



HM Revenue
& Customs

Extension of Offshore Time Limits

Summary of Responses
6 July 2018

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1. Introduction

- 1.1. This document summarises responses to the consultation document [Extension of Offshore Time Limits](#) (ETL), which sought views on how to increase the assessment¹ period for offshore tax to a minimum of 12 years after the end of the year of assessment to which it relates (for income tax and capital gains tax²). The additional time will improve HMRC's ability to establish the facts in offshore cases.
- 1.2. The consultation document was published on 19 February 2018 and the consultation period closed on 14 May 2018. The government is grateful to those who responded in writing and those who participated in meetings.

Context for the consultation

- 1.3. Offshore tax evasion, avoidance and non-compliance pose a threat to the UK tax base. It is only right and fair that everyone pays the tax they owe, including on offshore income, gains and chargeable transfers. Experience has shown that it can take much longer for HMRC to establish the facts concerning offshore transactions than in equivalent onshore cases, as it can be more difficult for HMRC to access the information needed to understand the transactions. This is particularly true where complex offshore structures are used.
- 1.4. The existing time limits for income tax (IT), inheritance tax (IHT) and capital gains tax (CGT) allow an assessment to be made at any time not more than 4 years after the end of the year of assessment to which it relates. An assessment can be made at any time not more than 6 years after the year of assessment if the non-compliance is due to a failure to take reasonable care. Where an assessment involves a loss of tax brought about deliberately the assessment time limit is 20 years after the end of the year of assessment and this time limit will not change³.
- 1.5. Due to the additional time that can be needed in offshore cases, HMRC may discover an under-declaration too late to assess the tax due under the 4 or 6 year rules. The time limits are therefore being extended to a minimum of 12 years to allow HMRC more time to establish the facts in offshore cases.
- 1.6. The extension of offshore time limits measure will complement the extensive package of reforms already introduced to tackle offshore non-compliance:
 - the UK is an early adopter of the **Common Reporting Standard⁴ (CRS)**, a ground-breaking multinational tax transparency agreement under which over 100 jurisdictions, including the UK, automatically exchange financial

¹ All references to “assessments” in this document should be read to include “notices of determination” for inheritance tax.

² For the relevant inheritance tax rules please see paragraphs 3.7 and 3.8 in the consultation document.

³ References to deliberate, deliberately or non-deliberate in relation to IT and CGT should be taken as references to all cases within section 36(1A) TMA and not just to cases falling within section 36(1A)(a)?

⁴ 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.

account information, improving HMRC's ability to detect any undeclared offshore financial accounts;

- **increased civil sanctions for offshore evaders** (Finance Acts 2015 and 2016) – these include 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;
- new **civil and criminal sanctions for the enablers of offshore evasion** (Finance Act 2016 and Criminal Finances Act 2017) – making it a criminal offence for a corporate to fail to prevent the facilitation of tax evasion, and new civil sanctions for individuals and businesses who deliberately enable offshore tax non-compliance;
- a new legal **Requirement to Correct** (Finance (No. 2) Act 2017) – any past failure, as at 5 April 2017, to declare UK tax on offshore interests must be disclosed, with new tougher sanctions from 1 October 2018 for those who fail to do so.

1.7. The ETL change will give HMRC more time to assess offshore cases and therefore will help protect the UK tax base from those who carelessly or accidentally fail to pay all the tax they owe.

Background to the consultation

1.8. The ETL consultation document sought views on the approach to designing the measure and its scope. It considered various issues including:

- which taxes should be in scope of the measure;
- the definition of offshore;
- how HMRC should approach cases where there is a mixture of undeclared onshore and offshore tax;
- the commencement rule for the measure.

Structure of the consultation response document

1.9. The remainder of the consultation response is divided into 3 sections:

- Chapter 2 sets out a summary of responses to the consultation and the government's overarching response.
- Chapter 3 discusses the views received from respondents and stakeholders on the specific questions posed within the consultation document. The

government's view in light of the responses received is summarised in relation to each question.

- Chapter 4 sets out the next steps for the ETL policy.
- Annexe A sets out the list of those that attended meetings during the consultation period and those who submitted written responses to the consultation.

2. Summary of Responses

Overview of responses

- 2.1. HMRC received 21 written responses to the consultation alongside comments made in meetings. The respondents were equally split between businesses and representative bodies.
- 2.2. A list of the respondents and those who attended meetings during the consultation, excluding individuals, is included in Annexe A.

