corporation where it fails to prevent an associated person criminally facilitating the evasion of a tax, and this will be the case whether the undeclared funds are in or outside the UK.

2.12 The response document stated that a criminal offence will have to have been committed at the taxpayer level, and that this offence must have been criminally facilitated by a person acting on behalf of the corporation.

2.13 The offence relating to UK tax evasion was reflected in the draft clauses with the following language:

2. Meaning of “tax evasion facilitation offence” and related terms

(1) This section and section 3 define terms used in this Part.

(2) “Tax evasion facilitation offence” means—
(a) a UK tax evasion facilitation offence, or
(b) an overseas tax evasion facilitation offence.

(3) A “UK tax evasion facilitation offence” is an offence under the law of any part of the United Kingdom which is committed by facilitating the commission of a UK tax evasion offence.

(4) “UK tax evasion offence” means—
(a) an offence of cheating the public revenue, or
(b) an offence consisting of being knowingly involved in, or in taking steps with a view to, the fraudulent evasion of a tax,
(c) any other offence under an enactment which may be indicted as an offence of cheating the public revenue.

2.14 The Government has made a number of amendments to clarify and refine the above language, resulting in the following amended clauses:

2 Failure to prevent facilitation of UK tax evasion offences

(4) In this Act—
(a) “UK tax evasion offence” means—
(i) an offence of cheating the public revenue, or

- (ii) 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; and
- (b) “UK tax evasion facilitation offence” means an offence under the law of any part of the United Kingdom which is committed by facilitating the commission by another person of a UK tax evasion offence.

2.15 This would still bring within scope any tax evasion offence that could be charged as cheating the public revenue, or any offence that involves knowingly being involved in, or taking steps with a view to, fraudulently evading UK tax.

2.16 Take the following example:

A company offers accountancy and invoicing services. One of the customers of the company is charged with the fraudulent evasion of VAT, an offence contrary to section 72 of the Value Added tax Act 1994. The offence is committed by the dishonest submission of untrue VAT returns underpinned by faked invoices. This was done by an employee of the company, who is also charged with an offence contrary to section 72 of VATA 1994.

2.17 The conduct charged as an offence contrary to section 72 of VATA 1994 (namely the dishonest submitting of untrue VAT returns and the faking of supporting invoices), would also be capable of being indicted as an offence of cheating the public revenue, as it involves fraudulently diverting funds from HMRC. Whilst the charge faced by the taxpayer is not cheating the public revenue, the fact that the offence could have been indicted as a cheat of the public revenue means that the company may be liable under the new corporate offence. To defend itself against the offence the company will need to show that it had such procedures in place as were reasonable in all the circumstances to prevent its employee criminally facilitating the taxpayer’s offence.

2.18 The facilitation of a tax offence was reflected in the draft clauses with the following language:

2. Meaning of “tax evasion facilitation offence” and related terms

- (5) A person facilitates the commission of a UK tax evasion offence by—
- (a) encouraging or assisting the commission of the offence,
 - (b) aiding and abetting, counselling or procuring the commission of the offence, or
 - (c) doing anything that constitutes the commission of a UK tax evasion offence by virtue of being knowingly involved in, or taking steps with a view to, the fraudulent evasion of tax by another person.

2.19 In order to provide greater clarity, the Government has amended the draft clauses, which now read as follows:

2 Failure to prevent facilitation of UK tax evasion offences

(5) For the purposes of subsection (4)(b) a person (A) facilitates the commission of a UK tax evasion offence by another person by doing any of the following (with the necessary knowledge or intent)—

- (a) aiding, abetting, counselling or procuring the commission of the offence,
- (b) being guilty of the offence as art and part only (contrary to the law of Scotland), or
- (c) doing anything that constitutes the commission by A of a UK tax evasion offence by virtue of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of tax by another person.

(6) Steps taken by A with a view to the fraudulent evasion of tax by another person are not to be regarded for the purposes of subsection (4)(b) as having facilitated a UK tax evasion offence unless the other person has committed a UK tax evasion offence facilitated by the steps taken.

QD1. Do you believe that the legislation, when read with the associated guidance, makes it sufficiently clear in respect of what criminal acts a corporation can be liable for failing to prevent its representatives from criminally facilitating? The Government welcomes suggested language or case studies for inclusion in the guidance.

E. Overseas tax fraud corporate offence

2.20 The consultation response document outlined the Government's intention to introduce an offence which applied in three situations:

- Where a UK based corporation fails to prevent those who act on its behalf from criminally facilitating a UK tax loss;
- Where a non-UK based corporation fails to prevent those who act on its behalf from criminally facilitating a UK tax loss;
- Where a UK based corporation fails to prevent those who act on its behalf from criminally facilitating a tax loss overseas, where the jurisdiction suffering the tax loss has laws in place equivalent to those in the UK, i.e. where there is dual criminality.

2.21 The consultation document stated that the Government believes that corporations with a presence in the UK should be obliged to take reasonable steps to prevent their agents being complicit in criminal tax evasion, wherever that tax is owed. The consultation also stated that if the evasion of tax is a crime in the foreign jurisdiction then corporations should take reasonable steps to prevent their agents becoming complicit in the criminal evasion of those taxes.

2.22 The draft legislation annexed to the consultation response document presented the domestic and foreign elements of the corporate offence together. The Government believes, in light of stakeholder feedback, that it may be clearer to separate these two elements into distinct offences. The new draft clauses therefore include a new clause to this effect. The overseas tax fraud offence is now presented as follows:

3 Failure to prevent facilitation of foreign tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person associated with B commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) B can only be guilty of an offence under this section if (when the foreign tax evasion facilitation offence is committed)—

(a) B is incorporated or formed under the law of any part of the United Kingdom, or

(b) where B is not within paragraph (a)—

(i) B is carrying on a business or other undertaking (or part of a business or other undertaking) from an establishment in the United Kingdom, or

(ii) any act or omission constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom. In paragraph (b)(i) “establishment” has the meaning given by section 1067(6) of the Companies Act 2006.

(3) In proceedings for an offence under this section 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) in all the circumstances it was not reasonable to expect B to have any prevention procedures in place.

(4) In subsection (3) “prevention procedures” means procedures designed to prevent persons associated with B from committing foreign tax evasion facilitation offences against the law of the foreign country concerned.

QE1. Do you agree that the domestic tax fraud and overseas tax fraud elements of the corporate offence are better presented as two separate offences?

2.23 The response document stated that a corporation will be liable for failing to prevent persons associated with it from criminally facilitating a tax fraud in another jurisdiction, provided there is dual criminality. This was represented in the response document draft clauses as follows:

2. Meaning of “tax evasion facilitation offence” and related terms

(6) An “overseas tax evasion facilitation offence” is an offence under the law of a country or territory outside the United Kingdom which is committed by facilitating the commission by another person of an overseas tax evasion offence.

(7) “Overseas tax evasion offence” means an offence under the law of a country or territory outside the United Kingdom which corresponds to any UK tax evasion offence and would if committed in the United Kingdom (assuming the tax law in that country or territory operated in the United Kingdom) constitute an offence under the law of a part of the United Kingdom.

(8) A person facilitates the commission of an overseas tax evasion offence by engaging in conduct which corresponds to any conduct mentioned in subsection (5) in connection with, or in committing, an overseas tax evasion offence.

