

EXPLANATORY MEMORANDUM TO
THE FACILITATION OF TAX EVASION OFFENCES (GUIDANCE ABOUT
PREVENTION) REGULATIONS 2017

2017 No. 876

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of the Chancellor of the Exchequer and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument brings into operation guidance prepared and published by the Chancellor of the Exchequer as required by section 47(1) of the Criminal Finances Act 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This is the first time that the power has been exercised.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 47(1) of the Criminal Finances Act 2017 requires the Chancellor of the Exchequer to prepare and publish guidance about the procedures that relevant bodies can put in place to prevent persons associated with them from criminally facilitating tax evasion. These Regulations bring such guidance into operation.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

What is being done and why

- 7.1 As required by section 47 of the Criminal Finances Act 2017, and in order to help relevant bodies to prepare for the coming into force of the new corporate offences of failure to prevent the criminal facilitation of tax evasion, the Chancellor of the Exchequer has prepared guidance on the procedures that relevant bodies can put in place to prevent persons associated with them from committing tax evasion facilitation offences.

Consolidation

- 7.2 This Statutory Instrument does not amend any other Statutory Instruments and therefore the question of consolidation does not arise.

8. Consultation outcome

- 8.1 Between April and July 2016, the Government publically consulted on a draft of the guidance alongside the draft clauses which later formed Part 3 of the Criminal Finances Act 2017. The consultation can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517020/Tackling_tax_evasion-legislation_guidance_corporate_offence_of_failure_to_prevent_criminal_facilitation_tax_evasion.pdf

- 8.2 The consultation received 32 written responses as well as substantial input during bilateral meetings and during discussions with representative bodies. Comments largely related to the inclusion of case studies and detailed points within the guidance. As summary of comments received and changes made in light of these comments can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560118/Tackling_tax_evasion-legislation_guidance_corporate_offence_of_failure_to_prevent_criminal_facilitation_tax_evasion-Summary_Responses.pdf

- 8.3 In response to the public consultation on the draft guidance for the new corporate offences the Government published a response document and updated draft guidance in October 2016, which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560120/Tackling_tax_evasion_-_Draft_government_guidance_for_the_corporate_offence_of_failure_to_prevent_the_criminal_facilitation_of_tax_evasion.pdf

- 8.4 The finalised guidance contains minor amendments made since the October 2016 draft guidance was published. These changes are intended to reflect minor changes made to the draft clauses that became Part 3 of the Criminal Finances Act 2017. The final guidance also includes some additional examples which were supplied by businesses during the consultation.

9. Guidance

- 9.1 The guidance prepared by the Chancellor of the Exchequer that will be brought into operation by the Regulations can be found at:

<https://www.gov.uk/government/consultations/tackling-tax-evasion-a-new-corporate-offence-of-failure-to-prevent-the-criminal-facilitation-of-tax-evasion>.

- 9.2 A copy can be obtained by writing to The Centre for Offshore Evasion Strategy, 1C/26, 100 Parliament Street, London SW1A 2BQ.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 Therefore, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to small businesses.
- 11.2 To minimise the impact of the requirements on small businesses the approach taken is to provide guidance that is principle based and takes a risk based approach to compliance, rather than creating a list of mandatory requirements. Whilst small businesses may have regard to the guidance, they may equally adopt their own approach to implementing procedures to prevent persons acting in the capacity of a person associated with them from committing tax evasion facilitation offences.

12. Monitoring & review

- 12.1 The Government will keep the guidance under review, working with the devolved administrations, to ensure that the guidance remains up to date and reflects relevant developments. The guidance invites businesses to contact HMRC should they feel that the guidance would benefit from additions or amendments.

13. Contact

- 13.1 Jennie Haslett at Her Majesty's Revenue and Customs can answer any queries regarding the instrument. She can be contacted by email at consult.nosafehavens@hmrc.gsi.gov.uk or by telephone on 03000 557 684.