

# Global Compliance

Criminal Finances Act (CFA)

Risk Assessment Roadmap – Preview



For more information on this roadmap, and any of the others in our Global Compliance Roadmap series, please get in touch with the Osborne Clarke team [here](#).



# Introduction

**The Criminal Finances Act 2017 enacted a new corporate offence of failing to prevent the facilitation of tax evasion. The only defence available to this offence is for the organisation to demonstrate that it had reasonable procedures in place to prevent the facilitation of tax evasion.**

HMRC guidance is that every organisation needs to conduct an objective and comprehensive risk assessment to identify any CFA risks that it may face.

The purpose of a CFA risk assessment is to assess the nature and extent of an organisation's exposure to the risk of those who act for or on behalf of the

organisation (Associated Persons) engaging in activity during the course of business to criminally facilitate tax evasion. The risk assessment is therefore primarily concerned with looking at risk from the Associated Persons' perspective in order to identify whether they have the motive, opportunity and means to criminally facilitate tax evasion.

The risk assessment should not be viewed as a one off exercise, but should be repeated at regular intervals, and whenever significant new business is undertaken that may alter the overall risk profile of the organisation. The risk assessment is the starting point in establishing reasonable prevention procedures.

Set out below is a 'roadmap' of questions designed to address information, which will enable businesses to identify any CFA risks it may face.

Having answered these questions, an assessment can then be made of the extent to which a commercial organisation's policies and procedures adequately address those risks. Steps can then be taken to address any issues identified in the risk assessment that are not addressed by existing policies and procedures.



# 1. Assessing your external CFA risk

- Has your organisation undertaken any prior assessment or consideration of the CFA (or, more broadly, tax evasion) risk it faces and, if so, when was that assessment last undertaken?

If the answer to the above is no, has your organisation undertaken any assessment or consideration of the bribery and corruption risks it faces under the UK Bribery Act 2010 (UKBA)? The UKBA is similar to the CFA and many bribery and corruption risks overlap with the CFA.

## 1.1 Identification of Associated Persons

- Do you know who your Associated Persons are (any person or entity that performs services for or on behalf of the organisation)?

## 1.3 Country risk

- Which countries do you have subsidiaries or joint ventures in? Is the nature of that operation in those countries (such as high levels of tax secrecy and lack of transparency) likely to increase your CFA risk? (such countries are unlikely to be covered by the Reporting Standard and/or the UKBA)
- Do you obtain tax advice from countries you operate in?
- Which other countries do you do business in? Do you have suppliers, agents or other third parties in those countries?
- Are any of the countries you do business in high levels of tax secrecy and lack of transparency (such countries are unlikely to be covered by the Reporting Standard and/or the UKBA)?

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# ● 1. Assessing your external CFA risk

## 1.6 Business partnership risk

- Do you have any business partners, for example joint venture entities, who would be regarded as performing services for or on behalf of your organisation?
- Do you undertake due diligence on any prospective business partner before entering into a business relationship with them?
- Are you aware of any business partner having any direct, or indirect, links with any high-risk jurisdiction, high-risk sector or high-risk individual?

## 1.7 Customer/client risk

- Do you deal with customers or clients who are involved in personal asset holding vehicles?
- Do you deal with customers or clients who are involved with nominee shareholders or trusts?
- Do you deal with customers or clients who are involved in intensive businesses?

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## 2. Assessing your current approach to CFA

### 2.1 Policies and procedures

Do you have:

(i) A tax policy?

(ii) A CFA policy?

(iii) A Code of Ethics?

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## ● 3. HMRC guidance relating to the CFA

The UK tax authority (HMRC) has issued guidance relating to what may constitute reasonable prevention procedures. The guidance focuses on six guiding principles:

### 3.1 Risk assessment

- Are your risk assessment procedures overseen by senior management?
- Does your organisation allocate appropriate resource to risk assessment, proportionate to the scale of your business and the risks that you may face?

### 3.3 Tone from the top

- To what extent does your Board demonstrate its leadership to the business on CFA compliance? For example, consideration of CFA compliance in the annual consideration and direction of the business, appropriate resourcing, firm values and policies?
- Is this message communicated through a clear statement on corporate values?
- Is there a member of senior management who is responsible for CFA compliance?

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## ● 3. HMRC guidance relating to the CFA

- What steps do you take to address or manage the CFA risk arising through third parties?

For example, does your organisation:

- (i) Have a systematic approach for engaging third parties consistently across the business?
- (ii) Do you have CFA or other contractual clauses in your contracts with third parties to mitigate against facilitation of tax evasion risks (such as requiring them to comply with applicable laws, comply with a supplier code of conduct,

### 3.5 Communications and training

- Does your organisation provide training to employees?

- (i) Is that training tailored so that it is relevant to the training relative to their role?
- (ii) How often is the training provided?
- (iii) Does this differ for persons with obvious CFA risks?

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## 4. Specific concerns

- Have any potential CFA issues (red flags) been identified as part of any internal or external audits conducted within the past 5 years? If so, how were these dealt with?
- Have any whistleblower reports referred to an potential CFA issues within the past 5 years? If so, how were these dealt with?
- Are you aware of any allegations, inquiries, investigations, prosecutions or other actions by a State regulator or prosecutor which may indicate a CFA issue connected to your organisation or a third party that performs

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