CRIMINAL FINANCE ACT
(Prevention of Facilitation of tax evasion)

University of St Andrews

Author: Wendy Macfarlane
School / Unit: Finance – Tax and Treasury
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1. Introduction

1.1 Summary of the Criminal Finances Act

1.2 New legislation called The Criminal Finances Act 2017 (CFA 2017) came into effect from 30th September 2017. Part 3 of the Act introduces a new Corporate Criminal Offence (CCO) of failure to prevent the facilitation of tax evasion.

1.3 Whilst it has always been a criminal offence to evade tax, and for anyone to help someone else evade tax, the new Act means that if a person ‘associated’ to the university, anywhere in the world - is found to have assisted a third-party in evading tax in the course of their duties, then the university itself could be deemed to have committed a corporate offence. If the University is charged with a CCO offence then it could face unlimited fines, reputational damage and potential barring from any government or public contracts.

1.4 The scope of 'Associated Persons’ is widely drafted and, whilst it includes the university’s officers, it also includes employees, workers, agents, sub-contractors and other people/organisations that provide services for, or on behalf of, the university. The new CCO relates to situations where the university fails to prevent 'Associated Persons' from assisting in the evasion of tax by another party.

1.5 The University has published a statement from the Principal on its website which states:-

“The University of St Andrews is committed to ensuring that all business carried out by and across the University is conducted with integrity, transparency, and fairness, and in compliance with all relevant rules, regulations, and legislation.

The University of St Andrews and all of its subsidiary companies are committed to preventing the facilitation of any form of tax evasion. We will not engage with any business that does not share our values and our commitment to preventing the facilitation of tax evasion.

The University of St Andrews recognises the importance of fostering positive business relationships and the need to maintain the confidence of the many institutions with which it does business. We will not knowingly work with any individual or organisation that is not committed to preventing the facilitation of tax evasion, in compliance with the Criminal Finances Act 2017.”

2 Definition of tax evasion

2.1 Tax evasion is an illegal action in which a person or entity deliberately avoids paying a true tax liability. The offence requires an element of fraud, which means there must be deliberate action, or omission with dishonest intent;

2.2 Tax evasion is not the same as tax avoidance or tax planning. Tax evasion involves deliberate and dishonest conduct. Tax avoidance is not illegal and involves taking steps, within the law, to minimise tax payable (or maximise tax reliefs). The University’s has developed a tax strategy which sets outs its policy and approach to conducting its tax affairs and the management of tax risk.
2.3 **Foreign tax evasion** means evading tax in a foreign country, provided that conduct is an offence in that country and would be a criminal offence if committed in the UK. As with tax evasion, the element of fraud means there must be deliberate action, or omission with dishonest intent; and

2.4 **Tax evasion facilitation** means being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, or aiding, abetting, counselling or procuring the commission of that offence. Tax evasion facilitation is a criminal offence, where it is done deliberately and dishonestly.

3. **Objectives and Scope of the Act**

3.1 **Corporate Criminal Offence**

3.1.1 The Criminal Finances Act 2017 has parallels with the UK Bribery Act and this policy should be read in conjunction with the university’s anti-bribery and corruption policy and related governance documents.

3.1.2 It is a criminal offence for anyone to evade paying tax of any kind, and also to help anyone to do so. Any individual found to be guilty of this could be subject to criminal proceedings under existing legislation.

However, under the CFA 2017 in the event of there being both:

- Criminal tax evasion by either a UK or overseas taxpayer (as an individual or an entity) under existing law, and,
- Criminal facilitation of this offence by an 'associated person' of the university

3.1.3 Then the university will automatically be charged with the corporate offence of failing to prevent its representatives from committing the criminal act of facilitation unless it can demonstrate that it had ‘adequate’ or ‘reasonable procedures’ in place to prevent that facilitation. If found guilty, the typical consequences for the university could be an unlimited fine, reputational damage and the potential disbarment from public/governmental contracts.

3.1.4 This policy deals with the implementation of adequate or reasonable procedures to prevent facilitation of tax evasion.

3.2 **Taxes in scope**

3.2.1 Tax means all forms of UK taxation, including but not limited to corporation tax, income tax, value added tax, stamp duty, stamp duty land tax, national insurance contributions (and their equivalents in any non-UK jurisdiction) and includes duty and any other form of taxation (however described).

3.3 **Potential scenarios that would constitute a CCO offence:**

3.3.1 A list of real life University scenarios have been included in Appendix 1. These scenarios demonstrate the ways an associated person of the University could facilitate tax evasion for a third party. If you encounter any of these situations (or other activity likely to fall under this policy) while working or acting on behalf of the University, you must report it promptly to the **Tax & Treasury Team** or the Chief Financial Officer:
4. **University Policy on CFA**

4.1 **Responsibilities of university staff and Associated Persons**

4.1.1 **Staff and associates** should not facilitate tax evasion by a third party, they should abide at all times by university policies; including this CFA 2017 policy; the anti-bribery and corruption policy; the University tax strategy and related governance documents. Failure to comply with these policies and the obligations detailed in this policy may result in disciplinary action.

