The triadic dilemma in the criminalisation and prosecution of corporate tax fraud and corruption in the United Kingdom

Prof. Umut Turksen (University of Exeter) &

Dr. Alison Lui (Liverpool John Moores University)

Abstract

While corruption in the public sector has been covered widely, corporate tax fraud/evasion, tax related fraud enabling corruption or tax corruption enabling fraud in the private sector have been given scant attention. This article fills this gap by a critical analysis of the legal regime in the United Kingdom (UK) for these complex offences. We identified a triadic dilemma in corporate tax fraud/evasion and tax corruption. The triadic dilemma involves (1) ambiguity in the definition and scope of tax crimes (2) the criminalisation challenges of tax crimes and (3) the prosecution challenges of tax crimes for corporations under the UK corporate criminal liability model. The triadic dilemma is complicated when applied to corporate offences, since recent cases reveal that corporate accountability under the failure to prevent model under corporate criminal liability is difficult to achieve.

Keywords: corporate criminal liability, tax evasion, corruption

Introduction

Empirical evidence increasingly demonstrates a significant overlap between tax crimes and corruption offences, with corporate actors frequently implicated in the commission of both.[1] Despite this observable convergence, the existing body of literature remains fragmented, with notable gaps in understanding the structural, legal, and institutional factors that facilitate or obscure these interrelated forms of misconduct.

[1] OECD, 'Standard Setting for Tax Crime' (2024) https://www.oecd.org/en/topics/standard-setting-for-tax-and-crime.html; and JP Brun et al. 'Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money' (2022) StAR, WU Global Tax Policy Center https://star.worldbank.org/publications/taxing-crime-whole-government-approach-fighting-corruption-money-laundering-and-tax

Firstly, there is no single source or definition of tax crimes in the UK. Tax crimes are found in an amalgamation of common law criminal law offences (i.e. cheating the public revenue[2]) and tax legislation (i.e., Taxes Management Act 1970 and Part 3 of the Criminal Finances Act 2017). Tax crime could be considered as wider than tax evasion, since it includes other crimes in tax matters that do not lead to tax evasion, for instance counterfeiting documents under section 168 of the Customs and Excise Management Act 1979.[3] UK criminal law does not expressly define the concept of tax or tax duties, so one must consult tax laws to understand the scope of tax duties.

Secondly, there is little clarity as to the scope of corporate tax crimes in the UK. Whilst tax evasion is illegal in the UK, there is much ambiguity surrounding the legality and ethics of tax avoidance, especially aggressive tax avoidance that some multinational companies such as Apple, Alphabet and Amazon have used in the past.[4] The taxonomy of tax crimes in the UK is complex. There is no single offence for tax fraud, evasion, or corruption. While terms like tax fraud and tax evasion, or corruption and bribery, are often used interchangeably, they are not always synonymous. Tax fraud may include evasion, but not all evasion involves fraud. Likewise, bribery is a specific offence under corruption. Notably, fraud and corruption can also enable one another. They are "intertwined and reinforcing".[5] In the context of tax offences, an example is false invoice fraud. This can be committed by a company employee to conceal corruption, so fraud is a means to hide a second crime, namely corruption. Corruption enabling fraud in the form of an employee bribing tax official to turn a blind eye to tax fraud is a type of tax corruption enabling fraud. Policy makers are broadly happy with the dichotomising corruption offences into those involving abuse of power

[2] R v Hudson [1956] 2 QB 252. The cheating the public revenue offence was preserved by section 32(1)(a) of the Theft Act 1968, which abolished the cheating offence in general. 'Cheating the public revenue' offence is very wide and it is unnecessary to prove an actual loss to the revenue.

[3] PROTAX, 'Report on Comparative Legal and Institutional Analysis. 787098 PROTAX EU H2020 Project.' (2020) https://protaxwebtoolkit.eu/wp-content/uploads/2021/08/PROTAX-3-D3.1__CH.pdf The UK government has introduced measures to address abusive and aggressive tax avoidance. See D. Neidle, 'Radical anti-avoidance measures hidden in the Spring Statement' (Tax Associates Policy, 26 March 2025) https://taxpolicy.org.uk/2025/03/26/radical-anti-avoidance-measures-hidden-in-the-spring-statement/

[4] H Lenz, 'Aggressive Tax Avoidance by Managers of Multinational Companies as a Violation of Their Moral Duty to Obey the Law: A Kantian Rationale' (2020) 165 Journal of Business Ethics 681

[5] J Alm, J Martinez-Vazquez and C McClellan, 'Corruption and Firm Tax Evasion' (2016) 124 Journal of Economic Behaviour and Organisation 146

and those which do not.[6] Other stakeholders such as regulators and prosecutors prefer specific definitions of individual crimes.[7]

Thirdly, the current UK corporate criminal liability framework, in the form of the failure to prevent model is problematic. In the UK, the failure to prevent model was created due to the difficulty in identifying culpable individuals within corporations. In the case of *Tesco Supermarkets Ltd v Nattrass*,[8] the supermarket manager, who failed to ensure the signs were taken down and a customer was charged at the higher price, was not held to be a 'directing mind or will' of the company. The fact that the manager was negligent did not lead to the company committing an offence under the Trade Descriptions Act 1968. Similarly, the case of *Serious Fraud Office v Barclays*[9] illustrates the challenge of the 'identification doctrine'. Individual company agents conducting the wrongdoing must either be its "directing mind and will" for all purposes, or the directing mind and will for the purpose of performing the particular function in question.

The failure to prevent model changed this and holds corporations to account if their employees commit corporate crimes. However, this model is often used with Deferred Prosecution Agreements (DPAs) as a negotiation tool against culpable corporations. In 2005, KPMG pleaded guilty and was fined $456 million for developing and marketing questionable tax shelters. Under the DPA, KPMG were monitored for five years. This posed a continuous, existential threat of criminal indictment for compliance failures during the five years, but the DPA did not have any spillover effect on KPMG's audit practice.[10] There was little evidence of the DPA having a negative effect on audit fees, likelihood of client losses and thus little harm to KPMG's factual audit quality. Thus, the effectiveness of DPAs is questionable.

The established literature very much focuses on the impact of tax evasion and corruption on individuals[11] and households.[12] Alm et al. developed a theoretical model linking bribery to firms'

[6] A Moiseienko and K Izenman, 'What's in a Name? Corruption and Fraud in the UK' (2019) https://static.rusi.org/20190617_corruption_and_fraud_web.pdf
[7] Ibid.
[8] [1971] UKHL 1
[9] [2018] EWHC 3055 (QB)
[10] M Baugh, J Boone, I Khurana, K Raman 'Did the 2005 Deferred Prosecution Agreement Adversely Impact KPMG's Audit Practice?' (2019) 38 Auditing: A Journal of Practice & Theory 77
[11] K Crocker and J Slemrod, 'Corporate Tax Evasion with Agency Costs' (2005) 89 Journal of Public Economics 1593; L Goerke, 'Bureaucratic Corruption and Proft of Tax Evasion' (2006)
[12] A Acconcia, Marcello D'Amato and M Riccardo, 'Corruption and Tax Evasion with Competitive Bribes' (2003); S Akdede, 'Corruption and Tax Evasion' (2006) 7 Dogus University Journal 141

tax reporting, and tested it using firm-level data from the World Enterprise Survey and the Business Environment and Enterprise Performance Survey.[13] Their results reveal that corruption drives higher levels of tax evasion in firms generally. Further, larger bribes to tax officials lead to higher levels of tax evasion.

Legal scholars have focused on global challenges and international responses to corruption and tax evasion,[14] whether corruption level moderates the association between financial crime and tax evasion at a cross-country level and anti-corruption efforts on tax evasion.[15] The complexities in defining tax crimes, corruption/bribery have also been studied by several scholars recently.[16] Building on prior work, this study advances the literature in three key ways.

