

ANTI- FACILITATION OF TAX EVASION POLICY



This document sets out the University's policy governing the anti-facilitation of tax evasion.

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Executive Sponsor	Chief Operating Officer
Officer Responsible for Policy/ Procedures	General Counsel
Consultation Process	Policy Infrastructure Project Board Executive Engagement Group
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INTRODUCTION AND CONTEXT

The Criminal Finances Act 2017 contains strict laws which make the University criminally liable for employees, contractors, and other services providers who facilitate, tax evasion, whether in the UK or abroad, when performing services for the University.

1. SCOPE OF THE POLICY

1.1 Purpose of the Policy

The purpose of the Policy is to assist in the prevention of the facilitation of tax evasion and to protect the University, and its staff, from breaching the Criminal Finances Act 2017 and other related tax and fraud laws.

1.2 What is covered by the Policy

This Policy:

- sets out the principles that all staff, business partners, contractors and suppliers must follow; and
- provides further guidance on the Corporate Criminal Offence.

1.3 Who is covered by the Policy

All staff, joint venture and business partners, contractors, and suppliers to the University must comply with the Policy.

The Policy does not form part of any employee's contract of employment and may be amended at any time.

1.4 Breach of this Policy

Any breach of this Policy and its associated procedures by staff will be investigated in accordance with the University's disciplinary procedure. A serious breach may amount to gross misconduct and could therefore result in summary dismissal. A breach of the Criminal Finances Act 2017 and other applicable tax laws may also result in the staff member being reported by the University to HMRC and/or the SFO.

Any breach of this Policy and its associated procedures by business partners, contractors and other third parties will be investigated and any breach may result in relevant contracts being terminated and the third party being reported by the University to HMRC, the SFO, and/or to an overseas tax authority (where relevant).

1.5 Policy Ownership

The Executive has approved this Policy. The Chief Operating Officer is the Executive sponsor and the General Counsel is the officer responsible for the Policy. Any questions about the operation of this Policy or any concerns that the Policy has not been followed should be referred in the first instance to the General Counsel.

2. THE POLICY STATEMENT

2.1 Guiding Principles

The University is committed to fostering a culture in which activity intended to facilitate tax evasion is never acceptable. To deliver compliance, the University adheres to the following guiding principles:

- The University will not engage in transactions where tax evasion is present or suspected to be present.
- The University will not provide services where we know or suspect them to be being misused or abused by a third person for the purposes of fraudulent tax evasion.

- The University will not buy services or goods from any supplier where we know or suspect them not to be properly declaring their income and any relevant tax and duties in connection with those activities.
- Any employee or associated person found to be in breach of these principles will face disciplinary action.
- No employee will suffer demotion, penalty, or other adverse consequence for refusing to engage in the sale or purchase of services and goods where they suspect or know tax evasion to be taking place; nor will they suffer such adverse consequence by reporting such suspected conduct.
- The University requires its agents, sub-agents, contractors, suppliers and others who represent it to commit to these principles.
- The University is committed to an ongoing programme to counter the risk of the University being involved in the facilitation of tax evasion.

2.2 Procedures

This Policy is implemented by Compliance Procedures.

3. DEFINITIONS

The terms set out in this section 3 apply to this Policy.

Associated person includes employees, agents or any other person providing services “for or on behalf” of organisations, so could extend to suppliers, intermediaries, advisers, contractors, consultants, joint venture partners and other third parties.

Corporate Criminal Offence or CCO are the offences as stated in the Criminal Finances Act 2017 which make the University criminally liable for employees, contractors, and other services providers who facilitate, tax evasion, whether in the UK or abroad, when performing services for the University.

CPS is the Crown Prosecution Service.

HMRC is HM Revenue and Customs.

NCA is the National Crime Agency.

SFO is the Serious Fraud Office.

4. FAILING TO PREVENT THE FACILITATION OF TAX EVASION

4.1 Corporate Criminal Offence

Under the Criminal Finances Act 2017, there are two corporate criminal offences which make the University criminally liable for the acts of an “associated person” who engages in facilitation of tax evasion whilst performing services for the University:

1. UK Tax Evasion Facilitation Offence; and
2. Overseas Tax Evasion Facilitation Offence.

4.2 UK Tax Evasion Facilitation Offence

Where there is a UK tax evasion facilitation offence it does not matter whether this takes place within the UK, at an overseas branch of permanent establishment (established under

the law of another country) or whether the associated person who performs the criminal act of facilitation is in the UK or overseas. In such cases the COO will have been committed and can be tried by the courts of the United Kingdom.

Stage 1: the criminal tax evasion by a taxpayer

For the CCO to be committed there must first be a criminal offence at the taxpayer level (stage one). Non-compliance, falling short of fraud, at the taxpayer level will not result in the corporate offence being committed. This offence only relates to the failure to prevent the facilitation of tax evasion. The domestic offence applies to all categories of taxation in the UK and national insurance contributions (except for Scottish Devolved Taxes).

