**The UK introduced the Criminal Finances Act (“CFA”) in 2017. This law creates new criminal offences relating to the facilitation of tax evasion. As a result, the actions of production companies (“Prodcos” or “you” below) and the individuals and/or companies engaged by Prodcos, even if based outside of the UK, could impact Amazon Studios.**

The CFA creates criminal liability for a company that fails to prevent its "associated persons" from facilitating tax evasion in the course of providing services to the company. Associated persons are the company’s employees, agents and others who perform services for or on behalf of the company. The CFA offences are investigated and prosecuted by the UK tax authority (HMRC).

HMRC may consider that Prodcos are associated persons of Amazon, which would mean that their actions could result in liability to Amazon. A Prodco may also incur independent liability under the CFA with respect to the actions of such Prodco’s associated persons. This document provides general background and Prodco-specific FAQs regarding the new offences.

**What is tax evasion?**

Tax evasion is the criminal non-payment of tax: fraudulently failing to declare and pay any tax lawfully due to HMRC or equivalent tax authority. It is possible to evade all kinds of tax, including corporation tax, income tax, national insurance contributions and VAT.

Examples of tax evasion include:

* Failing to register with HMRC or equivalent tax authority where required.
* Keeping business off the books by dealing in cash with no receipts.
* Not reporting or underreporting income to HMRC or equivalent tax authority.
* Inflating expense or deductions claimed.
* Hiding money in an offshore bank account.

Tax avoidance, where a person arranges their tax affairs in a lawful manner to reduce their tax bill, does not count as evasion.

**What is facilitation of tax evasion?**

Facilitation of tax evasion is being knowingly involved in, or otherwise assisting, another person’s fraudulent evasion of tax. Examples of criminal facilitation of tax evasion include:

* Accepting and processing invoices that fail to include tax when you know it is payable.
* Advising someone on structures to help them hide income from HMRC or an equivalent tax authority.
* Agreeing to make payments in cash so there is no record of the transaction.
* Falsifying invoices, expenses or other tax or financial documentation for another person.

**Will a Prodco be liable if it accidentally facilitates tax evasion?**

No. Facilitation of tax evasion is only a crime when it is done deliberately and dishonestly. "Deliberately" means consciously and intentionally. "Dishonesty" is measured against the standard of what ordinary people would consider to be dishonest.

You will not be liable where you facilitate tax evasion accidentally, ignorantly or negligently. However, it is important to remember that wilfully turning a blind eye to behaviour that is suspicious can be enough to commit the offence.

**Why is it important that Prodcos know about these offences?**

Tax evasion, and the facilitation of tax evasion, are criminal offences. If convicted, you could face imprisonment or a significant fine.

Further, under your contract with Amazon, you must comply with applicable laws at all times.

The new offences under the CFA mean that Amazon can be found criminally liable and/or face a fine of up to millions of pounds where you facilitate tax evasion in the course of providing services to Amazon.

**I'm based outside of the UK – do I still need to comply with the CFA?**

Yes. The CFA contains two separate offences: one related to the failure to prevent the facilitation of UK tax evasion and the other related to the failure to prevent the facilitation of **non-UK** tax evasion.

The offences have broad jurisdictional reach, so even non-UK based Prodcos could incur liability for themselves or Amazon under:

* The UK offence, where the underlying tax evasion relates to UK tax, irrespective of where the Prodco / Amazon is incorporated or where the facilitation offence is committed; and
* The non-UK offence, where the underlying tax evasion relates to non-UK tax, but a UK nexus exists (e.g., the Prodco / Amazon is a UK incorporated company or carries on business or part of a business in the UK, or where the facilitation offence is committed in the UK).

**Does it matter in which country the tax is due?**

The UK offence only relates to the evasion of UK tax, but under the non-UK offence the tax could be due in any other country.

**What steps should a Prodco take to prevent tax evasion and the facilitation of tax evasion (including by companies and individuals that the Prodco engages)?**

You should evaluate your own internal procedures to ensure they are sufficient to identify and prevent tax evasion and facilitation of tax evasion.

**What should a Prodco do if it suspects a company or individual engaged by the Prodco is attempting to evade the payment of tax?**

You are responsible for avoiding, detecting and reporting any activity that might amount to facilitation of tax evasion.

You should seek independent advice if:

* You become aware of any tax evasion by a company or individual that you have engaged;
* A company or individual that you have engaged asks you to assist in their tax evasion; or
* You believe or suspect that tax evasion has occurred or may occur,

and stop any participation in the activity in question and report said activity to the relevant authorities if so instructed by your independent advisors. Note that raising the issue directly with the company or individual concerned in the first instance could constitute “tipping off” which may itself be an offence.

To the extent you are able to (and you should confirm this with your independent advisors), you should also notify Amazon Studios that you have made a report to the relevant authorities, providing as much information as you able on the report made.

If you have any questions about the CFA, please direct these to your independent advisors.