

WHERE ARE WE NOW WITH CRIMINAL FINANCE ACT 2017 – THE NEW TAX EVASION OFFENCE

The Criminal Finance Act 2017 introduced two new offences: some eighteen months on I consider below how it is being used. The offences were first mooted after the panama papers scandal, prompted by the then Prime Minister's involvement in it. Due to this the offences were considered to be largely politically motivated and the practicalities of using them were not really considered. In my view they will very rarely be used, if at all, but that does not mean that companies do not have to monitor the measures they have put in place to comply with the legislation. The majority of prosecutions are going to come from self disclosures or whistle blowers, if at all.

The two offences make it an offence for corporations to fail to prevent the facilitation of tax evasion in relation to both UK and foreign taxes.

One offence deals with domestic tax evasion, the other deals with overseas evasion. Like the Bribery Act before it, the international scope of the offence is striking. An offence will be committed by a corporate entity where a person acting in the capacity of an associated person facilitates another person's offence of tax evasion. The definition of an associated person is wide and not confined to employees, which echoes the Bribery Act.

The main focus of the legislation is to put the emphasis on Corporations to self regulate and to report if they do commit an offence. The likelihood being that this will lead to a deferred prosecution agreement. On this basis,

corporations are required to carry out a risk assessment which considers where the issues might arise. This needs to be very far reaching as there is a need to consider UK and international tax rules. As well as this, a clear compliance program for all those defined as associated persons is required by each company. They also need to put in place measures to stop this occurring. The measures will of course have to depend on the business.

Where are we now

The offences have been a damp squib if they are to be judged on the amount of prosecutions, although it appears that there have been a number of investigations. It is also unlikely that there will be any prosecutions, or certainly prosecutions large numbers. The resources needed to investigate and prosecute a matter like this would be vast and it is likely that evidence of other offences, which would be easier to prosecute, would emerge.

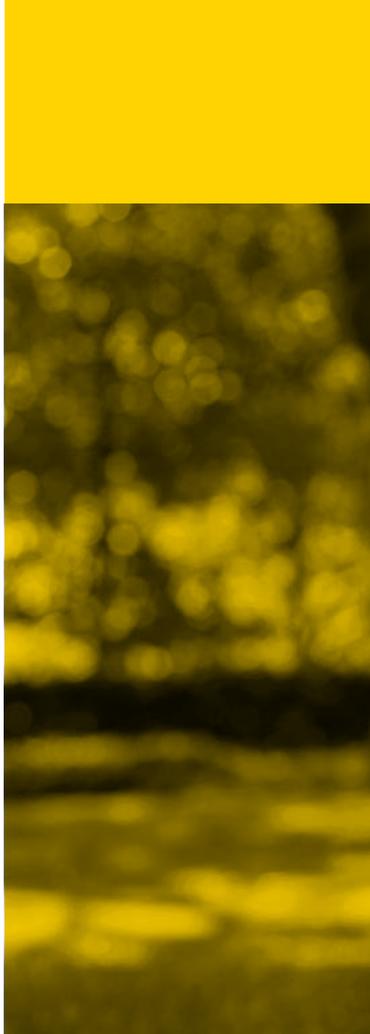
However, judging the offence by the amount of prosecutions misses the point. The threat of prosecution has meant that corporations are being extremely vigilant on tax evasion, especially international companies. Has this affected tax compliance? Only time will tell, but it certainly meets the political objective of being seen to be tough on tax evasion.

The offences will also provide a basis for civil asset recovery options such as account freezing and forfeiture orders, and potentially civil recovery.



It will be also used as the basis for deferred prosecution agreements. It looks like this is the start of a trend for how Governments would like to regulate the financial markets, with the emphasis on corporations, and the threat of non conviction based remedies to back up the regulations.

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Barnaby has a range of experience in fraud, international asset recovery, financial crime and professional discipline law, particularly in healthcare and sports law matters. He is regularly instructed in tax tribunal matters (in a POCA context) and civil recovery. Barnaby's international asset recovery and financial crime practice includes experience of dealing with corruption, money laundering, fraud offences (that have an international angle) and recovering the proceeds of these offences.

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He has experience of all areas of the Proceeds of Crime Act both domestically and internationally. In addition to his busy practise, Barnaby writes the chapters on International Asset Recovery and Terrorism Finance for Millington and Sutherland Williams on POCA and recently completed a series of seminars and articles on changes to POCA under the Criminal Finance Act 2017. Barnaby is ranked in the Legal500 as a 'leading individual' in POCA and Asset Recovery law.