HM Revenue
& Customs

Extension of Offshore Time Limits

Consultation document
Publication date: 19 February 2018
Closing date for comments: 14 May 2018

Subject of this consultation:	Extended time limits for HMRC to assess tax in cases involving offshore income, gains or chargeable transfers.
Scope of this consultation:	This consultation is to establish the design principles for legislation implementing the new minimum tax assessment time limit of 12 years, announced at the Autumn Budget 2017, for HMRC to make assessments or notices of determination in cases involving offshore income, gains or chargeable transfers; and invites comments and feedback on particular issues and impacts of the policy as described.
Who should read this:	This consultation will be of interest to individuals, trustees, companies, personal representatives of deceased persons and others with offshore income, gains or chargeable transfers (including the use of offshore structures); as well as their advisors and agents.
Duration:	This consultation runs for 12 weeks from 19 February 2018 to 14 May 2018.
Lead official:	Grusheka Lowton, HM Revenue & Customs
How to respond or enquire about this consultation:	Responses, requests for hard copies, and general queries about the content or scope of the consultation can be sent by email to: consult.nosafehavens@hmrc.gsi.gov.uk, using the subject heading *“Extension of Offshore Time Limits Consultation”*, or by post to: Ms Grusheka Lowton Extension of Offshore Time Limits Consultation HM Revenue & Customs Room 3C/04 100 Parliament Street London, SW1A 2BQ
Additional ways to be involved:	Please contact the lead official if you are interested in meeting to discuss this paper.
After the consultation:	The government will publish its response, along with draft legislation, in summer 2018. Legislation will be introduced in the 2018 to 2019 Finance Bill, to take effect from April 2019.
Getting to this stage:	This consultation takes forward the government’s strategy for tackling offshore tax evasion and non-compliance.
Previous engagement:	This is the first consultation on this subject.

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

Contents

1. Executive Summary

1.1. At the Autumn Budget 2017, the government announced that the assessment[1] time limit for non-deliberate offshore tax non-compliance will be increased to at least 12 years after the end of the relevant tax year or relevant period. Where there is deliberate behaviour, the current time limit of 20 years will remain.

1.2. It is right and fair that everyone pays all the tax they owe, including on offshore income, gains and chargeable transfers. This extension of time limits for offshore cases reflects the fact that it can take much longer for HMRC to establish the facts concerning offshore transactions, particularly when a complex offshore structure is involved. The additional time is needed to address situations where the current assessment time limits of 4 and 6 years are not sufficient to establish the facts and determine and assess the amount of tax due.

1.3. This consultation sets out the design principles for the new legislation, including the scope, commencement and transitional provisions, and invites comments on certain aspects of the design.

1.4. The document is structured as follows:

Chapter 2: Introduction – this Chapter summarises HMRC's Offshore Evasion Strategy and offshore measures aimed at meeting the objectives and goals set out in the strategy.

Chapter 3: Existing Rules – this Chapter describes the current tax assessment time limits.

Chapter 4: Scope of Proposals – this Chapter explains the policy rationale and objectives, as well as detail on the following design features:

- the taxes in scope and definitional matters (e.g. the meaning of an "offshore matter" and "offshore transfer");
- what happens in cases involving both offshore and onshore matters;
- the effect of the measure on HMRC's penalty regimes;
- taxpayer safeguards where information is provided to HMRC under automatic exchange of information agreements such as the OECD's Common Reporting Standard, of which the UK is a signatory; and
- proposed commencement and transitional rules.

Chapter 5: Assessment of Impacts – this Chapter sets out our initial analysis on the impact of the measure.

[1] All references to *"assessments to tax"* in this document should be read to include *"notices of determination"*.

Chapter 6: Summary of Consultation Questions – this Chapter sets out a list of questions raised in the consultation document.

Chapter 7: The Consultation Process – this Chapter sets out how to respond to the consultation, and includes important information regarding the confidentiality of responses.

Annex – the annex sets out relevant current UK legislation.

2. Introduction

2.1. Offshore tax evasion, avoidance and non-compliance pose an international challenge, as well as a domestic one. The UK has long been leading the way in tackling these issues in collaboration with other jurisdictions.

