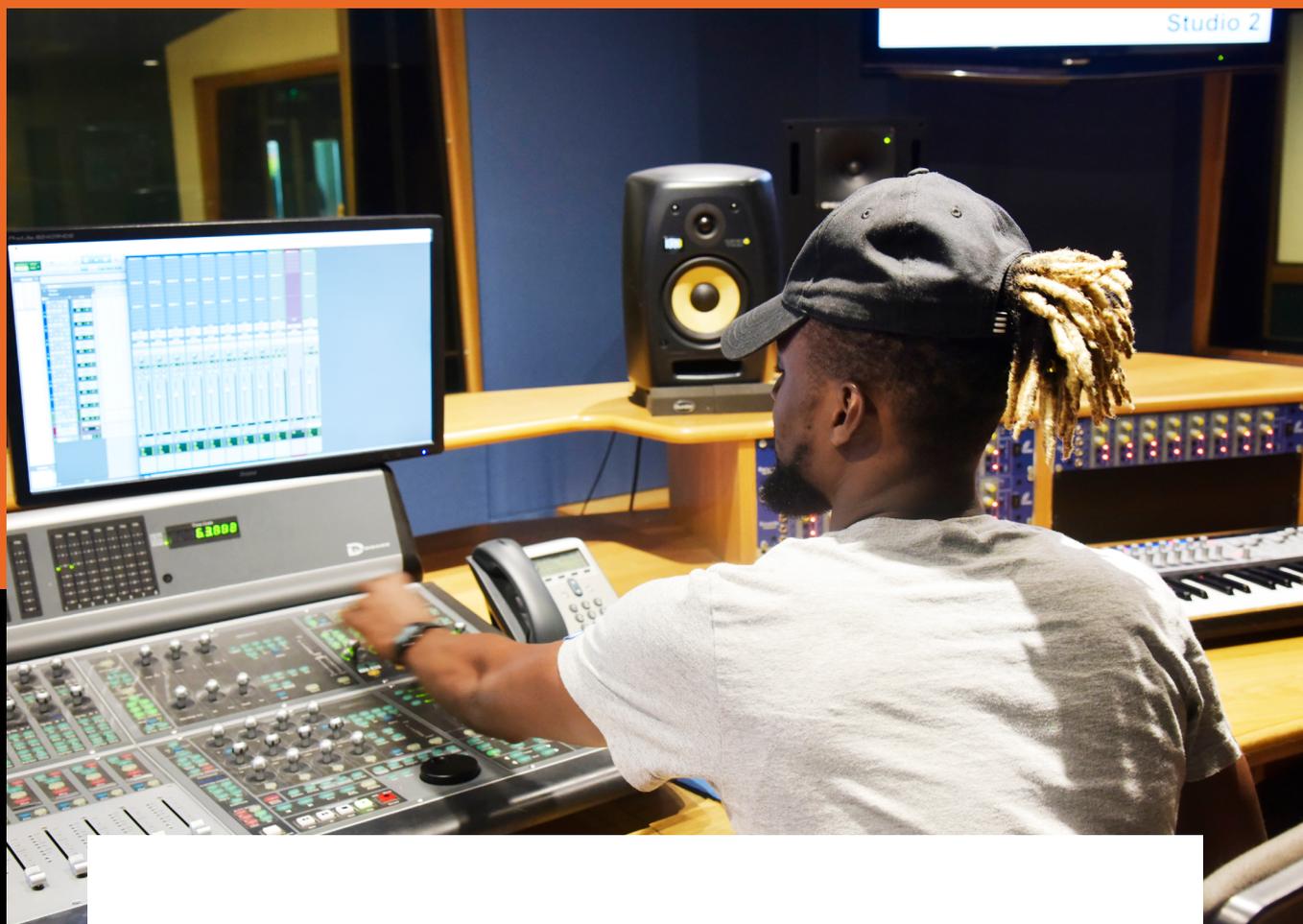




BUCKINGHAMSHIRE
NEW UNIVERSITY

EST. 1891



CRIMINAL FACILITATION OF TAX EVASION

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Introduction

- 1 The Criminal Finances Act 2017 comes into force on the 30th September 2017. Tax evasion and its facilitation are already criminal offences however this holds an organisation liable where they fail to prevent those that work for them or on their behalf from criminally facilitating tax evasion. Whilst this is specifically about relevant bodies such as a University, an employee may also be committing the same offence in their personal capacity under the Taxes Management Act 1970.
- 2 To protect the University both from a reputational and financial perspective there needs to be relevant policies, procedures and a risk assessment in place.

