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A practical approach to UK tax and payment reporting regulations

- » The UK Criminal Finances Act is an extra-territorial corporate criminal offense focused at preventing tax evasion.
- » Compliance programs to support the Criminal Finances Act will vary based on country, sectoral, and transactional risks.
- » Compliance programs for both the UK Criminal Finances Act and UK Reporting on Payment Practices and Performance Regulations will require assistance from Finance, Accounting, Tax, and Procurement colleagues.
- » The duty to report on payment practices will require assembling a broad set of data points not typically tracked or monitored.
- » Some companies may need well-thought-out narratives to explain the results of their reported payment practices and performance.

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We are well into 2018, and many of us are starting to plan for an annual compliance risk assessment. However, if your company does business in the UK, you may have two new potential areas of compliance risk.



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With your Finance, Accounting, and Tax colleagues, you will need to confirm the establishment of programs to support compliance with the UK's Criminal Finance Act (CFA) and the Reporting on Payment Practices and Performance Regulations (RPPPRs). Both made their way into the regulatory landscape in April 2017. If you're lucky, your colleagues will know what you're talking about and have an adequate program in place. For those of

us not so lucky, there are some immediate practical steps that can be taken.

UK CFA compliance

The UK government brought the CFA into Royal Assent on April 27, 2017, and the CFA became effective on September 30, 2017. The CFA is a corporate criminal offence aimed at companies that fail to prevent the facilitation of tax evasion in the UK or any other jurisdiction. In other words, a company is criminally liable for failing to prevent the facilitation of tax evasion committed by associated persons such as employees, vendors, agents, service providers, etc. Non-compliance consequences include unlimited fines, public record of conviction, criminal prosecution, disclosure, and inability to trade (ineligible for public contracts).

As a corporate offence, the CFA provides a statutory defense if, at the time of the offence, the company had reasonable

prevention procedures in place to prevent associated persons from committing the tax evasion facilitation offence. The UK government, through Her Majesty's Revenue & Customs (HMRC) office, issued guidance in September 2017 stating that prevention measures should follow six principles: proportionality of risk-based prevention procedures, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review.

Using HMRC guidance, there are several steps you can take immediately to start down the compliance path if a formal compliance program is absent at your company.

Proportionality of risk-based prevention procedures

What industry is your company in? Where does your company do business outside the UK? Do you have a branch office or an actual incorporated body? Answering these basic questions will help you determine the scope of compliance program your company will need. For example, a mid-size car parts manufacturer operating in the UK and EU may only have an overall low/medium risk; whereas a global full-service banking, finance, and investment services firm may be an overall high risk. Depending on your situation, some basic new company and/or employee policies may be adequate. Others may choose to update their vendor contract to have specific compliance statements. On the

far spectrum, your company may need software to monitor transactions.

Top-level commitment

Regardless of proportionality, you can immediately work with your communications team and senior management to send a communication or email to all staff indicating the importance of compliance and the steps your company is taking to comply with the CFA. In operation, if you do distribute an email communication, you will want to ensure distribution is for all UK staff (i.e., England, Scotland, Wales, and Northern Ireland).

Risk assessment

You should already have a risk matrix tool to conduct your annual compliance risk assessment. In that sense, here you can simply expand your matrix to include some of the HMRC recommended risk categories as identified in anti-corruption guidance, such as country, sectoral, and transactional. For country risks, you could use any of the readily available country corruption indices in a "high," "medium," "low" fashion. A similar approach could be used for sectoral and transactional risks, thereby creating a matrix like the one at the bottom of this page.

Due diligence

Here you need to recognize that the different moving parts of your company may require more or fewer compliance procedures and oversight depending on the identified risk,

CFA risk scoring (HMRC guidance risk factors)				
Country risk (scale of 1-3)	Sectoral risk (scale of 1-3)	Transactional risk (scale of 1-3)	Impact (scale of 1-3)	CFA risk rating ((Country + Sectoral + Transactional)/3)x Impact)
1	2	1	1	1.333333333

and those differences should be documented and actions against explained. For example, if you have a partner in the Cayman Islands that supplies accounting software, you may request a higher level of background checks on the supplier's staff than your internal payroll administration staff.

Communication (including training)

In addition to the aforementioned senior management to staff email, you may find your company is suited to make an external declaration of steps taken by publishing a transparency statement or incorporating a compliance statement into existing tax transparency statements and published policies. Additionally, although future years may warrant a formal staff training module, already being one year into compliance, there are numerous white papers readily available from various law firms and consultancies that have high-level concepts that can act as a foundation for creating a basic staff training module. Training should be targeted based on your company's risk level, but a good starting point is identifying and training staff in Finance, Accounting, Tax, Payroll, Invoicing/Payments, and advisory (legal, financial, life, etc.) roles.

Monitoring and review

Again assuming your company already conducts an annual compliance risk assessment, the CFA simply becomes another category to include in that risk assessment. You may even include the CFA as a specific risk assessment interview question: "Do you know of any new motives, opportunities, or means by which the company or company employees have or could facilitate tax evasion?" And, as you would with other topics, CFA program compliance artifacts, policies, and procedures should be reviewed at some ongoing interval to confirm alignment and relevancy to current business practices.

