



HM Revenue
& Customs

Tackling offshore tax evasion: A new criminal offence for offshore evaders

Summary of Responses
December 2015

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Foreword

Tax evasion is a crime which deprives the Government of much needed funds to run our public services and reduce the deficit, placing a greater burden on the vast majority of people who pay their fair share of tax. Tackling tax evasion is an important part of this Government's long-term economic plan and it will take tough action against evaders and those who help others to evade tax.

For too long it has been too easy for people to hide their money overseas to evade tax. We have changed that. Over the last two years the UK has led the drive in Europe, in the G20 and through its G8 Presidency to revolutionise international tax transparency. We now have agreement, reached with over 90 countries and jurisdictions, to exchange information on financial accounts automatically every year. Starting in 2016, HMRC will receive a wide range of information on offshore accounts held by UK tax residents. This will be an unprecedented step change in HMRC's ability to tackle offshore tax evasion, as for the first time it will reveal the details of billions of pounds worth of assets held offshore.

HMRC is today publishing the responses to four consultations on new tougher sanctions announced at the March 2015 Budget. It is right and fair that we make sure that the penalties evaders face, and the penalties for those who help them, reflect the wider harm caused by their actions and act as an effective deterrent to others.

The Government will legislate for:

- A new criminal offence for corporations that fail to take adequate steps to prevent the facilitation of tax evasion;
- Tougher financial penalties for offshore evaders, including a penalty based on the value of the asset on which tax was evaded as well as wider public naming of offshore evaders;
- A new penalty regime for those who enable tax evasion, based on the amount of tax evaded and public naming of enablers;
- A new criminal offence to make prosecution easier by removing the need to prove intent where a large amount of tax has not been paid on offshore income and gains.

The vast majority of people and businesses in the UK pay the tax they owe on time and do not attempt to dodge their responsibilities. Our message to evaders and enablers is clear and simple – HMRC is closing in on you, so come forward now or face tougher sanctions, both civil and criminal.

David Gauke

Financial Secretary to the Treasury

1. Introduction

- 1.1 This document summarises responses to the consultation '*Tackling offshore tax evasion: A new criminal offence for offshore evaders*', published on 16 July 2015.
- 1.2 HMRC is grateful to all those who responded or participated in meetings for taking the time to consider the issues raised by this consultation document, as well as for any responses to the previous consultation document on this subject.
- 1.3 For the avoidance of doubt, responses to the consultations on civil sanctions for offshore tax evaders and criminal or civil sanctions for the enablers of evasion are set out in separate response documents.

Context for the consultation

- 1.4 Offshore evasion is illegal and has a real impact on honest taxpayers. While most people pay their taxes correctly, a small minority don't. They ignore their tax responsibilities when their money is outside the UK, or actively take advantage of the challenges that offshore jurisdictions pose to HMRC and use these to evade the tax which is due.
- 1.5 HMRC's strategy for tackling offshore evasion, [No Safe Havens](#), sets out five key objectives:
 - 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 evasion.
- 1.6 In order to achieve these objectives there needs to be a strong deterrent against non-compliance, which includes ensuring that both civil and criminal sanctions are available, and that there is a real risk of prosecution for those who do not comply.
- 1.7 Progress on new automatic exchange of information agreements, the Common Reporting Standard (CRS), will be a major step forward. Over 90 jurisdictions have committed to share information automatically on offshore assets from 2017. This will greatly enhance HMRC's ability to detect, and then challenge, offshore evasion.

