



GLOBAL COMPLIANCE

# Criminal Finances Act (CFA) Risk Assessment Roadmap



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 UK Criminal Finances Act 2017 (“CFA”) enacted criminal corporate offences of failing to prevent the facilitation of tax evasion. It is a criminal offence if**

- **an associated person of a business**
- **facilitates tax evasion by a third party**
- **...and the business does not have in place “reasonable procedures” to prevent it**

The offences are deliberately international in scope and cover evasion of UK and non-UK taxes, although detailed conditions apply to evasion of non-UK taxes. In practice any business with a connection to the UK should take reasonable preventative procedures in respect of its UK activities, whether the risk relates to evasion of UK or non UK taxes.

The offences are ones of strict liability, that is to say if all the conditions are satisfied then the business is criminally liable even if management did not know anything.

The only defence available is for the organisation to demonstrate that it had reasonable procedures in place to prevent the facilitation of tax evasion.

In order to implement reasonable prevention procedures an organisation needs first to conduct an objective and comprehensive risk assessment to identify any CFA risks that it may face.

The risk assessment should 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”) – which includes employees but also anyone acting for or on behalf of the organisation – engaging in activity during the course of business to criminally facilitate tax evasion. The risk assessment is therefore primarily concerned with looking at risk that Associated Persons have the motive, opportunity and means to criminally facilitate tax evasion, and what reasonable prevention procedures can be introduced to prevent that occurring.

The risk assessment should not be viewed as a one off exercise, but should be repeated at regular intervals, including whenever there are significant changes in the business, for example acquiring a new business or changes to systems to ensure the procedures remain adequate.

Set out below is a ‘road map’ of questions designed to identify information, which will be relevant to the assessment of the CFA risks a business may face.

Having answered these questions, an assessment can then be made of the extent to which a commercial organisation’s policies and procedures need to be updated to adequately address those risks.



# 1. Assessing your external CFA risk

## 1.1 Identification of Associated Persons

- Aside from employees do you know who your Associated Persons are (any person or entity that performs services for or on behalf of the organisation)?
- Have your Associated Persons carried out risk assessments and implemented reasonable prevention procedures?
- Do you have controls and/or operational oversight as to what they do on your behalf?
- Which other countries do you operate in? (do you have suppliers, agents or other third parties in other countries?)
- Do you obtain tax advice from lawyers or accountants in other countries you operate in?
- Are any of the countries you operate in high risk jurisdictions with high levels of tax secrecy and/or low levels of transparency? (such countries are unlikely to have robust AML/CFT regimes)

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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?

### 2.2 Previous risk assessments

- Has your organisation undertaken a risk assessment or considered a risk assessment and, if so, when was the last undertaken?
- If the answer to the above question is no, has your organisation undertaken a risk assessment in the last 12 months?

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## ● 3. HMRC guidance relating to the CFA

HMRC has issued guidance relating to what may constitute reasonable prevention procedures. It is important to measure any existing or proposed prevention procedures against the six guiding principles set out in the guidance:

### 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 leadership to the business or, for example, consideration of CFA, consideration and direction of appropriate resourcing, firm v
- Is this message communicated in a 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 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, provide a

### 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 who are exposed to 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 a 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 services for or on your behalf?

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