

## CRIMINAL FINANCE ACT

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# AT A GLANCE



The Criminal Finances Act comes into effect on 30th September 2017 and should be on the radar of all recruitment agencies.



The most significant aspect of the legislation for recruiters is a new offence of failure to prevent facilitation of tax evasion.



This means that criminal charges can be brought against any corporate organisation which fails to prevent its employees and other associated persons from facilitating tax evasion.



An example would be where a recruitment agency employee recommends a payroll provider in the reasonable expectation that correct levels of tax are not being paid to HMRC. (This could include an Employee Loan Scheme).

Liability still applies even if management is not involved in or aware of the act of facilitation.



# KEY FACTS ABOUT THE **NEW OFFENCE**

Let's be clear - tax evasion is already an offence but now criminal liability can be attributed to the company where it originated, with a corresponding prison sentence and an unlimited fine.

The legislation states that: "A relevant body is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with it".

For a company or partnership to be liable under the Criminal Finances Act, 3 stages must be established:



Criminal tax evasion by a taxpayer under existing law



Criminal facilitation of the offence by a representative of the company



A corporate body's failure to prevent a representative from facilitating criminal tax evasion

The below infographic shows how these three stages could happen in a recruitment environment:

**TAX EVADER**  
Criminally evades tax

Contractor using a non-compliant payroll provider to get out of paying correct tax.

**FACILITATOR**  
Criminally assists tax

Recruitment consultant who recommends the provider.

**CORPORATE PREVENTER**  
Fails to prevent facilitation of tax evasion

Agency who employs the recruitment consultant and fails to prevent facilitation of tax evasion.

## DEFENCE FROM **CRIMINAL LIABILITY**

If stage one and two have been committed, then the onus is on the company to show that they have put reasonable measures in place to prevent facilitation or that in the circumstances it would have been unreasonable or unrealistic to expect such measures to be implemented.

### **Recommendations for recruiters**

The Criminal Finances Act effectively makes recruitment agency directors responsible for ensuring that no-one associated with their business facilitates tax evasion. The larger and more complex the business, the greater the risk. Don't forget - management being removed from or unaware of breaches is not considered a defence.

However there are certain measures you can take to mitigate these risks:

### **Risk assessment**

HMRC suggests that companies undertake risk assessments of their internal processes and procedures to identify any practices that could potentially be used to facilitate tax evasion. These may include instances where staff are less than open about particular client or supplier relationships.

### **Procedures review**

Your risk analysis will show any areas of your internal procedures and processes which need to be updated or fortified. These may include:

05 **CRIMINAL  
LIABILITY**



Demonstrating high-level commitment to preventing the facilitation of tax evasion



Inserting and enforcing clauses in contracts with employees and contractors precluding the facilitation of tax evasion and a requirement to report concerns



Providing staff training on identifying and preventing financial crime



Providing a safe whistle-blowing procedure



Monitoring, enforcing and reviewing prevention procedures on an ongoing basis.

## **Communication and training**

As we touched on above, it is essential that all employees and other representatives of the business are aware of the company's stance on preventing the facilitation of tax evasion and the seriousness of a breach. Training can either be carried out in-house or using a third party specialist.

## **Supply chain audit**

For recruitment businesses, this legislation makes it more important than ever to know that your preferred umbrella and contractor accounting suppliers are above board. Using only fully-accredited FCSA member companies is an infallible way to ensure this. A list of fully accredited members can be found [here](#).

## IN SUMMARY

The new corporate offence is similar to the Bribery Act in that it is a “failure to prevent” offence, with criminal sanctions if convicted.

Reasonable procedures to prevent the facilitation of tax evasion are the only defence.

The agency supply chain will be under even more scrutiny by HMRC, with particular attention being paid to offshore payment schemes, some aggressive onshore schemes and some aspects of false self-employment.

All recruitment businesses will need to demonstrate that they have carried out a risk assessment and provided training to their staff.

### Other measures in the Criminal Finances Act

In this guide we have focused on the most relevant provision of the Criminal Finances Act - the new offence of failing to prevent facilitation of tax evasion.

However the Act also covers a number of additional provisions to tackle financial crime, including further powers for authorities to investigate money laundering or terrorist financing, and new orders requiring anyone with information of money-laundering to disclose it.

The Act also allows for Unexplained Wealth orders to be served on anyone suspected of a serious crime to explain the source of their wealth.

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SUMMARY

## Further reading

HMRC has issued factsheets and guidance so organisations can get up to speed with the legislation:



HMRC draft guidance



Criminal Finances Bill factsheet

## Get more done - partner with Liquid Friday

Risk of liability under the Criminal Finances Act is yet another encumbrance for recruitment agencies, but our experts can support you with bespoke services ensuring you and your business are protected.

We'll work with you on a consultative basis to determine your compliance needs - these may include risk assessment, staff training (in-house or via webinar) and supply chain health checks.

The first step is to arrange a free consultation - to do this click on the link below or call us free on 0800 316 6030.

# REQUEST A CONSULTATION

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