- 1.8 However, there will still remain challenges for HMRC in detecting and countering offshore non-compliance, particularly in relation to those items of income or gains not reportable under the CRS. The sanctions available should be an effective deterrent: encouraging taxpayers to declare the correct tax due without the need for HMRC intervention.
- 1.9 Therefore, the Government believes that a new criminal offence will provide HMRC and the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service with an additional tool to tackle offshore evasion, which will help to improve compliance and discourage would-be evaders.
- 1.10 The consultation published this summer outlined that the offence would apply to all income and gains, in all overseas jurisdictions. However, taking on board stakeholder views, the Government believes it is right to target the offence at those areas where HMRC has most difficulty in detecting offshore evasion and consequently needs a stronger deterrent. Therefore, the offence will only relate to income or gains which are not reported under CRS, this is covered in more detail in Chapter 3.
- 1.11 The Government's message is clear: if you need to tell us about income or gains offshore come forward now and put your affairs in order. Those who do not take the opportunities on offer to come forward will be caught, and will face tough sanctions.

Background on the consultation

- 1.12 The Government has been clear in its commitment to tackle offshore tax evasion. To that end, in August 2014 HMRC published a consultation on a proposal to introduce a new simple criminal offence for offshore tax evaders. This outlined a number of reasons why offshore non-compliance is more difficult to detect and tackle.
- 1.13 Respondents to the consultation were broadly supportive of the Government's objective of taking tough action against offshore evaders but raised a number of concerns over the proposal. Recognising these concerns, HMRC published a second consultation on the offence on 16th July 2015, '*Tackling offshore tax evasion: A new criminal offence for offshore evaders.*' This closed on 8th October 2015 and was supplemented by meetings with stakeholders.
- 1.14 This consultation built on previous responses and set out a proposed model for the offence, along with draft legislation for consideration. The consultation focused on what safeguards would be appropriate in order to better target the offence at only those with significant levels of non-compliance. The consultation also asked a number of questions about the design of the offence:

- a) How income and gains should be apportioned between jurisdictions; and,
- b) How deemed income and gains under anti-avoidance provisions should be treated.

1.15 This consultation was published alongside three others on tackling offshore tax evasion: strengthening civil deterrents for offshore evaders, civil sanctions for enablers of offshore evasion and a new corporate criminal offence of failure to prevent the facilitation of evasion.

1.16 Respondents generally supported the aims of the Government in tackling offshore evasion, but had a range of views on the particular options presented in the four consultations.

Structure of the consultation response

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

- Chapter 2 sets out a summary of the responses to the consultation and the Government's overarching response.
- Chapter 3 provides more detail on the responses to the specific questions set out in the consultation document.
- Chapter 4 sets out next steps.
- Annex A sets out the list of respondents.
- Annex B sets out draft regulations for comment.
- Annex C sets out draft primary legislation for inclusion in Finance Bill 2016.

2. Summary of responses

Summary of responses

- 2.1 The Government received written responses from 22 businesses, professional bodies and individuals and held 11 meetings and events on this consultation.
- 2.2 Throughout the two consultations on this proposal, many respondents recognised the challenges the Government is trying to address but, despite this, almost all respondents strongly opposed the policy as a whole.
- 2.3 The main areas of concern raised were:
- Many respondents felt it was unfair to introduce an offence where intent did not need to be proved in an area as complex as international tax law.
 - Many respondents were concerned that the offence might result in large numbers of people being criminally prosecuted who had been negligent or careless, rather than those who had deliberately been trying to evade tax. Issues around residence and domicile were often cited as particularly problematic.
 - Some respondents thought a better approach would be to utilise the criminal sanctions the Government already has at its disposal, and increase the civil sanctions available.
- 2.4 Several respondents stated that their subsequent comments on the questions put forward for the consultation should not be read as implying support for the introduction of the measure.

Government response

- 2.5 The Government has considered the responses to this consultation carefully, as well as the responses to the previous consultation. The Government recognises the concerns raised by respondents over the idea of a new criminal offence, but needs to balance these concerns with the real harm that offshore tax evasion brings, and the need to tackle it effectively.
- 2.6 Therefore, the Government still believes that the offence will provide a valuable additional tool to tackle tax evasion. It will deter would be tax evaders and will ensure that people no longer think they can get away with ignoring their tax responsibilities when their income or gains are offshore.
- 2.7 After the first consultation the Government introduced a number of safeguards to take on board concerns raised by respondents and better target the offence.