Lastly, when in doubt, many companies also hire consultancies to assess compliance gaps and recommend adequate implementation measures.

UK RPPPRs compliance

The RPPPRs came into force in the UK on April 6, 2017, with a policy goal of solving UK business problems with the late payment of undisputed invoices owed to small and medium companies. The UK government released compliance guidance via the Department for Business, Energy & Industrial Strategy (DBEIS) in October 2017. In short, RPPPRs introduced a new transparency requirement to promote better payment practices by enabling potential suppliers to evaluate, compare, and make more informed decisions about who they do business with. Under the RPPPRs, all sequenced reporting deadlines have passed, and if your company meets the triggering elements, it must report. Aside from the court of public opinion, non-compliance is deemed a criminal offence, to which both the company and its directors may be liable to a fine upon conviction.

Is your company required to report?

The first practical task at hand is to determine whether or not your company must report. As with the CFA, you likely will need the assistance of Finance, Accounting, Procurement, and/or Tax colleagues. The DBEIS guidance offers a relatively easy-to-follow flowchart to assist your determination. And, although there are some nuances for parent companies, LLPs, companies incorporated outside the UK, and new businesses, generally your company must report if it meets two of three thresholds for two subsequent preceding years:

- ▶ Annual turnover of £36m
- ▶ Balance sheet total of £18m
- ▶ 250 employees

And then report on the following types of contracts that meet all the following criteria:

- ▶ Is between two or more businesses
- ▶ Has a significant connection with the UK
- ▶ Is for goods, services, or intangible property (including IP)
- ▶ Is *not* for financial services

If you have to report, here is where the fun begins, and you will need to start engaging a variety of stakeholders from your organization to collect the following data points and upload timely to the required gov.uk website. You cannot underestimate the complexity, time, and resources you will need to collect the data points. Practically speaking, many of these data points will be disparate, on different systems, in email inboxes, on print copies, etc. Your company likely has never viewed these data points together.

The data points required under the RPPPRs

- ▶ Statistics on payment performance:
 - Average number of days taken to make payments
 - Percentage of payments made within 30 days, 31–60 days, and more than 61 days
 - Percentage of payments due that were not paid within agreed-upon payment period terms
- ▶ Statements of policies and practices:
 - Availability of supplier electronic invoicing
 - Availability of supply chain financing
 - Whether sums can be deducted from suppliers to remain on supplier list and whether the company has done so

- Existence of any memberships to payment codes of conduct

- ▶ Narrative descriptions of:
 - Standard payment terms (days)
 - Maximum payment terms
 - Process for dealing with changes to terms
 - Process for dispute resolution

Getting the data

As noted above, practically speaking, the hardest task in reporting will be gathering the data. Do you have a local telecoms contract? Included. Do you have a facilities manager contract? Included. Do you have a quarterly office appliances repair contract? Included. Do you have a print/paper supply contract?

Included. Keep in mind, these examples will be in addition to any industry-specific supply contracts. Generally speaking, the range of contracts included in your company's reporting requirements could be as few as the high teens to as many as several hundred. And, after you locate all relevant contracts, you will need

You cannot underestimate the complexity, time, and resources you will need to collect the data points.

to go through the painstaking task of reviewing each manually to pull out required data points. Even if you have invoicing software for your contracts, it's likely the data points required cannot be reported on (exported) in a sensible fashion.

If this is your first reporting year, you should likely plan for a very manual process conducted by a few individuals with oversight by you as compliance lead with assistance from a head accountant or controller. If your company has a high volume of supplier contracts, it might make sense to purchase

a software solution to automate some of the process. If your company has a low volume of supplier contracts, you probably can get by with manual sorting and tracking into some spreadsheets. In either case, expect a meticulous process, but use the experience to plan for future reporting years (e.g., pull the required data points and track them centrally as new contracts are taken on, rather than wait until the end of the year and do a complete lookback).

Building narratives

Once you have the data points, you can focus on the narrative descriptions. Some companies may find value in more detailed narratives, especially if the data points could be perceived as negative or unreasonable. In some cases, a company may take additional narrative steps and prepare a public transparency statement on the results. In extreme cases, a company may need to prepare a responsive public relations strategy, as the UK media is already scrutinizing many companies considered household names. Your role in compliance

here is not only to ensure the required narratives are uploaded, but to work with your colleagues and weigh the pluses and minuses of additional narrative options and factor public relations risks into your responses. When in doubt, it is easy to check the website gov.uk for results and narratives industry peers have reported.

Beyond payment practices reporting

In the UK, the duty of companies to report on payment practices and performance is only part of a growing trend to require companies to disclose traditionally internal operational processes and metrics. Other recent examples include gender pay gap reporting requirements, which in many ways received comparably more media coverage. Companies should expect additional reporting requirements in future years with similar resource impacts. *

For additional information on the CFA:

<https://bit.ly/2J3iDyX>

For additional information on the RPPPRs:

<https://bit.ly/2kuYuHM>

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