



# Taxing Matters

## Does the Economic Crime Act really have teeth?

- Alice** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and 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 fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters).
- On 15 March, 2022, the “Economic Crime, Transparency and Enforcement Act” came into force after having been fast-tracked through Parliament in response to urgent calls for the UK’s economic crime laws to be tightened. This Act is one part of the long-awaited response to calls for reform in this area, including calls for the reform of the Law of Corporate Criminal Liability – which lessons may recall from our episodes with Law Commissioner David Allen and Barrister Robin Loof – but what is it that the Economic Crime Act does?
- Here to help us find answers to this question is Tom Godfrey. Tom is a Barrister at 23 Essex Street Chambers where he has a wide-ranging and diverse practice that sees him instruct beyond the most serious and complex crime and financial crime cases. Tom is an excellent advocate and a pleasure to listen to, which one might expect given that he has a background in theatre, which includes highlights such as playing a hookah-smoking turtle in a production of Alice in Wonderland. He then turned his attention to the law, and here we are today.
- Tom, welcome to Taxing Matters.
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- Tom** Hi Alice. Thanks for that introduction.
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- Alice** So, the Economic Crime Act – it’s much delayed and much lauded. It has finally become law! How did it come about though?
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- Tom** Well, you’re right to say it’s been a long-awaited response to what’s been a problem the Government have identified a long time ago, but the proposals were not new ones, tabled since 2016.
- Whilst certainly events in Ukraine have precipitated the introduction of the Act, the war itself of course is not its origin. The Government indicated its intention a long time ago to establish a register of overseas entities and that’s what we finally now have within part 1 of this new Act. The real question is why the delay? Six years after they indicated their initial intention – all legislation takes some time to come through – but the Government seem to have been slower than, certainly, most people would have wanted.
- In 2017 the Government themselves called for evidence of creation of such a register and, as we know, in July 2018 they published a draft register of an ‘Overseas Entities Bill’. Then followed a public consultation. So, they’ve been on the case, but it’s taken, I think the recent events, to really mean that there could be no further delay in implementing this Act. So, the cynical amongst us might suggest that there may have been some impetus on the part of the Government not to discourage foreign investment into the UK, particularly so after Brexit of course, but recent events has certainly focused on these issues.
- The Act was passed just three days ago on its first reading. As we know, the aim is to clamp down on use of illicit funds in UK properties and to help enforcement against those who seek to do so.
- I suppose the real question will be how much teeth his legislation actually has and, importantly, whether they are willing to put in the funds and resources that will be required to, really, follow through on what a fairly grandiose promises being made by the Government.
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- Alice** So, as you have alluded there, the Act is in three parts: The first part dealing with an overseas property register, the second expanding the unexplained wealth order regime and the third part introducing a new penalty regime for sanctions breaches.
- Taking each of these parts in turn, why was it seen as necessary to enact this particular provision.