Firstly, building on the work of Moiseienko and Izenman,[17] we use a doctrinal approach to show that UK legal definitions of tax crimes and corruption, particularly bribery, are distinct and carry different implications for stakeholders. These distinctions matter: prosecutors focus on enforceability, regulators on compliance, and policymakers on abuses of power, especially by public officials. For prosecutors, specific definitions of tax crimes, corruption/bribery help in the initial stage when applying the law to the facts. They select charges based on available evidence and potential sanctions, so legal definitions are only partly useful. For instance, concealing a bribe through false expense claims could be charged as either fraud by misrepresentation or false accounting.[18] Complex cases can be prosecuted for simple charges such as theft.[19] The effect of this dynamic is that the majority of scholarly discourse concerning the definitions of tax crimes and corruption (particularly bribery) tends to be oriented more toward informing policy development than supporting prosecutorial practice. This article demonstrates that the prosecution of tax evasion and corruption offences is often hindered by evidentiary challenges, including the insufficiency or inaccuracy of available evidence, which significantly impedes successful

[13] Alm, Martinez-Vazquez and McClellan (n 5)
[14] L Winter and D Vozza, 'Corruption, Tax Evasion, and the Distortion of Justice: Global Challenges and International Responses' (2022) 85 Law and Contemporary Problems 75
[15] I Amara and H Khlif, 'Financial Crime, Corruption and Tax Evasion: A Cross-Country Investigation' (2018) 21 Journal of Money Laundering Control 545
[16] U Turksen, 'The Importance of a Common Definition of Tax Crime and Its Impact on Criminal Countermeasures in the EU: An Explorative Study' (2020) *European Law Enforcement Research Bulletin*, 91; Winter and Vozza (n 18); Moiseienko and Izenman (n 6)
[17] Ibid.
[18] Ibid.
[19] Ibid.

enforcement efforts. This relates back to our first and third triadic dilemmas of ambiguity in defining tax crimes and the prosecution challenges of tax crimes.

Secondly, statistics on corruption/bribery will not fully reflect the scale of corruption in the UK. This is because of the prosecution challenge, where several offences can be used to prosecute corruption. At the same time, all prosecutions for fraud by abuse of power may be considered as corruption prosecution.[20] More problematic is the third triadic dilemma, the use of corporations and often complex corporate structures to facilitate these crimes. Yet, the UK corporate criminal liability model is problematic in holding those responsible for tax crimes. We thus focus on corporations and evaluate the challenges in holding corporations liable for corporate tax and corruption offences.

Finally, by articulating the triadic dilemma, this study advocates for a more rigorous cost-benefit analysis in the classification of fraud cases that intersect with corruption, particularly those involving tax fraud and related corrupt practices. Such an approach is likely to yield more accurate and nuanced statistical representations of corruption, thereby facilitating the development of more targeted and effective policy recommendations concerning the criminalisation and prosecution of these offences.

The article is organised as follows: Section one offers a critical evaluation of the first triadic dilemma, namely the ambiguity surrounding the definition and scope of tax crimes. Section two examines the second dilemma, focusing on the challenges associated with the criminalisation of tax crimes in England and Wales. Section three provides a critique of the third dilemma, which concerns the corporate criminal liability model applied to the prosecution of corporate tax offences within the jurisdiction. Section four discusses the broader implications of the findings and presents policy and legal recommendations. Finally, section five concludes the study.

1. Triadic Dilemma 1: Ambiguity in Definition and Scope of Tax Crimes

(a) Understanding Corporate Tax Fraud/Evasion

Quantifying the global incidence of corporate tax fraud and evasion remains elusive, primarily due to the definitional ambiguity surrounding illegal corporate tax behaviour. This ambiguity impedes

[20] Ibid.

empirical precision and introduces analytical uncertainty into cross-jurisdictional comparisons. Variations in national enforcement standards, inconsistent reporting practices, and the strategic opacity of firms' tax arrangements further compound the challenge. Complicating matters are methodological disparities across studies, ranging from differences in data sourcing to the scope of what constitutes fraud or evasion.

Nonetheless, literature reveals a persistently high fiscal cost of corporate tax evasion. Ya'U et al. estimate that between 4% and 10% of global corporate income tax revenues are lost, highlighting the scale of economic distortion.[21] Such figures illuminate the cross-border dynamics of tax abuse, especially among multinationals capable of exploiting gaps in international tax frameworks. Sophisticated corporate structures and the availability of aggressive tax planning instruments enable a persistent evasion ecology, even within well-monitored jurisdictions.[22]

Judicial interventions offer granular insights into such schemes. In *Hellard v Khan & Anor (Re Phoenix Tech Ltd – Insolvency Act 1986)*,[23] the High Court's 2024 ruling reflected a growing judicial willingness to impose personal liability on directors engaged in long-term VAT frauds, setting a precedent for attributing direct culpability.[24] Similarly, *Wright v Chappell*[25] exposes how asset acquisition can serve as a smokescreen for continued tax malfeasance. The £39 billion UK tax gap, a proxy for uncollected theoretical liabilities, reflects both the magnitude of noncompliance and systemic enforcement limitations.[26]

Multinational enterprises (MNEs) remain central actors in large-scale tax abuse, leveraging asymmetries in tax codes and jurisdictional tax arbitrage. Key among these practices is profit shifting, where revenues are reported in low-tax jurisdictions, decoupling reported profits from actual economic activity.[27] As Janský & Palanský argue, increasing investments in tax havens

[21] A Ya'u et al, 'Effects of Environmental Regulation on Corporates Tax Evasion' (2023) Research Square, https://doi.org/10.21203/rs.3.rs-2823968/v1
[22] P Janský & M Palanský, 'Estimating the scale of profit shifting and tax revenue losses related to foreign direct investment' (2019) 26(5) International Tax and Public Finance 1048-1103
[23] [2024] EWHC 1130.
[24] Tax Disputes, 'Historic MTIC VAT Fraud Directors Owe £4.8m (18 Years Later)' (August 2024), https://taxdisputes.co.uk/2024/08/historic-vat-fraud-mtic-director-owes-4-8m-hmrc-liquidator-tax-tribunal-phoenixtech/
[25] [2024] EWHC 2166 (Ch)
[26] HMRC, 'Official Statistics - Tax Gaps' (20 June 2024) https://www.gov.uk/government/statistics/measuring-tax-gaps/1-tax-gaps-summary
[27] Tax Justice Network, 'State of Tax Justice' (November 2024), p.20 <https://taxjustice.net/wp-content/uploads/2024/11/State-of-Tax-Justice-2024-English-Tax-Justice-Network.pdf

correspond with anomalous declines in reported returns, suggesting deliberate base erosion.[28] This highlights the misalignment between the jurisdiction in which corporations report economic activity and the jurisdiction they declare profits.

The Apple-Ireland state aid case[29] exemplifies how state-level tax competition intersects with corporate tax avoidance. In relation to tax havens, the case of *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland)*[30] illustrates how ostensibly lawful tools, such as employee trusts in offshore jurisdictions, may facilitate tax deferral or avoidance.[31]

Importantly, the legal distinction between tax avoidance and tax evasion remains conceptually and practically porous.[32] While tax avoidance exploits legal grey zones and systemic loopholes, tax evasion constitutes a violation of statutory obligations.[33] Yet the difficulty in distinguishing between 'aggressive tax planning' and outright fraud enables firms to skirt legal limits with limited exposure. [34]

Tactics such as false deductions, falsified financial records, offshoring, and underreporting reflect not merely technical non-compliance,[35] but an entrenched organisational strategy to minimise tax exposure while obscuring liability.[36] This makes estimates of corporate tax behaviour that could

[28] P Janský & M Palanský, 'Estimating the scale of profit shifting and tax revenue losses related to foreign direct investment' (2019) 26(5) International Tax and Public Finance 1048-1103
[29] C-465/20 P Commission v Ireland and Others EU:C:2024:724
[30] UKSC/2016/0073
[31] Vinciworks, 'Tax evasion: Reasonable procedures and prevention methods' https://vinciworks.com/resources-files/Tax_evasion/Tax-evasion_Reasonable-procedures-and-prevention-methods.pdf
[32] K Aliani, 'Does corporate governance affect tax planning? Evidence from American companies' (2013) 1 International Journal of Advanced Research 864
[33] J Fisher, 'Fairer shores: Tax havens, tax avoidance, and corporate social responsibility' (2014) 94 Boston University Law Review 337 https://www.bu.edu/bulawreview/files/2014/03/FISHER.pdf
[34] H Lenz, 'Aggressive tax avoidance by managers of multinational companies as a violation of their moral duty to obey the law: A kantian rationale' (2020) 165 Journal of Business Ethics 681; Anshu Duhoon and Mohinder Singh, 'Corporate tax avoidance: a systematic literature review and future research directions' (2023) 21 LBS Journal of Management & Research 197
[35] S Bourton, *Tax Evasion and the Law*: A Comparative Analysis of the UK and USA (Routledge, 2024)
[36] A Busy, 'Corporate tax evasion: Evidence from international trade' (2023) 159 European Economic Review 104571; P Gottschalk, 'Categories of financial crime' (2010) 17(4) Journal of Financial Crime 441-458; B Malkawi and H Haloush, 'The case of income tax evasion in Jordan: symptoms and solutions' (2008) 15 Journal of Financial Crime 282

amount to tax fraud/evasion befuddling. For example, the Tax Justice Network's recent report shows that approximately US$492 billion tax income is lost annually.[37]

At a macro level, these practices are embedded in a wider global tax ecosystem characterised by regulatory arbitrage, fragmented legal frameworks, and inconsistent political will.[38] Although multilateral frameworks such as the Organisation for Economic Co-operation and Development's (OECD) BEPS project[39] and emerging UN initiatives,[40] seek to mitigate such abuses, enforcement asymmetries and definitional contention hinder cohesive reform.