The Government is making further changes to the proposed offence following this consultation. These are discussed in more detail in chapter 3.

2.8 The Government would like to make clear that it does not have any intention of using this offence to prosecute those who make every effort to ensure that their tax affairs are in order. The use of this offence will follow HMRCs criminal investigations policy, as set out in full [here](#)¹.

2.9 This means that in the majority of cases HMRC will pursue the lost tax through civil means. This offence, like other offences, will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate. In these cases the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service will consider whether this or one of the existing criminal sanctions available is the most appropriate tool to use.

¹ At <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy>

3. Responses to questions posed in the consultation document

3.1 This chapter sets out the questions asked in the consultation and provides some detail on the responses received. It follows the order of the consultation document. Many responses were not specifically attributed to any particular consultation question so this chapter tries to group the responses under the most relevant question.

Safeguards

Question 1: Do you agree that there should be a statutory defence of reasonable excuse for those parts of the offence arising from a failure to notify chargeability to tax and failure to file a return; and of reasonable care for that part of the offence arising from an inaccurate return?

3.2 The majority of respondents agreed with the use of these statutory defences and thought they were essential to the introduction of the offence. A small number of respondents suggested potential alternative defences of reasonable belief or carelessness. Some respondents wanted the definition of reasonable care and excuse to be explicitly set out in legislation.

3.3 A small number of respondents raised a concern that the legislation places the onus of proof on the defendant and suggested reversing this burden. One stakeholder also suggested that the defences of reasonable care and excuse should be available across all parts of the offence.

Government response

3.4 The Government agrees that these statutory defences are important and will continue to include them in the legislation. The Government considered the alternative approaches suggested but felt that defences of reasonable care or excuse would provide the best protection for all those who have made the effort to get their tax affairs right. These defences are already well used within the offshore tax penalty regime and so the guidance will be in line with that provided elsewhere by HMRC.

3.5 The Government feels it is not unreasonable to ask individuals being investigated under this offence to provide evidence to show that they took reasonable care to meet their tax obligations, or else had a reasonable excuse for why they didn't. Reversing this onus would create substantial challenges for HMRC and remove many of the benefits of introducing the new offence.

- 3.6 The Government also believes that, where possible, an approach consistent with other sanctions should be considered. This means that the legislation will remain as drafted previously regarding which part of the offence the statutory defences apply to.

Question 2: Are there any other legislative safeguards that should be included in the offence?

- 3.7 Respondents suggested a range of additional safeguards that could be included in the offence. The key ones are summarised below:

3.8 Threshold: respondents were in favour of having a minimum threshold of potential tax lost per year which would need to be met before the offence could be applied. However, many suggested setting it at a higher level than the £5,000 included in the draft legislation. There were also a small number of suggestions for alternative ways to calculate the threshold.

3.9 Timing and evaluation suggestions: One respondent suggested delaying the start date until 2017, and another suggested ensuring that the offence only applies to tax years which start after Royal Assent. Other respondents suggested introducing a sunset clause into the legislation, or else committing to carrying out a post implementation review.

3.10 Immunity and exclusions for certain groups: Many stakeholders noted their disappointment that the current legislation does not include immunity for full and unprompted disclosures. Some stakeholders also suggested that certain other groups should be excluded: the mentally ill, those with long term illnesses, those with powers of attorney on behalf of others and countries signed up to the Common Reporting Standard. Some respondents also asked for confirmation that agents could not be found to be complicit in any prosecution under this offence.

3.11 Sanctions: Some respondents wanted clarity over the potential length of prison sentence, and the potential level of fine. A small number of respondents suggested that these should be consistent across England, Wales, Scotland and Northern Ireland.

3.12 Process for prosecution decisions: A number of respondents requested that the Director of Public Prosecutions or a Director General in HMRC should personally sign off any cases being considered under this offence.

