

# Criminal Finances Act Statement

## 1. Introduction

At the University of Edinburgh (the “University”), we do not condone and have a zero tolerance approach to the facilitation of tax evasion. This statement is made pursuant to Part 3 of the Criminal Finances Act 2017 (the “CFA 2017”), Corporate offences of failure to prevent facilitation of tax evasion. This statement sets out the steps the University has taken and will take in relation to preventing the facilitation of tax evasion.

## 2. The University’s structure and activities

The University is constituted by the Universities (Scotland) Acts 1858 to 1966. The Universities (Scotland) Acts make specific provision for three major bodies in the Governance of the University: Court, Senate and General Council. The University is organised in three Colleges (College of Arts, Humanities & Social Sciences, College of Medicine & Veterinary Medicine and College of Science & Engineering) and three Support Groups (Corporate Services, Information Services and University Secretary’s Group). The University educates students from all over the world and has offices in Edinburgh, Midlothian, Beijing, Mumbai, Santiago, New York and Singapore. It seeks to attract, develop, reward and retain the best staff for a world class teaching and research institution, and develops research, knowledge exchange and teaching partnerships and collaborations across the world.

We buy a wide range of goods and services or capital works, in accordance with public procurement law and our ethical sourcing principles and practices. These include construction services and supplies, furniture and stationery, electronics (computers, audio visual, etc.), food and catering supplies, travel services, laboratory supplies (equipment, chemicals, pharmaceuticals etc.), books and printing, and waste and recycling services. A large proportion is bought through frameworks established by collaborative consortia and we recognise that there are risks linked to global supply chains related to the goods and services that we procure. We apply the principles of ethical public procurement to support suppliers to offer a responsible code of conduct. We exclude suppliers who fail to meet the minimum standards.

As a truly global university, rooted in Scotland’s capital city, we make a significant, sustainable and socially responsible contribution to the world.

## 3. Our commitment

The University is committed to tackling malpractice. We will act ethically and with integrity in all our relationships, and use all reasonable endeavours to take action against malpractice, wherever we can do so. The University has a number of policies and procedures in place to tackle malpractice, including:

3.1 The University’s Financial Regulations are the overarching rules including external regulations which all staff must follow:

<http://www.ed.ac.uk/finance/for-staff/financial-regulations-policies-and-procedures/financial-regulations-overview-page/ethical-principles-and-business-conduct>

In section B of the Financial Regulations, Ethical Principles and Business Conduct, the General Principles state that “no University activity must be undertaken that is in known breach of the laws and regulations of any country. Staff knowingly or recklessly disregarding this prohibition may be subject to disciplinary action, up to and including dismissal. In cases of doubt, all staff must seek advice from the University Secretary before any financial commitment is made or where there is suspicion of money laundering or other criminal activity. All staff must ensure they commit University resources in a transparent and ethical way and must always seek to uphold and enhance the standing of the University.”

The Whistleblowing Code of Practice enables staff to report improper conduct or unethical behaviour. The Code of Practice reflects the University’s commitment to openness in its affairs and is based on the premise that individuals must feel able to draw attention to perceived malpractice openly and normally within existing procedures and be supported in so doing. Indeed, staff have a duty to report malpractice and are encouraged so to do:

<http://www.docs.sasg.ed.ac.uk/GaSP/Governance/whistleBlowing.pdf>

The University also has a number of additional policies which govern our relationships with stakeholders including the Conflict of Interest Policy, Anti-Bribery and Corruption Policy and Fraud Policy. We have a published [University Procurement Strategy](#) which displays our principles and practices in the acquisitions of goods, services and works, and outlines how we will take steps to ensure an ethical procurement approach. We apply under Public Contracts (Scotland) Regulations 2015, the mandatory exclusion criteria to companies bidding for major contracts (and the equivalent provision for contracts of lower values, regulated under the Procurement Reform (Scotland) Act 2014). A common process is used ensure that a supplier convicted of one of the criminal offences listed under regulation 58(1) of the Public Contracts (Scotland) Regulations 2015 must be excluded from procurement procedures for five years from the date of the conviction by final judgment unless the supplier provides evidence that it has taken measure sufficient to demonstrate its reliability despite the conviction (“self-cleansing”).

We also apply a code of conduct to high risk categories of supplies and include this in contracts: <http://www.apuc-scot.ac.uk/#!/Suscode> We are updating our standard terms and conditions for the new legislation.

These policies, which are aimed at tackling malpractice, facilitate the prevention of tax evasion.