2.2. It is right and fair that everyone pays all the tax they owe, including on offshore income, gains and chargeable transfers. It should not be possible to avoid a full investigation or assessment because of the time taken to gather facts on offshore structures and investments, which may not have been declared for many years, and can be very complex.

2.3. The government published a strategy to tackle offshore tax evasion in 2013 (*No Safe Havens*[2], updated in 2014). The strategy defines offshore tax evasion as *"using another jurisdiction's systems with the objective of evading UK tax"*, and sets out five key objectives to reduce/eliminate offshore tax evasion:

- there are no jurisdictions where UK taxpayers feel safe to hide their income and assets from HMRC;
- would-be offshore evaders realise that the balance of risk is against them;
- offshore evaders voluntarily pay the tax due and remain compliant;
- those who do not come forward are detected and face vigorously enforced sanctions; and
- there will be no place for the facilitators, or enablers, of offshore tax evasion.

2.4. To implement this strategy, the government introduced a number of important measures:

- the UK is an early adopter of the **Common Reporting Standard**[3], a ground-breaking multinational tax transparency agreement under which over 100 jurisdictions, including the UK, will automatically exchange financial account information, improving HMRC's ability to detect any irregularities with offshore financial accounts;
- **increased civil sanctions for offshore evaders** (Finance Acts 2015 and 2016) – this included a new asset based penalty of up to 10% of the value of the underlying asset;
- a new **criminal offence for offshore evasion** (Finance Act 2016) – this offence removed the need to prove intent for serious cases of failure to declare offshore income;

[2] The links to the 2013 and 2014 strategies can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193112/offshore-strategy_1_.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303012/No_safe_havens_2014.pdf

[3] Under the Common Reporting Standard, HMRC will receive information about overseas accounts, insurance products and other investments, including those held through overseas structures such as companies and trusts. This includes details of the account holder or owner, including name, address, date of birth, balance of the account, and payments into the account.

- new **civil and criminal sanctions for enablers of offshore evasion** (Finance Act 2016 and Criminal Finances Act 2017) – they hold enablers, including corporates and partnerships, to account concerning evasion facilitation; and
- a new legal **Requirement to Correct** (Finance (No. 2) Act 2017) – any past failure, as at 5 April 2017, to pay UK tax on offshore interests must be disclosed, with new tougher sanctions from 1 October 2018 for those who fail to do so.

2.5. This extensive package of measures indicates a significant toughening of the government’s approach to tackling offshore tax evasion and those who enable it.

2.6. However, not everyone who has failed to declare the right amount of offshore tax is an evader (somebody deliberately declaring the wrong amount of tax or deliberately not declaring tax) or avoider. A person’s tax affairs, especially those involving international transactions and offshore structures, can be complex so they may be unaware that they have not paid the correct tax on their offshore income, gains or transfers.

2.7. The information needed to establish whether, and how much, tax has been under-declared in cases involving offshore jurisdictions can take longer to obtain compared to domestic cases. Due to the additional time needed, HMRC may discover the under-declaration too late to assess the tax due under the current assessment time limits. They are therefore being extended to a minimum of 12 years to allow HMRC more time to establish the facts in offshore cases.

3. Existing Rules

Time Limits

3.1. Existing assessment time limits depend upon both the type of tax being charged and the reasons for any errors or failures that might result in the loss of that tax.

Income Tax and Capital Gains Tax

3.2. For income tax (IT) and capital gains tax (CGT), the time limits are as follows:

- ordinarily, any time within 4 years after the end of the tax year to which the assessment relates; but
- the time limit is 6 years if the loss of tax was brought about by carelessness; and
- the time limit is 20 years if the loss of tax was brought about deliberately by the taxpayer.

3.3. Where there is a loss of IT or CGT due to the taxpayer's failure to notify their liability to those taxes, the time limit is 20 years[4] unless the taxpayer had a reasonable excuse for the failure and notified HMRC without unreasonable delay after the excuse ended. In those circumstances, the 4 year time limit applies.