Summary of responses

- 2.3. The consultation document sought views on a number of issues on the scope of the ETL measure. Stakeholders and respondents supported the government's overall aim to act decisively against offshore tax evasion, avoidance and non-compliance. The concerns that respondents raised mostly related to the scope of the measure, the potential burden it could impose on taxpayers, and issues of equality.
- 2.4. Some respondents submitted views outside the scope of this consultation and expressed regret that the consultation was not launched at an earlier stage or that the scope of the consultation was not wider (e.g. asking for feedback on a range of options for possible time limits). Overall, respondents to the consultation were not in favour of the decision to extend assessment time limits. Most respondents felt that the distinction in the existing regime between a mistake despite taking reasonable care and carelessness should be maintained.
- 2.5. On the scope of the measure, some responses were in favour of the measure and could see its usefulness for income tax (IT), inheritance tax (IHT), and capital gains tax (CGT). However, the majority of respondents were not in favour of applying ETL to corporation tax (CT) and raised concerns about the possible impact on increasing administrative costs if this was done. On the other hand, several respondents saw the measure as appropriate for CT, especially as smaller companies could be used as part of a complex structure. Some respondents felt that HMRC has less need of the additional time allowed by ETL now that HMRC automatically receives information under the Common Reporting Standard (CRS).
- 2.6. Finally, on the equality impact of the measure, a small number of respondents noted that migrants may be more likely to hold offshore accounts or assets and therefore could be particularly impacted by the measure.

Government response

- 2.7. The government is determined to ensure that all UK taxpayers pay the tax they owe, and that offshore non-compliance is identified and investigated before assessment time limits expire. Those using complex offshore structures should not be able to escape the payment of tax simply because the investigation takes some time. HMRC's experience of offshore cases suggests an extension to 12 years is the right option to ensure that taxpayers pay their fair share.
- 2.8. Wherever proportionate and practical, the government consults on tax changes early in the policy making process. With this change the government was clear that additional time would be provided for assessments so it was appropriate to consult on how to make the changes, not whether to make them.
- 2.9. The government will implement this new legislation in a way that is effective and proportionate. It has taken account of the majority of responses concerning the application of the legislation to CT and the impact of the CRS. As detailed below, the extension of time limits will cover IHT, IT and CGT but not CT or where HMRC could reasonably be expected to raise an assessment within the existing time limits based on information received automatically.
- 2.10. In order to minimise the administrative burden on taxpayers, the government will not alter the statutory record keeping rules.
- 2.11. In terms of equality, it is expected that groups affected by the extended time limits are likely to have above average wealth. The government does not anticipate there will be adverse impacts on any group sharing protected characteristics, as defined in the Equality Act 2010.
- 2.12. Alongside this response document, the government is today publishing the draft legislation for the ETL and welcomes comments on whether the draft delivers on the government's intent.
- 2.13. The full government response is provided in Chapter 3.

3. Responses to questions posed in the consultation document

What taxes should be in scope?

3.1. The consultation document sets out the taxes that will be in scope of the ETL. These are IT, CGT and IHT. The government sought views on whether any other taxes (for example, CT) should also be included in the measure.

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?

3.2. The majority of the respondents opposed the inclusion of CT in the measure. Issues identified included:

- 12 years of uncertainty as a particular concern for corporates with complex affairs.
- The rules which identify offshore issues were originally designed for IT and CGT. Many corporates conduct genuine commercial transactions involving other jurisdictions that were never considered when those rules were first designed.
- Implications for tax indemnity agreements entered into on the sale or purchase of businesses, some of which may have already entered into force and could be affected retrospectively; in other cases this might impede future transactions.
- The impact of the legislation for controlled foreign companies (CFCs) and transfer pricing (see below).

3.3. Some of the respondents who were against the measure being extended to CT stated that they saw a stronger case to extend the measure to smaller companies (e.g. close companies) than for larger companies. However almost all respondents said that the measure should not apply to rules concerning CFCs or transfer pricing (TP).

3.4. CFC legislation applies to corporates and their offshore subsidiaries. The application of a 12 year assessment time limit was seen by the majority of respondents as creating major complications for corporates with CFCs who might need to keep records for each subsidiary for many years as a precautionary measure. Respondents also felt it was unnecessary to extend the measure to CFCs when they already need to comply with other regulatory measures, for example the senior accounting officer rules.

