

Criminal Finances Act Policy: Failure to Prevent the Facilitation of Tax Evasion

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1 Introduction

- 1.1 The Criminal Finances Act (CFA) 2017 came into force on 30 September 2017. Part 3 of the Act introduces a new 'corporate criminal offence of the failure to prevent the facilitation of tax evasion'.
- 1.2 There are two corporate offences – a domestic tax fraud offence and an overseas fraud offence. A UK incorporated body can be prosecuted for either offence. While the overseas offence is slightly narrower in scope, it still essentially means that universities need to consider potential risks for overseas tax evasion as well as UK tax evasion.
- 1.3 The Government believes that relevant bodies should be criminally liable where they fail to prevent those who act for, or on their behalf, from criminally facilitating tax evasion. The new corporate offence aims to overcome the difficulties in attributing criminal liability to 'relevant bodies' for the criminal acts of employees, agents or those that provide services for or on their behalf.
- 1.4 Importantly, there should be a top-level commitment within the organisation to embedding processes which will help eliminate opportunities for facilitating tax fraud and this should be followed through to the areas of the business where decisions are made and actions are taken.
- 1.5 Successful prosecution could lead to:
 - An unlimited fine;
 - A public record of conviction; and
 - Significant reputational damage and adverse publicity.
- 1.6 To protect the University both from a reputational and financial perspective there needs to be relevant policies, procedures and risk assessment in place.

2 Purpose and scope

- 2.1 Although the university sector has not been identified as a high risk sector by HMRC, it may be involved in high risk activities.
- 2.2 It is important to remember that this particular offence is not about De Montfort University (DMU) itself avoiding, evading or underpaying tax, but about it failing to prevent its employees/agents/associates from facilitating the evasion of tax by another party.

3 Obligations of staff and other associated persons

- 3.1 Should staff and associates become concerned that a fellow employee or associate is facilitating a third party's tax evasion, they should immediately contact either:
 - the Chief Financial Officer; or
 - the Head of Taxation Services.

3.2 The University has a number of processes and policies, which will ensure that steps are taken to prevent the facilitation of tax evasion by its staff and associates. These cover the following subjects:

- Procurement Policy
- Counter Fraud, Bribery and Money Laundering Policy
- Staff Travel, Business Expenses and Corporate Credit Card Policy
- Raising Serious Concerns at Work - Whistleblowing Policy
- Financial Regulations

3.3 All other policies can be found on our Finance Connect page.

4 **Responsible officer**

4.1 The University has nominated the Chief Finance Officer as the key officer responsible the CFA 2017 within the organisation.

4.2 The university has also nominated the Head of Taxation Services as the officer responsible for information, training and general queries on the CFA, who is known as the 'point person'

5 **Publication of guidance**

5.1 The University regularly reviews guidance and legislation in relation to CFA 2017 to ensure it is maintaining an appropriate CFA 2017 policy.

6 **Risk assessment**

6.1 The University maintains a register of possible risks of the facilitation of tax evasion by its staff and associates, as well as listing controls to mitigate those risks, and any actions required to improve those controls. This register is regularly reviewed and updated. The risk register is available at Appendix A.

Appendix A - Criminal finance act – risk register

Risk assessment

	Risk owner	Key Risk	Risk description	Mitigating Actions / Controls in Place
1.	Procurement / Budget holder / International office	International 1	Making a payment e.g. to an overseas agent in the knowledge that the agent intends to use the method of payment to evade tax	<ul style="list-style-type: none"> • Appropriate acceptance procedures for agents which would include the name of the bank account • Any requests for payment elsewhere or someone else should be escalated • Training for Accounts Payable on issues and process • Internal audit review of this process to identify gaps
2.	Faculty /International	International 2	Employee agrees to misdescribe an income stream to take the payment outside withholding tax obligation	<ul style="list-style-type: none"> • Appropriate procedures in place to ensure that the income streams received are checked against contract / tax advice • Training for relevant staff • Internal audit review of this process to identify gaps
3.	Budget holder / HR	ET1	Categorisation of payments to an individual who should be deemed an employee / treated as such under IR35 as self-employed knowing that the individual will use the gross payment to avoid tax	<ul style="list-style-type: none"> • Sufficient knowledge of criteria in determining employment status • Set-up of contractors in system are subject to the same due diligence as other suppliers • Appropriate review in place for set-up of contractors • Training on CCO to supplement existing training e.g. rules on employment status • Internal audit review of this process to identify gaps
4.	Advancement / International	ET/ VAT	Employee allows a payment for goods / services to be described as a donation so that the donor can claim relief	<ul style="list-style-type: none"> • Appropriate procedures to check that no linked transactions associated with a donation • Training on CCO to supplement existing training

	Risk owner	Key Risk	Risk description	Mitigating Actions / Controls in Place
5.	Line manager / budget holder / Payroll	ET2	Employee authorises an expense claim knowing that the claimant may use the originals to support a tax reclaim	<ul style="list-style-type: none"> • Appropriate procedures in financial regulations regarding evidencing expenses claims • Training on CCO to supplement existing knowledge
6.	Budget holder / line manager	CT / VAT	Employee accepts to pay on entity knowing that goods / services have been provided by another entity and that the purpose of the change is to evade / avoid tax	<ul style="list-style-type: none"> • Appropriate procedures to ensure that the payment details match the supplier • Any requests for payment elsewhere should be escalated • Training for Accounts Payable on issues and processes • Internal audit review to identify gaps
7.	Research Office	VAT 1	Employee colludes with another university / third party to mis-describe services as outside the scope e.g. grant funding rather than a taxable supply of research services where VAT cannot be recovered	<ul style="list-style-type: none"> • Separation of duties between purchase order creation and validation of purchase invoice • Appropriate procedures and training for staff
8.	Research office / Line manager	VAT 2	Employee agrees to mis-describe services provided to a third party in order to facilitate a VAT reclaim by them	<ul style="list-style-type: none"> • Validation of sales invoices against contract terms • Appropriate procedures and training for staff
9.	Faculty / line manager	VAT 3	Employee agrees to mis-describe goods being exported so that lower rate of customs duty / VAT become payable on import by a customer	<ul style="list-style-type: none"> • Separation of duties between creation of sales order and validation of sales invoice • Financial regulations to include reference to improper conduct
10.	Budget holder	VAT 4	Employee authorises a VAT invoice from a supplier knowing that they are not VAT registered	<ul style="list-style-type: none"> • Appropriate procedures regarding the inclusion of a VAT registration number into processes • Training on CCO to supplement existing knowledge

	Risk owner	Key Risk	Risk description	Mitigating Actions / Controls in Place
11.	Budget holder / line manager	VAT 5	Employee buys goods for personal use through a university account and issues a certificate for charitable relief	<ul style="list-style-type: none"> • Appropriate procedures in Finance Regulations regarding purchase of items for personal use • Training for relevant staff