3.4. There are also special time limit rules that apply in particular circumstances. For example, where a taxpayer fails to disclose their use of an avoidance scheme notifiable under the Disclosure of Tax Avoidance Schemes rules, HMRC has 20 years in which to assess any tax loss relating to the scheme in the same way as for a failure to notify case.

3.5. In the case of deceased taxpayers, any assessment has to be made within 4 years of the end of the year of assessment in which the taxpayer died. However, no assessment may be made for a year of assessment ending more than 6 years before the date of death. This is the case even where the assessment involves a loss of tax due to careless or deliberate behaviour, or the failure of the deceased to notify chargeability.

Corporation Tax

3.6. For corporation tax (CT) purposes, the same time limits apply but are determined by reference to the end of the accounting period rather than the tax year.

[4] For the 2008/09 and earlier tax years, the tax loss must also be attributable to the negligent conduct of the taxpayer or someone acting on their behalf.

Inheritance Tax

3.7. In the case of a loss of inheritance tax (IHT) brought about by an error in the IHT account, and where payment has been made and accepted in full satisfaction of the tax due, the time limits for proceedings to be brought for recovery of the tax are as follows:

- 4 years from the later of the date on which the (last) payment was made and accepted, or the date on which the tax or last instalment became due;
- 6 years where the error is attributable to careless behaviour; and
- 20 years where the error is attributable to deliberate behaviour.

3.8. Where an IHT account has not been duly delivered, or the payment of the attributable tax has not been made and accepted, the time limit is 20 years from the date of the chargeable transfer unless the loss of tax is brought about deliberately. In deliberate cases, there is no time limit.

Requirement to Correct (Finance (No. 2) Act 2017)

3.9. The new Requirement to Correct rules have extended the time limits for assessing IT, CGT and IHT related to offshore non-compliance, so that tax that is assessable on 6 April 2017 will remain assessable until 5 April 2021[5]. For example, under the existing IT assessment rules, the time limit for making an assessment to correct an inaccuracy in a 2014/15 tax return where the taxpayer has taken reasonable care would ordinarily be 5 April 2019. If the inaccuracy relates to offshore income, the Requirement to Correct rules mean that the tax will remain assessable until 5 April 2021.

Safeguards

3.10. In addition to the time limits explained above, there are various safeguards that apply in respect of assessments. For example, HMRC's ability to make "discovery" assessments for IT and CGT is restricted where a tax return has been delivered for that year. This includes no assessment being possible where an error or mistake in a return reflected practice generally prevailing at the time the return was made[6]. A similar rule applies for IHT purposes[7].

3.11. There is also a right of appeal against all assessments. A taxpayer can, for example, challenge an assessment if they think the amount of the assessment is too high.

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[5] Paragraph 26 of Schedule 18 to Finance (No. 2) Act 2017.
[6] Section 29(2) of the Taxes Management Act 1970.
[7] Section 255 of the Inheritance Tax Act 1984.

3.12. Furthermore, if HMRC opens an enquiry into certain tax returns[8], an application may be made to the First-tier Tribunal (Tax Chamber) to require HMRC to issue a closure notice. This may happen, for example, where a taxpayer is concerned that an investigation is taking too long.

3.13. No change is proposed to any of these safeguards which will continue to apply in relation to the new 12 year assessment time limit for offshore cases in the same way as they apply to any other assessment.

[8] These include personal return, company return, partnership return, trustee return, Enterprise Management Incentives (qualifying options), non-resident capital gains tax return, land transaction return (for stamp duty land tax), and claim or amendment of a claim. A request to issue a counteraction or no-counteration notice in relation to transactions in securities may also be made to the Tribunal.

4. Scope of Proposals

What does this proposal do?

4.1. Where transactions involve offshore jurisdictions, notwithstanding the introduction of the Common Reporting Standard, it can be more difficult for HMRC to access the information needed to understand the transactions, calculate the tax due and detect any errors. For example, gathering the information needed to understand the tax at risk and assess the taxpayer's behaviour may rely on co-operation from other jurisdictions which can take time.

