



Criminal Finance Act 2017

What you need to know

By Workwell | Updated November 2022

The Criminal Finance Act 2017 is one of the key components governing the compliant use of temporary labour as it aims to address tax evasion.

Whilst broad in scope, it is highly relevant to all members of the contingent labour supply chain – and worth a reminder in the current climate of ongoing labour shortages in a number of sectors. One of the fears is that some parts of the supply chain could relax their usual risk-averse stance as a way of addressing the skills shortages and loss of labour to less scrupulous competitors.

Because the legislation covers the businesses and individuals involved in the payment of temporary workers, it means your recruitment business, your Board of Directors and your end clients are at risk. This underlines the need for simplification of the supply chain to give ever-increasing transparency between all parties along with robust, auditable compliance practices that do not waver over time.

Compliance is and always will be our highest priority. With Workwell as your contractor payments partner, you can rest assured knowing that your business is not compromised. Furthermore, we can help you and your teams understand the broader complexities and put in place the right measures throughout your supply chain to support your clients and protect your business.

“You should perform due diligence to enable you to make a judgement on transactions and the integrity of your supply chain.”

Source: HMRC Guidance: Advice on applying supply chain due diligence principles to assure your labour supply chains.

RISKS FOR STAFFING BUSINESSES AND HIRERS

The most common areas of risk for recruitment businesses include:

1. The correct determination of self-employment.
2. The correct administration of business expenses for Umbrella employees.
3. The use of complex models such as “deemed employment” or those designed to avoid VAT or inappropriately benefit from National Insurance allowances.

- **Correct determination of self-employment**

Before a worker can register with us, they undergo detailed assessments to ensure they are only offered working options appropriate to their circumstances. We are able to offer a range of other fully compliant working options such as Umbrella employment, PEO, PAYE, and support compliant working overseas. We can also offer accountancy services to PSCs, if the circumstances are right, and they choose to work this way.

- **The correct administration of business expenses for Umbrella employees**

There are strict rules governing the administration of business expenses for Umbrella employees. At Workwell we carefully review requests for Umbrella expenses and will advise your recruitment business on compliance.

- **The use of complex models such as “deemed employment” or those designed to avoid VAT or inappropriately benefit from National Insurance allowances.**

Unfortunately, there always have been and always will be organisations that are prepared to take risks to make it look as if they can legitimately offer commercial advantages to workers and recruitment businesses by doing some fancy footwork with the standard deductions.

Our view is that the rules are the rules, there should be no difference in take-home pay offered by us or the other good contractor payment companies – our competitive difference is our superior service.

“Protect your business by testing the credibility, legitimacy, legal & tax compliance of your suppliers, customers, employees & labour supply chain.”

Source: HMRC Guidance: Advice on applying supply chain due diligence principles to assure your labour supply chains.

CONSEQUENCES OF NON-COMPLIANCE

Directors are now criminally liable so should take an active interest in tax evasion prevention procedures.

This may involve identifying the possible opportunities for tax evasion within the business; identifying which employees are most at risk of facilitating tax evasion; and ensuring individuals are given appropriate internal training so that they fully understand the seriousness of the offences. It may also be necessary to impose additional administrative processes in high-risk areas of the business.

It should be noted that this risk could extend to your clients if it can be shown there were inadequate measures in place to prevent tax evasion, especially where there would be an expectation of the hirer knowing something did not appear compliant.

If found guilty, there would be reputational damage to deal with alongside unlimited fines (as a minimum this would be 100% of the tax evaded with aggravated or mitigating circumstances taken into account); company directors could face a criminal conviction and there could be ancillary orders such as confiscation orders.

As you can see, the consequences are severe, which is why we have developed extensive capability in this area to support and protect our clients.

WHAT CONSTITUTES AN OFFENCE?

Assessment of whether an offence has been committed is covered in three stages:

- Stage 1: A criminal tax evasion by a taxpayer (either by an individual or legal entity) under existing law.
- Stage 2: The criminal facilitation of this offence by a person associated with the company or partnership with a view to aiding, abetting, counselling or procuring the evasion of tax by the taxpayer.
- Stage 3: If stages 1 and 2 are satisfied, the company/partnership will have committed an offence unless it shows that:
 - (i) it has put in place reasonable measures and procedures to prevent the criminal facilitation of tax evasion
 - (ii) it was not reasonable in all the circumstances to expect it to have prevention procedures in place.

HMRC GUIDANCE

HMRC has issued guidance to help businesses understand the types of processes and procedures which they might put in place to prevent associated persons from criminally facilitating tax evasion.

HMRC stresses that its guidance is intended to be of general application and applied in a proportionate way; it is not prescriptive or a one-size fits all document and what is classed as “reasonable” may evolve over time, and may differ from one company to another depending upon the nature of the work performed and the level of associated risk.

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The HMRC guidance mirrors the 6 guiding principles in the Bribery Act 2010 and focuses on:

- (i) Risk Assessment – companies should undertake a risk assessment to determine the nature and extent of their exposure to the risk that their employees/agents may engage in the facilitation of tax evasion. The assessment should focus on the opportunities and means by which employees/agents may engage in criminal activity and consider what prevention measures may mitigate such risks.
- iii) Top level commitment – senior management of the company/partnership should be committed to developing and implementing the prevention procedures.
- (iv) Due diligence – companies should apply due diligence procedures to identify and respond to risks.
- (v) Communication – prevention procedures should be adequately communicated, understood and embedded throughout the company.
- (vi) Monitoring and review – prevention procedures should be monitored and reviewed regularly, and necessary improvements made.

HMRC has made it clear that even strict compliance with its guidance will not necessarily be “reasonable” when a business faces particular risks that it fails to address.

It’s clear that temporary labour supply chains need enhanced measures due to the nature of their work and the increased opportunities which may arise to facilitate tax evasion, whether facilitation has been deliberate or has occurred due to slack prevention policies.

HOW CAN WE HELP?

It is essential that you have a documented assessment of the above risks including well-communicated policies and regular audits which are adequate to meet the expectations of HMRC.

At Workwell we have already assisted many recruitment businesses and some end hirers in addressing the above risks.

If you would like to benefit from a free consultation in this area, please contact our Agency Support Team on 01923 474740 or email agency@workwellsolutions.com.