2.24 Having split the domestic and overseas tax frauds elements of the offence, the government has made a number of amendments to the draft clause to accommodate this and to further clarify the offence and the requirement for there to be dual criminality. The new draft legislation now reads as follows:

3 Failure to prevent facilitation of foreign tax evasion offences

(5) In this Act—

(a) “foreign tax evasion offence” means conduct (carried out with the necessary knowledge or intent) which—

(i) is an offence under the law of a foreign country that relates to the evasion of a tax payable under the law of that country, and

(ii) would amount to an offence of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax

(assuming that there was an offence of that kind in the United Kingdom in relation to that tax); and

(b) “foreign tax evasion facilitation offence” means an offence under the law of the foreign country concerned which is committed by facilitating the commission by another person of a foreign tax evasion offence under the law of that country.

(6) For the purposes of subsection (5)(b) a person facilitates the commission of a foreign tax evasion offence by engaging in conduct in relation to such an offence (with the necessary knowledge or intent) which—

(a) is an offence under the law of the foreign country concerned, and

(b) would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence (see section 2(4) to (6)).

QE2. The Government welcomes stakeholder views on the new clauses, whether they sufficiently articulate the requirement for dual criminality at both the taxpayer and facilitator level, when read alongside the associated guidance. And whether they sufficiently articulate the requirement for dual criminality at both the taxpayer and facilitator level. The Government welcomes suggested language or case studies for inclusion in the guidance.

F. Territorial scope of the overseas tax fraud corporate offence

2.25 The territorial scope of the overseas fraud offence was represented in the draft clauses published with the response document with the following language.

6. Offences: territorial application and jurisdiction

(1) A relevant body cannot be guilty of an offence under this section relating to an overseas tax evasion facilitation offence unless it—
(a) is incorporated or formed under the law of any part of the United Kingdom,
or
(b) it is carrying on a business or other undertaking (or part of a business or other undertaking) in the United Kingdom

2.26 Having further considered stakeholder comments the Government has made a number of suggested changes to further clarify the territorial application and geographic scope of the offence. The amended draft legislation reads as follows:

3 Failure to prevent facilitation of foreign tax evasion offences

(2) B can only be guilty of an offence under this section if (when the foreign tax evasion facilitation offence is committed)—
(a) B is incorporated or formed under the law of any part of the United Kingdom, or
(b) where B is not within paragraph (a)—
(i) B is carrying on a business or other undertaking (or part of a business or other undertaking) from an establishment in the United Kingdom, or
(ii) any act or omission constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom. In paragraph (b)(i) “establishment” has the meaning given by section 1067(6) of the Companies Act 2006.

QF1. Do you believe the amended draft legislation brings within scope only those corporations with a sufficient presence in the UK, or those corporations whose representatives are committing the relevant criminal act(s) from within the UK? The Government welcomes suggested language or case studies for inclusion in the guidance.

Protections in relation to the failure to prevent the criminal facilitation of an overseas tax fraud

2.27 During the consultation process stakeholders raised concerns about the application of the offence in relation to taxes that would not be recognised as

lawful by the UK. For example, because the taxes were applied in a discriminatory way on the basis of race or religion, or as a form of extortion, rather than because they are applied in relation to an item or asset to which they are not applied in the UK. The Government recognises these concerns and thanks those stakeholders who shared their experiences from other jurisdictions. It is with the examples provided in mind that the Government is seeking to work with stakeholders to develop case studies for inclusion in the Guidance. In order to ensure the guidance reflects stakeholder concerns and experiences, the Government asks that stakeholders submit suggested case studies for inclusion within the guidance.

2.28 The legislation also requires that before proceedings for the offence are issued in England, Wales or Northern Ireland the personal consent of the Director of Public Prosecutions or the Director of the Serious Fraud Office must be gained⁴. Such consent would only be forthcoming where, having weighed up all factors, the prosecution was in the public interest. We do not believe that using the new offences to indirectly enforce punitive or discriminatory foreign taxes would be in the public interest. Indeed any decision to bring such a prosecution might be susceptible to challenge by way of judicial review.

⁴ In relation to Scotland, the decision to prosecute is always taken by the Crown Office and Procurator Fiscal Service and so personal consent is not required in the legislation on the corporate offence. As a public body the Crown Office and Procurator Fiscal Service are bound by the Human Rights Act.

G. Any other comments

2.29 HMRC welcomes additional comments on the guidance which are not directly covered by the questions posed above. A copy of the draft clauses with all suggested Government amendments can be found at Annex B.

2.30 As set out in the consultation response document and meetings with interested parties, the Government is open to considering a system whereby affected bodies can produce their own guidance on what constitutes “reasonable procedures” for the purposes of a defence to the new offence, and have the guidance endorsed by the Government.

2.31 During the course of this consultation we would welcome stakeholders’ views on whether such a procedure would be beneficial. Should stakeholders wish to produce such guidance, HMRC is available to review such guidance and work with stakeholders to ensure that the guidance is compatible with the Government’s guidance.

3. Draft guidance for the new corporate offence

Feedback from stakeholders

3.1 During the initial consultation, stakeholders expressed a desire that the guidance produced for the new corporate offence should follow the principle-based approach of the guidance produced for the Bribery Act⁵. Stakeholders felt that the guidance should set out a broad view of how corporations should go about creating reasonable procedures, and the hallmarks of such procedures, without being too prescriptive. The Government recognises that the new corporate offence will affect a diverse range of corporations in terms of their size, structure, business activity and geographical location. Therefore, there is likely to be a similar range of procedures, or combinations of procedures, that will all meet the test of being “reasonable” for a particular corporation’s situation. We therefore share the desire of stakeholders that the guidance should be overarching and take account of the diverse range of corporations affected by the new offence.

3.2 Some stakeholders sought the certainty of more prescriptive guidance, which was clearly articulated in terms of their business area. In response to this the Government agreed to consider making provision for tailored sector-specific guidance produced by corporations and their representative trade bodies to be approved by Government where it was in keeping with the overarching Government produced guidance.

3.3 Once the guidance has been finalised, the Government intends to include chapter numbers and cross reference each part of the guidance to the relevant clauses in the legislation.

The use of case studies

3.4 Stakeholders have stated that they have found the case studies in the consultation document and the response document helpful. They expressed a desire for the guidance to include case studies. The Government recognises the importance of case studies and intends to include these within the finalised guidance and explanatory notes.

⁵ <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

3.5 In order to inform these case studies, we ask stakeholders to submit examples for the six principles within the guidance. When drafting these case studies, stakeholders may wish to consider those included within the Bribery Act guidance and the case studies within the FCA's Financial Crime Guide⁶. The consultation document highlights within the guidance where examples to inform case studies would be particularly helpful and relevant, but the Government welcomes examples from stakeholders to inform case studies for all of the principles.

3.6 The case study below has been drafted to help inform stakeholder feedback.

Bravo Finances Limited is a company incorporated under UK law and has an office in London. **Alan** is an employee of Bravo Finances Limited. **Charles**, a UK taxpayer comes to the offices of Bravo and seeks advice from Alan in relation to this financial affairs. Alan, during the meeting:

- Offers Charles advice on arranging his financial affairs to make them more efficient in relation to income tax; and
- Advises Charles in relation to his VAT and refers him to another company, **Dan's Invoices Ltd**, for help in regularising his outstanding VAT returns;

Charles subsequently follows Alan's advice and makes changes to his affairs so as to make them more tax efficient in relation to income tax. He visits Dan's Invoices Limited where Dan helps him fabricate backdated invoices to help him bring up to date (and under-report) his VAT liabilities.

Charles's liability for tax evasion

In relation to income tax, Charles has committed no tax evasion offence. His legitimate tax planning does not amount to a tax evasion offence. It is not a cheat of the public revenue nor a fraudulent evasion of income tax.