- 3.5. TP concerns the price of transactions between connected parties and often involves tax in both UK and non-UK jurisdictions. There are multinational rules designed to help avoid double taxation where transfer pricing applies (“mutual agreement procedures” - MAP), however the time limit for applying these rules is often less than 12 years so was seen as incompatible with the new assessment time limit. For example, one respondent said “where additional CT is assessed using the extended time limits, it may be too late for the company to obtain double tax relief in another jurisdiction with a shorter time limit”.
- 3.6. A small minority of respondents saw the measure as appropriate for CT. One respondent felt that both CT and VAT should be included in the measure.
- 3.7. Two respondents mentioned that ETL could pose particular issues in relation to the winding up of the estates of deceased persons.
- 3.8. On an operational point, a small number of respondents stressed the importance of HMRC having sufficient capacity to process data and progress enquiries.

Government response

- 3.9. The government intends to introduce the measure for IT, IHT and CGT. The anti-avoidance measures that can apply in relation to offshore structures charge UK taxpayers IT or CGT rather than charging offshore companies CT. The government has therefore decided not to extend the measure to CT at this time. In HMRC’s experience delays obtaining information do not prevent CFC charges being assessed so this measure will not be extended to CFC charges.
- 3.10. The government recognises the concerns expressed about differences in the time limits for the ETL and MAP relating to TP. To prevent double taxation additional tax due because of TP adjustments will be excluded from the scope of the new legislation.
- 3.11. With respect to winding up estates there will be no change to the current special time limit for raising an assessment⁵. This special limit is 4 years after the end of the year of assessment in which the death occurred. The assessments that can be raised within the special 4 year time limit cannot go back further than 6 years where the loss of tax has been brought about carelessly or deliberately⁶.
- 3.12. HMRC will always work to collect all the tax that is owed. Analysis of the operational impact of this measure has shown that HMRC has sufficient resources to implement this measure effectively.

Defining Offshore

⁵ Section 40(1) Taxes Management Act 1970

⁶ Section 40(2) Taxes Management Act 1970

Q3: What are your views on the proposed definitions?

- 3.13. Many respondents agreed with the HMRC proposal that the definition of “offshore” should be based on existing legislative definitions of an ‘offshore matter’ and an ‘offshore transfer’ in the Requirement to Correct (RTC) rules in paragraphs 9 to 11 of Schedule 18 to Finance (No.2) Act 2017.
- 3.14. Some respondents felt that the RTC definitions may not be appropriate if applied to new taxes (any taxes other than IT, CGT and IHT) and if CT is brought into scope then further thought would be needed on the definitions used. They also felt that the government should consider holding a second consultation if the proposals are extended to CT.
- 3.15. One respondent felt that the Republic of Ireland should be excluded from the definition of offshore. Some respondents felt the current definition of offshore is not focused enough and should exempt interactions between ‘high tax’ jurisdictions during genuine commercial activity.

Government response

- 3.16. The government is confident that using existing definitions for offshore will help to ensure a consistent approach across the tax system. As this legislation is not being applied to CT the problems of interpretation raised by some respondents do not arise. The government agrees with the majority of respondents who said it would be appropriate to base the definition of “offshore” for this legislation on the RTC rules. The draft legislation is therefore based on the appropriate RTC rules with some minor changes to increase clarity.
- 3.17. The government does not think it appropriate to exclude certain jurisdictions from the definition of “offshore” – that would be inconsistent with the existing rules. However, as explained below, the new legislation will not apply where HMRC could reasonably be expected to raise an assessment within the existing assessment time limits based on information received automatically (such as CRS information).

Cases involving both offshore and onshore matters

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

- 3.18. Respondents were generally content with the proposed scope of the rule for cases where both offshore and onshore tax is involved. It was thought appropriate that tax is apportioned on a just and reasonable basis, and that this is based on the existing rules set out in the RTC in paragraphs 15(3) to (6) of schedule 18 to Finance (No. 2) Act 2017.

Government response

- 3.19. The draft legislation does not include a rule for cases where both offshore and onshore tax is involved. This measure is concerned with the assessment of tax rather than the apportionment of tax (ie deciding whether tax can be assessed rather than distinguishing tax charged between onshore and offshore tax). If

respondents believe a rule is required after considering the draft legislation, they are asked to please provide examples of any specific scenarios where the current definitions would not work as intended.

Commencement

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

- 3.20. Many respondents welcomed the fact that the measure was not intended to be retrospective. Others considered it should only apply to tax years beginning after the date of implementation (and not also to those tax years still “in date” at that time). Some stakeholders felt that the proposed rules are, in fact, retrospective in that they apply to all years that are still in date at the time of implementation.
- 3.21. Some thought it unreasonable to extend the time limits once under RTC and again under this measure. They considered that the new extended time limits should only apply after the extended time limits under the RTC rules have expired.