4.2. Because establishing the facts can take longer, HMRC can be left with a reduced period, compared to wholly domestic cases, in which to establish the tax due before it goes out of time for assessment. The result is that there are cases where HMRC believes there may be unpaid tax but is unable to collect that tax as it is too late to make an assessment. In contrast, a similar case that only involved the UK is likely to progress more quickly, giving more time for assessments to be made.

4.3. To address these issues, the new legislation will apply an assessment time limit of 12 years in cases of mistakes or non-deliberate errors involving offshore tax. This will give HMRC more time to investigate offshore non-compliance, but the safeguards described in Chapter 3 will still apply. In addition, a proportionate approach will be taken where HMRC has already received certain information under automatic exchange of information agreements (see paragraph 4.12).

4.4. The time limit for assessing unpaid tax in cases of deliberate non-compliance (including where offshore income, gains and chargeable transfers are involved) will continue to be up to 20 years after the end of the tax year or relevant period[9].

What taxes should be in scope?

4.5. The extended time limit will apply to the taxes that are currently in scope for the Requirement to Correct rules and other civil measures tackling offshore tax evasion. This will put assessments relating to IT, CGT and IHT within the scope of the new legislation.

4.6. In addition, given that many offshore structures involve corporate entities, the government is considering, and would welcome views on, applying this proposal to CT.

[9] For cases where section 240(6) IHTA 1984 applies, the time limit for non-deliberate non-compliance will also remain as 20 years.

Q1: In addition to the taxes above, what (if any) other taxes (for example, CT) should we look to include within scope, and why?

Q2: Do you foresee any difficulties for extension to other taxes and are there any potential solutions to address these?

Defining Offshore

4.7. We recommend that the scope of this proposal should be based around the legislative definitions of an "offshore matter" and an "offshore transfer" as described in the Requirement to Correct rules in paragraphs 9 to 11 of Schedule 18 to Finance (No. 2) Act 2017 (see Annex).

Q3: What are your views on the proposed definitions?

Cases involving both offshore and onshore matters

4.8. In many cases, calculating the tax referable to an offshore matter/transfer is straightforward. For example, if a taxpayer has omitted an item of income from their return which is an offshore matter, the tax referable to it will be the additional tax chargeable when HMRC assesses that income. All of the tax will be "offshore tax".

4.9. There may, however, be cases where both offshore and onshore tax is involved and it is not clear how to determine the amount of tax referable to offshore matters/transfers. In such cases, we propose the tax is apportioned on a just and reasonable basis, and that this rule be based on the existing rules set out in the Requirement to Correct in paragraphs 15(3) to (6) of Schedule 18 to Finance (No. 2) Act 2017 (see Annex).

Q4: What are your views on the proposed scope of the rule?

Penalties

4.10. Penalties are charged where there is an understatement of tax due to carelessness of the taxpayer or someone acting on their behalf (or if the understatement is deliberate). No penalties are chargeable where the taxpayer has taken reasonable care with their tax affairs. The penalty is a deterrent against not taking reasonable care.

4.11. The time limits for assessing penalties are based on when a tax assessment is made, so an increase in the tax assessment time limit will mean that more periods are also subject to penalties in appropriate circumstances. In other words, where the new legislation allows tax assessments to be made for 12 years instead of the current 6 years (for failure to take reasonable care or carelessness), penalties could also be assessed for those 12 years if they are due.

Example 1

In November 2033, during the course of an enquiry into a taxpayer's 2031/32 tax return, inaccuracies relating to offshore income are established in the tax return for 2024/25 which are due to the taxpayer's careless behaviour. As the tax year 2024/25 falls within the new 12 year assessing time limit, an assessment may be made for the underpaid tax. As the inaccuracies were careless, a penalty may also be payable. The time limit to assess the penalty would be 12 months from the end of the appeal period for the tax assessment correcting the inaccuracies, so a penalty for 2024/25 could be assessed.

If the inaccuracies arose despite the taxpayer taking reasonable care then no penalty would be due.

