



# Challenges arising from the UK Criminal Finances Act 2017

GEZ OWEN

MANAGING DIRECTOR & GENERAL COUNSEL

HUBBIS

# UK Criminal Finances Act 2017 becomes law

- ▶ On the 27th April 2017, The Criminal Finances Act 2017 received Royal Assent at the UK Parliament. The Act 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

# Why is this legislation relevant to me?

This new Act has impact on businesses based both in and outside of the UK and they apply to UK and non-UK companies, and to UK and non-UK tax evasion.

The UK Government issued 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

# 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.



Is there any Guidance or courses available on this?

- ▶ On the 1st September 2017, UK Government guidance was issued by HMRC.
- ▶ Hubbis also now has an e-learning course available as part of our e-learning syllabus.

# The new corporate offences of tax evasion

The Act introduced two new corporate offences:

- ▶ Failure of a relevant corporate body to prevent the facilitation of UK tax evasion by an associated person; **(the UK tax evasion offence)**
- ▶ Failure of a relevant corporate body to prevent the facilitation of non-UK tax evasion by an associated **person (the foreign tax evasion offence)**

# Which businesses are subject to this legislation?

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

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

# Who is an “associated person”?

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;
- ▶ An agent of the corporate body or partnership, when acting in the capacity of agent;
- ▶ 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

# The new UK tax evasion offence

The UK tax evasion offence is split into three stages:

1. Criminal evasion of UK tax by the taxpayer
2. Criminal facilitation of the tax evasion by an “associated person” of the relevant body who is acting in that capacity
3. Failure by the relevant body to prevent that facilitation.

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. However, there is some better news in that there is a statutory defence.

# The new Foreign tax evasion corporate offence

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.

It is crucial that businesses understand that these new offences could be committed outside of the UK, and those businesses involved in wealth and asset management should assess their overseas operations risk profiles and take proactive steps to manage those risks.

For the new overseas tax offences to have been committed, in addition to establishing the same stages as for the UK tax evasion offence referred to above , then the UK prosecutors would **need to also demonstrate both a nexus with the UK and dual criminality.**

# Penalties for the new offences

- ▶ Significant Brand and reputational damage
- ▶ Unlimited fine
- ▶ Ban on bidding for public contracts.
- ▶ Potential other sanctions upon conviction including confiscation

# The Statutory Defence

It is a statutory defence where at the time of the offence the relevant body had **reasonable prevention procedures** in place to prevent its associated persons from committing tax evasion facilitation offences or where it is unreasonable to expect such procedures.

# Statutory Defence of having Reasonable Prevention Procedures

These procedures follow the same principles based guidance as for the UK Bribery Act 2010. As such many organisations will already have procedures in place to prevent bribery. It will not however be sufficient just to rely on those procedures. An organisation will need to do a full risk analysis, and put in place procedures specific to their organisations operational risk profile.

- ▶ Principle 1 – Risk assessment
- ▶ Principle 2 – Proportionality of risk-based prevention procedures
- ▶ Principle 3 – Top level commitment
- ▶ Principle 4 – Due diligence
- ▶ Principle 5 – Communication (including training) – the Guidance provides suggestions on training
- ▶ Principle 6 – Monitoring and Review

# Unexplained Wealth Orders

- ▶ The Act 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. Has significant potential impact on those considered to be PEPs.
- ▶ The UK Authorities can apply to the High Court without notice to the subject of the Order including a request for an interim freezing order, for an UWO and can require individuals to explain (within a time period set by the Court) the origin of assets which appear to be disproportionate to their income, or risk the assets being seized.
- ▶ The UWO provisions came into force on 31.1.2018

# Consequences of an UWO

- ▶ The onus of proof is on the **defendant**.
- ▶ If a person subject to a UWO fails to comply with the order without reasonable excuse, their interest in the property will be presumed to be recoverable through existing civil recovery powers for the purpose of any proceedings taken in respect of the property (e.g. a freezing order).
- ▶ **Neither the property or the respondent needs to be within the UK.**
- ▶ In addition, a person found guilty of making a false statement in response to a UWO will be liable to a term of imprisonment not exceeding two years, a fine or both