Purpose and scope

- 3 Buckinghamshire New University (BNU), including its domestic and overseas activities through partners and others, ("the University") is dedicated to conducting all its academic, administrative and commercial operations in a law-abiding and ethical manner and will not tolerate acts of criminal facilitation of tax evasion by its staff, subcontractors or any other of its associates anywhere in the world.
- 4 The purpose of this policy is to set out the responsibilities of the University and of those working for it, whether as an officer, employee, worker, subcontractor, agent or in any other capacity, in observing and upholding the University's position on criminal facilitation of tax evasion.
- 5 This policy applies alongside the University's 'Anti-fraud and Corruption Policy'.

Criminal Finances Act 2017 (CFA 2017)

- 6 Part 3 of the CFA 2017, introduces a new corporate criminal offence of failure to prevent the facilitation of tax evasion.
- 7 This is applicable to the University and applies to situations where the University fails to prevent 'Associated Persons' from assisting in the evasion of tax by another party.
- 8 'Associated Persons' includes the University's officers, employees, workers, agents, sub-contractors or other people or organisations that provide services for or on the University's behalf.
- 9 It is of course, in any case, a criminal offence for anyone to evade paying tax of any kind, and for helping someone to do so. Any individual found to be guilty of this could be subject to criminal proceedings under existing legislation.
- 10 However, under the CFA 2017 in the event of there being both:
 - Criminal tax evasion by a either a UK or overseas taxpayer (as an individual or an entity) under existing law and
 - Criminal Facilitation of this offence by an 'associated person' of the University...the University will automatically be charged with the offence of failing to prevent its representatives from committing the criminal act of facilitation unless it can demonstrate that it had reasonable procedures in place to prevent that facilitation.

- 11 The University, if found guilty, could face an unlimited fine, exclusion from tendering for public contracts, and damage to its reputation.
- 12 Examples of situations where Associates could be considered to be assisting third parties to commit criminal tax evasion can be found in Annex 1 attached to this document.

Obligations of Staff and other Associated Persons

- 13 Staff and associates are reminded that they are required at all times to abide by the University's policies and procedures in the *Anti-Fraud and Corruption Policy*.
- 14 Failure to comply with these policies and the obligations detailed in this Policy may result in disciplinary action for staff and termination of contract for associated persons.
- 15 Should staff and associates become concerned that a fellow employee or associate is facilitating a third party's tax evasion, they should immediately contact either:
 - the Director of Finance
 - the Director of HR;
 - a member of SMT; or
 - the Chair of Council or Chair of one of Council's subcommittees
- 16 Members of staff may also raise concerns under the *Raising Issues of Concern (Whistleblowing) Policy*.
- 17 General queries regarding this Act should be directed to the Financial Controller in the first instance.

Risk Assessment

- 18 The University has commenced a review of its risks and associated processes and procedures to ensure that all appropriate steps are taken to prevent facilitation of tax evasion. This review is facilitated by the Senior Business Partner in the Strategic Development and Planning Department who will maintain a register of possible risks of the facilitation of tax evasion by its staff and associates, as well as listing controls to mitigate those risks, and any actions required to improve those controls. This register will form part of the overall risk register of the University and will be regularly reviewed and updated, as and when required, including reporting to the Audit Committee.

Publication of guidance

- 19 The University regularly reviews guidance and legislation in relation to CFA 2017 to ensure it is maintaining an appropriate CFA 2017 policy.