In sum, corporate tax fraud and evasion are not merely financial crimes but symptoms of deeper structural dysfunctions within national and transnational governance. Addressing this triadic dilemma requires more than improved compliance; it demands fundamental realignments in global tax policy, corporate accountability, and cross-border regulatory coordination.

(b) Understanding Corporate Tax Corruption

Corruption is frequently treated as a monolithic concept, yet its manifestations are diverse and differentiated by structure, intent, and relational dynamics. A critical distinction exists between collusive corruption, wherein both the briber and the bribee derive mutual benefit - often through covert, prearranged transactions[41] - and extortive corruption, where a power asymmetry compels one party, typically under duress, to offer bribes in response to exploitative demands. The latter embeds coercion within institutional hierarchies, while the former reflects strategic alignment between actors to circumvent regulatory barriers or gain illicit advantage.

Detecting collusive corruption poses a formidable challenge due to its consensual and concealed nature. Extortive corruption, by contrast, can emerge more visibly within bureaucratic choke points where gatekeepers wield discretionary authority, such as licensing, customs clearance, or tax

[37] Tax Justice Network, 'State of Tax Justice' (November 2024), p.20 https://taxjustice.net/wp-content/uploads/2024/11/State-of-Tax-Justice-2024-English-Tax-Justice-Network.pdf
[38] P Janský and M Palanský, 'Estimating the scale of profit shifting and tax revenue losses related to foreign direct investment' (2019) 26(5) International Tax and Public Finance 1048-1103
[39] Inclusive Framework concludes successful meeting in South Africa' (April 2025) https://www.oecd.org/en/about/news/announcements/2025/04/inclusive-framework-concludes-successful-meeting-in-south-africa.html
[40] United Nations, 'Global Cooperation Key to Align Tax Systems with Sustainable Development, Economic and Social Council Told'<https://press.un.org/en/2025/ecosoc7194.doc.htm
[41] T Soreide, 'Drivers of Corruption : A Brief Review' (2014) World Bank Group Study

assessments. The motivations underpinning corporate corruption resist simplistic, individualistic explanations. Rather, they emerge from a constellation of internal and external determinants, including organisational culture, sectoral norms, political embeddedness, and historical legacies of governance. While personal incentives such as promotions or financial gain play a role, corruption is often instrumentalised at the organisational level to secure competitive advantages, be it through tax leniency, regulatory exemptions, or preferential access to public procurement.

Quantitative data underscores the institutional prevalence of corruption. According to the World Bank 11.2% of companies across 159 economies reported at least one bribe solicitation, pointing to systemic vulnerability rather than isolated anomalies.[42] Specific patterns include gift-giving expectations during engagements with tax officials (8.7%), for securing operating licences (8.2%), and to obtain public contracts (16.3%) which suggest that corruption is routinised within key state-market interfaces.[43] Furthermore, corruption becomes more structurally embedded in cross-border contexts. The OECD's 2023 Foreign Bribery Report illuminates this dynamic: in 41% of the 427 adjudicated foreign bribery cases, management-level employees were directly involved, with CEOs and Presidents accounting for a further 12%.[44] This indicates not only institutional complicity at the upper echelons of corporate hierarchies, but also a clear awareness of the criminality involved. Indeed, the premeditated character of such bribery is evident in its strategic targeting, 57% of bribes sought to influence public procurement outcomes, 12% addressed customs procedures, and 7% aimed to obtain preferential tax treatment. [45]

This data compel a broader analytical reflection on governance and accountability. Senior executives knowingly sanction illicit acts implies systemic failings in both corporate compliance cultures and regulatory enforcement. The concentration of decision-making power within senior management structures enables acts of corruption to be obscured beneath layers of organisational legitimacy, making ex-post detection and sanctioning considerably more difficult. Therefore, tackling corporate corruption requires not merely legal reform, but also institutional transformation

[42] The World Bank, 'Enterprise Surveys' (2023) https://www.enterprisesurveys.org/en/data/exploretopics/corruption
[43] Ibid.
[44] OECD, 'OECD Foreign Bribery Report, An Analysis of the Crime of Bribery of Foreign Public Officials' (2014) https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm
[45] Ibid.

to address incentive structures, enhance whistleblower protections, and recalibrate regulatory oversight to effectively monitor and deter corporate misconduct at its managerial core.

Traditional scholarship on tax and corruption has predominantly centred on individuals, particularly taxpayers, and public officials, often framed within public administration or criminological paradigms.[46] Yet, this literature offers insufficient analytical attention to corporate actors as both initiators and beneficiaries of corrupt tax practices.[47] The relatively narrow academic and policy focus neglects the systemic interweaving of tax crimes and corruption within corporate spheres, despite mounting evidence that such offences are neither peripheral nor anomalous.

Corporate tax corruption is not a fringe irregularity but a structural vulnerability with significant fiscal and governance repercussions.[48] Bribery of tax officials, manipulation of financial records to conceal illicit payments, and strategic use of opaque entities such as shell companies are not isolated transgressions; they form a persistent feature of certain corporate tax strategies. However, empirical exploration of this intersection is limited by definitional ambiguity and data scarcity.[49] Indeed, the conceptual fuzziness between corruption and fraud undermines both legal clarity and empirical reliability. Legal definitions, often jurisdictionally contingent, are "imperfect guides to the distinction between corruption and fraud,"[50] making law enforcement statistics a fragile foundation for analytical generalisations. This definitional elasticity makes it difficult to demarcate acceptable tax minimisation strategies from behaviours that compromise state integrity.[51]

The link between corruption and tax evasion is mutually reinforcing. On one hand, endemic corruption, particularly within tax administrations, facilitates greater evasion by creating opportunities for rent extraction, selective enforcement, and impunity.[52] On the other hand, complex tax regimes and weak institutional capacity may invite corruption as a means of

[46] P Aghion and others, 'Tax, Corruption and Growth' (2016) 86 European Economic Review 24051.
[47] S K Chand and K O Moene, 'Controlling Fiscal Corruption' (1999) 27 World Development 1129; J Li, 'Counteracting Corruption in Tax Administration in Transitional Economies: A Case Study of China' (1997) 51 Bulletin for International Fiscal Documentation 474; OH Fjeldstad and B Tungodden, 'Fiscal Corruption: A Vice Or Virtue?' (2003) 31 World Development 1459
[48] P Sorbello and S Holden, 'Developing a Working Model to Fight Fiscal Corruption: The Nexus at Which Tax Crimes and Corruption Meet' (2022) 85 Law and contemporary problems 185
[49] JM Villarino, 'Measuring Corruption: A Critical Analysis of the Existing Datasets and Their Suitability for Diachronic Transnational Research'. (2021) 157 Social Indicators Research, 709–747
[50] Moiseienko and Izenman (n 6)
[51] R Barrington, 'When Is Tax Abuse Corruption? The New Official View of Transparency International' (2016) https://www.transparency.org.uk/when-tax-abuse-corruption-new-official-view-transparency-international
[52] D Joulfaian, 'Bribes and Business Tax Evasion' (2009) 6 European Journal of Comparative Economics 227

navigating opaque regulatory environments. For instance, accounting fraud may not merely reflect attempts to evade tax,[53] but also serve as a mechanism to obscure bribery or misappropriation of funds.[54] While corruption and tax evasion are not synonymous, they frequently operate through overlapping mechanisms and institutional blind spots. These include the use of secrecy jurisdictions,[55] shell entities, and discretionary decision-making by public officials.[56] The common denominator is often the deliberate obscuration of financial flows and accountability chains, which renders investigative efforts difficult and cross-border enforcement weak.[57]

The under-theorisation of this intersection in existing literature reflects a broader challenge: the invisibility of corporate misconduct that resides in legal grey zones or international jurisdictional gaps. Where corporate behaviour is shielded by complex legal architectures and the pretext of compliance, distinguishing between aggressive tax planning and corrupt practice becomes more than a legal problem; it becomes a political and ethical dilemma.