3.13 Publicity: A number of respondents requested substantial publicity ahead of the introduction of this offence, or any of the other measures being considered across the four consultations. One respondent specifically mentioned the need to provide more information for migrants.

Government response

- 3.14 In considering these suggestions the Government has tried to balance the additional protection they would provide for defendants with the usability of the offence.
- 3.15 Threshold: The Government agrees that in order to target the offence at only the most significant cases of non-compliance the threshold should be increased and has amended the legislation to include a minimum threshold of £25,000. This means the offence could only apply to the top 5% of evaders who are currently pursued through civil penalties. It would mean that a higher rate taxpayer would need between £1.25m and £6.25m savings in a bank account (if the interest rate was between 1% and 5%) before this offence applied. The legislation continues to include a provision to allow the threshold to be increased in future years.
- 3.16 Timing and evaluation issues: The Government can confirm that the offence will not come into effect until April 2017 at the earliest. This gives people 3 years' notice between the initial announcement and its introduction. The offence will not apply retrospectively but will first apply in respect of the tax year in which the offence is introduced. For example, if the offence comes into effect in September 2017 then returns filed in relation to the tax year 2017-18 would be the first to potentially fall within the scope of the offence. However, such returns are not usually due until 31 January 2019 and no offence of making an inaccurate return could be committed until the end of the period provided for correcting the return – 31 January 2020. The Government believes this gives people time to prepare for and understand the new offence.
- 3.17 The Government does not see a strong rationale for a sunset clause but would like to reassure respondents that it will continue to review and evaluate the need for this offence in light of changing circumstances. Given the length of time before the first prosecution could take place the Government does not believe it would be practical to specify a particular structure for any review at this present time.
- 3.18 Immunity and exclusions for certain groups: The Government set out its view on providing immunity for full and unprompted disclosures in the previous consultation. The Government has been clear that it does not want to deter those who wish to come forward from doing so and that this offence will only be used in line with the principles set out in HMRC's criminal investigations policy, which provides guidance on the types of people and behaviours that HMRC may choose to pursue through criminal investigations.
- 3.19 The Government believes it is fair to treat those who are mentally ill and those with long term illnesses in a manner consistent with the approach to other

penalties and sanctions. In practice this means those who are mentally ill are likely to fall within the defence of reasonable care or excuse, although each case would be considered on its own particular merits. Long term illness would be taken into account in any decision to prosecute, but the Government sees no reason that this group should be excluded from following the law when it comes to paying tax. Likewise, the Government intends to treat those with powers of attorney on behalf of others in a manner similar to other areas of the penalty system, where they are not excluded from any sanctions or offences.

- 3.20 The Government has taken on board stakeholder views, and the rapidly changing context regarding the automatic exchange of information between countries, and has decided to exclude income and gains reportable under the CRS from the offence². This will help to target the offence at areas where HMRC faces the biggest challenges in tackling evasion, and therefore where a stronger deterrent is needed.
- 3.21 The Government would like to clarify that the normal rules around secondary liability will apply to this offence. Therefore, if an agent knowingly submitted returns which did not declare tax due, they would fall within the general law of secondary liability. Alongside the publication of this response document the Government is also publishing response documents on new measures for enablers of offshore tax evasion which set out how this offence will be considered in relation to the new civil and criminal sanctions for enablers.
- 3.22 Sanctions: The Government welcomes the chance to clarify the position on sanctions. The offence will follow the rules and procedures of the summary criminal justice system in the different countries within the UK. As the legal systems can differ between countries some variation between sanctions is inevitable, as is the case with other criminal offences.
- 3.23 In all parts of the UK the maximum custodial sentence for this offence will be 6 months. However, in England and Wales, legislation was passed in 2003 which allows the maximum sentence in a magistrate's court to be increased to 51 weeks. In the last 12 years this has never been brought into force but if it were to come into force, the Government does not see a strong rationale for singling out this offence and providing it with a lower maximum than all others being considered by the magistrate's court (which in itself has a lower maximum penalty than the crown court). Therefore, in this scenario, the maximum custodial sentence in England and Wales would increase to 51 weeks.

