



# Taxing Matters

Navigating the complexities of the tax world

RPC

## Season 3

### The countdown to failure to prevent fraud is on (Part 3): Looking ahead: further developments for corporate criminal liability

**Alexis** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alexis Armitage and I'm a Senior Associate in RPC's Tax Disputes team. I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some extra bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpclegal.com/taxingmatters](http://www.rpclegal.com/taxingmatters).

Hello, I'm delighted to be back again today with our very own Tom Jenkins, who sits in the Tax Investigations and Financial Crime team with me here at RPC, for the final part of this three-part mini podcast series on corporate criminal liability.

Tom has extensive experience in conducting anti-corruption investigations and advising on the implementation and enhancement of compliance programmes. He has advised clients facing a wide range of white collar and regulatory defence challenges, including working on multi-jurisdictional investigations involving bribery and corruption, fraud, and allegations of market abuse.

In the last two episodes, we have looked at a series of developments in the law of corporate criminal liability, including the new senior manager test for establishing liability in a range of economic crimes, and the new failure to prevent fraud offence. In our final podcast today, we will look at what else might be on the horizon in this area.

So Tom, what are the new rules of attribution and the new failure to prevent fraud offence likely to mean in terms of prosecutions?

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**Tom** Hi Alexis and thanks for having me back on again. So yeah, so we're yet to see the first prosecution brought using the new senior manager test that we discussed in our first podcast. And also obviously we haven't yet seen anything under the failure to prevent fraud offence, as it's not yet in force. And so just an important point at the start, neither of these things has retroactive effects, so the senior manager test will only apply to conduct that's taken place since December 2024, and the failure to prevent fraud offence will only apply to frauds undertaken from the 1st of September this year or later. So we're not likely to see any major failure to prevent fraud investigations for example probably until 2026 at the earliest.

But it is expected that these two tools will lead to increased enforcement activity in the future. The Serious Fraud Office (SFO) which is our principal prosecutor of large and complex financial crime matters, including fraud, has made numerous public statements suggesting that it intends to use these new tools to boost its caseload and to commence more investigations and prosecutions. So in its business plan for 2025 to 2026, which the SFO released in April of this year, it specifically states that it plans to promote the new failure to prevent fraud offence, that's been further underpinned by public statements made by senior SFO figures, for instance, in speeches, in particular, the Director of the SFO, Nick Ephgrave, who's amongst other things stated that he intends the SFO "to be bold" in its prosecution of the offence.

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**Alexis** Thanks, Tom. That's really interesting. And so we touched in the last podcast on the other two failures to prevent offences. Are there any developments regarding those?

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**Tom** Okay, so it's a good question, the law itself with respect to both of those two offences, so that's the failure to prevent bribery offence and the failure to prevent the facilitation of tax evasion offence that we discussed. The law is fairly well settled. There's no kind of change in the law at present, but there are interesting developments around how one or both of them are to be enforced in the coming period.

So let's start with the bribery offence the corporate bribery offence under section seven of the Bribery Act continues to be prosecuted actively, particularly by the Serious Fraud Office. So while there's been inevitably much focus in recent months on developments relating to fraud, the SFO has continued to pursue numerous bribery prosecutions and it's looking to continue to prosecute actively in that area.

One example earlier this summer, The SFO announced it had charged a UK-based insurance broker called United Insurance Brokers with the failure to prevent bribery offence in relation to that brokerage's sale of reinsurance products in Ecuador. It's a particularly interesting case actually as it's likely to offer us a clearest test yet in the courts of how the courts will assess whether a company had in place adequate procedures to prevent bribery. So as we've talked about with the failures prevent fraud offence, the bribery offence also has a compliance-based defence. But in all the years the bribery act has been enforced, the courts have only really been asked to consider that defence once. And that was a case called Skansen Interiors that was quite specific to its fact and involved a very small company. So if this new insurance related case proceeds to trial, it will be a chance for the court to provide some long sought after judicial guidance on bribery compliance procedures. Just as an aside, that's actually going to be quite interesting, I think, for companies, not only in the context of developing and maintaining their bribery compliance controls, but also in the context of what we talked about last time, implementing and enhancing their fraud compliance controls, and just beyond that, bribery prosecution and enforcement is further alive at the SFO, they've recently also announced a new investigation into companies in the construction industry relating to building of data centres in the Netherlands. So I think it's expected that bribery enforcement will continue as it has done in previous years.

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**Alexis** And so how about the failure to prevent the facilitation of tax evasion offence then?

**Tom** As for that offence, there may well be some developments in this area in the next year or so. So to date, there hasn't been a single prosecution of the offences under sections 45 and 46 of the Criminal Finances Act, they're the statutory provisions that set out the failure to prevent the facilitation of tax evasion. Even though those tools have been available to the revenue since 2017, they really haven't been used. So just as a bit of a recap, the offences operate in a fundamentally similar way to the fraud and bribery offences we've been looking at. So essentially there's a three-stage test; the first would be to establish was there criminal tax evasion by a taxpayer, either a UK or foreign taxpayer? And then the second stage will be to determine whether an associated person facilitated that tax evasion, and finally, to determine whether the company in question failed to prevent that facilitation. Again, importantly for that third step, there's a compliance-based defence. Now, as I say, this hasn't yet been prosecuted, so over the next 12 months, we may see HMRC use these tools a little more. So data published by HMRC shows that the amount of cases it has reviewed and considers for investigation under the failure to prevent tax evasion offences has increased year on year in recent years. And at the end of last year, it had 11 open investigations. And it took several years for the first Bribery Act cases to be prosecuted after that came into force. And it may be that particularly with mounting pressure to address the tax gap in the UK, HMRC moves towards an enforcement approach with these offences over the coming months and year.