Consequently, advancing the field requires a multidisciplinary approach that brings together tax law, political economy, forensic accounting, and anti-corruption scholarship. Only by reframing corporate tax offences as part of a broader corrupt infrastructure can policymakers and scholars fully apprehend the scope, scale, and impact of corporate tax corruption on global public finance and institutional trust.

2. Triadic Dilemma 2: Criminalisation of Tax Offences in the UK

The OECD emphasises criminal sanctions for tax offences as key to tax integrity, aiming to enhance fairness, deter non-compliance, and equate tax crimes with other criminal acts.[58]

[53] R Awasthi and N Bayraktar, 'Can Tax Simplification Help Lower Tax Corruption?' (2015) 5 Eurasian Economic Review 297

[54] A Graycar and A Sidebottom, 'Corruption and Control: A Corruption Reduction Approach' (2013) 19 Journal of Financial Crime 384

[55] G Schjelderup, 'Secrecy Jurisdictions' (2016) 23 International Tax and Public Finance 168

[56] J Alm, J Martinez-Vazquez, C McClellan, 'Corruption and firm tax evasion' (2016) 124 Journal of Economic Behaviour & Organization 146

[57] There are however various estimates of tax evasion by individuals: Tax Justice Network, The State of Tax Justice (2023) https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf and European Commission, Estimating International Tax Evasion by Individuals (2017) https://taxation-customs.ec.europa.eu/system/files/2019-10/2019-taxation-papers-76.pdf

[58] OECD, 'Fighting Tax Crime – The Ten Global Principles', Second Edition, https://www.oecd.org/en/publications/fighting-tax-crime-the-ten-global-principles-second-edition_006a6512-en/full-report/component-6.html#chapter-d1e324

Reflecting this, the UK has codified criminal measures to confront tax-related misconduct. However, a closer inspection reveals tensions between legislative breadth, enforcement culture, and prosecutorial outcomes.[59]

(a) Criminalisation of Tax Crimes for Individuals in the UK

The UK's dual common law and statutory regime provides expansive legal tools to sanction tax crimes. Offences such as cheating the public revenue and conspiracy to defraud,[60] underpinned by case law (e.g., *R v Mavji, R v Hunt*) [61], allow authorities to target fraudulent omission, recklessness, and intent even without direct evidence of deceit or financial loss. This conduct-based approach ensures that the offence lies in the act of cheating itself, not just the outcome, thus lowering the evidentiary threshold for prosecution.

Nonetheless, this doctrinal scope has not translated into proportionate enforcement. Despite 76,000 suspected tax fraud reports in 2022–2023, only 540 individuals were charged.[62] This disjunction between legal capacity and prosecutorial frequency is attributed to evidentiary complexity, institutional preferences for civil recovery, and HMRC's revenue-centric ethos. The longstanding perception that prosecution is inefficient for tax recovery creates a strategic trade-off between deterrence and administrative pragmatism.

The prosecution rate in the UK is low because of evidential complexities in tax fraud cases and that historically, HMRC preferred to use civil actions for tax offences. This was because its primary objective was to collect revenue, and it closely adhered to the view that 'prosecution is not an efficient way of recovering evaded tax.'[63]

Statutory offences, including those in sections 106B, 106C and 106D of the Taxes Management Act 1970 and VAT Act 1994, tether criminal liability to specific tax types and incorporate well-

[59] U Turksen, F Rasmouki, R Kreissl and D Vozza, Tax Crimes and Enforcement in the European Union: Solutions for Bridging the Gaps in Law, Policy and Practice, (Oxford University Press, 2023)
[60] The common law criminal offences of conspiracy to defraud and cheating the public revenue are preserved by section 5(2) of the Criminal Law Act 1977 and section 32(1)(a) of the Theft Act 1968
[61] [1987] 1 WLR 1388
[62] It is suggested that the limited number of prosecutions stems from the fact that many reports are low-level, lack adequate evidence, or are addressed through civil penalties rather than criminal proceedings. P Cannon, '2024 Tax Evasion Statistics UK' (2025) https://www.patrickcannon.net/insights/tax-evasion-statistics-uk/. It could also be the case that such reports are a product of overcautious compliance protocols that lack substantive evidence and are based on suspicion. Ferwerda J, Deleanu IS, Unger B (2019) Strategies to avoid blacklisting: The case of statistics on money laundering. PLoS ONE 14(6): e0218532. https://doi.org/10.1371/journal. pone.0218532.
[63] National Audit Office, 'Tackling Fraud Against the Inland Revenue' (HC 2002-03, 429-I) para 2.46

established criminal law constructs such as *actus reus* and *mens rea*. Notably, the incorporation of strict liability offences, such as those in section 166 of the Finance Act 2016, reflects an attempt to balance enforcement burdens with policy priority by dispensing with the need to prove subjective intent. This reinforces the criminalisation of tax offences as both a symbolic and functional tool of regulatory governance.

(b) Criminalisation of Tax Offences for Corporations in the UK

Corporate criminal liability historically struggled with the evidentiary burden of identifying a "directing mind and will."[64] To circumvent this limitation, the UK has embraced the 'failure to prevent' model, which shifts the focus from intent to institutional accountability. Under this model (formalised through laws such as section 7 of the Bribery Act 2010, sections 45-46 of the Criminal Finances Act 2017 , and section 170 of the Economic Crime and Corporate Transparency Act 2023 (ECCTA)) organisations can be held strictly liable for failing to prevent economic crimes committed by their employees or associated persons.

The model operationalises corporate criminality through a compliance-defence structure. A company is presumed liable unless it can show it had reasonable prevention procedures in place. This signals a movement away from merely punishing individual wrongdoing toward institutionalising due diligence obligations within the corporate governance apparatus. The model's extraterritorial application extends its deterrent reach, particularly in relation to cross-border tax evasion and bribery facilitated by multinational subsidiaries.[65]

Sections 45–46 of the Criminal Finances Act 2017 specifically target facilitation of tax evasion, criminalising organisational neglect where employees collude in schemes such as false invoicing or third-party misrepresentation. By extending corporate liability even in the absence of senior management complicity, the UK legal framework embeds systemic culpability, aimed at addressing both wilful blindness and inadequate governance.[66] Yet, the actual effectiveness of this model depends on prosecutorial use and judicial interpretation. Introduced by the Crime and

[64] *Tesco Supermarkets Ltd v Nattrass* [1971] UKHL 1, *Serious Fraud Office v Barclays* [2018] EWHC 3055 (QB)
[65] UK Government, 'Policy Paper Economic Crime and Corporate Transparency Act: Failure to Prevent Fraud Offence' (2024) https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-act-2023-factsheets/economic-crime-and-corporate-transparency-act-failure-to-prevent-fraud-offence#how-does-the-offence-apply-outside-the-uk
[66] The company has a defence if it can show that it had in place adequate or reasonable procedures to prevent the offence.

Courts Act 2013 (Schedule 17), DPAs are a voluntary deal between a prosecutor and a company, where prosecution is paused for a set time. In return, the company agrees to specific conditions such as paying fines, improving compliance, cooperating with investigations, and compensating victims. If the company meets these terms, the prosecution is dropped. While pragmatic, the growing reliance on DPAs raises normative questions about corporate impunity and the erosion of punitive credibility in corporate criminal law. Modelled on section 7 of the Bribery Act 2010, the Criminal Finances Act 2017 imposes criminal liability on organisations that fail to prevent persons associated with them from facilitating tax evasion.[67]

(b) Criminalisation of Corruption Offences in the UK

(i) Criminalisation of Individuals and the Elusive Boundaries of Corruption

While tax breaches may be prosecuted as criminal offences under UK law, the conceptual scaffolding that underpins corruption-related offences remains notably opaque. UK criminal law does not codify the term "corruption" per se; instead, it relies on functionally proximate offences such as bribery and fraud to prosecute what are commonly understood as corrupt acts. This definitional lacuna reflects both the elasticity of the corruption concept and the evolution of statutory emphasis toward prosecutable conduct rather than overarching moral or political constructs.