Government response

- 3.22. The legislation will have effect from April 2019. It will apply to the 4 years still in date at 6 April 2019 together with the two earlier years (in cases where there has been careless behaviour). The new measure will not extend time limits for years that were out of date for assessment at the date of implementation. In other words, the measure will not apply to years that had already become “out of date” so that they are brought back “in date” again.
- 3.23. The government recognises that there is concern about the interaction between the new extended time limits and the RTC provisions. The RTC is a short-term measure that requires disclosure of certain offshore non-compliance before 1 October 2018 after which new stricter penalties will operate. Time limits were extended under the RTC to allow HMRC to bring into charge any additional tax disclosed under the RTC. The new 12 year extended time limit is a longer term solution to the problem of investigating complex offshore cases. The two measures complement each other and make it less likely that HMRC will be unable to assess tax due.

Other considerations

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

- 3.24. In answers to this question, many respondents repeated that HMRC should take into account the uncertainty this measure would introduce into taxpayers’ tax affairs. Some respondents felt that waiting 12 years after the end of a tax year for certainty was excessive and that it would add to taxpayers’ stress and anxiety. Some individual respondents suggested introducing procedural limits to the exercise of the ETL powers to reduce taxpayers’ uncertainty. A small number of respondents felt that the introduction of an independent arbiter, such

as a tribunal, at the start of the process, to establish the grounds for the extension of offshore time limits, would minimise the number of contentious disputes.

- 3.25. Around half the respondents noted that HMRC is already receiving new information on UK taxpayers. They pointed out that the CRS and the RTC will increase the amount of data available to HMRC and they believe this additional information makes the extra assessing time available under the ETL measure less necessary. The RTC requires UK taxpayers to make sure they have declared the right amount of tax on all their foreign income and assets. Those who have not declared the right amount of tax must correct the situation before the 1st October 2018 or face substantially higher penalties.
- 3.26. Some felt that under the CRS, the government would get information at a much earlier stage. As an alternative, it was suggested that the government could apply ETL only to jurisdictions that do not participate in the CRS.
- 3.27. Many respondents expressed concerns about a possible conflict between the likely behavioural response to the measure, i.e. keeping records for 12 years rather than 4 or 6, and the new GDPR regulations on data privacy.
- 3.28. Another group of respondents pointed out that taxpayers have much less than 12 years to claim recovery for any overpaid tax. They thought that non-deliberate overpayments of tax should be treated in a similar way as non-deliberate underpayments of tax and the same 12 year time limits should apply to both.
- 3.29. One respondent said that penalties should only be applied to the years which would have been caught in any case under the normal rules (or under RTC) with earlier years falling out of scope for penalty consideration. They also felt clarification was needed on the calculation and level of potential penalties for the additional years and the position on repayments that might arise in these years.
- 3.30. Finally, a small number of respondents pointed out the importance of publicising the measure to the public to ensure that individuals that are affected are aware of the change in the rules.

Government response

- 3.31. The government recognises the importance of giving taxpayers tax certainty as early as practicable. However, as explained above, more time is required to establish the facts in some cases involving offshore assets and income. HMRC will continue to process cases promptly and efficiently, and will only use the additional time allocated under this measure where necessary.
- 3.32. The government does not want to add to the administrative process before raising assessments, particularly in cases where tax has been outstanding for a period of several years. Such a process would increase the time taken to bring

tax into charge. Taxpayers already have the right to a statutory review and they can make an appeal to the tax tribunal against assessments or penalties.

- 3.33. The government recognises that under certain circumstances automatically exchanged information may make the ETL unnecessary. The draft legislation takes this into account. For example, the ETL rule will not apply where HMRC receives accurate CRS information and is able to raise an assessment without having to investigate further. Therefore there is no need to restrict the measure to jurisdictions not participating in CRS. With respect to information from the RTC, the government's view is that the RTC is a short term measure. By contrast, the new time limits will permanently improve the government's ability to assess taxes due.
- 3.34. In terms of taxpayers' rights to make claims, there are already provisions to allow claims against an additional tax liability charged by an assessment. The same rights will apply where assessments are made under the ETL and these rights provide appropriate protection for taxpayers to the extent that there is an additional tax liability.
- 3.35. The measure will be consistent with data protection laws, including the Data Protection Act 2018 and GDPR. It will not impose new administrative or record keeping requirements. Under current rules HMRC already has the ability to assess taxes for a period of up to 20 years where there has been a deliberate failure to declare tax. As the ETL measure does not extend the existing maximum period of assessment the impact on record keeping will be not disproportionate.
- 3.36. The government does not propose to bring in rules that will reduce the penalties applying to years assessed under the new extended time limits. Doing so would give an incentive to delay disclosure until the extended time limits applied. In any case, the government is in favour of making appropriate use of penalties to encourage timely compliance.
- 3.37. The government recognises the importance of raising awareness of the policy change. A proactive communications plan is in place to engage with industry bodies, specialist media and the public.