Any fraudulent activity that intends to divert funds from the public revenue constitutes the common law offence of cheating the public revenue. There are also a range of statutory offences of “fraudulently evading” various taxes (for example fraudulently evading VAT, contrary to section 72 of the Value Added Tax Act 1994; or fraudulently evading income tax, contrary to section 106A of the Taxes Management Act 1970). These provisions make it an offence to dishonestly “take steps with a view to” or “be knowingly concerned in” the evasion of the tax. For these offences to be committed it is not necessary that any tax to be successfully evaded.

A conviction at the taxpayer level is not a pre-requisite for bringing a prosecution against the University under Criminal Finances Act 2017. For example, a taxpayer may voluntarily come forward and make a full and honest disclosure to HMRC of their actions and it may not be in the interests of justice to criminally prosecute that individual. Where there is no criminal conviction of the taxpayer the prosecution would still have to prove during the prosecution of the University, to the criminal standard of beyond all reasonable doubt, that the taxpayer level offence had been committed.

Stage 2: the criminal facilitation of the tax evasion by an “associated person” of the University

For the Corporate Criminal Offence to be committed by the University, there must be criminal facilitation of the taxpayer evasion by a person acting in the capacity of a person associated with the University. The associated person must deliberately and dishonestly take action to facilitate the taxpayer-level evasion. If the associated person is only proved to have accidentally, ignorantly or even negligently facilitated tax the evasion offence then the new offence is not committed by the University.

- The Corporate Criminal Offence is in addition to the following crimes:
- Deliberately and dishonestly facilitating the commission of revenue fraud by another person.
- Be knowingly concerned in, or take steps with a view to, another person fraudulently evading.
- Aiding and abetting another person in committing a revenue fraud.

Stage 3: failure by the University to prevent its representative from committing the criminal facilitation act

The Corporate Criminal Offence is a strict liability offence. This means that if the Stage 1 and Stage 2 offences are committed then the University will have committed the Criminal Corporate Offence. The only defence to the offence is for the University to prove that it had reasonable prevention procedures. Therefore, it is essential for all those subject to this Policy to comply with the Compliance Procedures.

4.3 Overseas Tax Evasion Facilitation Offence

The overseas tax evasion facilitation offence operates in a broadly similar way to the UK tax evasion facilitation offence, however, is slightly narrower in scope, in that only certain

relevant bodies with a UK nexus can commit it and the legislation also requires “dual criminality”.

UK Nexus

In addition to requirement of the establishment of criminal liability through criminal evasion by a taxpayer (stage one), then the criminal facilitation of tax evasion by an associated person (stage two), the overseas offence can only be committed by a relevant body that deemed to be sufficiently connected to the UK in accordance with the following tests:

- incorporated under UK law;
- carrying on a business or part of a business in the UK, for example a company incorporated under the law of France but operating from an office in Birmingham; or
- whose associated person is located within the UK at the time of the criminal act that facilitates the evasion of the overseas tax, for example an entity incorporated under German law whose employee helps another person to commit an overseas foreign tax evasion offence whilst in London.

“Dual Criminality”

There are two stages of dual criminality:

1. the overseas jurisdiction must have an equivalent tax evasion offence at the taxpayer level and it must be the case that the actions carried out by the taxpayer would constitute a crime if they took place in the UK (an offence of being knowingly concerned in or taking steps with a view to the fraudulent evasion of the tax). Therefore, the CCO cannot be committed where the acts of the associated person would not be criminal if committed in the UK, regardless of what the foreign criminal law may be.
2. the overseas jurisdiction must have an equivalent offence covering the associated person’s criminal act of facilitation, and it must be the case that the actions of the associated person would constitute a crime had they took place in the UK.

Even where the foreign criminal law renders inadvertent or negligent facilitation of tax evasion criminal, the CCO will not be committed because the requirement for dual criminality will not be met - UK law renders only deliberate and dishonest acts of facilitation criminal.

Therefore, any conduct that contravenes the criminal law of another country relating to tax evasion may give rise to the overseas tax evasion facilitation offence where:

Stage A - under UK law the actions of taxpayer (tax evasion) and associated person (facilitation) would be an offence

AND

Stage B - the overseas jurisdiction has equivalent offences at both the taxpayer and facilitator level and recognises the act(s) of the taxpayer and the act(s) of the facilitator as criminal. Where the act of facilitation happens outside of the country suffering the tax loss, the country suffering the tax loss must recognise the act(s) of facilitation which occur outside of its borders as criminal under its domestic law.