The Bribery Act 2010 represents a legislative watershed, modernising and consolidating disparate common law principles into four primary offences. Sections 1 and 2 specifically apply to individuals, criminalising both the offering and acceptance of undue advantage in exchange for improper conduct. The Act thereby centres legal culpability not on abstract notions of corruption but on the more tangible exchange relationship involving misuse of entrusted power.

The case of *R v Munir Patel* illustrates how low-value but high-frequency acts of bribery by public officials can be met with custodial sanctions that can serve to restore public confidence in

[67] A similar approach is also adopted in Economic Crime and Corporate Transparency Act 2023. Home Office, Guidance to organisations on the offence of failure to prevent fraud, November 2024, https://assets.publishing.service.gov.uk/media/67331b8ff407dcf2b561350a/Failure_to_Prevent_Fraud_Guidance_-_English_Language_v1.3.pdf

institutional integrity.[68] Judicial commentary in this case reaffirmed the importance of upholding trust in public functions, particularly when exercised by court personnel, whose duties lie at the very heart of justice. Judge McCreath stated that Mr Patel 'created a danger not only to the integrity of the process but also to public confidence in it. A justice system in which officials are prepared to take bribes in order to allow offenders to escape the proper consequences of their offending is inherently corrupt and is one which deserves no public respect and which will attract none.'[69] Mr Patel committed a very serious breach of trust, and Judge McCreath believed that only the most serious punishment, in the form of imprisonment, can restore the public's confidence in public officials.

Notably, the Act omits the term "corruption," reinforcing the functional, rather than conceptual, approach to legislative drafting. This omission generates a definitional overlap between bribery, corruption, and fraud, further compounded by the Fraud Act 2006. The latter criminalises false representation (Section 2), failure to disclose information (Section 3), and abuse of position (Section 4), all of which can intersect with corrupt intent. The offence of fraud by abuse of position, in particular, mirrors classic corruption scenarios involving discretionary authority and personal gain.

The divergence between civil and criminal legal thresholds adds another layer of complexity. In civil claims, bribery need not entail intent to procure improper performance, and restitution can be sought even when the benefit to the payer was not established. By contrast, criminal bribery requires a more narrowly construed intention to induce or reward improper performance. This duality illustrates the legal pluralism with which corruption is navigated across the UK legal landscape.

For policymakers, this definitional ambiguity matters less than the functional distinction between offences involving abuse of power and those devoid of such asymmetries. By contrast,

[68] *R v Munir Patel* (Unreported, Southwark Crown Court, HHJ, McCreath, A, 18 November 2011). For the relationship between of custodial sentences and public confidence and trust in the judiciary see, Arie Freiberg, 'Bridging Gaps, Not Leaping Chasms: Trust, Confidence and Sentencing Councils' (2021) 12(3) International Journal for Court Administration, 6. DOI: https://doi. org/10.36745/ijca.421; Anne Wallace and Jane Goodman-Delahunty, 'Measuring Trust and Confidence in Courts' (2021) 12(3) International Journal for Court Administration 3. DOI: https://doi.org/10.36745/ ijca.418; and Roberts, J.V. and Hough, Mike (2011) Custody or community: exploring the boundaries of public punitiveness in England and Wales. Criminology & Criminal Justice 11 (2), pp. 181-197.

[69] Ibid (n 68)

enforcement bodies, including HMRC, the SFO, and the FCA, prioritise legal clarity and evidentiary tractability. Prosecutors must grapple with doctrinal nuance, case-specific facts, and available sanctions, making statutory precision a practical imperative rather than a theoretical concern.[70] This will then enable them to tailor suitable responses to the offences. The abuse of power, whether public or private, can potentially undermine trust in the government and distort business processes in the private sector. For investigatory organisations the definitions of specific crimes of corruption/fraud are of initial importance, because they focus on the complexity and type of the crime; harm caused and resources available. Prosecutors apply the law to the facts in each case, so details and definitions of specific crimes are useful. Nevertheless, the evidence and sanctions available to prosecutors will fundamentally influence the prosecutors' decision as to which offence(s) to charge.

Therefore, setting out specific definitions of these crimes is important. A simple dichotomy of corruption versus fraud is therefore of little use to investigatory organisations; prosecutors and public/private sector organisations, whereas policy makers are interested in the more general distinction between offences which involve abuse of power and those which do not.

The UK's commitment to the OECD Convention and the UN Convention Against Corruption, 2003 (UNCAC) reinforces the political salience of tackling abuse of power in international business. Yet the domestic legislative framework, anchored in bribery and fraud, remains conceptually fragmented. This calls into question the semantic coherence of the UK's anti-corruption regime and highlights the ongoing tension between international definitional frameworks and national prosecutorial practice. The Law Commission's 2008 report criticised the UK's bribery laws as outdated and fragmented,[71] prompting the Bribery Act 2010. This Act modernised the legal framework, clarified bribery definitions, aligned with international standards, and introduced a corporate offence for failing to prevent bribery.

(ii) Criminalisation of Corruption for Corporations in the UK

For corporations, Section 7 of the Bribery Act 2010 represents a paradigm shift: liability no longer depends on *mens rea* within the corporate hierarchy but on the organisation's failure to prevent

[70] Moiseienko and Izenman (n 6).
[71] Law Commission, Reforming Bribery 2008, LAW COM No. 313, https://assets.publishing.service.gov.uk/media/5a7c66cfed915d6969f449dd/0928.pdf

bribery by associated persons. This strict liability regime is intended to cultivate internal compliance ecosystems that proactively detect and deter corrupt conduct. It places the onus on firms to demonstrate that they had "adequate procedures" in place; a compliance defence that reorients the corporate duty from reactive denial to anticipatory governance. While the statute theoretically empowers regulators to hold firms accountable irrespective of intent, enforcement outcomes reveal mixed effectiveness.[72] The majority are charges under section 1 (offence of bribing another person) and under section 2 (offence of taking bribes). There have been two convictions under section 7, 'failure of commercial organisations to prevent bribery'. The largest financial penalty for a company resulting from prosecution under the Act included a fine of £1.4m, a confiscation order of £850,000 and £95,000 in costs.[73]

However, only two convictions under this provision in 10 years, out of a total of 99 prosecutions, suggest the expectations have been unmet. According to the Simmons & Simmons,[74] there are 13 cases of DPA which have been approved, rejected or pending approval between the Serious Fraud Office (SFO) and the Crown Prosecution Service. Of these 13 cases, the case of *R v Sweett Group Plc (unreported)* and *R* v *Skansen Interiors Lt (unreported)* illuminate the statute's legal and practical contours.[75] In Sweett, the company's lack of cooperation prompted the SFO to pursue prosecution rather than a DPA, a signal that engagement with authorities is a strategic variable in regulatory outcomes. By contrast, Skansen Interiors, a dormant firm without assets, was convicted but received an absolute discharge, raising questions about the deterrent value of criminal prosecution in the absence of corporate solvency or active operations.[76]

The broader significance of Section 7 may lie less in courtroom convictions and more in its utility as regulatory leverage. The SFO has increasingly used the threat of prosecution to negotiate DPAs, resulting in substantial financial settlements and imposed compliance reforms. This quasi-

[72] N Blundell and J Reid, 'Bribery Act 2010: 10 Years in Numbers' (*Macfarlanes Blog*, 2020) https://blog.macfarlanes.com/post/102g50t/bribery-act-2010-10-years-in-numbers
[73] Ibid.
[74] Simmons & Simmons, 'Deferred Prosecution Agreement Tracker' (*Deferred Prosecution Agreement Tracker*, 2024) https://www.simmons-simmons.com/en/publications/ck0a1enh36awc0b94oi3o7sab/191017-deferred-prosecution-agreement-tracker
[75] UK Parliament, Post Legislative Scrutiny, Chapter 6: Failure to prevent bribery (section 7), https://publications.parliament.uk/pa/ld201719/ldselect/ldbribact/303/30309.htm
[76] The Sweett Group was found making corrupt payments to Al Ain Ahlia Insurance Company, to secure a £1.6 million project management and cost consulting contract.

enforcement model aligns corporate self-reporting with public interest goals, though critics argue it may undercut criminal accountability in exchange for fiscal expediency.

Ultimately, while the Bribery Act 2010 embeds a robust compliance logic, its limited deployment under Section 7 reflects enduring challenges in corporate criminal enforcement—ranging from evidentiary hurdles and procedural economy to judicial conservatism and regulatory resourcing. Whether this model will evolve into a potent mechanism for deterring corporate corruption depends on future case law, prosecutorial strategy, and political will.[77]

3. Triadic Dilemma 3: Critique of the Corporate Criminal Liability Model for prosecuting Tax Crimes in the UK

The UK's evolving corporate criminal liability framework reflects a growing intent to hold organisations accountable for systemic economic misconduct, particularly tax crime. However, the current legal architecture suffers from significant inconsistencies in scope, terminology, and enforcement rationale**,** especially when applied to corporate failure to prevent tax-related offences.