Had Charles actually been committing an income tax fraud but hidden this fact from his advisor Alan then we would have to consider whether Alan had committed a tax evasion facilitation offence. Whilst Alan's advice and assistance might have in fact assisted the fraud committed by Charles, Alan's acts would not have been done with the requisite guilty mind for a tax evasion facilitation offence. He has not dishonestly facilitated Charles' offence. As Alan had not committed a tax evasion facilitation offence there would be no question of the new corporate offence having been committed.

In relation to VAT, Charles has committed a tax evasion offence. He has committed the offences of fraudulently evading VAT (contrary to section 72 of the Value Added Tax Act 1994) and the offence of cheating the public revenue (contrary to common law).

⁶ https://www.handbook.fca.org.uk/handbook/document/FC1_FCA_20150427.pdf.

Alan's liability for aiding and abetting Charles to evade tax

If Alan made the referral to Dan's Invoices Ltd honestly, unaware that they provided fraudulent services, then he has not: he lacks the requisite guilty state of mind. There would be no question of his act of referral rendering Bravo Finances Ltd liable for the new offence.

If Alan knew that Dan was dishonest and made the referral knowing it would help Charles evade tax, the referral would constitute a criminal offence. This could then attract liability for Bravo Finances Ltd.

Dan's liability for aiding and abetting Charles to evade tax

Dan has committed a tax evasion facilitation offence. He is guilty of the section 72 VATA 1994 offence as he has fraudulently taken steps with a view to the evasion of Charles' VAT. He has also aided and abetted Charles' wrongdoing.

In order for Dan's actions to give rise to liability for Bravo Finance Ltd, Dan would need to fall within the definition of a person associated with Bravo Finance Ltd. Dan is not an employee of Bravo Finance Ltd. If Bravo Finance Ltd contracted invoicing and VAT regularising services offered to their clients to Dan and his company then they would be likely to be "associated persons" whose criminal facilitation could give rise Bravo Finance Ltd being liable. By virtue of the sub-contracting Dan's Invoices would be providing services on behalf of Bravo Finance Ltd. However, here there was a referral. It is thus unlikely that Dan is a person associated with Bravo Finance Ltd, and thus his criminal facilitation of Charles' offence cannot give rise to liability for Bravo.

However, if Dan were an ex-employee of Bravo and only took work from Bravo Finance Ltd and did this work at less than commercial rates, then a jury might look past the formal arrangements to consider the substance of the relationship, concluding that Dan in reality provided services on behalf of Bravo and was thus a person associated with them.

If Dan was found to be an associated person of Bravo Finance Ltd, the question would still arise as to whether Bravo Finance Ltd had reasonable procedures. If Bravo Finance Ltd had a prominent message from its board of directors against tax evasion, had terms in its contracts (with employees and contractors) requiring that tax evasion facilitation not be engaged in, regular training for its staff, clear reporting procedures for whistle-blowers, and regular reviews of the effectiveness of its procedures, then one might expect these procedures to be reasonable and thus prevent Bravo Finance Ltd from being guilty of the new offence.

If Bravo Finance Ltd has not put in place reasonable procedures then Bravo Finance Ltd would have no defence. For example, if Bravo Finance Ltd has undertaken no risk assessment in relation to the services it offered being used to facilitate tax evasion, or offered no training to its staff on financial crime detection and prevention

or had no means for its representatives to report suspected criminal wrong-doing, then its procedures may be found not to be reasonable.

Liability of Dan's Invoices Ltd for aiding and abetting Charles to evade tax

As Dan has committed a tax evasion facilitation offence, his company, Dan's Invoices Ltd could also be guilty of the new corporate offence.

Summary

In the above example, a prosecution might follow, whereby:

- Charles was prosecuted for the fraudulent evasion of VAT;
- Alan was not prosecuted as his acts were innocent;
- Bravo Finance Ltd was not prosecuted as no person associated with them committed a tax evasion facilitation offence;
- Dan was prosecuted for his involvement in Charles' evasion of VAT;
- Dan's Invoices Ltd was prosecuted for the new offence.

Draft guidance: the corporate criminal offence of failing to prevent the criminal facilitation of tax evasion

Draft first published April 2016

Draft: Guidance for the new corporate offence of failure to prevent the criminal facilitation of tax evasion

Purpose of guidance

This guidance explains the policy behind the new offences and is intended to help relevant bodies of all sizes and in all sectors understand what sorts of procedures they can put in place to prevent persons associated with them from criminally facilitating tax evasion.

The guidance is designed to be of general application and is formulated around six guiding principles, each followed by commentary and examples. The guidance is not prescriptive and is not a one-size-fits-all document. The question of whether an organisation has *such procedures as are reasonable* in place to prevent the facilitation of tax evasion in the context of a particular prosecution is a matter that can only be resolved by the courts taking into account the particular facts and circumstances of the case. The onus will remain on the organisation, in any case where it seeks to rely on the defence, to show that it had in place such procedures as were reasonable in all the circumstances. Departures from the suggested procedures contained within the guidance will not, of itself, give rise to a presumption that an organisation does not have reasonable procedures: alternative procedures may also be just as reasonable. Moreover, a small organisation and a large multi-national organisation may give effect to these principles in very different ways: what is reasonable for a small business in a low risk sector may be entirely unreasonable for a large business in a high risk sector.

This guidance will also inform trade bodies and sector representatives in the development of more precisely tailored sector-specific guidance which can be put forwards for endorsement by the Government.

This guidance aims to:

- provide guidance to firms on steps they can take to reduce the risk of their representative facilitating tax evasion.
- enhance understanding of Government expectations and help firms to assess the adequacy of their systems and controls and remedy deficiencies.
- help firms adopt a more effective, risk-based and outcomes-focused approach to mitigating tax crime risk.

The Guidance does not include guidance on all the tax evasion crime risks that a corporation may face. The case studies of good and poor practice are not exhaustive.

The examples present ways, but not the only ways, in which corporations might comply with the requirement of “reasonable procedures”. Similarly, there are many practices we would consider poor that we have not identified as such in the guidance.

This guidance is not the only source of guidance on preventing tax evasion. Corporations are reminded that other bodies produce guidance that may also be relevant and useful.

This guidance should be applied in a risk-based, proportionate way. This includes taking into account the size, nature and complexity of a firm when deciding whether a certain example of good or poor practice is appropriate to its business.

This Guidance is not a checklist of things that all corporations must do or not do to reduce their risk of liability under the corporate criminal offence, and should not be used as such by firms.

Relevant Body

Only a “relevant body” can commit the new offences. This means that only bodies corporate (companies) and partnerships can commit the new offences. The new offences cannot be committed by natural (as opposed to juristic) persons.

The offence in section 2 in relation to tax owed in the UK, can be committed by any body corporate or partnership regardless of whether it is formulated under the law of the UK or the law of a foreign jurisdiction. This reflects the fact that under the current law any person can be guilty of a UK tax evasion offence contrary to UK law, regardless of their location, if they assist somebody to evade UK tax with the requisite guilty state of mind. The fact that the offence is committed against the UK is sufficient to give the criminal courts of the UK jurisdiction over the offence. Thus companies incorporated under the law of France or partnerships formed under German law would be capable of committing the offence in section 2 in relation to taxes owed to the UK.