Assessment of impacts

- 3.38. The consultation also considered the impact of the measure on equality, on individuals and families and on Civil Society Organisations. The government's assessment is that there will not be any specific impacts on groups with protected characteristics. The measure will only impact on individuals or businesses with offshore income, gains or chargeable transfers who have made non-deliberate errors. The economic impact and the impact on administrative costs for businesses is estimated to be negligible.

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

- 3.39. Respondents mostly focused on the equality and the economic impacts of the measure. Responses on economic issues tended to focus on the impact the measure would have on record keeping practices for individuals and, if the measure was extended to CT, for corporates. Several respondents felt that the estimate of the economic impact of the measure did not fully take into account the new administrative burden for taxpayers that may result from the measure. Many respondents felt that taxpayers would be well advised to keep their tax records for 12 years following the introduction of the measure, even though there are no changes to the statutory record keeping requirements. A minority of respondents recommended that HMRC review the statutory record keeping period or extend it to 12 years to bring it in line with the new ETL limits.
- 3.40. Others felt that the additional revenue estimated to be generated by the measure will not compensate for the additional administrative costs to taxpayers.
- 3.41. In terms of equality, a small number of respondents identified particular groups who may be disproportionately affected by the measure. Two respondents noted that migrants may be more likely to hold offshore accounts or assets and therefore could be particularly impacted by the measure. If individuals have difficulties communicating in English, they could find it more challenging to understand and arrange their tax affairs in the UK. Another respondent noted that small discrepancies should be excluded from the measure in order to protect vulnerable people from the anxiety of a tax assessment and to ensure proportionality. It was also noted that older people may be affected more as they might be more likely to have inherited offshore accounts or assets.

Government response

- 3.42. The government has no plans to increase the statutory record keeping requirements in the UK. If this was done it would increase the record keeping requirements for all UK taxpayers whether they have offshore income or assets etc. or not.
- 3.43. The government does not think it necessary to legislate a de minimis limit in this case. In general, HMRC do not seek to raise assessments where the cost of doing so will be greater than the tax at stake.
- 3.44. The government expects that groups affected by the extended time limits are likely to have above average wealth. The government does not anticipate there will be adverse impacts on any group sharing protected characteristics. As is always the case, where an individual believes they may have paid the incorrect tax, or have difficulties in paying their tax, they should contact HMRC at the earliest opportunity. Details of how to do so are available on <https://www.gov.uk/difficulties-paying-hmrc>. Information about dealing with HMRC for those with additional needs is available here: <https://www.gov.uk/dealing-hmrc-additional-needs/english-not-first-language>.

4. Next steps

- 4.1. Based on the responses received to the consultation document, and feedback from stakeholders received during the consultation period, draft legislation has been published today.
- 4.2. Comments on the draft legislation are welcome. Write to consult.nosafehavens@hmrc.gsi.gov.uk by 31 August.
- 4.3. Subject to final approval and the Parliamentary process, the draft legislation HMRC publishes today will be part of Finance Bill 2018-19 and the Extension of Offshore Time Limits will come into force following Royal Assent to the Finance Act 2019.

Annexe A: List of stakeholders consulted

The following representative bodies and firms responded to the consultation either in writing or through meetings.

Abell Morliss
Association for Financial Markets in Europe (AFME)
Association of Accounting Technicians (AAT)
Association of Taxation Technicians (ATT)
BDO LLP
CBI
Chartered Institute of Taxation (CIOT)
Chartered Accountants Ireland
Crowe Clark Whitehall
Deloitte
Grant Thornton
Institute of Chartered Accountants of Scotland (ICAS)
KPMG
Low Incomes Tax Reform Group (LITRG)
London Society of Chartered Accountants' Taxation Committee
Mazars
Moore Stephens
Pinsent Masons
PwC
Rawlinson & Hunter
STEP
Tax Investigation Practitioners Group (TIPG)