<b>Tom</b>	<p>Well, it's been a long-held belief that the UK, England and Wales, particularly London, is a haven for "dirty money". We've all seen depicted in the media, and indeed in TV shows, the views, quite rightly, held as to the problems London has in terms of money laundering.</p> <p>One of the principle aims of the Act is to crack down on those individuals and businesses, based overseas, using real estate in the UK to launder money. So that's the principle aim. Kwasi Kwarteng, our Business Secretary, believes that the implementation of this Act will have an immediate dissuasive effect on oligarchs attempting to hide their ill-gotten gains. Rishi Sunak said "our economic climate will enable us to crack down harder and faster on dirty money and those who support Putin and his regime".</p> <p>So, a clear message from the Government as to who the Bill is aimed at and, in a sense, triumphant in laying down the gauntlet to these foreign nationals who they perceive are investing "dirty money" through our capital and elsewhere. The necessity of the register, certainly as far as the Government are concerned it seems, is that no such register, hitherto, existed and in creating this 'fanfare' that the Government have, they are in some ways highlighting the deficiencies of the legislation that was, hitherto, in place.</p> <p>Certainly, it's the register of overseas entities that is proposed that the Government sees as a real tool in seeking to prevent this 'laundered' money flowing through the capital.</p>
<b>Alice</b>	<p>So, what is it that the new provisions in this part of the Act do?</p>
<b>Tom</b>	<p>Broadly speaking, as it says within the Act in Section 1, it 'makes provision designed to compel overseas entities to register if they own land'. In other words, introducing a requirement for overseas owners of UK properties to disclose the information as to who the beneficial owners are. So far as an overseas entity is concerned – that's defined as a legal entity which is governed by the law of a country or territory outside the UK. So, all non-UK entities that own or buy real property in the UK are mandated now to join a public register listing the entity's beneficial owner.</p> <p>Once such entities are registered, they will become a registered overseas entity. The requirement aims to prevent criminals hiding their property ownership behind chains of obscure shell companies because they will be forced to disclose who exactly the entities are.</p> <p>In terms of the registration, a person will be a beneficial owner if they either hold more than 25% of the shares, or voting rights, in that entity. They have the right to appoint, or remove the majority of the directors of that entity, or they have the right to exercise, or actually do exercise, significant influence or control over that entity.</p> <p>So, those are the individuals who will find themselves having to register under this new provision, part 1 of this Act. Of course, then Companies House will have to implement that registration which they will anticipate and endeavour to do as quickly as they can.</p> <p>The rules being introduced under part 1 apply retrospectively, so those properties bought since January 1999, in England and Wales, and since December 2014 in Scotland will require disclosure by the entity outside the UK. They will have six-months in which to register that interest from the date the provision comes into force. I should say that the original suggestion was that it should be an 18-month period, from the implantation of this Act, with which people could register their overseas entities in the interest and that was significantly reduced down to six-months and, indeed, there was argument as to being further reduced certainly – labour support a further reduction down to 28-days – but six months is the period by which such interest must be registered.</p>
<b>Alice</b>	<p>So, what is it that businesses might need to know about this particular provision?</p>
<b>Tom</b>	<p>Well, it is the registration, that it's now incumbent upon overseas entities to register with the nearly enacted "registration of overseas entities" and, as I say, it impacts overseas owners holding of UK lands since January 1999, so one has to go back over 20-years to look at what has been acquired by overseas entities, then requires the disclosure of those properties. It's an obligation on overseas entities to register or dispose of its interest in the property within six months of this legislation coming into force.</p> <p>So far as part 1 and part 2 – and we will look at part 2 unexplained wealth orders in due course – they have not come into force yet. Part 3 have, in fact, come into force – so far as the sanction changes. But as soon as it comes into force – part 1 – within six-months individuals and entities will have to comply with the strictures that are being put in place and register as is required.</p> <p>So, there are obligations being imposed upon individuals that, hitherto, hadn't been in place – and the other thing Alice, of course, the overseas companies – those involved in overseas entities – will need to comply with the new rules and ensure that they are properly registered at Companies House to enable them to deal with the UK property. Also, anyone transacting as such owners will need to see evidence of such compliance including of course anti-money laundering compliance.</p>