However, the offence in section 3 in relation to overseas tax can only be committed:

- by a relevant body incorporated under UK law, for example a limited company incorporated under UK law;
- by a relevant body carrying on a business or other undertaking from a permanent establishment within the UK, for example a company incorporated under the law of France but operating from an office in Manchester; or
- by a relevant body whose associated person is located within the UK at the time of the act that facilitates the evasion of the overseas tax, for example a company incorporated under German law whose employee helps another person to commit a foreign tax evasion offence whilst in London.

These bodies are considered sufficiently connected to the UK for it to be proper that they be subject to the new offence in relation to overseas tax.

Associated Person

A relevant body can only commit the new offences if a person associated with it criminally facilitates a tax evasion offence. A person is “associated” with a relevant body if, when facilitating the tax evasion offence, that person is performing services for or on behalf of the relevant body. The associated person can be an individual or an

incorporated body. The capacity in which a person performs services for or on behalf of the organisation does not matter, so employees (who are presumed to be performing services for their employer), agents and subsidiaries are included.

The question as to whether a person is performing services for an organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the organisation. The concept of a person who 'performs services for or on behalf of' the organisation is intended to be broad in scope, so as to embrace the whole range of persons who might be capable of facilitating tax evasion whilst acting on the relevant body's behalf. This broad scope means that contractors could be 'associated' persons to the extent that they are performing services for or on behalf of a commercial organisation. The decision will always necessitate looking past the contractual form and considering all the relevant factors including contractual proximity, control, and benefit.

Request for stakeholder feedback

A number of stakeholders have requested that the guidance for the offence includes specific examples around how liability may be attracted for a corporation where they refer a client to another individual or organisation.

In order to inform and further develop such examples, HMRC requests that stakeholders submit anonymised case studies that reflect the way their organisations make referrals, especially where the referral forms the basis of an ongoing relationship or the joint provision of services to a client. This will help to ensure that the examples provided within the guidance are relevant and reflect the manner in which corporations conduct their business.

UK Tax Evasion Offence (by a taxpayer)

Any fraudulent conduct that intends to divert funds from the public revenue constitutes the common law offence of cheating the public revenue. There are also a range of statutory offences of "fraudulently evading" various taxes (for example fraudulently evading VAT, contrary to section 72 of the Value Added Tax Act 1994; or fraudulently evading income tax, contrary to section 106A of the Taxes Management Act 1970). These make it an offence to dishonestly "take steps with a view to" or "be knowingly concerned in" the evasion of the tax. For these offences to be committed it is not necessary that any tax actually be successfully evaded.

UK Tax Evasion Facilitation Offence (by an associated person)

The above offences can be committed by a person other than the person who owes the tax. Where person A dishonestly takes steps with a view to the evasion of a tax owed by person B, person A will be guilty of the offence. The fact that these offences can be committed as a facilitating perpetrator mean that it is seldom necessary to

have resort to secondary liability as an aider or abettor (also known as an accessory). However, a UK tax evasion facilitation offence will cover any criminal offence committed by facilitating another's tax evasion offence (whether as a perpetrator or as secondary party/accomplice).

Foreign Tax Evasion Offence

Any conduct that contravenes the criminal law of another country relating to the evasion of tax and would, if that tax were owed to the UK, be a UK tax evasion offence constitutes a foreign tax evasion offence. For example, the German Fiscal Code creates an offence of tax evasion. Section 370 states:

- (1) A penalty of up to five years' imprisonment or a monetary fine shall be imposed on any person who
 1. Furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters of substantial significance for taxation.
 2. Fails to inform the revenue authorities of facts of substantial significance for taxation when obliged to do so, or
 3. Fails to use revenue stamps or revenue stamping machines when obliged to do so and as a result understates taxes or derives unwarranted tax advantages for himself or for another person.

Conduct that is an offence contrary to this law, which is also dishonest, would amount to an offence under English law of cheating the public revenue or the fraudulent evasion of the tax in question had the tax been owed to HMRC. Dishonestly providing incorrect or incomplete particulars concerning matters of substantial significance for taxation or failing to inform the authorities of such facts would amount to taking steps with a view to evading the tax and to fraudulent conduct tending to divert funds from the revenue.

Similarly, Sections 378 and 379 of the Norwegian Penal Code state:

Section 378. Tax Evasion

Penalties or imprisonment until 2 years are imposed on the person who provides public authorities with incorrect or incomplete information, or who fails to give mandatory information, when he/she understood or should have understood that this could result in tax advantages.

Section 379. Gross Tax Evasion

Gross tax evasion is punishable by fines or imprisonment until 6 years. When deciding if the tax evasion is gross, special consideration shall be given to whether it:

- a) has led or could have led to evasion of a significant amount,
- b) is performed in a manner that has made it particularly difficult to detect,
- c) is committed on several occasions or over a long period,
- d) is committed by several persons jointly or has a systematic or organized mark,
- e) is performed by abusing position or relationship of trust, or
- f) constitutes complicity in the exercise of business.

Again, where the conduct is dishonest and involves providing incorrect or incomplete information or issuing an incorrect document understood to result in a tax advantage, the conduct would, had the tax been owed to the UK, amount to the offences in English law of taking steps with a view to evading the tax or cheating the public revenue.

Principle 1 proportionality of reasonable procedures

What constitutes reasonable procedures for a corporation to adopt to prevent persons associated with it from criminally facilitating tax evasion will be proportionate to the risk of criminal facilitation faced by the corporation. This will depend on the nature, scale and complexity of the corporation's activities. The new offences do not require corporations to undertake excessive due diligence but does demand more than mere lip-service to preventing the facilitation of tax evasion.

Commentary

The term 'procedures' within this guidance is used to mean both:

- those formal policies adopted by a corporation to prevent criminal facilitation of tax evasion by those acting on its behalf, and
- practical steps taken to implement these policies, the enforcing of compliance with the policies, and the monitoring of the policies' effectiveness.

The policies should outline the corporation's position on involvement in the facilitation of tax evasion, including the provision of services which pose a high risk of being misused to commit a tax crime, and a plan of how it will implement and review measures to ensure that persons associated with it are not aiding and abetting tax evasion.

Procedures to prevent the criminal facilitation of tax evasion should be proportionate to the risk the corporation faces as a result of the service that it provides and the manner in which it provides them. Burdensome procedures designed to perfectly address every conceivable risk no matter how remote are *not* required. Procedures need only to be reasonable given the risks posed in the circumstances. It is expected that a corporation will therefore undertake an assessment of the risk that those who act on its behalf may criminally facilitate tax evasion. A number of factors will be relevant when assessing the risk posed to a corporation by the services it provides and the manner in which it provides them, including the size of the corporation, the nature and complexity of its business and the jurisdictions in which it operates.

To be "reasonable", prevention procedures should be proportionate to the risks that the organisation faces. An initial assessment of risk (specifically posed by the potential facilitation of tax evasion) across the organisation is therefore a necessary first step. The size of the organisation will be an important factor, as will the nature and complexity of its business, but size will not be the only determining factor. Some small organisations may face significant risks, and will need more extensive procedures than their counterparts facing limited risks. However, small organisations are unlikely to need procedures that are as extensive as those of a large multi-national organisation. For example, a very small business may be able to rely heavily on

periodic oral briefings to communicate its policies while a large one may need to rely on more extensive written communication. Larger organisations may also exercise less day-to-day oversight over those providing services on its behalf, and may therefore need to put in place alternative oversight arrangements.

Procedures to prevent the criminal facilitation of tax evasion by a person associated with the corporation may be independent, standalone procedures; but so long as they properly address the risk of facilitating tax evasion they may form part of a wider package of procedures, for example internal Anti-Money Laundering or fraud prevention procedures.