(i) Legal Fragmentation and Doctrinal Disparities

The ECCTA introduces offences such as failure to prevent fraudulent evasion of duty under section 170 of the Customs and Excise Management Act 1979. Liability hinges on whether the wrongdoer is "associated" with the company, interpreted broadly under section 199(7) and contextualised in section 199(9) to reflect all relevant circumstances. This appears conceptually aligned with sections 45 and 46 of the Criminal Finances Act 2017, which establish corporate liability for failure to prevent tax evasion.

Yet, closer scrutiny reveals a doctrinal mismatch**.** While both offences hinge on dishonest conduct by an associated party, the Criminal Finances Act 2017 imposes liability only when tax evasion is committed in the course of employment or agency. Moreover, organisations may evade liability by demonstrating they had - or were not reasonably expected to have - adequate prevention procedures. The ECCTA, conversely, employs a more expansive approach, enabling a holistic assessment of corporate culpability, regardless of formal employment status. Senior managers are now liable for certain economic crimes, including fraud, under section 196 ECCTA when they act

[77] The largest penalty imposed by SFO was £991m (including both a fine and costs) SFO, 'Case Information, Airbus Group' (2022) https://www.sfo.gov.uk/cases/airbus-group/

within their actual or apparent authority. If the Crime and Policing Bill is passed, then senior managers will be liable for all economic crimes.

The effect of this is that there is no need to show intention to benefit the organisation to be shown to establish liability, and companies can be prosecuted for the economic crime committed by the relevant senior manager. This creates inconsistent thresholds for corporate responsibility across analogous tax crimes**,** diluting normative clarity and undermining deterrence. Functionally similar offences, such as failure to prevent false invoice fraud, bribery, or duty evasion, are governed by disparate statutes with divergent evidentiary and procedural demands. The result is a fragmented landscape where substantively similar misconducts produce variable corporate exposure**.**

(ii) Conceptual Overlap and Enforcement Gaps

Tax fraud often functions as a conduit to mask corruption**,** such as bribery hidden within inflated or falsified invoices. Yet the legal architecture fails to consolidate these interlinked harms within a unified statutory response. Instead, invoice fraud may fall under the ECCTA, while bribery is prosecuted under Section 7 of the Bribery Act 2010. Section 7 is notably broader: it does not require any formalised relationship between the wrongdoer and the corporation, focusing instead on outcomes (i.e., securing a business advantage).

The asymmetry in legal burdens between anti-bribery and anti-tax evasion legislation is therefore stark. Section 7's wide net contrasts with the narrow scope of sections 45–46 Criminal Finances Act 2017, restricting enforcement to internal personnel and requiring firms to demonstrate preventative compliance. This inconsistency fosters regulatory confusion about when and how corporations can be held liable for misconduct facilitated through opaque financial practices.

Given the symbiotic relationship between tax evasion and corruption**,** there is compelling logic in subsuming egregious tax fraud within the corruption framework. High-profile scandals such as Swiss Leaks[78] and the Panama Papers[79] confirm that tax evasion is not simply a revenue issue, it actively erodes global public goods, fosters cross-border illicit finance[80] and diminish public trust

[78] International Consortium of Investigative Journalists, Swiss Leaks (2015) https://www.icij.org/investigations/swiss-leaks/
[79] International Consortium of Investigative Journalists, Panama Papers (2023) https://www.icij.org/investigations/panama-papers/
[80] HM Revenue and Customs, 'Taskforce Launches Criminal and Civil Investigations into Panama Paper' (2016) www.gov.uk/government/news/taskforce-launches-criminal-and-civil-investigations-into-panama-papers https://perma.cc/NLJ5-GZE8

in governmental institutions.[81] When banks, offshore intermediaries, and corporate advisors operate as enablers, the argument for aligning tax fraud with corruption under Section 7 becomes not just doctrinal but ethical.

(iii) The Enforcement Landscape: Strategic Minimalism

While common law and statutory provisions offer prosecutors considerable latitude, including offences such as cheating the public revenue, actual prosecution practice remains selective and restrained. Most tax fraud cases are resolved through HMRC civil procedures (e.g. Code of Practice 9), with criminal prosecution reserved for highly egregious misconduct. The Crown Prosecution Service, meanwhile, relies on a patchwork of offences under the Fraud Act 2006, Theft Act 1968, and various tax statutes, each with distinct evidentiary burdens.

Despite mounting corporate tax losses (e.g. a £13.7 billion gap in 2023), criminal charges under Sections 45–46 remain rare. As of January 2025, only 11 investigations were active, and no prosecutions initiated. Of 140 total "opportunities," over 100 were declined, suggesting systemic underutilisation of legal tools**,** possibly due to resourcing constraints, evidential complexity, or risk aversion in prosecuting powerful corporate actors.

The SFO, while more visible in bribery prosecutions, has also struggled to secure convictions. Recent acquittals in *Tesco Stores Ltd*, *Serco Geografix Ltd*, and *Güralp Systems Ltd* highlight the forensic and procedural fragilities of high-profile corporate trials. Juries often acquit senior executives, and prosecutorial missteps, such as disclosure failures, further undermine credibility.

(iv) Toward Legal Coherence and Substantive Parity

The prosecution gap, coupled with inconsistent statutory design, reveals a troubling disconnect between legal capacity and enforcement reality**.** While lawmakers have progressively expanded the theoretical scope of corporate criminal liability,[82] the actual mechanisms for pursuing complex tax corruption remain halting and fragmented. [83]

---

[81] *Supra note* 59, Turksen *et al*., p. 136

[82] A Tenbrunsel, 'VIRTEU Roundtable - CSR, Business Ethics, and Human Rights in the Area of Taxation, CORP. CRIME OBSERVATORY' (2021) https://www.corporatecrime.co.uk/vir-teu-csr-business-ethics

[83] N Lord, K Wingerde and L Campbell, 'Organising the Monies of Corporate Financial Crimes via Organisational Structures: Ostensible Legitimacy, Effective Anonymity, and Third-Party Facilitation' (2018) 8 Administrative Sciences 1

Closing these gaps requires more than statutory tweaks. It demands a recalibration of corporate criminal law**,** aligning the treatment of tax evasion with bribery and integrating corruption through an analytic and prosecutorial lens. This approach would mirror the real-world function of corporate misconduct, as interconnected forms of financial crime, and support a governance framework that privileges functional impact over statutory formalism**.**

The examples shown here expose how corporations actively enable third-party criminality, playing a direct role in the supply side of corruption through concealment.[84] This insight underscores the case for treating tax evasion not merely as a financial offence but as a form of corruption. The next section critically examines how the UK prosecutes tax evasion and corruption. It reveals striking overlaps: (a) between individual offences and corporate failures to prevent bribery under the Bribery Act 2010; (b) between the common law offence of cheating the public revenue and statutory tax evasion offences; and (c) between conspiracy to corrupt and failures under section 7 of the Bribery Act 2010.

(a) Prosecution Practice of Tax Fraud and Corruption in the UK

There is currently no legislation which explicitly deals with tax fraud or tax corruption. There is no single offence of 'tax evasion/fraud' either.[85] The Crown Prosecution Service can charge individuals under several statutory or common law offences depending on the gravity of the offence. The statutory offences that may be charged include: Fraud (section 1, Fraud Act 2006); False accounting (section 17, Theft Act 1968); Fraudulent evasion of VAT (section 72(1), Value Added Tax Act 1994 (VATA 1994)); False statement for VAT purposes (section 72(3), VATA 1994); Conduct amounting to an offence (section 72(8), VATA 1994); Fraudulent evasion of income tax and Improper importation of goods (section 50(1)(a) and (2) Customs and Excise Management Act 1979).