Interaction with Automatic Exchange of Information agreements

4.12. HMRC automatically receives information about certain offshore income and assets under international agreements such as the Common Reporting Standard. If the information allows HMRC to make the relevant assessment, the problem of assessment time limits running out before the facts are fully established would not arise. The government will ensure the new legislation is proportionate and targeted to account for certain income or gains notified to HMRC under automatic Exchange of Information agreements[10].

Commencement

4.13. We propose that with effect from 1 April 2019 for IHT (and CT, if included), and 6 April 2019 for IT and CGT, the time limit for assessing tax in the cases covered by this proposal will be extended to 12 years. This will apply to any year that is still in date for assessment when the new legislation comes into effect. The new legislation will not apply retrospectively, so any year for which the time limit has expired before 6 April 2019 will not be affected.

4.14. It should be noted, however, that the Requirement to Correct rules have extended the time limits for IT, CGT and IHT assessable at 6 April 2017 until 5 April 2021. The Requirement to Correct does not apply to CT.

[10] The European Court of Justice has considered similar issues in the case *E.H.A Passenheim-van Schoot (C-157/08).*

Example 2

A taxpayer has underpaid IT on offshore income due to careless behaviour for the tax year 2013/14. Under the existing time limit rules, HMRC can assess that tax at any time up to 5 April 2021 (6 years after the end of the year of assessment plus the Requirement to Correct extension). However, the new legislation will apply from 6 April 2019, before that existing time limit has run out. HMRC will therefore be able to assess until 12 years after the end of the year of assessment, i.e. until 5 April 2026.

Example 3

A taxpayer has underpaid IT on offshore income due to careless behaviour for the 2009/10 tax year. Under the existing time limit rules, HMRC can assess that tax at any time up to 5 April 2016 (6 years after the end of the year of assessment). That time limit has expired before the new legislation comes into force on 6 April 2019 so is unaffected by this proposal. It is also unaffected by the Requirement to Correct rules because the assessing time limit ends before 6 April 2017.

Example 4

HMRC opens an enquiry into a taxpayer's 2021/22 tax return. In February 2023, inaccuracies relating to offshore income are established in the tax returns for 2010/11 and 2015/16. These inaccuracies arose despite the taxpayer taking reasonable care and resulted in underpaid IT for those years. Although both years fall within the new 12 year assessing time limit, only 2015/16 can be assessed, as 2010/11 was out of date at 6 April 2019 under the current time limit rules.

Q5: What are your views on the proposed commencement rule?

Other considerations

Q6: In your view, are there any other considerations that HMRC should take into account when considering the design of this measure?

5. Assessment of Impacts

Summary of impacts

Exchequer impact (£m)	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
	0	Negligible	Negligible	Negligible	+5	+10
	These figures are set out in Table 2.1 of the Autumn Budget 2017 (*“44 Offshore Time Limits: extend to prevent non-compliance”*) and have been certified by the Office of Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Budget 2017.					
Economic impact	This measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	This measure will only have an impact on individuals with offshore income, gains or chargeable transfers who have made non-deliberate errors. These individuals may receive an assessment of tax as a result of the increase of the assessing time limit to 12 years. The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	It is not anticipated that there will be any impacts on groups sharing protected characteristics.					
Impact on businesses and Civil Society Organisations	This measure will impact on businesses with offshore income, gains or chargeable transfers who have made non-deliberate errors. These businesses may receive an assessment of tax as a result of the increase of the assessing time limit to 12 years. This measure is expected to have a negligible impact on business admin burdens; statutory record-keeping requirements remain unchanged. One-off costs may include familiarisation with the new rules. On-going costs may include additional interaction with HMRC as a result of the increased time limit. There is no impact on civil society organisations.					
Impact on HMRC or other public sector delivery organisations	The impact on HMRC resources will be considered further once the proposals are fully developed.					
Other impacts	Other impacts have been considered and none have been identified.					

Q7: Do you have any comments on the assessment of equality or other impacts?

6. Summary of Consultation Questions

What taxes should be in scope?

Q1: In addition to the taxes above, what (if any) other taxes (for example, CT) should we look to include within scope, and why?

Q2: Do you foresee any difficulties for extension to other taxes and are there any potential solutions to address these?

