



TEESSIDE UNIVERSITY

CRIMINAL FINANCES ACT (ANTI-TAX EVASION) POLICY

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1. Introduction

- 1.1 Teesside University is committed to ensuring that all business undertaken by the University and its subsidiary companies (the University) is conducted with integrity, transparency and fairness, and in compliance with all relevant rules, regulations and legislation.
- 1.2 We are committed to acting professionally, fairly and with integrity in all our business dealings and relationships wherever we operate; and to implementing and enforcing effective systems to counter tax evasion facilitation.
- 1.3 We conduct all our business in an honest and ethical manner. We take a zero-tolerance approach to the facilitation of any form of tax evasion, whether under UK law or under the law of any foreign country.
- 1.4 We will uphold all laws relevant to countering tax evasion, including the Criminal Finances Act 2017 ('CFA2017'), in all the jurisdictions in which we operate. Part 3 of the CFA includes the 'corporate criminal offence of failure to prevent the facilitation of tax evasion'. The legislation applies to all business and all taxes. This particular offence is not about the University itself avoiding, evading or underpaying tax, but about the University failing to prevent its employees/agents/ associates from facilitating the evasion of tax by another party.
- 1.5 The CFA applies to all UK corporates (including universities) and they can be subject to prosecution for the facilitation of tax evasion by "associated persons". There are two corporate offences - a domestic tax fraud offence and an overseas fraud offence. A UK incorporated body can be prosecuted for either offence. While the overseas offence is slightly narrower in scope, it is still essential that universities consider the potential for overseas tax evasion as well as UK tax evasion.
- 1.6 The UK Offence: This requires three stages:
 - The criminal tax evasion by a taxpayer under existing law
 - The criminal facilitation of the tax evasion by "an associated person" of the relevant body who is acting in that capacity (as defined by the Accessories and Abettors Act 1861)
 - The relevant body failed to prevent its representative from committing the criminal facilities action
- 1.7 The Overseas Offence: This requires the same three stages, but there are additional questions to consider in determining whether it is an offence under the CFA;
 - The criminal tax evasion by a taxpayer (either an individual or legal entity) under existing law

- The criminal facilitation of the tax evasion by an "associated person" of the relevant body who is acting in the capacity (as defined by the Accessories and Abettors Act 1861).
 - a) Stage a - Would this be a crime if carried out in the UK?
 - b) Stage b - Does the overseas jurisdiction have the equivalent laws at stage 1 & 2?
- The relevant body failed to prevent its representative from committing the criminal facilities action.

1.8 In the light of the CFA2017, the University adopted a 'Tackling Tax Evasion Statement' ("the statement") of our commitment to preventing persons associated with the University from engaging in the criminal facilitation of tax evasion in the UK or in a foreign country. This statement is approved by the Board of Governors, signed by the Vice-Chancellor & Chief Executive, published on the University's website and reviewed annually.

1.9 The University is committed to preventing the facilitation of tax evasion by associated individuals or businesses ('Associated Person') anywhere within its operations. The statement governs all our business dealings and the conduct of all persons or organisations who are appointed to act on our behalf. All members of staff and all who have, or seek to have, a business relationship with the University and/or any of its subsidiary companies must familiarise themselves with this Policy and the statement and are required to act at all times in a way which is consistent with the Policy and the statement.

2. Purpose and Scope of this Policy

2.1 The purpose of this policy is to:

- (a) set out our responsibilities, and the responsibilities of those working for us, in observing and upholding our position on preventing the criminal facilitation of tax evasion; and
- (b) provide information and guidance to those working for us on how to recognise and avoid tax evasion.

2.2 As an employer, if we fail to prevent our employees, workers, agents or service providers facilitating tax evasion, we can face criminal sanctions including an unlimited fine, a public record of conviction, as well as exclusion from tendering for public contracts, significant damage to our reputation and adverse publicity. We therefore take our legal responsibilities seriously. There is a defence of having reasonable prevention procedures in place.