[84] A Skipper, 'The Attorney's Facilitation of Transnational Corruption: Shortcomings of the United States Anti-Money Laundering Framework' (2020) 33 Georgetown Journal of Legal Ethics 825

[85] A Craggs and R Waterson, 'Criminal Prosecutions for Tax Fraud Overview' (*Practical Law Business Crime and Investigations*, 2023) https://uk.practicallaw.thomsonreuters.com/Document/Iffa7e7b85ac111e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad740350000018c8cbb8ecbd59f69ef%3Fppcid%3Da16804a9bd9a4405a0d256b69ecc4de5%26Nav%3DKNOWHOW_UK%26

In practice, the Crown Prosecution Service will often rely on the common law offence of cheating the public revenue for serious types of tax fraud.[86] The common law offers a wider scope of tax offences than statutory offences, and the common law offence can be satisfied without a false representation by words or conduct. Whilst the offence of cheating the public revenue offers more flexibility and scope for prosecution, this is where we see overlap between tax and criminal laws. The example of no single offence of 'tax evasion/fraud' mentioned above illustrates this overlap. In addition, dishonesty is required to prove that someone has acted in a fraudulent manner in tax evasion. The leading case on dishonesty is *Ivey v Genting Casinos (UK) Ltd t/a Crockford*.[87]

In the UK, the HMRC prosecute most tax fraud cases using the Civil Investigation of Powers Procedures under the Code of Practice 9.[88] HMRC only use criminal investigations for the most serious cases, such as alleged corruption and VAT 'bogus' registration repayment fraud. HMRC is not responsible for deciding if a case will be criminally prosecuted.[89] It is the Crown Prosecution Service in England and Wales which ultimately decide whether to prosecute under criminal law. Criminal prosecution for tax offences is typically reserved for the most serious cases, with decisions shaped by the offence's severity, evidentiary strength, public interest, and the challenges of pursuing complex or corporate offenders.

As of 27 January 2025, there are 11 ongoing investigations under sections 45 and 46, of which HMRC has not instigated any criminal charges.[90] There are 28 live opportunities under review, and they also rejected an additional 101 opportunities. Investigations and prosecutions will not always lead to convictions, and the number of investigations is not necessarily an indicator of

[86] HMRC, 'Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion' (September 2017) https://assets.publishing.service.gov.uk/media/5a82aaa0e5274a2e8ab58b82/Tackling-tax-evasion-corporate-offences.pdf
[87] [2017] UKSC 67
[88] HMRC, 'Corporate Report, Fraud Investigation Service: Technical Note' (30 July 2024) https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2023-to-2024-technical-notes/fraud-investigation-service-technical-note. HMRC particularly draws its criminal investigation powers from: England and Wales (and Northern Ireland): Police and Criminal Evidence Act 1984 (PACE). Scotland: Criminal Justice (Scotland) Act 2016 (consequential provisions) Order 2018 (known as CJSA); and Criminal Law (Consolidation) (Scotland) Act 1995 and the Criminal Procedure (Scotland) Act 1995.
[89] HMRC, 'Guidance HMRC's criminal investigation powers and safeguards' (2021) https://www.gov.uk/government/publications/criminal-investigation/criminal-investigation
[90] HMRC, 'Number of Live Corporate Criminal Offences Investigations' (*Number of live Corporate Criminal Offences investigations*, 2025) https://www.gov.uk/government/publications/number-of-live-corporate-criminal-offences-investigations/number-of-live-corporate-criminal-offences-investigations

success in reducing tax evasion. The SFO has 25 live criminal investigations against companies for bribery and fraud.[91] Although individuals were prosecuted in recent cases, they were not punished for two reasons: (1) insufficient or erroneous evidence; and (2) juries acquitting senior executives.[92]

In the cases of *Serious Fraud Office v Tesco Stores Ltd*[93] and *Serious Fraud Office v Serco Geografix Ltd,*[94] the prosecution of individuals for fraud and false accounting did not proceed. In *Tesco Stores Ltd*, the verdict of no case to answer resulted from insufficient evidence against the individuals by the prosecution. In the latter case, uncovered errors were made in the non-disclosure of certain materials. Juries in the *Serious Fraud Office v Güralp Systems Ltd*[95] and *Serious Fraud Office v Sarclad Ltd*[96] cases acquitted the senior executives concerned.

(b) *Serious Fraud Office v Güralp Systems Ltd*[97]

The *SFO v Güralp Systems Ltd (GSL)* case[98] exemplifies a striking asymmetry in corruption enforcement. While the demand side, embodied by Dr Chi, a South Korean public official, was prosecuted and convicted, the supply side, involving the corporate actors and their executives, largely escaped penal accountability. Dr Chi's use of fictitious invoicing and instructions to destroy email correspondence exposes a textbook case of fraud-enabled corruption. Yet, despite compelling evidence implicating GSL and its senior employees, the prosecutorial and judicial outcomes suggest structural leniencies afforded to suspected corporate offenders under the UK's DPA regime.

GSL faced two charges: (1) conspiracy to corrupt spanning over a decade (2002–2015), and (2) failure to prevent bribery under section 7 of the Bribery Act 2010 (2011–2015). The trial judge's

[91] Serious Fraud Office, 'Serious Fraud Office Criminal Investigations' (2024) https://www.sfo.gov.uk/our-cases/current-cases/
[92] S Hawley. 'Power Without Responsibility: The state of senior executive accountability for economic crime in the UK today', Spotlight on Corruption (2024) https://www.spotlightcorruption.org/report/power-without-responsibility/
[93] [2019] EW Misc 1
[94] [2019] 7 WLUK 45
[95] [2020] Lloyd's Rep. FC Plus 8
[96] [2016] 7 WLUK 211
[97] Ibid.
[98] *Serious Fraud Office v Güralp Systems Ltd* (n 108), paragraph 25.

assessment that the latter added "little" to the conspiracy count implicitly undermines the independent utility of the failure-to-prevent model. This marginalisation raises fundamental questions about the prosecutorial value of section 7, despite the SFO's assertion that evidential thresholds for both charges were met under the Full Code Test.

Despite email evidence[99] confirming unlawful conduct (e.g., bribery), the UK-based defendants, including senior executives Güralp, Pearce and Bell, were acquitted. Ironically, GSL had already conceded in its statement of facts that employees paid approximately $1 million in bribes in return for confidential commercial intelligence and contract awards.[100] The glaring disconnect between corporate admissions and individual acquittals illustrates a central paradox in corporate criminal law: group culpability without corresponding individual liability.

The approval of a DPA was justified as a balancing act. On the one hand, GSL's conduct (systematic bribery across ten years) mirrored corrupt practices observed in *SFO v Rolls Royce Plc*, a far more severe case.[101] On the other, mitigating factors (voluntary self-reporting, removal of implicated personnel, absence of prior misconduct, and post-incident reforms) helped tip the scales toward leniency towards non-prosecution. This leniency echoes a broader concern that the DPA regime frontloads considerations of collateral consequences, such as economic disruption and job losses, typically reserved for post-conviction sentencing.[102] This pretrial cost-benefit analysis can distort justice by allowing economic concerns to eclipse the gravity of corporate wrongdoing.

Furthermore, the DPA framework introduces interpretive subjectivity into the public interest test. While prosecutors must satisfy both evidential sufficiency and public interest justifications, the latter remains open to judicial discretion. This flexibility, while pragmatic, risks prioritising economic utility over legal consistency and undermines the rule of law[103] and equality before the

[99] Office of Public Affairs U.S. Department of Justice, 'Director of South Korea's Earthquake Research Center Convicted of Money Laundering in Million Dollar Bribe Scheme' (Press Release, 2017) https://www.justice.gov/opa/pr/director-south-koreas-earthquake-research-center-convicted-money-laundering-million-dollar

[100] A Reeves and R Cowley, 'Güralp DPA Announced after Employees Acquitted of Bribery Offences' (*Regulation Tomorrow*, 2019) https://www.regulationtomorrow.com/eu/investigations-and-enforcement/guralp-dpa-announced-after-employees-acquitted-of-bribery-offences/

[101] [2017] Lloyd's Rep. FC 249

[102] C King and N Lord, 'Deferred Prosecution Agreements in England & Wales: Castles Made of Sand?' [2020] Public Law 307

[103] J Grant, 'The Ideals of the Rule of Law' (2017) 37 Oxford Journal of Legal Studies 383.

law.[104] In this sense, the DPA model risks institutionalising a dual track of justice: one for corporations and another for individuals.