What is considered a proportionate timescale for implementing, reviewing and amending procedures to prevent criminal facilitation of tax evasion will depend on the nature, scale and complexity of the corporation's activities and the resources available to the corporation. It is anticipated a corporation's procedures will not be static, but will evolve and develop in line with the corporation's activities.

Procedures

The precise procedures that will be reasonable may differ for each organisation, but they are likely to include common elements. For example:

- A specific commitment to preventing the involvement of those acting on the corporation's behalf in the criminal facilitation of tax evasion
- A clearly articulated risk assessment on which the corporate's procedures are based.
- An articulation of its approach to mitigating risks of involvement in the criminal facilitation of tax evasion, such as those arising from the nature of its services and areas of operation.
- An overview of its strategy and timeframe to implement its preventative policies. It is expected that what is reasonable will evolve over time. For example, IT systems which form part of a corporation's due diligence procedures may take time to develop and subsequently review and amend.
- Monitoring and enforcing compliance with its procedures
- Reviewing procedures for effectiveness and refining them.
- A clear pathway for reporting wrongdoing by persons associated with the corporation.

The procedures put in place to implement an organisation's preventative policies should be designed to mitigate identified risks as well as prevent criminal conduct on the part of those providing services on behalf of the corporation. The following list is intended as guidance for the topics that preventative procedures may embrace depending on the nature of the particular risks faced:

- The involvement of the corporation's top level management

- The procedures and methods used to assess the risk to the corporation posed by its activities
- Due diligence conducted in relation to persons associated with the corporation
- The contractual terms and conditions of persons associated with the corporation
- Disciplinary and enforcement action taken against those persons breaching the corporation's policies
- How the corporation will communicate its policies to persons associated with it
- Policies around reporting criminal actions by persons associated with the corporation
- The process and timeline by which the organisation plans to implement its preventative procedures and training in their application
- The monitoring, review and evaluation of the corporation's preventative policy and procedures
- Disclosure of client information in line with existing legal requirements, for example reporting under the Common Reporting Standard and the Proceeds of Crime Act.

Principles 2 top level commitment

The top-level management of a corporation are committed to preventing persons associated with the corporation from engaging in criminal facilitation of tax evasion. They foster a culture within the corporation in which activity to facilitate tax evasion is never acceptable.

Commentary

Those at the most senior levels of the organisation are best placed to foster a culture of compliance where actions intended to facilitate tax evasion are considered unacceptable. This principle is intended to encourage the involvement of senior management in the creation and implementation of preventative measures. It is also intended to encourage senior management involvement in the decision making process in relation to the assessment of risk, where this is appropriate for the management structure of the corporation.

Procedures

The level and nature of the involvement of senior management of a corporation will vary depending on the size and structure of the corporation, but will likely include:

- communication and endorsement of the corporation's stance on preventing the facilitation of tax evasion, and
- involvement in the development and review of preventative procedures

Internal and external communication and endorsement of the corporation's position of preventing the facilitation of tax evasion

The manner and form in which a corporation chooses to communicate, both internally and externally, its position on ensuring that persons associated with it do not criminally facilitate the evasion of taxes may vary depending on a number of factors including the size of the corporation, the nature and complexity of its business and the jurisdictions within which it operates.

Communication may vary depending on the target audience, for example communications aimed at the corporation's clients may be different from those aimed at employees of the corporation.

Effective formal statements to demonstrate the commitment by senior managers within the corporation may include:

- A commitment to zero tolerance towards the criminal facilitation of tax evasion

- The consequences for persons associated with the corporation for breaching the corporation's policy on the facilitation of tax evasion
- A commitment not to recommend the services of other corporations who do not have equivalent standards on tax evasion prevention
- Articulation of the benefits of rejecting the provision of services to enable tax evasion (reputational, customer and business partner confidence)
- Articulation of the corporation's preventive procedures
- Key individuals and/or departments involved in the development and implementation of the organisation's prevention procedures
- Reference to any membership of collective action against the facilitation of tax evasion, for example through initiatives undertaken by representative bodies

Involvement in developing preventative measures

The level and nature of involvement in the creation and implementation of preventative measures will be bespoke to the corporation involved. It is expected that the level of involvement will be proportionate to the corporation's size, management structure and business activities.

In smaller corporations it may be proportionate for the most senior management to be personally involved in the design and implementation of preventative measures. In a large multinational organisation personal involvement in the design and implementation of preventative measures may not be proportionate, and senior management may instead take responsibility for preventative measures by providing oversight of work delegated to a committee and the publication with positive endorsement for the preventative measures thereby created.

Regardless of the scale of involvement of senior management, it is likely to reflect the following elements:

- Members of senior management of the corporation having designated responsibility for preventative measures
- Endorsement of the corporation's preventative policy and associated publications
- Leadership and designated responsibility for awareness raising of the corporation's preventative policies
- Engagement with relevant associated persons and external bodies to help articulate the organisation's policies
- Designated responsibility for certifying the assessment of risk
- Designated responsibility at senior level for disciplinary procedures relating to the breach of the corporation's policies.

Principle 3 Risk assessment

The corporation assesses the nature and extent of its exposure to the risk of its agents engaging in activity during the course of business to criminally facilitate tax evasion. The risk assessment is documented and kept under review.

Commentary

Those corporations most affected by the new offence, for example those in the financial services, legal and accounting sectors, may already undertake a range of risk assessments relating for their business activities. The purpose of this principle is to promote the inclusion of tax evasion within the corporation's wider risk assessment.

Corporations may wish to consider The Financial Conduct Authority's (FCA) guide for firms on preventing Financial Crime⁷ and the Law Society's Anti Money Laundering Guidance, particularly Chapter 2 which considers a risk based approach⁸.

Procedures

Risk assessment procedures that allow a corporation to accurately identify and prioritise the risks it faces will, whatever its size, activities, customers or markets, usually reflect a few common themes. These are:

- Oversight of risk assessment by senior management
- Appropriate allocation of resourcing to detection and monitoring risk – this will reflect the size and nature of the corporation
- Identification of the internal and external information sources that will enable the risk to be assessed and reviewed, as well as any gaps in the information available to the corporation
- Due diligence enquiries (see Principle 4)
- Accurate and appropriate documentation of the risk assessment and a clear articulation of tax evasion risks where this is considered as part of the corporation's wider risk assessment.
- Risk assessments are periodically reviewed and updated in line of changing circumstances.
- Organisations should have in place procedures to identify emerging risks and feed these into the organisation's risking.

⁷ https://www.handbook.fca.org.uk/handbook/document/FC1_FCA_20150427.pdf

⁸ <http://www.lawsociety.org.uk/support-services/advice/practice-notes/aml/risk-based-approach/>.

- Internal challenge to risk assessments.

The nature of the risks of facilitating tax evasion faced by a corporation will evolve as the corporation's business and customer base evolves. For example, a corporation may consider that its risk increased, and thus requires enhanced procedures, where it begins to provide services in jurisdictions not reporting taxpayer information under the Common Reporting Standard or offers a new product which carries a known risk of being misused by those seeking to evade tax.

Commonly encountered risks

An assessment of external risks is intended to help inform how these risks can be mitigated by the corporation's procedures and the level of due diligence a corporation may deem it reasonable to apply in relation to a given situation.

Request for stakeholder feedback

HMRC asks that stakeholders, during the course of the consultation period, submit what they see as commonly encountered risks. HMRC intends for this information to form the basis of a common understanding of external risks to inform the guidance.

