

# Challenges arising from the UK Criminal Finances Act 2017

*Gez Owen, Managing Director & General Counsel for Hubbis, is an ex UK lawyer who has more than two decades of experience in dealing with tax evasion matters related to UK law. He told the audience just how essential it is to comply.*

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**O**WEN EXPLAINED TO THE AUDIENCE at the Hubbis Asia Wealth Management Forum of February 27 in Hong Kong how his career as a lawyer in private practice dealing with international regulatory and corporate crime had spanned 22 years. “And then I decided to do something more entrepreneurial, so I joined Hubbis to focus on regulatory and compliance training and enhance our current learning platform offering.

Owen’s presentation focused on a brand-new UK law, which introduced two new corporate tax evasion offences. The Criminal Finances Act 2017 became effective law from 30th September 2017. The Act introduced two new corporate tax evasion offences and a new statutory defence. The Act also introduced new enforcement powers including Unexplained Wealth Orders which came into effect on 31st January 2018.



**GEZ OWEN**  
Hubbis

## **New corporate tax evasion offences apply to both UK and non-UK firms**

The critical element of the new law is that it applies to both UK and non-UK companies, and to UK and non-

UK tax evasion.

The Act introduced two new corporate offences. The first is failure of a relevant corporate body to prevent the facilitation of UK tax evasion by an associated person, (the

UK tax evasion offence for short). The second is failure of a relevant corporate body to prevent the facilitation of non-UK tax evasion by an associated person (the foreign tax evasion offence).

“With the non-UK tax evasion offence, it does not require UK tax evasion,” Owen added. “It follows that it affects the wealth management industry worldwide, and in particular, it could have impact on anyone giving bespoke financial advice or tax advice.”

The UK Government’s guidance makes it clear that higher risk business lines will be those involved in giving bespoke financial advice or tax advice. It is clear therefore, that this legislation will have a particularly strong impact on those engaged in wealth and asset management.

Those risks are made higher for organisations connected to offshore jurisdictions, tax havens or secrecy havens.

### **Watch the small print...**

Owen explained that relevant body means a body corporate or partnership, wherever incorporated or formed. And partnership means a partnership within the meaning of the Partnership Act 1890 or a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of

a foreign country.

An associated person for the purposes of the offence is: an employee of the corporate body or partnership, when acting in the capacity of employee; or an agent of the corporate body or partnership, when acting in the capacity of agent; or any other person performing services for or on behalf of the corporate body or partnership, when acting in the capacity of provider of the relevant services.

Owen further elucidated that the UK tax evasion offence is split into three stages: criminal evasion of UK tax by the taxpayer; criminal facilitation of the tax evasion by an “associated person” of the relevant body who is acting in that capacity; and failure by the relevant body to prevent that facilitation.

### **This is not something businesses in the industry can ignore**

“It is vital that businesses understand that this is a strict liability offence for an entity for the actions of associated persons regardless of knowledge or intention,” Owen noted.

The foreign tax evasion offence will catch UK companies, and also non-UK companies if the non-UK company carries on business in the UK, or some or all of the facilitation happens in the UK. “However,” Owen added, “there is some better

news in that there is a **statutory defence**” and explained the requirements to have reasonable procedures to prevent tax evasion.

### **Meeting the new challenge and upgrading wealth skills with learning**

“It is imperative that your business considers carefully the impact of this new legislation on existing business policies and procedures and implement appropriate changes to systems and controls,” said Owen. “Updating your staff training to make sure your company meets the new statutory defence is essential.”

The Act also creates a process by which UK law enforcement authorities can seek an Unexplained Wealth Order (UWO) against an individual or company suspected of being involved in or associated with serious financial crimes which came into effect on the 31st January 2018. This new UWO regime has already been used by enforcement authorities in the UK in respect of a South Asia PEP.

Owen concluded that many of those in the wealth industry, especially those connected tax or secrecy havens, should consider immediate training specifically to understand new laws such as these, and that Hubbis has created training platforms to address precisely such requirements. ■

## What does my business need to do?

It is imperative that your business considers carefully the impact of this new legislation on existing business policies and procedures and implement appropriate changes to systems and controls, and update your staff training to make sure your company meets the new statutory defence.