² Income and gains reportable under CRS are mainly relating to savings and investment, with different timetables of implementation for CRS for different countries. More information can be found: <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>

- 3.24 As an alternative to a custodial sentence, or in addition, the courts could issue a fine. In Scotland and Northern Ireland the maximum fine is set at level 5 on the standard scale, the maximum available for a summary only offence. In England and Wales the fine would be unlimited, as for the rest of the summary criminal justice system. We would recommend and expect the courts to consider the equivalent level of civil penalties when setting any fines.
- 3.25 Process for prosecution decisions: A robust process already exists within HMRC to ensure that the right decision is taken as to whether a case is pursued civilly or criminally and the Government does not believe any additional process is necessary. Furthermore, the ultimate choice is for the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service, which have their own processes in place.
- 3.26 Publicity: The Government agrees with the comments made and is looking at ways to ensure that people are aware of their tax obligations, and of the consequences of not complying. One of the ways in which the Government hopes to reach people is by requiring financial institutions to write to any customers with offshore accounts. The GOV.UK web pages provide comprehensive information including how to come forward if you would like to put your tax affairs in order by telling HMRC about previously undeclared offshore assets or gains. The Government is also exploring ways to provide targeted communications encouraging tax payers to check their affairs and to seek advice if they are unsure.

Other design questions

Question 3: When HMRC cannot accurately apportion an item of income or a gain between the UK and overseas, or between different overseas jurisdictions, how should that sum be taken into account when deciding whether tax understated exceeds the threshold amount? Do you agree that the use of a certification regime, as outlined above, would be an appropriate way forward?

- 3.27 Respondents' views on this were mixed. The majority of stakeholders supported the idea of some type of apportionment, although there were different views on what the best mechanism would be. A group of respondents were strongly opposed to any idea of apportionment.

Government response

- 3.28 The Government has recognised the concerns expressed and will not be introducing a mechanism for apportionment. This will simplify the offence and will ensure that any prosecution is based on the ability to prove to a criminal standard that tax has been evaded offshore in a relevant jurisdiction.

Question 4: Do you agree that overseas income and gains that are deemed to be that of the taxpayer under various anti-avoidance provisions should be taken into account in the normal way?

3.29 Respondent's views on this were mixed. The majority of stakeholders raised concerns over including deemed income and gains within the offence. Respondent's main concerns were around the complexity of including this type of income and gains, and the potential risk of the offence being applied to people inappropriately. Some respondents, however, agreed with the proposal and thought there was no principled reason to exclude this type of income or gains.

Government response

3.30 The Government recognises the concerns raised by some respondents but does not believe there is a clear justification for excluding this type of income or gains, and believes that it would be fairer to include it. The Government believes that the statutory defences of reasonable care and excuse will be sufficient to ensure that anyone who has done their best to comply with the tax rules will not be prosecuted under this offence.

Impacts

Question 5: Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

3.31 A number of respondents cited examples of those who might be impacted. These included those with very technical affairs, those new to the UK or those taxed on the remittance basis, or the unknowing beneficiaries of income. Some respondents also raised concerns over the compliance costs associated with the new offence.

Government response

3.32 The Government believes that the statutory defences of reasonable excuse and care would cover all those in the above examples who have made every effort to get their tax affairs correct. The Government believes any additional compliance cost would be reasonable as the activity of taking reasonable care to comply with the UK tax system is not a new burden on people. The additional cost would, therefore, be limited to understanding the new implications of not complying with the UK tax rules and, if needed, being able to show evidence that reasonable care has been taken.

Draft legislation

Comments were also welcomed on the draft legislation.

