

Evidence to the Criminal Finances Bill Scrutiny Committee

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I am giving evidence to the House of Commons Committee considering the [Criminal Finance Bill](#) this morning at 11am, at their request.

The evidence I submitted in advance of the hearing was as follows:

To: **The Criminal Finances Public Bill Committee**

10 November 2016

Sent by email

You have asked for my opinion on Part 3 of the Criminal Finances Bill.

This part of the Bill seeks to tackle the promotion of tax evasion by the employees of companies and partnerships. The proposed sanction is a fine on the company responsible for permitting its employee, agent or representative to promote tax evasion.

Whilst the primary focus of the legislation is on UK tax evasion overseas tax evasion linked to a UK activity is also covered.

The nature of tax evasion is widely defined and is not linked solely to corporation tax. Other taxes are covered, as is National Insurance.

The drafting of the relevant sections of proposed law is similar in style to the UK Bribery Act 2010.

The Bill creates what is, in effect, a strict liability offence: evidence of intention is not required for conviction under the terms of this Bill; all that is required is evidence that tax evasion has taken place. Many in the tax profession dislike such provisions. I do not share their concerns: attempts to tackle tax evasion have for too long been undermined by the difficulty of proving intent when evidence of evasion having taken place is readily available.

As a consequence of this being a strict liability offence an alternative defence to prosecution is provided: this is that the company has taken all reasonable steps to prevent employees partaking in tax evasion. We do not yet know what evidence this will require from the companies otherwise alleged to have permitted tax evasion as the required steps will be established by regulations.

In principle it does appear that this Bill provides a major new tool to HMRC to tackle tax evasion. In practice I doubt that this is the case for a number of reasons.

First, because of the restrictions placed on bringing a prosecution, which may well require Serious Fraud Office involvement, the number of cases will be very low. This has been the case with the Bribery Act.

Second, because having internal systems meant to tackle tax evasion should prevent a prosecution the chance of a successful prosecution is even lower. Existing money laundering training in most banks and other financial services providers should be enough to prevent prosecution, I suspect, unless very high level collusion could be shown and the focus of the proposed Bill does not encourage consideration of such motives being tested.

Third, for the two previously noted reasons it is likely that the low risk of prosecution will not result in significant behavioural change, which is the greatest benefit of most anti-tax abuse legislation.

Fourth, this legislation is in any event being put in place after much of the abuse it will tackle is likely to be declining for other reasons. Very few financial services companies will now be going near the creation of offshore arrangements likely to result in tax evasion. This is a major change resulting from:

- * The history of recent leaks on this issue that have caused considerable embarrassment to the institutions involved;
- * New automatic information exchange arrangements that seem to be reducing demand for evasion products as the risk of being caught grows;
- * Some potential improvements in procedures by both companies and tax authorities.

Fifth, most tax evasion (and the vast majority of the tax gap) arises in the domestic economy and is undertaken by individuals and small companies and this legislation as drafted goes nowhere near tackling this issue. There is not space here to suggest how to address that; suffice to say this Bill attempts to hit a small part (maybe 10% or less) of the tax evasion target with its implicit focus on offshore enablement by employees of larger financial service providers when 90% of the problem is undertaken by domestic trading companies and businesses for the personal gain of those directing such entities.

Sixth, the measure does not address the issue of tax avoidance which remains of great concern to the public, not least because those with wealth do not tend to evade so

much as avoid because they can afford to buy arrangements that bring their tax abuse within the realms of the law. It may be appropriate to extend the Bill to the promotion of arrangements that abuse the UK General Anti-Abuse Rule or similar arrangements in other countries to address this defect.

I shall be pleased to discuss these issues with the Committee.