<b>Alice</b>	So that is the first part of that Act. The second part is, of course, unexplained wealth orders regime. Why was it necessary to amend this particular regime brought into force in the Criminal Finances Act 2017?
<b>Tom</b>	<p>I think they have realised, based upon the relatively few numbers of UWO's that have actually been used or enforced – I think it is four – that this is an under-used resource. What this Act seeks to do in effect to make it easier to use unexplained wealth orders against individuals. The idea, certainly, was that the plan behind UWO's was that there was an expectation that they would see an increase in civil recovery – and that is what the UWO's provided – how to confiscate criminal assets without having to prove to the criminal standard, The burden being placed on the individual to justify legitimacy of the funds – but, as I say, rarely been used.</p> <p>What we have now, having been introduced – albeit not actually enforced yet – but certainly as part 2 of this Act – seeks to make the use of these powers easier. It expands the definition of property covered and includes houses held in Trust, or Shell companies. It provides more time to the investigators to make their case and, really significantly I think, the investors are protected from having to pay costs – and that was always seen as a big disincentive to unexplained wealth orders. Unless the investigators have acted “unreasonably” – which is a fairly high threshold to satisfy – costs are not recoverable, incentivising the pursuance of these orders without the financial risk to the bodies seeking the new orders.</p>
<b>Alice</b>	Having given us the background to that, what is it that these provisions have actually introduced?
<b>Tom</b>	What they have really done is establish a lower test for the granting of a UWO. In this sense, instead of the court being satisfied that the known sources of lawful income would be insufficient to obtain the property – the previous test, it will now be sufficient if the court is satisfied that there are “reasonable grounds” for suspecting that the property has been obtained through unlawful conduct. So, lowering the threshold, really – the test – and, as I say, the idea that that simply makes it easier to obtain UWO's. It also has provided the enforcement authorities with the ability to apply for an “interim freezing order” alongside the application for a UWO to work in tandem
<b>Alice</b>	So, what do you see the impact of businesses, from these changes, as being?
<b>Tom</b>	<p>Well, I think businesses need to be aware of the changes in terms of their compliance and their obligations. The Act will bring individuals who own property in the UK through Trusts and Shell companies within the scope of the UWO rules.</p> <p>For businesses the compliance checks would need to be undertaken – so far as ensuring its Trust and Shell companies – now can be susceptible to unexplained wealth orders.</p>
<b>Alice</b>	Having dealt with part 1 property register, part 2 the unexplained wealth orders we now move onto part 3 which is arguably the most topical of the three parts introduced by this Act. It introduced a new penalty regime and new designation provisions. Why was it seen as necessary to introduce these changes.
<b>Tom</b>	<p>I think the commonly held view of the UK and Wales is that we had a weak record of sanctions enforcement. I think especially when compared with the US.</p> <p>What this Act seeks to do is to beef up the sanctions that the UK can impose and really as sort of a political ‘flexing of muscles’ to show that we are being tough in many ways it lives up to that billing.</p>
<b>Alice</b>	So, what is it that these provisions actually do?
<b>Tom</b>	Well, it amends the existing law in respect of sanctions in some quite significant ways. The most significant seems to me to be under chapter , part 2 of the Act: “In individual companies that breach a financial sanction, prohibition or failed to comply with an obligation will become subject to civil monetary penalties imposed by the office of financial sanctions and implementations...” obviously “on a strict liability basis” – that is the significant aspect of this part of the Act. Liability now rests on a strict liability basis. Previously a requirement to receive a fine for sanction breach the person must have known, or suspected, they were breaching sanctions law . Basis for liability now is a “strict liability” one, in other words it caters for errors and it caters for breaches that are unbeknownst to the individuals or the companies. It increases, I would suggest quite substantially, the scope for civil monetary penalties removing any real test as to liability.
<b>Alice</b>	That is the most significant change what other changes has the Act brought about.
<b>Tom</b>	The Act also enables authorities to publicly identify companies and individuals that it suspects, on the balance of probabilities, have breached financial sanction rules. The public identification of companies, or individuals, will, of course, come with collateral damage.– even the suggestion that they have breached sanction rules – so that is a change.

