

Table of Contents

<i>Table of Cases</i>	xv
<i>Table of Statutes</i>	xxv
<i>Table of Statutory Instruments</i>	xxvii
<i>Table of EU Legislation</i>	xxix
<i>Table of International Instruments</i>	xxxi
<i>List of Abbreviations</i>	xxxiii
1 Introduction	1
2 Crimes of Evasion—History and Theory	7
A Short History	7
Customs and Excise	8
Customs	8
Excise	9
Smuggling to Evade Duty	11
The Relationship between Customs and Excise Duties and Other Taxes	14
Precursors of Income Tax	14
Income Tax	15
What Is Wrong with Tax Evasion?	17
The Nature of the Wrong	18
Conscientious Refusers and Tax Resisters	20
Advisers and Customers	21
Complicity of Corporations	24
3 Avoidance and Evasion	25
Avoidance	26
The Jurisprudence of Tax Avoidance and Statutory Interpretation	28
Avoidance—Remedies	31
Evasion—Remedies	34
Blurring the Line between Avoidance and Evasion	34
The <i>HSBC Suisse</i> (2015) and Mossack Fonseca (<i>Panama Papers</i>)	
(2016) Scandals	37
4 Criminal Evasion of Duties and Taxes	41
Types and Interrelationships of Criminal Offences	41
Common Law and Statutory Offences	41

Specific or General Offences?	43
Vague or Precise Definitions?	45
Tax-specific or Not? Mutually Exclusive or Overlapping Offences?	46
The Existing Criminal Charges	47
Smuggling Offences	47
The 'Tax Perjury' Offence	48
The Major Smuggling Offences	48
Evasion of Income Tax	50
The Early Statutory Offences	52
Cheating the Revenue	53
Conduct	55
Mental state	56
The Statutory Offence of Fraudulent Evasion	57
The Overseas Evasion Offence	57
Value Added Tax	58
Inheritance Tax and Corporation Tax	59
Stamp Duty and Stamp Duty Land Tax	60
Offences Ancillary to Tax Evasion	60
After the substantive offence—the customs handling offence	61
Tax Credit Fraud	63
Council Tax Fraud and Council Tax Benefit Fraud	64
Rulings, Guidance, Abuse of Process, Exclusion of Evidence	64
Sentencing	66
Concluding—Offence Definitions and Reform Options	69
5 Investigation and Prosecution Structures	71
Models in Criminal Procedure	71
Philips and the Crown Prosecution Service	72
Enquiries and Reports	74
Glidewell	74
Gower–Hammond	75
Butterfield	76
O'Donnell	78
Organizing the Prosecutions	81
Conclusion	82
6 Investigatory Powers	83
Investigatory Functions and Powers of HMRC	83
Dawn Raids and the Legacy of <i>Rosminster</i>	83
The Keith Committee	85

Table of Contents

xiii

Conduct of Tax Investigations	86
Civil Investigations	86
Customs Searches	88
Criminal Investigations by HMRC	88
Obtaining Information from the Taxpayer	88
Confidential and Privileged Information	91
The Privilege against Self-incrimination in Tax Law	91
Evasive answers and limitations upon questions	97
Legal Advice Privilege—Lawyers and Other Tax Advisers	98
Litigation Privilege	100
Absolute or defeasible?	101
Legal advice privilege and non-lawyers	102
What is ‘legal’ advice?	104
Does LPP extend to companies?	104
Advice to individual and to corporate clients	105
In-house lawyers	105
Must the lawyer be an English lawyer?	106
The ‘Iniquity Exception’	107
The Mechanics of LPP: (i) Resolution of Disputes	110
The Mechanics of LPP: (ii) The Execution of Tax Fraud Searches	111
Obtaining Information Otherwise than From the Taxpayer	113
Taxpayer Confidentiality	115
Conclusions	116
7 Prosecution and Its Alternatives	119
The Prosecution Decision	119
Publicity Without Prosecution?	122
Judicial Review of Prosecution Decisions	122
Deal-making	124
The Hansard Procedure	126
Code of Practice 9	130
Contractual Disclosure Facilities	131
Offshore Disclosure Facilities	132
Switzerland	133
Deferred Prosecution Agreements	134
The Civil Penalties Regime	135
The Modern Penalty Provisions	137
Procedure, and Burden and Standard of Proof	138
The Human Rights Aspects of Civil Penalties	139
Civil Actions	142

8 The International Element	143
International Aspects of Tax Evasion	143
Offshore	146
The International Response to Scandals	148
Specific Offences of Offshore Evasion	151
Failure to Prevent Offences	153
Extradition for Tax Evasion	154
Evidence-gathering	155
Conclusion	155
9 Problems at the Intersections of Tax and Criminal Law	157
Taxing the Proceeds of Crime	157
Income Tax	157
Deductions for Illegal Expenses?	159
Confiscating the Proceeds of Tax Evasion	161
Deductions from Confiscation Orders	165
Do Confiscation Orders Affect Tax Liability (and <i>Vice Versa</i>)?	167
Confiscation or Compensation Orders?	168
Who Gets the Money? Incentivized Criminal Law Enforcement	168
Laundering the Proceeds of Tax Evasion	170
Tax Offences and the Identification of their Proceeds	174
The Substantive Laundering Offences	175
The Proceeds of Crime Act Tax Jurisdiction	179
Double Counting	183
Forfeitures and Other <i>In Rem</i> Seizures	184
Forfeitures	184
Cash Forfeiture	184
Unexplained Wealth Orders	187
Conclusions	188
10 Should More Alleged Tax Evaders Be Prosecuted?	189
 <i>Bibliography</i>	193
<i>Index</i>	211