

Explanatory Note

Clause 70: Offences relating to offshore income, assets and activities

Summary

1. Clause 70 introduces a new criminal offence which does not require the need to prove intent for failing to declare taxable offshore income and gains, through an amendment to the Taxes Management Act 1970 (TMA). The offences will apply for the purposes of income tax and capital gains tax, where a person has failed to properly declare offshore income or gains in accordance with sections 7 and 8 TMA leading to a loss of tax over a threshold amount which will be defined in regulations and will be on a per tax year basis. The provisions will come into force following a commencement order.

Details of the clause

Section (1)

2. Section 1 amends TMA to insert new sections to that Act, sections 106B-H.
3. New section 106B subsection (1) establishes a new criminal offence if a person fails, before the end of the notification period, to notify HM Revenue and Customs (HMRC) as required by section 7 TMA of the person's chargeability to income tax or capital gains tax exceeding a certain amount ("threshold amount") and the tax in question is chargeable by reference to offshore income, assets or activities.
4. New subsection (2) of section 106B provides a defence to the new subsection (1) offence if the person accused proves they had a reasonable excuse for failing to notify as required under section 7 TMA.
5. New subsection (3) of section 106B defines the "notification period" as having the same meaning as in section 7(1C) TMA.
6. New section 106C subsection (1) establishes a new criminal offence if a person fails, before the end of the withdrawal period, to deliver a tax return when required by a notice under section 8 TMA and an accurate return would have shown income or capital gains tax chargeable by reference to offshore income, assets or activities, and that amount of tax exceeds the threshold amount.
7. New subsection (2) of section 106C provides a defence to the new subsection (1) offence if the person proves they had a reasonable excuse for failing to deliver the tax return as required under section 8 TMA.
8. New subsection (3) of section 106C defines the "withdrawal period" as having the same

meaning as in section 8B(6) TMA.

9. New section 106D subsection (1) establishes a new criminal offence if a person, who is required by a notice under section 8 TMA to do so, delivers a tax return which, at the end of the amendment period, understates income tax or capital gains tax chargeable by reference to offshore income, assets or activities for the period covered by the return which exceeds the threshold amount.
10. New subsection (2) of section 106D provides a defence to the new subsection (1) offence if the person proves they took reasonable care to ensure that the return was correct.
11. New subsection (3) of section 106D defines the "amendment period" as having the same meaning as in section 9ZA TMA.
12. New section 106E subsection (1) provides that the offences do not apply to persons who are responsible for giving notice or making a return to HMRC by virtue of being a trustee of a settlement or an executor/administrator of a deceased person.
13. New subsections (2) and (3) of section 106E provide the Treasury with a power to make regulations specifying other circumstances when a person will not be guilty of the new offences. By virtue of the new section 106H (see below), the regulations may make different provisions for different cases and make other consequential and transitional provisions.
14. New section 106F subsection (1) provides that where a period of time is extended by HMRC, the tribunal or an office under subsection (2) of section 118 TMA, this extended period is to apply to the periods of time relevant to the offences in new sections 106B, 106C and 106D TMA.
15. New subsections (2) and (3) of section 106F provide the Treasury with a power to specify in regulations the threshold amount for the purposes of the new offences (where the amount of tax specified in the offence is equal to or less than the threshold amount the new offences will not apply). The threshold must not be less than £25,000. The regulations may also set out how to calculate whether the threshold has been exceeded for the purposes of the offences. These regulations may also make different provisions and other consequential and transitional provisions by virtue of new section 106H.
16. New subsections (4) and (5) of section 106F define the terms "offshore income, assets or activities" and "assets".
17. New section 106G subsection (1) and (2) provides the penalties for conviction. Subsection (1)(a) and (2) allow for an unlimited fine in England and Wales and/or a custodial sentence of up to 6 months for offences committed before section 281(5) of the Criminal Justice Act 2003 comes into force, and 51 weeks thereafter. Subsection 1(b) allows for a fine not exceeding level 5 on the standard scale in Scotland or Northern Ireland and/or a custodial sentence of no more than 6 months.
18. New section 106H makes provisions about regulations under sections 106E and 106F. The regulations may make different provisions for different cases and may include incidental, supplemental, consequential and transitional provision and savings. The regulations may also provide that any reference they make to a document or any provision of a document must be construed as a reference to the document or provision as amended from time to time. The regulations must be made by statutory instrument which is subject to annulment in pursuance

of a resolution of the House of Commons.

Section (2) - (4)

19. Subsections (2) and (3) of the clause provides the Treasury with a power to appoint a day for the offences to come into force by regulations. The regulations may appoint different days for different parts of the offence and may include incidental, supplemental, consequential and transitional provision and savings.
20. Sub-section (4) of the clause provides that the offences will first apply to notifications or returns in respect of the tax year in which the offence is introduced.

Background note

21. Following consultation, this clause has been introduced to support the Government's wider offshore tax evasion strategy. The clause will introduce new criminal offences for offshore tax evasion which does not require the prosecution to demonstrate the taxpayer intentionally sought to evade tax. The new offences will be an additional tool to enable HMRC to tackle offshore tax evasion and deter would be evaders.
22. The offences will apply only for the purposes of income tax and capital gains tax and will only apply if the tax underpaid or understated is more than a threshold amount. The offence cannot apply if the taxpayer can satisfy the court that they have a reasonable excuse or took reasonable care to comply with UK tax obligations.
23. If you have any questions about this change, or comments on the legislation, please contact Tim Holmes on 03000 522 637 (email: timothy.holmes@hmrc.gsi.gov.uk).