Stakeholders may wish to consider the commonly encountered risks articulated in the Bribery Act guidance, which are reproduced below.

Country risk: this is evidenced by perceived high levels of corruption, an absence of effectively implemented anti-bribery legislation and a failure of the foreign government, media, local business community and civil society effectively to promote transparent procurement and investment policies.

Sectoral risk: some sectors are higher risk than others. Higher risk sectors include the extractive industries and the large scale infrastructure sector.

Transaction risk: certain types of transaction give rise to higher risks, for example, charitable or political contributions, licences and permits, and transactions relating to public procurement.

Business opportunity risk: such risks might arise in high value projects or with projects involving many contractors or intermediaries; or with projects which are not apparently undertaken at market prices, or which do not have a clear legitimate objective.

Business partnership risk: certain relationships may involve higher risk, for example, the use of intermediaries in transactions with foreign public officials; consortia or

joint venture partners; and relationships with politically exposed persons where the proposed business relationship involves, or is linked to, a prominent public official.

A number of stakeholders have expressed an interest in a forum where risks can be periodically considered, monitored and shared between business and investigators. If you see you merit in such a forum, we ask that you submit an expression of interest to consult.nosafehavens@hmrc.gsi.gov.uk. This can be done as part of a consultation response, or separately.

A risk assessment should also consider the extent to which internal structures or procedures may themselves add to the level of risk. Common encountered internal factors may include:

- Deficiencies in employee training, skills and knowledge
- A bonus culture that rewards excessive risk taking
- Lack of clarity on the organisation's policies on, and procedures for, the provision of high risk services and products
- Deficiencies in the organisation's submission of Suspicious Activity Reports (SARs)
- Lack of clear financial controls
- Lack of clear messaging from top-level management on refusing to engage in fraud.

Principle 4 Due diligence

The organisation applies due diligence procedures, taking an appropriate and risk based approach, in respect of persons who perform or will perform services on behalf of the organisation, or if appropriate to their clients, in order to mitigate identified risks.

Commentary

Those organisations in the sectors facing the greatest risks are likely already to undertake a wide variety of due diligence procedures, both mandatory due diligence and due diligence undertaken in response to risks associated with specific transactions. It is envisaged that these due diligence procedures will be capable of being developed so as to apply to the risk of criminal facilitation of tax evasion by associated persons. However, it should not be thought that merely applying old procedures tailored to a different type of risk will be an adequate response to the risk of tax evasion facilitation.

Those with exposure to the greatest risk may choose to clearly articulate their due diligence procedures specifically in relation to the corporate offence. Moreover, a single corporation might have differing procedures for different parts of its business reflecting the varying levels of risk across all of its activities. A corporation may, upon conducting a risk assessment, decide that services provided to a certain group of its clients pose a higher risk of being misused to perpetrate a tax fraud. As a result they may apply increased scrutiny over those providing services to those clients, or over those who provide those services, to address the specific risks identified.

Procedures

The due diligence procedures put in place should be proportionate to the identified risk. For example, it may be that the risk identified in given situations is so remote as to justify there being no procedures in place. Alternatively, an organisation may assess the risks as being substantial in relation to a particular associated person, client or service, and so apply considerably greater scrutiny in that circumstance.

Organisations may choose to conduct their due diligence internally, or externally, for example by consultants.

It is expected that the effectiveness of the organisation's procedures will be reviewed and where necessary the procedures will be amended.

Principle 5 Communication (including training)

The organisation seeks to ensure that its prevention policies and procedures are embedded and understood throughout the organisation, through internal and external communication, including training. This is proportionate to the risk the organisation assesses that it is exposed to.

Commentary

A clear articulation of an organisation's policy against engaging in activities to help clients commit tax fraud deters those providing services on behalf of the corporation from engaging in such activities.

It is important that the corporation ensures awareness and understanding of its policy amongst its representatives. The organisation may feel that it is necessary to require its representatives to undertake training, depending on the risks it is exposed to, to ensure that they have the skills needed to identify when they might be at risk of engaging in an illegal act and what procedure to follow if this occurs.

Procedures

The nature of internal and external communication may vary depending on the nature of the risk being addressed, the size, business and operation of the organisation in question.

Internal communications should make clear the corporation's zero tolerance policy for the provision of illegal services by its representatives and the consequences for anyone found to be complicit in illegal activity. Such communication may focus on high risk areas of operation for the corporations and what is expected of representatives who find themselves being asked to provide a service which they believe will be used to facilitate a tax fraud.

An important aspect of internal communication is an established and confidential means for representatives of the organisation to raise concerns about the provision of services to facilitate tax fraud. It should be clear to those providing services on behalf of the organisation who they should contact within the organisation if they have questions or concerns about the services they are providing. Corporations may wish for these communications to form part of their existing communications, for example of money laundering prevention, or as a standalone communication.

External communication of an organisation's policy on the provision of services to facilitate tax evasion can act as a strong deterrent to those who would seek to use the organisation's services to further illegal activity. Organisations may consider it proportionate and appropriate to convey these messages to partner organisations, particularly those to whom it is making referral, or from whom clients are referred.

Training

The training should be proportionate to the risk faced. Some corporations may wish to incorporate training into their existing financial crime prevention training, other organisation may wish to introduce bespoke training to address specific risks.

Consideration should be given to the specific training needs of those in the highest risk posts, and to training required to ensure that the corporation's representatives understand the process for referring any concerns. The effectiveness of training should be monitored and evaluated.

Principle 6 monitoring and review

The organisation monitors and reviews its preventative procedures and makes improvements where necessary.

Commentary

The nature of the risks faced by an organisation will change and evolve over time. This may be as a natural result of external developments, or as a result of changes in the organisation's activities. The organisation will therefore need to change its procedures in response to the changes in the risks that it faces.

Procedures

There are a range of approaches which an organisation may wish to take when reviewing its monitoring mechanisms. An Organisation may wish to have its review conducted by an external party, or may choose to conduct its review internally.

Organisations can review their procedures in a number of ways, for example:

- By seeking internal feedback from staff members and looking to other financial crime prevention procedures.
- Through formalised periodic review with documented findings.
- Through working with other organisations, such as representative bodies or other organisations facing similar risks.

This is not an exhaustive list and it is expected that organisations will choose the approach most suited to their needs. Organisations may change their review process in light of developments, for example an organisation may need to take a more formalised and detailed approach to reviewing its procedures, following criminal activity by persons associated with it.

4. Assessment of Impacts

Stakeholders have stressed that they cannot make an accurate assessment of the new corporate offence on their corporations until they have seen the finalised legislation and guidance. As we consult on finalising draft legislation and guidance, we welcome evidence from affected entities on the potential impacts of the new corporate offence.

Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	The final costing of the corporate offence will depend on the outcome of the consultation and will be subject to scrutiny by the Office for Budget Responsibility. We expect for a final assessment to be made once the legislation has been finalised.				
Economic impact	The final economic impact of the corporate offence will depend on the outcome of the consultation and will be subject to scrutiny by the Office for Budget Responsibility. We expect for a final assessment to be made once the legislation has been finalised.				
Impact on individuals and households	The offence will apply to corporations, not individuals, we therefore do not expect an impact on individuals or households.				
Equalities impacts	Not applicable as this criminal offence applies to non-natural persons only.				
Impact on businesses and Civil Society Organisations	The impact on corporations affected by the new offence will depend on the precise scope of the offence and the nature of the reasonable procedures defence. Stakeholders have stressed that they cannot make an accurate impact assessment until they have seen the finalised legislation and guidance. We will continue to consult with stakeholders on the impact of the new corporate offence following publication of finalised draft legislation.				
Impact on HMRC or other public sector delivery organisations	The operational impact of investigating and bringing prosecutions under the new criminal offence will depend on the scope of the legislation. Further work will be undertaken to assess these impacts following the consultation.				
Other impacts	None.				