4.1.2 The prevention, detection and reporting of tax evasion and foreign tax evasion are the responsibility of all those working for the University or under our control. You are required to avoid any activity that might lead to, or suggest, a breach of this policy.

4.1.3 Should staff and associates become concerned that a fellow employee or associate is facilitating tax evasion by a third-party then they should immediately alert their line manager, contact VAT enquiries at vatenquiries@st-andrews.ac.uk or follow the whistleblowing procedure.

4.2 **What you must not do**

4.2.1 It is **not acceptable for you** (or someone acting on your behalf) to:

- engage in any form of facilitating tax evasion or foreign tax evasion;
- aid, abet, counsel or procure the commission of a tax evasion offence or foreign tax evasion offence by another person;
- fail to promptly report any request or demand from any third party to facilitate the fraudulent evasion of tax (whether UK tax or tax in a foreign country), or any suspected fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, in accordance with this policy;
- engage in any other activity that might lead to a breach of this policy;

4.3 **Training**

4.3.1 The university will provide relevant members of staff with training on the key aspects of CFA 2017, as set out in this policy, within a timely manner. Further online training regarding the Criminal Finances Act 2017 is available from BUFDG on their e-learning platform. This is free to all staff members of the University. Please follow this link to the BUFDG e-Learning page. Should any Heads of School or Unit Heads feel that they would like to receive further training then please contact the Tax and Treasury Manager via the following email address vatenquiries@st-andrews.ac.uk.

4.4 **Register of possible CFA 2017 risks**

4.4.1 A register of possible risks related to the facilitation of tax evasion by staff and/or associates has been prepared and maintained; the register will also list the controls to mitigate those risks and actions required to improve the controls. Section Heads who are responsible for risk areas identified within the risk register will be responsible for reviewing and updating these risks and controls. The review of this register will be co-ordinated by the Tax & Treasury Team annually.

4.5 **Reporting of offenses/ suspicions**

4.5.1 Should staff and associates become concerned that a fellow employee or associate is facilitating tax evasion by a third-party then they should immediately alert the Chief Financial Officer, contact the Tax & Treasury Team or use the university’s whistleblowing procedure.
4.5.2 The Tax and Treasury section of Finance will maintain a register of any suspicions reported to the Chief Financial Officer with a record of the follow-up performed, conclusions drawn and any subsequent action taken.

4.6 Changes to contractual clauses with suppliers etc. relating to the new CFA 2017

4.6.1 The University’s zero-tolerance approach to tax evasion and foreign tax evasion must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate after that. The University’s standard Terms and Conditions for the Purchase of Goods and Services can be found here and have been updated (see Clause 18) to include reference to the Criminal Finance Act 2017. This includes an obligation to report to the University any request or demand from a third party to facilitate tax evasion within the meaning of Criminal finance Act 2017. Breach of Clause 18 is deemed a material breach of contract by the supplier.

5. Contacts / Further Information

- Criminal Finances Act Legislation
- University Tax Strategy (draft)
- Public Statement of Commitment to the CFA Principles (may open in another window)
- Terms and Conditions for the Purchase of Goods and Services (may open in another window)
- Staff memo released in respect of CFA 2017 – May 2018
- Whistleblowing policy
- E-learning on CFA 2017 (registration required)

Any questions or issues relating to this policy should be directed to vatenquiries@st-andrews.ac.uk
Appendix 1
Potential scenarios that would constitute a CCO offence:

The following is a list of possible real life scenarios that may arise while acting as an associated person of the University and which may raise concerns related to tax evasion or foreign tax evasion. The list is not intended to be exhaustive and is for illustrative purposes only. If you encounter any of these situations (or other activity likely to fall under this policy) while working or acting on behalf of the University, you must report it promptly to the Tax & Treasury Team or the Chief Financial Officer:

1. You become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC (or the equivalent authority in any relevant non-UK jurisdiction); has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority;

2. You become aware, in the course of your work, that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT;

3. You are asked to make a payment overseas e.g. to an overseas agent and are aware that the agent intends to use the method of payment to evade tax. Typically, this could apply where a payment is made into a bank account which is not in the name of the agent or their company but in the name of a different individual or company, or to a jurisdiction where the individual does not live or work or known tax havens.

4. A payment has been received from a sanctioned country/individual or a payment is received from a country/entity that has no relation or connection to the student or debtor.

5. You are asked to categorise a payment to an individual (who should be deemed an employee or treated as such under off payroll working rules) as self-employed.

6. You are asked to mis-describe services provided to a third-party in order to facilitate a VAT reclaim by them.

7. You are asked to mis-describe goods being exported so that a lower rate of Customs duty becomes payable on import by customer.

8. You are requested to pay one entity and are aware that the goods/services have been provided by another entity and that the purpose of the change is to evade tax.

9. You are requested to describe a payment for goods/services as a donation so that the donor can claim tax relief.

10. You are asked to authorise a VAT invoice from a supplier knowing that they are not VAT registered.
11 You are asked to describe something as collaborative research from a supplier, whilst knowing it would not meet HMRC’s definition of collaborative research bringing the transaction outside the scope of VAT.

12 You are asked to allow academics, not employed by the university to perform work in return for a payment in kind e.g. travel to a conference or use of facilities, knowing that no tax will be paid on the payment.