	<p>One other thing the Act has brought in which, again, I think is significant is that the imposition of sanctions, now, is possible on the basis of what is called an “urgent procedure” when another jurisdiction with whom the UK aligns its sanction policy – the US, Australia, Canada and others – and where those countries have designated an individual, or an entity, and the minister in this country considers that it is in the UK’s interest to designate the same person, or entity, the UK can adopt that decision. This is an entirely new basis on which sanctions designations can be made. The idea behind it is to provide a basis across the jurisdictions when equivalent tests are being supplied – parity – but it does remove the requirement, at least for the initial period of 56-days, to have reasonable grounds to suspect that the person is an ‘involved person’.</p> <p>So, in other words going on the decision of another state and adopting that decision, which is a big change so far as the regime is concerned.</p>
<b>Alice</b>	<p>So, these are incredibly significant changes to the sanctions regime of the UK. What is it that businesses in the UK, or operating through it, need to be thinking about in terms of their own compliance and how they incorporate these changes?</p>
<b>Tom</b>	<p>There are very significant changes and they will have an impact upon businesses. What businesses need to be conscious of are their own sanction provisions and a review of their own sanction provisions – their own screening of clients.</p> <p>These are new and wide-ranging changes that will require interpretation of course if this is unclear then they should seek help and assistance to their own positions and the definitions of this new Act.</p>
<b>Alice</b>	<p>There are many who say that this is a good start. This Act creates a much-needed change but it does not go far enough to tackle the issues which economic crime. What do you think is coming next?</p>
<b>Tom</b>	<p>Well, there is already a proposed second economic crime bill for later this year.</p> <p>We’ve seen with previous legislative efforts against economic crime that, really, its effectiveness, in practice, will turn upon how serious the government is to put financial resources to this issue to properly fund enforcement authorities and if they are willing to do that and this isn’t merely a reaction to current situations then these changes are likely to have a significant impact.</p> <p>The stated aim by parliament is the increased impetus on enforcement but it’s going to require proper funding and if it is properly funded then I think these will have a significant impact – and it will be followed up, may be later this year, by a second bill which, again, has significant proposals. The main one being Companies House reform requiring directors and persons of significant control to verify their identity with Companies House.</p> <p>A further important proposal would be to allow companies to have only one layer of corporate directors who must be UK based.</p> <p>There are further proposals for new powers to seize crypto-assets. Anti-money laundering powers to be increased and, perhaps, in light of the changes so far as this country’s use of foreign countries’ determinations of sanctions, finding sanctions of some individuals, no doubt the sharing of information on economic crime is due to be increased.</p>
<b>Alice</b>	<p>So, what about the complex question of the law of corporate criminal liability – we’ve talked about that a lot on Taxing Matters - what is your take on when that might be actually tackled?</p>
<b>Tom</b>	<p>Well, I am not sure. As has been stated, this ‘Economic Warfare Act’, which is how it has been described by some, and that is the direction of the government in terms of what they aim to achieve – If that is right, and this Act demonstrates that it is, then one would hope that corporate criminal liability reform would be next on the table, but it has been tabled for quite some time.</p> <p>It remains to be seen how, and if, the government propose to tackle it, but I suppose they have implemented this legislation and it will be interesting to see how this is used and it may be a guide as to where the government might go in the future so far as corporate criminal liability is concerned.</p>
<b>Alice</b>	<p>In general, what should businesses be considering and what steps should they be taking in light of this new Act and possible future developments?</p>

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- Tom** I would suggest that companies scrutinise the Act for themselves – it's quite dense but it is obviously an important Act – companies need to be aware of the minutiae that is contained therein.  
Compliance is the key. They need to review and rereview their sanctions provision, they need to ensure compliance with this new Act and, indeed, with a wary-eye on what Act are to come in the future.  
I would reiterate that it is, as it has been, incumbent upon businesses to ensure client with these sanctions regulations but they are increased as a direct result of three days ago.
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- Alice** Thank you so much! Unfortunately that's all we've got time for in this week's episode so, thank you again Tom for joining us.  
You can find Tom through LinkedIn and on 23 Essex Street chambers website. If you have any questions for me or for, or any topics you would like us to cover in a future episode, please do email us on [taxingmatters@rpc.co.uk](mailto:taxingmatters@rpc.co.uk) – we'd love to hear from you!  
RPC would like to thank Josh McDonald. Our original score is composed by Inciter Music who also produce this podcast series. To hear a full, uninterrupted version of our podcast theme go to Instagram @incitermusic and follow the link in bio.
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**Alice**

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Thank you all for listening and talk to you again in two weeks.

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