



# Criminal Finances Bill

## Corporate failure to prevent tax evasion

- This measure will reinforce the integrity of the UK's economy and will make sure that banks and other financial institutions are held to account for the actions of their employees.
- This measure introduces two new criminal offences to tackle corporate facilitation of tax evasion
  - **The domestic fraud offence** – which criminalises corporations, based anywhere in the world, who fail to put in place reasonable procedures to prevent their representatives from criminally facilitating tax evasion.
  - **The overseas fraud offence** – which criminalises corporations carrying out a business in the UK, who fail to put in place reasonable procedures to prevent their representatives facilitating tax evasion in another jurisdiction.
- These offences address gaps in the existing law which can act as a disincentive for large multinational businesses to exercise due diligence over their representatives.
- The measure was announced at the Anti-corruption summit in April 2016 and there has been extensive public consultation.

## Background

- Offshore tax evasion was the driving force behind introducing the new corporate offence, but the offence will apply to both onshore and offshore tax evasion and will apply to all taxes.
- In the past, obtaining evidence against those who hide their money offshore in order to evade tax has been extremely difficult, particularly where this activity is carried out in the least transparent jurisdictions. With the introduction of new taxpayer information sharing agreements, HMRC will have access to greater levels of taxpayer information than ever before. Information under these agreements will begin to be exchanged in 2016-2018.
- We have seen with previous tax transparency agreements that a small minority of taxpayers will go to extreme lengths in an attempt to circumvent such agreements and continue to hide their taxable income. To achieve this they may seek the services of a range of professionals.
- At present those deliberately helping others to commit tax evasion take advantage of gaps between domestic criminal justice systems to avoid prosecution, for example by operating out of jurisdictions that do not recognise tax evasion as a criminal offence. Applying the new corporate offences beyond the borders of the UK helps to address this.
- The Government is aiming for the new offence to act as a deterrent to corporations from providing services for this purpose, and incentivising them to ensure their agents aren't complicit in illegal activity. Our feedback from industry has been that the corporate offence is already beginning to have the desired effect.

## Key facts

- Over 100 countries and jurisdictions exchange taxpayer information on offshore assets.
- £900 million was made available over the spending review period to raise additional revenues from those who undermine the tax system.
- In 2015/16 as a result of our criminal investigations HMRC:
  - Secured **1,135** charging decisions (our conviction rate is over 90%);
  - Secured **808 convictions**; and
  - **2.2bn** in revenue loss prevented.
- Over 58,000 individuals have come forward to disclose offshore tax issues to HMRC, and we have collected £2.7 billion in additional tax, penalties and interest from our disclosure facilities and international agreements.

*"Make it a crime if companies fail to put in place measures to stop economic crime, such as tax evasion"*

### **Conservative Manifesto 2015**

*"We will legislate this year to hold companies who fail to stop their employees facilitating tax evasion criminally liable"*

### **Prime Minister's statement to the House (12 April 2016)**



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## How will the new offence work?

- For the corporation to be liable under the new offence, there must have been:
  - **Stage one:** criminal tax evasion by a taxpayer (either an individual or an entity) under the existing law.
  - **Stage two:** criminal facilitation of this offence by a representative of the corporation, as defined by the Accessories and Abettors Act 1861.
  - **Stage three:** the corporation failed to prevent its representative from committing the criminal act outlined at stage two.
- The corporation may choose to put forward a defence (on the balance of probabilities) of having put in place “reasonable procedures” to prevent the action at stage two.

## Does this measure cover tax avoidance?

- The new laws target deliberate and dishonest behaviour at the taxpayer level.
- They do not create any new offences at the individual level - if activity would currently be considered tax evasion under the existing law then it will continue to be so.
- Likewise, if activity would not currently be considered tax evasion, then the new law does not make it tax evasion.

## What happens if a corporation gets a criminal conviction?

- A corporation will face a potentially unlimited fine.
- There will also be additional impacts for those in the regulated sector both in the UK and overseas, for example losing their license or having restrictions placed upon them.
- Corporations may also be prohibited for bidding for public contracts.

## Will other countries put in place similar laws?

- The UK has engaged extensively with other countries and territories to explain our approach and discuss joint ways to tackle financial crime.
- A number of other jurisdictions have expressed an interest in legislating for similar laws in their jurisdictions, as many countries did when the UK introduced a similar offence in the Bribery Act 2010.

## Why is the Government creating an overseas fraud offence?

- Professionals who deliberately help their clients to commit tax evasion seek to operate across borders to take advantage of gaps in domestic legal systems.
- For example, if a professional wished to help a French tax resident to evade his French taxes, he would do so from outside of France. Likewise, those professionals helping UK taxpayers to evade their UK taxes are based outside of the UK.
- To tackle those professionals and corporations who facilitate tax evasion across borders requires international co-operation and for jurisdictions to actively police within their own borders, even where they are not suffering a tax loss.
- The overseas fraud offence requires corporations with business activity in the UK to do what is reasonable to prevent their representatives from committing acts which if undertaken in the UK would be criminal in the UK.
- This offence is especially important to guard against corporations facilitating tax evasion in developing countries, that may not have the capacity to detect, investigate and prosecute complex international fraud cases.

## How will the new offence apply to a corporation based in an overseas territory or crown dependency that is facilitating tax evasion?

- If a corporation is operating outside of the UK and a person providing services for that corporation is deliberately and dishonestly facilitating the evasion of taxes in the UK, then that corporation would be liable under the new offence, regardless of which country it is operating out of.
- If that corporation is based overseas but is carrying out part of a business in the UK, and a person providing services for that corporation deliberately and dishonestly facilitating the evasion of taxes in another jurisdiction, for example a developing country, then that corporation will be liable in the UK by virtue of carrying out a business activity in the UK.
- Similarly, if an individual is providing services for a corporation based outside of the UK deliberately and dishonestly facilitates a tax evasion whilst physically present in the UK, then that corporation is liable.