The policy will be monitored and assessed alongside other measures in the Government's package for tackling offshore evasion.

5. Summary of Consultation Questions

QA1. Do you believe that the draft legislation, when read with the draft guidance, adequately articulates the offence and defence? The Government would welcome alternative or additional wording for inclusion in the guidance that stakeholders believe adds clarity to the offence and defence.

QB1. Do consultees consider that this clause, when read with its associated guidance, will enable them to identify when a person acts for or on behalf of a corporation? The Government welcomes suggested case studies from stakeholders for inclusion in the guidance to illustrate when a person can be said to be associated with a corporation for the purposes of the offence.

QB2. Do you believe the draft clauses, when read with the associated guidance, clearly exclude instances where the corporation's representative is acting in a private capacity, rather than providing services for or on behalf of the corporation? The Government welcomes suggested language or case studies for inclusion in the guidance.

QC1. Do you have any comments on the draft clause above, when read with the associated guidance?

QD1. Do you believe that the legislation, when read with the associated guidance, makes it sufficiently clear in respect of what criminal acts a corporation can be liable for failing to prevent its representatives from criminally facilitating? The Government welcomes suggested language or case studies for inclusion in the guidance.

QE1. Do you agree that the domestic tax fraud and overseas tax fraud elements of the corporate offence are better presented as two separate offences?

QE2. The Government welcomes stakeholder views on the new clauses, whether they sufficiently articulate the requirement for dual criminality at both the taxpayer and facilitator level, when read alongside the associated guidance. And whether they sufficiently articulate the requirement for dual criminality at both the taxpayer and facilitator level. The Government welcomes suggested language or case studies for inclusion in the guidance.

QF1. Do you believe the amended draft legislation brings within scope only those corporations with a sufficient presence in the UK, or those corporations whose representatives are committing the relevant criminal act(s) from within the UK? The Government welcomes suggested language or case studies for inclusion in the guidance.

HMRC welcomes additional comments on the guidance which are not directly covered by the questions posed above

Please note that throughout the draft guidance HMRC has highlighted where stakeholder input into case studies and examples is particularly welcome

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

A summary of the main questions in this consultation is included at Chapter 5.

Responses should be sent by 10th July 2016, by e-mail to consult.nosafehavens@hmrc.gsi.gov.uk or by post to:

Jennifer Haslett
HMRC Centre for Offshore Evasion Strategy
Room 1C/26
100 Parliament Street
London SW1A 2BQ

Telephone enquiries can be addressed on 03000 557864 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Draft clauses published in December 2015

PART 1

FAILURE TO PREVENT FACILITATION OF TAX EVASION

1 Failure by corporations etc to prevent facilitation of tax evasion offences by associated persons

(1) A relevant body ("B") is guilty of an offence if a person associated with B ("A") commits a tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) It is a defence for B to show that —

(a) it had in place procedures designed to prevent persons associated with it from committing tax evasion facilitation offences, and

(b) its procedures were reasonable in all the circumstances.

(3) A person guilty of an offence under this section is liable, on summary conviction or on conviction on indictment, to a fine.

2 Meaning of "tax evasion facilitation offence" and related terms

(1) This section and section 3 define terms used in this Part.

(2) "Tax evasion facilitation offence" means—

(a) a UK tax evasion facilitation offence, or

(b) an overseas tax evasion facilitation offence.

(3) A "UK tax evasion facilitation offence" is an offence under the law of any part of the United Kingdom which is committed by facilitating the commission of a UK tax evasion offence.

(4) "UK tax evasion offence" means—

(a) an offence of cheating the public revenue, or

(b) an offence consisting of being knowingly involved in, or in taking steps with a view to, the fraudulent evasion of a tax,

(c) any other offence under an enactment which may be indicted as an offence of cheating the public revenue.

(5) A person facilitates the commission of a UK tax evasion offence by—

(a) encouraging or assisting the commission of the offence,

- (b) aiding and abetting, counselling or procuring the commission of the offence,
- or
- (c) doing anything that constitutes the commission of a UK tax evasion offence by virtue of being knowingly involved in, or taking steps with a view to, the fraudulent evasion of tax by another person.

(6) An “overseas tax evasion facilitation offence” is an offence under the law of a country or territory outside the United Kingdom which is committed by facilitating the commission by another person of an overseas tax evasion offence.

(7) “Overseas tax evasion offence” means an offence under the law of a country or territory outside the United Kingdom which corresponds to any UK tax evasion offence and would if committed in the United Kingdom (assuming the tax law in that country or territory operated in the United Kingdom) constitute an offence under the law of a part of the United Kingdom.

(8) A person facilitates the commission of an overseas tax evasion offence by engaging in conduct which corresponds to any conduct mentioned in subsection (5) in connection with, or in committing, an overseas tax evasion offence.

3 Other definitions

(1) “Relevant body” means a body corporate or partnership (wherever incorporated or formed).

(2) “Partnership” means—

- (a) a partnership within the meaning of the Partnerships Act 1890,
- (b) a limited partnership registered under the Limited Partnerships Act 1907, or
- (c) a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom.

(3) A person (“A”) is associated with B if A is a person who performs services for or on behalf of B and for this purpose—

- (a) the capacity in which A performs services for or on behalf of B does not matter (so, for example, A might be an employee, agent or subsidiary of B), and
- (b) subject to subsection (5), whether or not A 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 relationship between A and C.

(4) If A is an employee of B it is to be presumed, unless the contrary is shown that A is a person who performs services for or on behalf of B.

4 Guidance about preventing the facilitation of tax evasion offences

(1) HMRC must publish guidance about procedures that relevant bodies can put in place to prevent persons associated with them from committing facilitating tax evasion offences.

(2) HMRC may from time to time publish—

- (a) revisions to guidance published under this section, or
- (b) new or revised guidance to supersede guidance previously published.

(3) HMRC must consult the Secretary of State, Scottish Ministers and the Department for Justice in Northern Ireland before publishing anything under this section.

(4) Publication under this section is to be in such manner as HMRC consider appropriate.

(5) HMRC may approve guidance prepared and published by another person or body on matters relating to the procedures referred to in subsection (1) (and the HMRC guidance published under subsection (1) need not cover the matters covered by any guidance so approved).

5 Offences: supplementary

(1) No proceedings for an offence under section 1 consisting of an overseas tax evasion facilitation offence may be instituted in England and Wales or Northern Ireland except by or with the consent of the Director of Public Prosecutions or the Director of the Serious Fraud Office.

(2) Proceedings for an offence under section 1 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).

(3) 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 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,
 - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)),
 - (iii) section 70 of the Criminal Procedure (Scotland) Act 1995.

(4) A fine imposed on a partnership on its conviction for an offence under section 1 is to be paid out of the partnership assets.

6 Offences: territorial application and jurisdiction

(1) A relevant body cannot be guilty of an offence under this section relating to an overseas tax evasion facilitation offence unless it—

- (a) is incorporated or formed under the law of any part of the United Kingdom,
- or
- (b) it is carrying on a business or other undertaking (or part of a business or other undertaking) in the United Kingdom.

(2) It is immaterial for the purposes of section 1 whether—

- (a) any relevant act or omission of the relevant body,
- (b) the tax evasion facilitation offence committed by A, or
- (c) the tax evasion offence facilitated by A, takes place in the United Kingdom or elsewhere.