Annex 1 – Examples of Aiding and Abetting Criminal Tax Evasion

For illustration purposes, examples are given below of when an Employee or Associate of BNU might themselves be guilty of committing an offence of criminal tax evasion, and thus also BNU itself:

1. Deliberately entering false or misleading information on the employment ‘Status Fact Finder Form’

A supplier wishes to be treated as a self-employed contractor outside of IR35 so that payments made to them by BNU are gross, and they can evade paying appropriate income tax and national insurance liabilities. Knowing this, a BNU employee helps the supplier to evade tax by providing false information on the Status Fact Finder Form used by Finance Operations and the Procurement Team to assess whether such a supplier may be considered as self-employed or not for tax purposes.

By supplying false information in this way, the BNU employee is committing a criminal offence as they have assisted a third party in criminal tax evasion.

2. Colluding with another University to artificially document services supplied to that University as outside the scope of VAT

University X has asked a research team based at BNU to supply data analysis services to them in respect of some grant funding they are receiving, where the grant funding is outside the scope of VAT. As such University X is unable to recover any VAT BNU might charge them for the data analysis service. University X asks BNU to state falsely in the agreement between them that the two Universities are acting as collaborators on the project (when this is contrary to what is actually happening in practice). The BNU team conclude that University X are asking this to evade paying VAT but go ahead and sign the document regardless without making any further enquiries or seeking help internally.

The University research employees are committing a criminal offence as they have agreed to sign an Agreement, where they know the information provided is false and was done so that University X could evade paying the associated VAT liability on their services.

3. Helping an overseas education establishment avoid overseas tax on payments they make to BNU

There is an agreement in place between BNU and an education establishment overseas, whereby BNU is supplying teaching staff to the overseas establishment for a particular programme. The agreement between the parties states that the overseas establishment should bear the cost of any local withholding taxes that may be due on payments made for this service. The overseas establishment tells a BNU employee, that if instead of describing the services correctly as ‘teaching services’ on the invoice, they are described as something else, (for example marketing services), they won’t have to pay the withholding tax to their own overseas tax authority. The BNU employee agrees to do this.

The BNU employee has committed a criminal act by putting false information on the sales invoice, albeit that the tax evaded is not UK tax but overseas tax.

4. Helping another employee or third party claim a payment due to them as an expense rather than another type of payment which would be subject to tax

A BNU manager agrees to allow one of their members of staff to claim home to university (place of work) mileage through an expense form. However, knowing that it is against BNU policy and to help their member of staff evade paying tax which is properly due on the claim, they allow the staff member to describe the travel as being for fictitious journeys away from the office.

The Head of School is knowingly allowing a member of staff to provide false information on their expense claim to evade tax and is committing a criminal offence of assisting criminal tax evasion.

5. Academics use money from research funds to pay themselves

A BNU academic manages a research fund and uses their own consultancy to fulfil part of the research to enable funds to be used for their work on a specific project, even if outside BNU core employment. The academic secures agreement from their manager to pay the money gross and the money is paid within the manager's authority even though they know it should have gone through proper scrutiny with the Research or Procurement Team to assess whether such an arrangement may be considered as self-employed or not for tax purposes.

By supplying false information in this way, the BNU manager is committing a criminal offence as they have assisted an employee in criminal tax evasion.

6. Buying personal items through a BNU account or Procurement Card

An employee of BNU buys the latest camera on their credit card or through a BNU supplier and uses the camera both for personal and work related items. The head of department signs off the purchase knowing that the employee will use the camera at home for their own purposes, even taking the camera on holiday with them, and allows this to happen.

The Head of Department is knowingly allowing a member of staff to benefit from the camera whilst knowing this is not declared as a taxable benefit thereby evading tax and is committing a criminal offence of assisting tax evasion.

7. Expense claims

A manager signs off an employee's expense claims with copy or digital receipts and suspects the employee uses the receipts for professional subscriptions to also claim against their personal tax return. The manager does not query this or ask the employee to provide the originals within a reasonable time period.

The manager is knowingly allowing a member of staff to provide false information on their tax return to evade tax and is committing a criminal offence of assisting criminal tax evasion.