2.3 A number of particular risks for our business have been identified and risk assessments and a CFA2017 Risk Register have been completed and are subject to periodic review. These are communicated to senior managers and to relevant third parties to ensure that they are embedded and

understood. Additionally, employees, those in our business chain and other relevant third parties are required to review, understand and provide signatures demonstrating their understanding of this and other relevant University policies.

- 2.4 In this policy, third party means any individual or organisation with whom the University works, and includes students, Governors, suppliers, customers, volunteers, casual workers, agency staff, contractors and agents.
- 2.5 This Policy does not form part of any contract of employment and the University may amend it at any time.

3. Personnel responsible for the Policy

- 3.1 The University's Audit Committee has overall responsibility for this Policy and for reviewing the effectiveness of actions taken in response to concerns raised under this Policy. This Policy has been endorsed by the University's Executive Team.
- 3.2 The Director of Finance & Commercial Development (FCD) has day-to-day operational responsibility for this Policy.

4. Who must comply with this Policy

- 4.1 This policy applies to all persons working for the University or any subsidiary company or overseas office or on our behalf in any capacity, including employees, students, Governors, volunteers, interns, casual workers, agency staff, contractors and third parties.

5. What is the facilitation of tax evasion?

- 5.1 For the purposes of this policy:

(a) **Tax evasion** means the offence of cheating the public revenue or fraudulently evading UK tax, and is a criminal offence. The offence requires an element of fraud, which means there must be deliberate action, or omission with dishonest intent;

(b) **Foreign tax evasion** means evading tax in a foreign country, provided that the conduct is an offence in that country and would be a criminal offence if committed in the UK. As with tax evasion, the element of fraud means there must be deliberate action, or omission with dishonest intent; and

(c) **Tax evasion facilitation** means being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, or aiding, abetting, counselling or procuring the commission of that offence. Tax evasion facilitation is a criminal offence, where it is done deliberately and dishonestly.

- 5.2 Under the CFA2017, a separate criminal offence is automatically committed by an organisation where the tax evasion is facilitated by a person acting in the capacity of an Associated Person to that body. For the offence to be made out, the associated person must deliberately and dishonestly take action to facilitate the tax evasion by the taxpayer. If the associated person accidentally, ignorantly, or negligently facilitates the tax evasion, then the corporate offence will not have been committed. The University does not have to have deliberately or dishonestly facilitated the tax evasion itself; the fact that the associated person has done so creates the liability for the University.
- 5.3 Tax evasion is not the same as tax avoidance or tax planning. Tax evasion involves deliberate and dishonest conduct. Tax avoidance is not illegal and involves taking steps, within the law, to minimise tax payable (or maximise tax reliefs).
- 5.4 Tax means all forms of UK taxation, including but not limited to corporation tax, income tax, value added tax, stamp duty, stamp duty land tax, national insurance contributions (and their equivalents in any non-UK jurisdiction) and includes duty and any other form of taxation (however described).

6. What You Must Not Do

- 6.1 It is not acceptable for you (or someone acting on your behalf) to:
- (a) engage in any form of facilitating tax evasion or foreign tax evasion;
 - (b) aid, abet, counsel or procure the commission of a tax evasion offence or foreign tax evasion offence by another person;
 - (c) fail to promptly report any request or demand from any third party to facilitate the fraudulent evasion of tax (whether UK tax or tax in a foreign country), or any suspected fraudulent evasion of tax (whether UK tax or tax in a foreign country) by another person, in accordance with this policy;
 - (d) engage in any other activity that might lead to a breach of this policy; or
 - (e) threaten or retaliate against another individual who has refused to commit a tax evasion offence or a foreign tax evasion offence or who has raised concerns under this policy.

7. Your Responsibilities

- 7.1 You must ensure that you read, understand and comply with this policy. This will be confirmed through the University's MyCompliance system.
- 7.2 The prevention, detection and reporting of tax evasion and foreign tax evasion are the responsibility of all those working for us or under our control. You are required to avoid any activity that might lead to, or suggest, a breach of this policy.
- 7.3 You must notify your line manager as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future. For example, if an employee or supplier asks to be paid into an offshore bank account, without good reason, or a supplier asks to be paid in cash, indicating that this will mean the payment is not subject to applicable tax (e.g. VAT and corporation tax). Further "red flags" that may indicate potential tax evasion are set out in section 10.

