On the 27th April 2017 the Criminal Finances Act 2017 (the **"Act"**) received Royal Assent in the UK, and is due to come into force in September 2017. As will be highlighted below, parts of the Act will have extra territorial effect and may apply in Jersey and should therefore be focussing the minds of the local financial sector.

The Act introduces a range of new measures to fight financial crime, of which one of the most important and far-reaching is the introduction of the new offence of failure to prevent the facilitation of tax evasion which may render corporate bodies liable, in certain circumstances, for the acts of their *"associated persons".* This is subject only to a defence relating to having in place reasonable prevention procedures designed to prevent them from facilitating tax evasion.

It has historically always been difficult to attribute criminal liability to a corporation from the criminal acts of its representatives because of the high burden of proving that the *"directing mind and will"* of the company (senior management) was involved. For example, this was famously demonstrated in the 1987 Zeebrugge ferry disaster where the corporate manslaughter case failed because the various acts of negligence could not be attributed to any individual who was a "controlling mind."

The new offences contained in the Act therefore seek to plug a perceived gap under which the HMRC considers that it is too difficult to prosecute a company when its employees facilitate tax evasion by their customers or suppliers. The Act's introduction was undoubtedly fast tracked in light of the Panama Papers leak and the publicity it attracted in order to make corporations more accountable and it is inevitable in an election year that politicians will want to be seen as taking a hard stance on tax evasion, viewing it as an easy vote winner.

Although the new offences do not extend the scope of tax evasion, they are designed to change who can be held to account for facilitating evasion, making it easier to take action against the business concerned.

Relevance to Jersey

In relation to the territorial scope of the offences, the Act includes the offence of failure to prevent the facilitation of UK tax evasion (the **"Offence"**). In relation to this Offence, a body corporate or a partnership (referred to as a **"Relevant Body"**), whether established for business or non-business purposes, may be prosecuted for failure to prevent the facilitation of tax evasion if:

1. a person evades tax;
2. an associate (for example, an employee, agent or any other person who performs services for or on behalf of the Relevant Body) criminally facilitates that evasion while acting in the capacity of an associate of the Relevant Body; and
3. the Relevant Body is unable to show they had in place "reasonable prevention procedures" in place.

Importantly, it does not matter whether the Relevant Body is UK based or established under the law of another country (for example Jersey) or whether the associate who performs the criminal act of facilitation is situate in the UK or overseas. The Act therefore seeks to have extra-territorial effect and is of direct relevance to Jersey.

For example, Match-Makers R US Limited is a successful Jersey business matching buyers and sellers and has a significant operation in the UK. An employee at Match-Makers R US Limited arranges for a payment to a UK Seller to be made offshore with the express intention of evading tax. The Jersey company had no reasonable preventative measures in place. In this case, it would be irrelevant that the company is based in Jersey, given that UK tax is being evaded and it is likely that the Jersey company would be liable under the Act.

As the Offence is a strict liability offence, it will not require the proof of involvement of senior management if the offences listed in clauses one and two above are committed then the Relevant Body will have committed the new corporate offence unless it has put in place reasonable preventative procedures, which should include the following core principles:

1. **Risk assessment**: Businesses should assess the nature and extent of their exposure to any risks arising from those who act for or on its behalf and should keep the risks under review. The risk assessment is key to all the other principles which need to be evaluated in the light of the analysis of risk.
2. **Proportionality**: To be 'reasonable', prevention procedures should be proportionate to the risks faced by businesses, and this depends on the nature, scale and complexity of its activities.
3. **Top level commitment**: The top-level management should be committed to preventing persons associated with the business from engaging in the criminal facilitation of tax evasion. Those at the most senior levels of the business are best placed to foster a culture where actions intended to facilitate tax evasion are considered unacceptable.
4. **Due diligence**: it will be necessary to apply due diligence procedures, taking an appropriate risk-based approach, to identify the risk of criminal facilitation of tax evasion by associated persons.
5. **Communication** (including training): with regards to policies and procedures ensuring that the business' policy against engaging in activities to help clients commit tax fraud is communicated, embedded and understood throughout the organisation.
6. **Monitoring and review**: The business monitors and reviews its prevention procedures and makes improvements where necessary.

In relation to sanctions under the Act, Relevant Bodies can face criminal prosecution, unlimited fines and disclosure to professional regulators, with conviction also undoubtedly leading to wider reputational damage.

In light of the extra territorial effect of the Act, Jersey businesses that are aware that they transact (or that there is a risk that they may transact) business with persons who may have UK tax liabilities will not be immune and the time to act is now. Compliance, legal and tax departments of affected Jersey businesses should familiarise themselves with the offences and carrying out the relevant risk assessment and policy implementation