Indeed, critics like Campbell, King and Lord underscore the SFO's apparent reluctance, or incapacity, to prosecute large firms outright.[105] Their argument gains weight from a statistical dearth of corporate convictions and is reinforced by the GSL outcome. Reilly's concern about the erosion of deterrence and redress for victims of economic crime is particularly salient here.[106]

In the GSL case, the corporation was praised for its co-operation, leadership overhaul, and improved compliance protocols. The SFO even delayed interviewing replacement staff to align with ongoing investigations, a practice increasingly institutionalised under its Corporate Co-operation Guidance.[107] However, this cooperative posture, while lauded, perpetuates a troubling trend: corporate admissions securing DPAs while shielding individuals from meaningful accountability.

This dynamic diminishes the functional relevance of new statutory tools. For example, failure-to-prevent offences under section 7 of the Bribery Act 2010 or section 199 of the ECCTA appear largely ineffectual if prosecutorial practice continues to prioritise institutional co-operation over punitive consequence.

From a policy standpoint, DPAs offer pragmatic enforcement options, particularly where evidence is diffused or cross-jurisdictional coordination is necessary. Yet they also entrench a prosecutorial dependency on corporate goodwill, which paradoxically weakens enforcement leverage. As Lord Justice Edis noted, judicial scrutiny of DPAs is narrowly confined to corporate culpability,[108] leaving individual criminality largely untouched.

---

[104] R Winter, 'Changing Concepts of Equality: From Equality Before the Law to the Welfare State' [1979] Washington University Law Quarterly 741

[105] Ibid.

[106] P Reilly, 'Corporate Deferred Prosecution as Discretionary Injustice' (2017) 5 Utah Law Review 839

[107] Serious Fraud Office, 'Corporate Co-Operation Guidance' (*Corporate Co-operation Guidance* 2023) https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/corporate-co-operation-guidance/

[108] *Serious Fraud Office v Amec Foster Wheeler Energy Ltd* unreported 1 July 2021 (Crown Court, Southwark)

DPAs are attractive to both prosecutors and corporations: low-cost, low-risk, and reputationally manageable. But for smaller firms and victims of economic crime, they perpetuate inequality.[109] The evidentiary burdens, financial penalties, and reputational stakes disproportionately impact small and medium-sized enterprises s, whereas larger entities with technical specialisation or economic clout are more likely to negotiate favourable settlements. Consequently, the DPA regime risks becoming a mechanism of structural privilege, rather than an engine of accountability.

(c) Deferred Prosecution Agreements

The failure-to-prevent model of corporate liability, grounded in strict liability, was intended to incentivise companies to embed compliance within their institutional DNA.[110] However, in practice, the mechanism has been substantially undermined by prosecutorial emphasis on co-operation over culpability within the DPA framework. As the *Serious Fraud Office v Amec Foster Wheeler Energy Ltd* (AFWEL) case illustrates, judicial scrutiny of DPAs is narrowly circumscribed. Lord Justice Edis noted the Court's role is confined to verifying corporate liability, leaving questions of individual culpability largely unexamined.[111]

This dynamic creates a perverse outcome: one factor bolstering a company's DPA eligibility is the removal of senior staff responsible for wrongdoing. Yet once removed, these individuals often evade prosecution, dissolving the link between individual and corporate criminal liability. The result is an accountability vacuum, where institutional reform is praised but personal liability is diluted or lost entirely.

From a policymaking standpoint, DPAs offer pragmatic value; they conserve judicial resources, promote swift resolution, and avoid the socio-economic fallout of criminal convictions. Companies, particularly those with international exposure or complex governance structures, find DPAs a palatable alternative to full prosecution. However, this practical appeal introduces systemic inequalities. Large firms, with financial resilience and legal sophistication, can shoulder

[109] O Charles and U Turksen, 'Deferred prosecution agreements: A soft touch?' in A Philips et al., *Organised Crime, Financial Crime, and Criminal Justice* (eds) (Routledge 2023) and C Wells, 'Who's Afraid of the Bribery Act 2010?' (2012) 5 Journal of Business Law 420
[110] Ibid.
[111] *Serious Fraud Office v Amec Foster Wheeler Energy Ltd* unreported 1 July 2021 (Crown Court (Southwark)

DPA penalties and compliance undertakings. In contrast, small and medium-sized enterprises may struggle to absorb equivalent sanctions or access comparable settlement pathways.

For victims and the broader public, DPAs can appear deeply inequitable. Major corporations are often deemed "too complex to convict," and judges increasingly factor in the economic repercussions of prosecution even before a final hearing. Beyond size, sectoral expertise itself may become decisive. Corporations in niche markets - banking, technology, pharmaceuticals - are increasingly insulated by their economic indispensability. As Laird suggests, "the question in future may not be one of size, but of expertise." [112]

4. Implications and Recommendations

Prosecuting corporate tax crime in England and Wales, particularly forms that straddle tax fraud, tax corruption, and fraud-enabled corruption, remains complex and underenforced. This is due, in part, to the fragmented legal terrain from which tax offences emerge: a confluence of common law, criminal statutes, and a shifting regulatory framework. This legal architecture lacks the coherence necessary for streamlined enforcement and creates significant interpretive latitude, particularly in distinguishing between tax avoidance (legal), aggressive tax planning (questionable), and tax evasion (criminal).

These semantic gradations matter deeply to different institutional actors. Policymakers are concerned with ethical boundaries and the abuse of power for private gain; enforcement agencies, in contrast, require definitional clarity to guide legal action. The blurring of boundaries between fraud and corruption, and between tax evasion and bribery supports the normative argument for classifying corporate tax crime within the broader legal and conceptual umbrella of corruption. Tax evasion, like bribery, is a crime of dishonesty, concealment, and elite advantage. Classifying both under corruption could sharpen enforcement tools and reinforce social condemnation.

A practical step toward such realignment is suggested by Moiseienko and Izenman: corruption-linked tax offences could be flagged manually within the case management systems.[113] Although this would entail administrative overhead, the benefits such as more accurate prosecution data, greater visibility of corruption-enabled fraud, and improved metrics for assessing policy efficacy,

[112] K Laird, 'Deferred Prosecution Agreements: The Latest Developments' (2021) 4 Criminal Law Review 283
[113] Moiseienko and Izenman (n 6)

could outweigh the costs. As with any procedural reform, a careful cost-benefit analysis is warranted.

The *Güralp Systems Ltd* (GSL) case reinforces the marginal utility of the failure-to-prevent model. Despite strong evidence supporting both the primary charge (conspiracy to corrupt) and the secondary offence (failure to prevent bribery), the latter was deemed redundant. This indicates that prosecutorial discretion continues to favour primary conspiracy or bribery offences, relegating failure-to-prevent charges to a supplementary role. Consequently, the legislative intent behind the strict liability framework to broaden corporate culpability and encourage proactive compliance remains unfulfilled.

Moreover, the application of the Bribery Act 2010 and the Criminal Finances Act 2017 has failed to hold companies accountable. Structural and evidentiary challenges in attributing criminal intent to senior personnel, especially within complex corporate hierarchies, means individual culpability remains elusive. Even where knowledge of wrongdoing is widespread, attribution thresholds for criminal responsibility remain high.

In this landscape, DPAs emerge as an attractive enforcement compromise. For prosecutors, they conserve resources; for corporations, they avoid criminal conviction and reputational ruin. However, their widespread use risks diluting the deterrent function of corporate criminal law. The potential for DPAs to be granted more readily to large or specialised firms introduces a de facto hierarchy in enforcement, where prosecutorial pragmatism substitutes for legal equality. Such a trend is antithetical to the principle that justice should be blind to size, influence, or market relevance.

5. Conclusion

The triadic dilemma in the criminalisation and prosecution of corporate tax fraud/evasion and corruption shows that first, legal definitions are useful to prosecutors to an extent, but ultimately, the evidence and sanctions available will determine the specific offences used. Secondly, by analysing the criminalisation and prosecution of tax crimes and corruption/bribery, we build on Moiseienko and Izenman's work by providing a richer context of the additional challenges in defining 'tax fraud/evasion' and 'tax corruption'. It makes sense to bring the definition of tax

fraud/evasion with corruption, as these two crimes are intertwined.[114] Nevertheless, this theoretical proposal will be of little benefit to prosecutors, since they select suitable offences to charge according to the available evidence and sanctions. Finally, our evaluation reveals that the failure to prevent offences may be of secondary importance if the individuals in the corporations are also charged with relevant offences. The divergent, interwoven and ambiguous nature of this area leads to challenges in enforcement of these crimes. More cost-benefit analysis into marking fraud cases (including tax fraud) overlapping with corruption would be beneficial in providing more accurate statistics, and thus prosecution of such crimes.

[114] Alm, Martinez-Vazquez and McClellan (n 5)