8. Training and Communication

- 8.1 FCD staff are formally briefed on CFA2017, the outcomes from risk assessments and this policy and other bespoke training and awareness is delivered for other staff where CFA2017-specific risks are identified. Such training forms part of wider financial crime detection and prevention training. FCD staff are required, via MyCompliance to confirm that they have understood and comply with this Policy on an annual basis. The University also subscribes to the training available from British Universities Finance Directors Group website.
- 8.2 Our zero-tolerance approach to tax evasion and foreign tax evasion must be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate after that.
- 8.3 This policy is published on the University's intranet under Financial Regulations and is communicated to staff via internal communication, such as Update and My Compliance.

9. Breaches of This Policy

- 9.1 Any employee who breaches this policy may face disciplinary action, which may result in dismissal for misconduct or gross misconduct.
- 9.2 We may terminate our relationship with other individuals and organisations working on our behalf if they breach this policy

10. Potential Risk Scenarios: "Red Flags"

- 10.1 The following is a list of possible red flags that may arise while you work for the University and which may raise concerns related to tax evasion or foreign tax evasion. The list is not intended to be exhaustive and is for

illustrative purposes only. If you encounter any of these red flags (or other activity likely to fall under this policy) while working for the University, you must report them promptly to your line manager:

- a) you become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC (or the equivalent authority in any relevant non-UK jurisdiction); has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority;
- b) you become aware, in the course of your work, that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT;
- c) a third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- d) you become aware, in the course of your work, that a third party working for the University as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions;
- e) deliberate mis-categorisation of an individual as a self – employed contractor rather than employed. When the Check Employment Status for tax (CEST) tool is completed it is important that this is completed according to the **true** nature of the relationship with the University. Falsely and deliberately tweaking the answers on the tool so that a response of “Self-employed” is achieved will result in HM Revenues and Customs (HMRC) collecting less National Insurance and potentially lower income tax.
- f) a third party requests that payment is made to a country or geographic location different from where the third party resides or conducts business;
- g) a third party to whom the University has provided services requests that their invoice is addressed to a different entity, where the University did not provide services to such entity directly;
- h) a third party to whom the University has provided services asks for the description of services rendered on an invoice in a way that seems designed to obscure the nature of the services provided;
- i) an invoice from a third party that appears to be non-standard or customised;
- j) a third party insists on the use of side letters or refuses to put terms agreed in writing or asks for contracts or other documentation to be backdated;
- k) the University has been invoiced for a commission or fee payment that appears too large or too small, given the service stated to have been provided;

- l) a third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to the University
- m) Colluding with an individual so that a payment for goods /services is described as a donation so that the donor can claim tax relief . To be classed as a “donation” the funds must have been freely given with no obligation on the University to provide goods or services to the donor. Deliberate misdescribing the service will result in HMRC not recovering all the Income tax that is due.

11. Monitoring & Review

- 11.1 This policy will be reviewed annually by the Director of FCD and the Audit Committee. Risk identification (10, above) will form a key element of the overall monitoring and review process.

12. Associated policies

- 12.1 The following policies are also available on the University Intranet:

- Anti-Bribery & Corruption Policy & Procedures (incl Gifts & Hospitality)
- Anti-Money Laundering Policy
- Public Interest Disclosure Policy (“Whistleblowing”)
- Counter Fraud Policy

13. Procedure for Making a Disclosure

- 13.1 Should any member of staff or Associated Person become concerned that a fellow employee or Associated Person is facilitating a third party’s tax evasion they should immediately contact either:

- Diane Howie, Deputy Director of Finance (Financial Services & Assurance); or
- Victoria Dixon, Solicitor in Legal & Governance Services

- 13.2 Members of staff may also raise concerns under the whistleblowing procedures as set out in the University’s Public Interest Disclosure Policy:

<https://unity3.tees.ac.uk/Departments/USEC/UniversityRegulations/University%20Regulations%20Documents/Forms/New%20or%20Revised%20Regulation%20since%20September%202012.aspx>