(3) If no relevant act or omission of the relevant body has taken place in the United Kingdom, proceedings for an offence under section 1 may be taken in any place in the United Kingdom.

(4) If by virtue of subsection (2) proceedings for an offence are to be taken in Scotland against a person, they may be taken in such sheriff court district as the Lord Advocate may determine.

(5) In subsection (3) “sheriff court district” is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.

7 Commencement of Part

(1) This Part (apart from this section) comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.

(2) Regulations under this section may—

- (a) appoint different days for different purposes, and
- (b) make such transitional provision as the Treasury considers appropriate in connection with the coming into force of any provision of this Part.

Annex B: Amended draft clauses published

1 Meaning of relevant body and associated person

(1) This section defines terms used in this Act.

(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,

(b) a limited partnership registered under the Limited Partnerships Act 1907, or

(c) a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom.

(4) A person (A) is associated with a relevant body (B) if A performs services for or on behalf of B and for this purpose—

(a) the capacity in which A performs services for or on behalf of B does not

matter (so, for example, A might be an employee, agent or subsidiary of B), and

(b) subject to subsection (5), whether or not A 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 relationship between A and B.

(5) An employee of B is to be presumed, unless the contrary is shown, to be a person who performs services for or on behalf of B.

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

2 Failure to prevent facilitation of UK tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person associated with B commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) In proceedings for an offence under this section it is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—

(a) it had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) that in all the circumstances, it was not reasonable to expect B to have any prevention procedures in place.

(3) In subsection (2) “prevention procedures” means procedures designed to prevent persons associated with the body from committing UK tax evasion facilitation offences.

(4) In this Act—

- (a) “UK tax evasion offence” means—
- (i) an offence of cheating the public revenue, or
 - (ii) 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; and
- (b) “UK tax evasion facilitation offence” means an offence under the law of any part of the United Kingdom which is committed by facilitating the commission by another person of a UK tax evasion offence.

(5) For the purposes of subsection (4)(b) a person (A) facilitates the commission of a UK tax evasion offence by another person by doing any of the following (with the necessary knowledge or intent)—

- (a) aiding, abetting, counselling or procuring the commission of the offence,
- (b) being guilty of the offence as art and part only (contrary to the law of Scotland), or
- (c) doing anything that constitutes the commission by A of a UK tax evasion offence by virtue of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of tax by another person.

(6) Steps taken by A with a view to the fraudulent evasion of tax by another person are not to be regarded for the purposes of subsection (4)(b) as having facilitated a UK tax evasion offence unless the other person has committed a UK tax evasion offence facilitated by the steps taken.

(7) A relevant body guilty of an offence under this section is liable, on summary conviction or on conviction on indictment, to a fine.

3 Failure to prevent facilitation of foreign tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person associated with B commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) B can only be guilty of an offence under this section if (when the foreign tax evasion facilitation offence is committed)—

- (a) B is incorporated or formed under the law of any part of the United Kingdom, or
- (b) where B is not within paragraph (a)—
 - (i) B is carrying on a business or other undertaking (or part of a business or other undertaking) from an establishment in the United Kingdom, or
 - (ii) any act or omission constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom. In paragraph (b)(i) “establishment” has the meaning given by section 1067(6) of the Companies Act 2006.

(3) In proceedings for an offence under this section 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) in all the circumstances it was not reasonable to expect B to have any prevention procedures in place.

(4) In subsection (3) “prevention procedures” means procedures designed to prevent persons associated with B from committing foreign tax evasion facilitation offences against the law of the foreign country concerned.

(5) In this Act—

(a) “foreign tax evasion offence” means conduct (carried out with the necessary knowledge or intent) which—

(i) is an offence under the law of a foreign country that relates to the evasion of a tax payable under the law of that country, and

(ii) would amount to an offence of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax (assuming that there was an offence of that kind in the United Kingdom in relation to that tax); and

(b) “foreign tax evasion facilitation offence” means an offence under the law of the foreign country concerned which is committed by facilitating the commission by another person of a foreign tax evasion offence under the law of that country.

(6) For the purposes of subsection (5)(b) a person facilitates the commission of a foreign tax evasion offence by engaging in conduct in relation to such an offence (with the necessary knowledge or intent) which—

(a) is an offence under the law of the foreign country concerned, and

(b) would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence (see section 2(4) to (6)).

(7) A relevant body guilty of an offence under this section is liable, on summary conviction or on conviction on indictment, to a fine.

(8) In this section “foreign country” means a country or territory outside the United Kingdom.

4 Guidance about preventing the facilitation of tax evasion offences

(1) The Chancellor of the Exchequer (“the Chancellor”) must publish guidance about procedures that relevant bodies can put in place to prevent persons associated with them from committing UK tax evasion facilitation offences or foreign tax evasion facilitation offences.

(2) The Chancellor may from time to time publish—

(a) revisions to guidance published under this section, or

(b) new or revised guidance to supersede guidance previously published.

(3) The Chancellor must consult the Scottish Ministers and the Department for Justice in Northern Ireland before publishing anything under this section.

(4) Publication under this section is to be in such manner as the Chancellor considers appropriate.

(5) The Chancellor may approve guidance prepared and published by another person or body on matters within the scope of subsection (1) (and the guidance published under subsection (1) need not cover matters covered by any guidance so approved).

Offences: general and supplementary provisions

5 Offences: extra-territorial application and jurisdiction

(1) It is immaterial for the purposes of section 2 or 3 (except to the extent provided by section 3(2)) whether—

(a) any relevant acts or omissions of a relevant body,

(b) any relevant acts or omissions which form part of—

(i) an offence committed by a person associated with a relevant body, or

(ii) an offence facilitated by such a person, take place in the United Kingdom or elsewhere.

(2) Proceedings for an offence under section 2 or 3 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.

6 Consent to prosecution under section 3

(1) In this section “proceedings” means proceedings for an offence under section 3.

(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 (1) or (2) 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 (2) 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.

7 Offences by partnerships: supplementary

(1) Proceedings for an offence under section 2 or 3 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 of 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,

(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 (SI 1981/1675(NI 26)),

(iii) section 70 of the Criminal Procedure (Scotland) Act 1995.

(3) A fine imposed on a partnership on its conviction for an offence under section 2 or 3 is to be paid out of the partnership assets.

Final provisions

8 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 the Facilitation of Tax Evasion (Corporate Offences) Act 2016."

(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 2 or 3 of the Facilitation of Tax Evasion (Corporate Offences) Act 2016 (failure to prevent the criminal facilitation of 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 2 or 3 of the Facilitation of Tax Evasion (Corporate Offences) Act 2016 (failure to prevent the criminal facilitation of 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 2 or 3 of the Facilitation of Tax Evasion (Corporate Offences) Act 2016 (failure to prevent the criminal facilitation of 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 26 insert— “26A An offence under section 2 or 3 of the Facilitation of Tax Evasion (Corporate Offences) Act 2016 (failure to prevent the criminal facilitation of tax evasion offences or foreign tax evasion offences).”

9 Extent

(1) This Act (apart from section 8) extends to England and Wales, Scotland and Northern Ireland.

(2) An amendment made by section 8 has the same extent as the provision amended.

10 Commencement

(1) This Act (apart from this section) comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.

(2) Regulations under subsection (1) may—

(a) appoint different days for different purposes, and

(b) make such transitional provision as the Treasury considers appropriate in connection with the coming into force of any provision of this Act.