- 3.33 Respondents on the whole did not comment specifically on the draft legislation and the legislation has been considered and revised in light of the small number of technical suggestions received. A number of respondents did raise some broad points or questions about the criminal justice process. These were primarily:
- a. Whether investigations would be conducted under the appropriate criminal justice procedures, for example the Police and Criminal Evidence Act 1984 (PACE) rules and codes of practice in England and Wales;
 - b. Whether it was appropriate for the offence to be considered in the magistrates court; and,
 - c. Whether someone convicted would be subject to the Proceeds of Crime Act 2002.

Government response

- 3.34 The Government is happy to provide clarification on the questions posed above:
- a. As now, any decision to investigate a case criminally will go through the proper internal channels and any subsequent criminal investigation will be conducted under PACE in England and Wales, and the appropriate rules in Scotland and Northern Ireland. HMRC will consider how its internal processes may need to change to take into account this new offence but the principles and procedure underpinning the civil or criminal investigation of cases will remain the same.
 - b. The Government believes the magistrate's court is an appropriate place to consider this offence as it has experience of dealing with other complex areas of law.
 - c. Yes, as with any other offence, someone convicted could be subject to the Proceeds of Crime Act 2002.

4. Next Steps

- 4.1 After listening to feedback from the two consultations the Government has decided to make a number of changes to the legislation which was published in draft in the consultation document. A new version of draft primary legislation for inclusion in Finance Bill 2016 has been published alongside this response document. The Government would welcome any technical comments on the draft legislation.
- 4.2 This response document also includes draft regulations which would be legislated for after Finance Bill 2016 gains Royal Assent. The Government would also welcome any comments on these. Guidance will be produced in due course, closer to the time of introduction. The guidance will, where possible, be consistent with guidance which already exists in relation to other penalties.
- 4.3 The introduction of the offence will be subject to a commencement order. There are a number of other HMRC changes taking place in relation to offshore evasion, not least the strengthened civil sanctions and the new disclosure facility. It is important that this offence comes into force at a time which works alongside those changes and provides as much clarity to taxpayers as possible about the potential repercussions of tax evasion.
- 4.4 The Government would welcome views on the best time for the offence to come into effect but would like to confirm that it will not be before April 2017 at the earliest.

Annex A: List of consultation respondents

The following representative bodies and firms responded to the consultation either in writing or through meetings. In addition one individual also responded to the consultation.

- Association of Accounting Technicians
- Association of Chartered Certified Accountants
- Baker Tilly
- BDO
- Chartered Institute of Taxation
- Criminal Bar Association
- Compliance Reform Group
- Deloitte LLP
- Ernst & Young LLP
- Fraud Lawyers Association
- Grant Thornton
- Institute of Chartered Accountants England and Wales
- Institute of Chartered Accountants Scotland
- Kingsley Napley
- KPMG LLP
- Law Society
- London Criminal Courts Solicitors' Association
- Mazars LLP
- Moore Stephens LLP
- Pinsent Masons LLP
- PwC LLP
- Peters & Peters Solicitors LLP
- Slater and Gordon
- Society of Trust and Estate Practitioners
- TaxAid
- Tax Investigations Practitioners Group

Annex B: Draft legislation

The draft legislation follows on the next page. The draft legislation should not be viewed as final and we welcome comments on the legislation, in writing, to consult.nosafehavens@hmrc.gsi.gov.uk by 3rd February 2016.

1 Offences relating to offshore income, assets and activities

(1) After section 106A of TMA 1970 insert—

“Offshore income, assets and activities

106B Offence of failing to give notice of being chargeable to tax

(1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has not given that notice by the end of the notification period commits an offence if—

- (a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and
- (b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.

(3) In this section “the notification period” has the same meaning as in section 7 (see subsection (1C) of that section).

106C Offence of failing to deliver return

(1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if—

- (a) the return is not delivered by the end of the withdrawal period,
- (b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
- (c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.

(3) In this section “the withdrawal period” has the same meaning as in section 8B (see subsection (6) of that section).

106D Offence of making inaccurate return

(1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period—

- (a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
- (b) the amount of that increase exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.

(3) In this section “the amendment period” means the period for amending the return under section 9ZA.