Therefore, the overseas tax evasions facilitation offence cannot be committed by acts that would be lawful in relation to a UK tax. Due to the dual criminality requirement, it is only necessary to have an understanding of the foreign criminal law when doing something that would be illegal if done in the UK. If the actions of the associated person would be lawful in the UK then the “dual-criminality” requirement will not be fulfilled and the overseas tax facilitation evasion offence will not be committed regardless of what the foreign law may be.

The legislation also requires that before proceedings for the overseas tax evasion facilitation offence are commenced in England, Wales or Northern Ireland the personal consent of the

Director of Public Prosecutions or the Director of the SFO must be gained. Such consent would only be forthcoming where, having weighed up all factors, the prosecution was in the public interest.

UK Government guidance indicates that whilst the preference will normally be for the jurisdiction suffering the tax loss to take the appropriate criminal or civil response, if this is not possible (for example due to lack of resources, corruption, or any other reason), the Government believes that it should be open to the UK to hold the relevant body to account, should it be in the public interest to do so.

5. SANCTIONS

The UK tax evasion facilitation offence will be investigated by HMRC, with prosecutions brought by the CPS whilst the overseas tax evasion facilitation offence will be investigated by the SFO or the NCA and prosecutions will be brought by either the SFO or CPS.

The penalties for this offence will include:

- unlimited financial penalties; and
- ancillary orders such as confiscation orders or serious crime prevention orders.

There are further business and reputational implications because disclosure of the criminal conviction may be required to professional regulators both in the UK and overseas and prevent the University being awarded public contracts.

6. TAX EVASION V TAX AVOIDANCE

The Corporate Criminal Offence applies when there has been fraudulent tax evasion. Fraudulent tax evasion is a crime and involves dishonest behaviour. A person behaves dishonestly if they know (or turn a “blind eye” to whether) they have a liability to pay tax but decide not to pay it/declare it. Dishonest behaviour may involve a person simply deciding not to declare money they make. It may involve someone deliberately trying to hide the source of money, or even intentionally misrepresenting where money came from.

The Corporate Criminal Offence does not apply to tax avoidance. A person's attempts to avoid tax may involve using complicated and artificial structures to exploit gaps in the rules of the tax system. Tax avoidance will usually involve arrangements to move assets from one place to another to secure a better tax treatment. Tax avoidance would only become evasion if the taxpayer dishonestly withheld or misrepresented information to try to make the planning appear effective when it is not in fact effective.

7. IMPLEMENTATION

7.1 HMRC Guidance Compliance

HMRC has published guidance on the Corporate Criminal Offence, in which it sets out 6 guiding principles that underpin the defence of having reasonable prevention procedures. The University has implemented these principles in the Compliance Procedures:

Principle 1: Risk Assessment – the University assesses the nature and extent of its exposure to the risk of those who act in the capacity of a person associated with it criminally facilitating tax evasion offences. The risk assessment is documented and kept under review.

Principle 2: Prevention Procedures – the University adopts reasonable procedures to prevent persons acting in the capacity of a person associated with it from criminally facilitating tax evasion will be proportionate to the risk the relevant body faces of persons associated with it committing tax evasion facilitation offences.

Principle 3: Top Level Commitment – this Policy and the Compliance Procedures are approved by the Executive and ratified by Audit Committee to demonstrate that the University is committed to preventing persons acting in the capacity of a person associated with it from engaging in criminal facilitation of tax evasion.

Principle 4: Due Diligence – the University applies due diligence procedures, taking an appropriate and risk-based approach, in respect of persons who perform or will perform services on behalf of the University, in order to mitigate identified risks.

Principle 5: Communication (including training) - the University seeks to ensure that this Policy and the Compliance Procedures are communicated, embedded and understood throughout the University, through internal and external communication, including training. This is proportionate to the risk to which the University assesses that it is exposed.

Principle 6: Monitoring and Review - the University monitors and reviews Compliance Procedures and makes improvements where necessary.

7.2 Red Flags

In accordance with the Compliance Procedures, those subject to this Policy must remain vigilant for facilitation of tax evasion "red flags". Any red flags should be reported immediately and the proposed transaction should not proceed until further checks are undertaken.

Examples of red flags include:

- the third party refuses or fails to confirm that it will comply with the University's due diligence checks.
- the third party operates or is resident in a market or country where there is a high risk of tax evasion.
- the third party has unusual invoicing or documentation practices, for example, such as splitting costs between product charges and marketing charges.
- the third party declines to provide an invoice.
- the goods being purchased are significantly cheaper than goods supplied by other suppliers without any reasonable explanation for why that is the case.
- the third party requests for payments to be:
 - made in cash;
 - paid or refunded to or through another entity;
 - paid or refunded to bank accounts in countries other than the country from which services are performed or goods are supplied;
 - paid or refunded to offshore bank accounts;
 - paid or refunded in a currency other than the local currency; or
 - paid in advance of the services being performed.



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