#### 4. Legislation

The CFA2017 received royal assent on 27 April 2017 and came into force on 30 September 2017. It represents a radical overhaul of the Proceeds of Crime Act 2002 (POCA) anti-money laundering and confiscation regime.

The new offence is directed at holding organisations (referred to in the CFA 2017 as a 'relevant body') to account for the actions of their 'associated persons' (e.g. employees, agents, contractors, suppliers and intermediaries) in facilitating tax evasion or assisting customers to evade tax. The CFA 2017 is part of a wider attempt by the Government and HMRC to tackle tax evasion and avoidance. Taxation evasion is already an offence, but prior to the introduction of the CFA 2017 it was difficult to ascribe criminal liability to the organisation where it occurred. The new rules target deliberate and dishonest behaviour and focus on the processes and procedures that organisations have to prevent such behaviour.

Two new failure-to-prevent offences apply:

- **failure to prevent facilitation of domestic tax evasion** (section 45).
- **failure to prevent facilitation of foreign tax evasion** (section 46).

For a relevant body to be liable under the Act, there must have been:

- **Stage one:** criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law.
- **Stage two:** criminal facilitation of the offence by an 'associated person' of the relevant body who is acting in that capacity (as defined by the Accessories and Abettors Act 1861).
- **Stage three:** the relevant body failed to prevent its representative from committing the criminal facilitation outlined at stage two.

Only a relevant body – a legal entity such as a company or partnership (wherever incorporated or organised) – can commit the offence. The new offences do not apply at the individual level.

Where a person 'associated with' a relevant body commits a foreign or UK tax facilitation evasion offence, the relevant body will be vicariously liable. An 'associated person' is broadly defined to include an employee, agent or any other person performing services on behalf of the relevant body. Any prosecution requires the consent of the Director of Public Prosecutions or Director of the SFO. Potential fines are unlimited as is potential reputational damage.

If activity would be considered to be tax evasion under existing law, then it will continue to be so. Likewise, if the activity would not currently be considered tax evasion, then the CFA 2017 does not make it so.

The CFA 2017 is limited to tax evasion offences which require a dishonest intention (i.e. it excludes strict liability offences). Likewise, criminal facilitation involves a mental element – it must be dishonest facilitation so does not include knowing facilitation of avoidance or unknowing facilitation of evasion. The necessary dishonest intent might involve non-disclosure, misrepresentation, concealment, 'turning a blind eye' or recklessness.

## 5. Reasonable prevention procedures defence

Modelled on section 7(2) of the Bribery Act 2010, the CFA 2017 provides for a defence against a charge of failing to prevent facilitation of domestic or foreign tax evasion where at the time of the offence the relevant body had in force 'reasonable prevention procedures'. HMRC draft guidance states that: 'If a relevant body can demonstrate that it has put in place a system of reasonable prevention procedures, the six guiding principles, that identifies and

mitigates its tax evasion facilitation risks, then prosecution is unlikely as it will be able to raise a defence.’ The six guiding principles referred to in this guidance are set out in section 6.

## 6. Six guiding principles

The six guiding principles that HMRC recommends should inform the types of processes and procedures that can be put in place to prevent associated persons from criminally facilitating tax evasion are as follows:

- 1.1. **Risk assessment.** Carrying out a risk assessment to identify the specific risks of facilitation. A methodical and thorough assessment of the nature and extent to which a relevant body is exposed to a risk that those who act for or on its behalf are criminally facilitating tax evasion will be the cornerstone of any “reasonable prevention procedures” defence.
- 1.2. **Proportionality of risk-based prevention procedures.** Implementing procedures which are proportionate to the specific risks identified in the risk assessment.
- 1.3. **Due diligence.** Performing due diligence of staff, third parties and clients in proportion to the risks that they pose to the business.
- 1.4. **Top level commitment.** Ensuring that there is a top level commitment within the organisation to preventing the facilitation of tax evasion.
- 1.5. **Communication.** Communication (including training) to employees and third parties to ensure procedures are embedded and understood.
- 1.6. **Monitoring and review.** Carrying out ongoing monitoring and review of procedures and risk assessment.

This CFA statement constitutes the statement of commitment to these six guiding principles and will demonstrate the top level commitment required.

## 7. Approval and review

<b>Statement owner</b>	Director of Finance
<b>Date statement approved</b>	31 October 2017
<b>Approval by</b>	Central Management Group
<b>Next date for review</b>	31 October 2018
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