

# Non-Facilitation of Tax Evasion Policy

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## DOCUMENT CONTROL TABLE

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## 1. INTRODUCTION

This Policy applies to all staff performing services for the following First State Investments (“FSI”) operating companies/funds:

- First State Investments (UK) Limited
- First State Investments International Limited
- First State Investment Management (UK) Limited
- First State Investment Services (UK) Limited
- First State Investments (Ireland) Limited
- First State Investments ICVC.

FSI is committed to the prevention, deterrence and detection of criminal tax evasion. We will take all reasonable steps in all circumstances to uphold all laws relevant to countering tax evasion, including the UK Criminal Finances Act 2017 (“the Act”), in all jurisdictions in which we operate.

The purpose of this policy is to:

- Set 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
- Provide information and guidance on how to recognise and avoid tax evasion.

## 2. THE OFFENCE

The Act establishes two categories of offence:

- Failure to prevent the criminal facilitation of a UK tax evasion offence
- Failure to prevent the criminal facilitation of an overseas tax evasion offence.

There are three stages that apply to both the domestic and foreign tax evasion facilitation offences. For FSI to be guilty of an offence, there must be:

**Stage one:** the criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing UK or overseas law

**Stage two:** the criminal facilitation of the tax evasion by a person “associated” with FSI; and

**Stage three:** FSI has failed to take reasonable steps to prevent its “associated person” from facilitating the tax evasion.

The Government recognises that any regime is risk-based and proportionate. If FSI can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates its tax evasion risks, then prosecution is unlikely as it will be able to raise a defence.

The offence extends to overseas tax evasion facilitated by associates of FSI. The foreign offence operates in a broadly similar way to the domestic offence, first with a requirement for criminal evasion by a taxpayer (stage one), then the criminal facilitation of tax evasion by an associated

person (stage two) and, if stages one and two offences are committed, then FSI is criminally liable (stage three) unless it can show it has put in place reasonable preventative procedures.

### **3. WHO MUST COMPLY WITH THIS POLICY**

This policy applies to all persons working for FSI or on our behalf in any capacity, including employees at all levels, and associated persons (as defined in section 5), including but not limited to permanent employees, interns, contractors, external consultants, or any other person providing services on our behalf, wherever located.

### **4. FSI'S RESPONSIBILITIES**

The guidance published by HMRC, recommends that organisations adopt a risk- based approach to managing the tax evasion facilitation risk and has established six key principles to assist organisations in developing robust policies and procedures.

FSI has reviewed and documented a response to each key principle. The principles are as follows:

**1. Risk assessment** – a thorough assessment of the risks faced by the organisation should be conducted on an ongoing basis. These assessments should consider both the internal and external tax evasion facilitation risks.

**2. Proportionality of risk-based prevention procedures** – the organisation should develop clear and precise formal policies and procedures to reduce the risk of facilitation of tax evasion and take practical steps to implement these policies. The policies and procedures should be proportionate to the risk associated with the size, nature and complexity of the business and its activities as well as the jurisdictions in which it operates and should establish clear reporting lines and methods of escalating any issues identified.

**3. Top-level commitment** – the culture of the organisation should be seen to flow from senior management down. The Board of the FSI operating companies takes responsibility for communicating our position on ensuring that we and our associates do not criminally facilitate tax evasion.

**4. Due diligence** – where risks are identified, appropriate investigations should be conducted to ensure criminal facilitation of tax evasion by associated persons is not occurring. These will include a review of all associated persons through a risk-proportionate process.

**5. Communication (including training)** – the communication of our policies and procedures is as important as the policies themselves. Senior management should ensure that all associated persons are aware of our policies and procedures and agree to comply with them as part of their terms of service(s). Training should also be conducted for all staff initially when they join the firm and then on an ongoing basis as necessary.

**6. Monitoring and review** – the policies and procedures will be reviewed periodically and updated where appropriate, depending on the nature, scale and complexity of our activities and resources.

## **5. ASSOCIATED PERSONS**

A person is “associated” with FSI if that person is an employee, agent or other person who performs services on behalf of FSI. The offence is committed where the facilitation offences are committed by someone acting in the capacity of an associated person. The associated person can be an individual or an incorporated body.

The concept of a person who ‘performs services on behalf of’ the organisation is intended to be broad in scope, to embrace the whole range of persons who might be capable of facilitating tax evasion whilst acting on behalf of the relevant body.

FSI have completed an assessment to determine its associated persons. These have been identified as (please note this list is not exhaustive):

- Employees of and individual contractors to EMEA financial institutions
- Other CFSGAM group companies which are providing services on behalf of the EMEA entities
- Fund service providers – e.g. transfer agents and paying agents
- Distributors
- Independent Financial Advisors
- Brokers
- External payroll providers

Contractual terms will be put in place where appropriate.

## **6. TRAINING**

FSI will provide appropriate training to all employees, contractors and directors in relation to the scope of the new offence, any particular areas of risk and this Policy as soon as reasonably practicable and, if appropriate, from time to time in the future. New employees will be provided with training as soon as reasonably practicable after starting employment with FSI.

## **7. HOW TO RAISE A CONCERN**

If at any time you are concerned about whether a particular transaction or activity may amount to tax evasion, criminal facilitation of tax evasion or a breach of this Policy, you should raise any question or concern at the earliest possible opportunity with your line manager and Head of Compliance EMEA, or via the whistleblowing procedure.

All matters raised will be dealt with in strict confidence and you will not suffer any adverse consequence for refusing to engage in the facilitation of tax evasion or for reporting instances in which you suspect that this Policy has been breached, even if this may result in FSI losing business.

## **8. POTENTIAL RED FLAGS**

The following is a list of possible red flags that 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.

- staff who refuse to take leave and do not allow anyone else to review their files, or are overtly defensive over client relationships
- 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 is attempting to or intends to hide income, gains or assets from a tax authority by setting up a complex legal structure or an account within an uncooperative tax haven

- 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
- you become aware, in the course of your work, that a third party working for us as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions
- a third party requests that payment is made to a country or geographic location different from where the third party resides or conducts business
- you receive an invoice from a third party that appears to be non-standard or customised
- a potential or existing client wishes to set up a company, trust or other vehicle to hide the beneficial ownership.