

Recruiter's Guide to Criminal Finance Act

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What is the Criminal Finances Act 2017?

The Criminal Finances Act introduced two new offences:



Failure of a company to prevent the facilitation of the evasion of UK taxes by anyone, anywhere in the world



Failure of a company to prevent the facilitation of the evasion of overseas taxes by UK persons anywhere in the world.

In order to be guilty of an offence under the legislation:

- There must have been an offence of tax evasion under UK or foreign law
- The tax evasion must have been facilitated by an employee, agent, or those performing services for the business
- The business must have failed to prevent the facilitation of tax evasion

Overview

One way in which HMRC have cracked down on tax-related offences is through the introduction of the Criminal Finances Act 2017, which came into effect on 30th September 2017. This was an updated overhaul of the Proceeds of Crime Act (POCA) 2002, which outlined terms for the recovery of assets under criminal circumstances. Whilst this focused on money laundering and confiscation, the updated Act features offences which are highly relevant to recruitment businesses.

You may be wondering, what does this mean to you as a recruitment agency? We have looked over the Act, its relevance to your clients, how it could affect you, and additional measures you can put in place to cover yourself and your agency.

What are the implications for recruitment agencies?

The introduction of the legislation means that businesses, including recruitment agencies, are now liable for employees who commit a tax evasion offence. This will still apply even if the recruitment agency is unaware that it is happening.

Recruitment businesses could be inadvertently facilitating tax evasion if any of their employees:

- Refer contractors to a tax evasion scheme
- Accept incentive payments without ensuring that the tax and National Insurance Contributions are paid
- Continue to trade with contractors knowing they participate in a tax evasion scheme

The recruitment agency must have failed to take suitable steps to prevent the facilitation of tax evasion. There's no excuse for claiming unawareness of the referral or a non-compliant scheme.

Regular effective supply chain checks must be made, and they need to monitor any referrals made to third parties.

Potential consequences of the Criminal Finances Act

As a recruitment business, you must be able to prove that you have taken all reasonable measures to prevent the facilitation of tax evasion. Unless you can show that you have completed this, you could be guilty of an offence.

The consequences of failing to prevent the facilitation of tax evasion are severe. Unlimited fines, confiscation of assets, and a criminal record are three outcomes of committing the offence. In addition to this, the business can also risk being prohibited from bidding for public contracts.

You will have a defence if:

- **You have put in place 'reasonable prevention procedures' to prevent 'associated persons' from committing tax evasion facilitation offences; or**
- **It is unreasonable to expect the relevant body to have such procedures in place**

Six steps to take action

Doing nothing is not an option, ignorance is not a defence. As a recruitment agency, you could be guilty of an offence even if you're unaware it's happening. To best prepare yourself for any unwelcome events, there are some steps which we would recommend you to take urgently:



Carry out risk assessments to identify any risks of facilitation



Regularly review policies and risk assessments



Communicate regularly with your whole team



Audit and enforce your PSL



Manage all referrals and incentives associated with your business



Ensure that tax is paid on any incentives given

Following these steps will ensure that you've taken reasonable measures to avoid the facilitation of tax evasion.

To summarise

We realise that we've gone over quite a lot of information in this guide, so to refresh your memory, we've drawn up a list of points to take away:



• HMRC are cracking down on tax-related offences



• The Criminal Finances Act was effective from 30 September 2017



• This legislation focuses on the businesses role in preventing the facilitation of tax evasion



• The consequences of failing to prevent the facilitation of tax evasion are severe



• You can protect yourself by ensuring you have robust procedures in place

Following these steps will ensure that you've taken reasonable measures to avoid the facilitation of tax evasion.

We're with you all the way

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