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**Alexis** Yes, I think you might be right about that one, Tom. I expect we'll see a lot of movement in the near future on that one. So we also spoke in our first podcast about the wider changes to corporate criminal liability and the senior manager test. Is there likely to be any further development in that area?

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**Tom** So as a starting point, and just to recap what I said at the start of our discussion today, we've still not seen the first prosecution of a corporate using this new test. It's been in law since the end of 2024, and the expectation is that, at least in the economic crime environment, prosecutions will start soon using this test. But there is a further interesting development afoot. There's a bill currently before parliament called the Crime and Policing Bill, that bill had its second reading in parliament on the 10th of March, so a few months ago, and it covers a wide range of criminal law matters. But importantly, and for our purposes today, Alexis, it's expected to introduce further significant reforms to the law of corporate criminal liability. And they may have wide reaching implications for corporate criminal enforcement in the UK. So as it's currently drafted, the bill will build on the senior manager test that's set out in ECCTA, as we've discussed across our podcast series. So as we talked about, ECCTA establishes that senior manager test now as the primary means for establishing the liability of corporate entities for approximately 60 economic crimes. This bill, the Crime and Policing Bill will dramatically broaden the scope of that statutory test by applying it, the same test, to all criminal offences, so not just economic crimes. So therefore, once enacted, if enacted in its current form, a company could be liable for other crimes such as environmental offences or data protection offences on the basis of actions of a senior manager. Now, a further point, if the bill is left in its current form, and there's quite a bit of discussion around this, other criminal offences may come into scope that English law has historically not seen as matters, which generally attribute liability to companies. So that might include, for example, sexual offences, where it can be demonstrated that the senior manager in question committed the offence while acting within the scope of their authority in their role, in the job they're working in the company. So as we discussed in our first session, that doesn't mean that the specific act, so the offence,

the specific offending act has to have been approved as part of the senior manager's role, but it would need to be shown that they were acting within the broad scope of what they're authorised to do. So you can see how this change in law could potentially have quite a wide impact, not just in the kind of economic crime area that we've been discussing over these sessions but more broadly from a corporate criminal perspective.

**Alexis** Thanks Tom. So we've covered quite a lot of ground during this mini podcast series. Are there a few final key takeaway points that companies should take away in order to prepare for the changes that we've discussed?

**Tom** Yes, I think there are a few things that can probably be taken away as the most important points. So I think first and foremost is obviously the impending coming into effect of the failure to prevent fraud offence. As we've discussed over these podcasts, this will be a fundamental change in the way corporates will need to view fraud risk, as it will require them to consider the situation where they are the perpetrator. Whereas previously the overwhelming focus of fraud prevention policies in companies have been on situations where the company was the victim or the potential victim. So companies have until the 1st of September to progress their preparation; from that date onwards, from the 1st of September onwards, the only defence companies will have to liability established by the fraudulent acts of their associated persons will be demonstrating reasonable fraud prevention procedures.

So in terms of upcoming activity for companies, the risk assessment would be a prudent place to focus. Beyond failure to prevent fraud, companies should be alive to the increased risks presented by the new senior manager test, particularly as it currently stands in relation to economic crimes. This brings a wider pool of people into scope whose conduct can create criminal exposure for the company. So companies might consider some training or awareness raising around this change with more senior members of the business and may consider taking financial crime risk into account when making decisions regarding hiring or promoting into senior roles.

And finally, don't forget the existing failures to prevent offences, those very much remain in force, and as we just talked about, particularly in the case of bribery, remain actively prosecuted, preparation for the affairs of fraud offence is a good opportunity to revisit the controls relating to tax evasion and bribery to determine if they remain adequate and proportionate.

**Alexis** Thank you. There's some good advice there. And that brings this mini podcast series to a close. Thank you again to Tom and to everyone for listening. We'll be taking a break in August, but we'll be back again in September. Wishing you all a wonderful summer and see you again in the autumn.

As ever, a big thank you goes to RPC's in-house team for the production, music and sound editing of this episode.

A full transcript of this episode together with our references can be found on our website at [www.rpclegal.com/taxingmatters](http://www.rpclegal.com/taxingmatters). And if you have any questions for me or any topics you'd us to cover in a future episode, please do email us on [taxingmatters@rpclegal.com](mailto:taxingmatters@rpclegal.com). I would love to hear from you. If you like Taxing Matters, why not try RPC's other podcast offerings, Insurance Covered, which looks at the inner workings of the insurance industry hosted by the brilliant Peter Mansfield and available on Apple podcasts, Spotify and our website. Or the Work Couch, the podcast series, which is where we explore how your business can navigate today's tricky people challenges and respond to key developments in the ever-evolving world of employment law. Hosted by the fantastic Ellie Gelder and also available on Apple podcasts, Spotify and our website [rpclegal.com](http://rpclegal.com). If you like this episode, please take a moment to rate, review and subscribe and remember to tell a colleague about us.

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