Defining offshore

Q3: What are your views on the proposed definitions?

Cases where both undeclared offshore and onshore tax is involved

Q4: What are your views on the proposed scope of the rule?

Commencement

Q5: What are your views on the proposed commencement rule?

Other considerations

Q6: In your view, are there any other considerations that HMRC should take into account when considering the design of this measure?

Assessment of impacts

Q7: Do you have any comments on the assessment of equality or other impacts?

7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included in Chapter 4.

Responses should be sent by 14 May 2018, by e-mail to consult.nosafehavens@hmrc.gsi.gov.uk, using the subject heading *"Extension of Offshore Time Limits Consultation"*,

or by post to:

Ms Grusheka Lowton
Extension of Offshore Time Limits Consultation
HM Revenue & Customs
Room 3C/04
100 Parliament Street
London
SW1A 2BQ

For telephone queries, you can contact the lead official, Grusheka Lowton, on 03000 586 714 (from a text phone, prefix this number with 18001).

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex
Relevant Current UK Legislation

Assessment Time Limits

Income Tax and Capital Gains Tax:
Sections 34, 36 and 40 of the Taxes Management Act 1970

Inheritance Tax:
Part VIII of the Inheritance Tax Act 1984

Corporation Tax:
Paragraphs 36, 40 and 46 of Schedule 18 to Finance Act 1998

Penalties

Schedule 24 to Finance Act 2007
Schedule 41 to Finance Act 2008
Schedule 55 to Finance Act 2009

Defining offshore

"Offshore matter" and "offshore transfer": paragraph 9 to 11 of Schedule 18 to Finance (No. 2) Act 2017[11]

"Paragraph 9

(1) This paragraph applies to any tax non-compliance consisting of a failure to comply with an obligation under section 7 of TMA 1970 to notify chargeability to income tax or capital gains tax.

(2)The tax non-compliance "involves an offshore matter" if the potential loss of revenue is charged on or by reference to—

> *(a) income arising from a source in a territory outside the UK,*
>
> *(b) assets situated or held in a territory outside the UK,*
>
> *(c) activities carried on wholly or mainly in a territory outside the UK, or*
>
> *(d) anything having effect as if it were income, assets or activities of a kind described above.*

[11] To note, references to 5 April 2017 are not relevant to this proposal.

(3) The tax non-compliance "involves an offshore transfer" if—

(a) it does not involve an offshore matter, and

(b) the applicable condition is satisfied (see sub-paragraphs (4) and (5)).

(4) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income—

(a) was received in a territory outside the UK, or

(b) was transferred on or before 5 April 2017 to a territory outside the UK.

(5) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

(a) were received in a territory outside the UK, or

(b) were transferred on or before 5 April 2017 to a territory outside the UK.

(6)In the case of a transfer falling within sub-paragraph (4)(b) or (5)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.

(7)In this paragraph and paragraphs 10 and 11 "assets" has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.

Paragraph 10

(1)This paragraph applies where—

(a) any tax non-compliance by a person consists of a failure to comply with an obligation to deliver a return or other document, and

(b) a complete and accurate return or other document would have included information that would have enabled or assisted HMRC to assess the person's liability to tax.

(2)The tax non-compliance "involves an offshore matter" if the liability to tax that would have been shown in the return or other document is or includes a liability to tax charged on or by reference to—

(a) income arising from a source in a territory outside the UK,

(b) assets situated or held in a territory outside the UK,

(c) activities carried on wholly or mainly in a territory outside the UK, or

(d) anything having effect as if it were income, assets or activities of a kind described above.

(3) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (2) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(4)The tax non-compliance "involves an offshore transfer" if—

(a) it does not involve an offshore matter, and

(b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (5) to (7)).

(5) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income—

(a) was received in a territory outside the UK, or

(b) was transferred on or before 5 April 2017 to a territory outside the UK.

(6) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

(a) was received in a territory outside the UK, or

(b) was transferred on or before 5 April 2017 to a territory outside the UK.

