

Para 18.20 Other examples of express statutory provision for corporate criminal liability is provided by the Criminal Finances Act 2017, ss 45 and 46, which came into force on 30 September 2017.

Section 45(1) provides that a 'relevant body' (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence (as defined) when acting in the capacity of a person associated with B. By s 45(2), it is a defence for B to prove that, when the UK tax evasion facilitation offence was committed:

- (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
- (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

Section 46 provides a similar offence of failure by a relevant body to prevent facilitation of a foreign tax evasion offence (as defined).

The definition of 'relevant body' in ss 45 and 46 includes a corporation (wherever incorporated) (s 44(2)).

Para 18.27 In *A Ltd* [2016] EWCA Crim 1469, the Court of Appeal rejected an argument that, although BK, a director of A Ltd, may have been acting as the directing mind of A Ltd when he was acting in his capacity as a director of A Ltd, he was not acting as the directing mind of A Ltd when he was acting in his capacity as the head of the compliance department of a parent or associate company. It stated (at [35]):

'The critical question is to examine the knowledge and state of mind of BK when acting for A Ltd. That is not confined only to such knowledge and other mental elements as he may have acquired while acting for A Ltd. He brings to his actions on behalf of A Ltd all the knowledge which he had by then acquired, in whatever capacity. It would be absurd to suggest that, although he formed an intention to pay a bribe while acting as head of compliance for a parent or associated company ..., this intention was to be ignored when, acting as a director of A Ltd, he put that intention into practice.'

Para 18.51 By the Criminal Finances Act 2017, s 44(2), a partnership (wherever formed) is a 'relevant body' for the purposes of the offences under ss 45 and 46 of that Act referred to above.