(7) Where the liability to tax which would have been shown in the document is a liability to inheritance tax, the applicable condition is satisfied if—

(a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable involves a transfer of assets, and

(b) after that disposition but on or before 5 April 2017 the assets, or any part of the assets, are transferred to a territory outside the UK.

(8) In the case of a transfer falling within sub-paragraph (5)(b), (6)(b) or (7)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.

Paragraph 11

(1)This paragraph applies to any tax non-compliance by a person if—

(a) the tax non-compliance consists of delivering or giving HMRC a return or other document which contains an inaccuracy, and

(b) the inaccuracy relates to information that would have enabled or assisted HMRC to assess the person's liability to tax.

(2)The tax non-compliance to which this paragraph applies "involves an offshore matter" if the information that should have been given in the tax document relates to—

(a) income arising from a source in a territory outside the UK,

(b) assets situated or held in a territory outside the UK,

(c) activities carried on wholly or mainly in a territory outside the UK, or

(d) anything having effect as if it were income, assets or activities of a kind described above.

(3)Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (2) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(4)Tax non-compliance to which this paragraph applies "involves an offshore transfer" if—

(a) it does not involve an offshore matter, and

(b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (5) to (7)).

(5)Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—

(a) was received in a territory outside the UK, or

(b) was transferred on or before 5 April 2017 to a territory outside the UK.

(6) Where the tax at stake is capital gains tax, the applicable condition is satisfied if—

(a) the information that should have been given in the tax document relates to the proceeds of the disposal on or by reference to which the tax is charged, and

(b) the proceeds, or any part of the proceeds—

(i) were received in a territory outside the UK, or

(ii) were transferred on or before 5 April 2017 to a territory outside the UK.

(7) Where the tax at stake is inheritance tax, the applicable condition is satisfied if—

> *(a) the information that should have been given in the tax document relates to the disposition that gives rise to the transfer of value by reason of which the tax becomes payable relates to a transfer of assets, and*
>
> *(b) after that disposition but on or before 5 April 2017 the assets or any part of the assets are transferred to a territory outside the UK.*

(8) In the case of a transfer falling within sub-paragraph (5)(b), (6)(b) or (7)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets."

Cases involving both offshore and onshore matters

Paragraph 15, Schedule 18 F(No 2) A 2017:

"(3) In its application for the purposes of sub-paragraph (2)(c) above, paragraph 6 of Schedule 24 to FA 2007 has effect as if—

(a) for sub-paragraph (1) there were substituted—

"(1) Where—

a) P is liable to a penalty in respect of two or more inaccuracies (each being an inaccuracy in a return or other document listed in paragraph 8(3) or (4) of Schedule 18) to F(No 2)A 2017) in relation to a tax year or, in the case of inheritance tax, a single transfer of value,

b) in relation to any one (or more than one) of those inaccuracies, the delivery of the return or other document containing it constitutes offshore tax non-compliance, and

c) the calculation of potential lost revenue attributable to each of those inaccuracies depends on the order in which they are corrected,

the potential lost revenue attributable to any offshore tax non-compliance constituted by any one of those inaccuracies is to be taken to be such amount as is just and reasonable.

(1A) In sub-paragraph (1) "offshore tax non-compliance" has the same meaning as in Schedule 18 to F(No2)A 2017; and

(b) in sub-paragraph (4), for paragraphs (b) to (d) there were substituted—

"(b) other understatements."

(4) In sub-paragraphs (5) and (6) "combined tax non-compliance" is tax non-compliance that—

a) *involves an offshore matter or an offshore transfer, but*
b) *also involves an onshore matter.*

(5) Any combined tax non-compliance is to be treated for the purposes of this Schedule as if it were two separate acts of tax non-compliance, namely—

a) *the combined tax non-compliance so far as it involves an offshore matter or an offshore transfer (which is then offshore tax non-compliance within the meaning of this Schedule), and*
b) *the combined tax non-compliance so far as it involves an onshore matter.*

(6) The potential lost revenue attributable to the offshore tax non-compliance referred to in sub-paragraph (5)(a) is to be taken to be such share of the potential lost revenue attributable to the combined tax non-compliance as is just and reasonable."