106E Exclusions from offences under sections 106B to 106D

- (1) A person is not guilty of an offence under section 106B, 106C or 106D if the capacity in which the person is required to give the notice or make and deliver the return is—
- (a) as a relevant trustee of a settlement, or
 - (b) as the executor or administrator of a deceased person.
- (2) The Treasury may by regulations provide that a person is not guilty of an offence under section 106B, 106C or 106D if—
- (a) conditions specified in the regulations are met, or
 - (b) circumstances so specified exist.
- (3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

106F Offences under sections 106B to 106D: supplementary provision

- (1) Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer (but not where a period is otherwise extended under that subsection), any reference in section 106B, 106C or 106D to the end of the period is to be read as a reference to the end of the period as so extended.
- (2) The Treasury may by regulations specify the amount (which must not be less than £25,000) that is to be the threshold amount for the purposes of sections 106B to 106D.
- (3) The Treasury may by regulations make provision as to the calculation for the purposes of sections 106B to 106D of—
- (a) the amount of tax that is chargeable on or by reference to offshore income, assets or activities, and
 - (b) the increase in the amount of tax that is so chargeable as a result of correcting an inaccuracy.
- (4) In sections 106B to 106D and this section “offshore income, assets or activities” means—
- (a) income arising from a source in a territory outside the United Kingdom,
 - (b) assets situated or held in a territory outside the United Kingdom, or
 - (c) activities carried on wholly or mainly in a territory outside the United Kingdom.
- (5) In subsection (4), “assets” has the meaning given in section 21(1) of the 1992 Act, but also includes sterling.

106G Penalties for offences under sections 106B to 106D

- (1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction—
- (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (2) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1)(a) to 51 weeks is to be read as a reference to 6 months.

106H Regulations under sections 106E and 106F

- (1) This section makes provision about regulations under sections 106E and 106F.
 - (2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.
 - (3) The regulations—
 - (a) may make different provision for different cases, and
 - (b) may include incidental, supplemental, consequential and transitional provision and savings.
 - (4) The regulations are to be made by statutory instrument.
 - (5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations appoint.
- (3) The regulations—
 - (a) may appoint different days for different purposes, and
 - (b) may include incidental, supplemental, consequential and transitional provision and savings.
- (4) The amendment made by this section does not have effect in relation to—
 - (a) a failure to give a notice required by section 7 of TMA 1970,
 - (b) a failure to make and deliver a return required by section 8 of TMA 1970, or
 - (c) a return required by section 8 that contains an inaccuracy, if the notice or return relates to a tax year before that in which the amendment comes into force.

Annex C: Draft regulations

The draft regulations follow on the next page. These should not be viewed as final and we welcome comments on these, in writing, to consult.nosafehavens@hmrc.gsi.gov.uk by 3rd February 2016.

0000 No. 0000

INCOME TAX

CAPITAL GAINS TAX

The Sections 106B, 106C and 106D of the Taxes Management Act
1970 (Exclusions and Specified Threshold Amount) Regulations
XXXX

<i>Made</i>	- - - -	***
<i>Laid</i>	- - - -	***
<i>Coming into force</i>	- -	***

These Regulations are made by the Treasury in exercise of the powers conferred by sections 106E(2) and (3), 106F(2) and (3), and 106H of the Taxes Management Act 1970 Act⁽³⁾.

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Sections 106B, 106C and 106D of the Taxes Management Act 1970 (Exclusions and Specified Threshold Amount) Regulations XXXX;
 - (b) come into force on XXXX and have effect in relation to a tax year commencing on or after 6th April XXXX.

Interpretation

2. In these Regulations—
 - (a) “CRS” means—
 - (i) the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of the United Kingdom of Great Britain and Northern Ireland on 29th of October 2014 to improve international tax compliance based on the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development⁽⁴⁾; and

⁽³⁾ 1970 c. 9; sections 106E, 106F and 106H were inserted by Schedule XXXX to the Finance Act 2016 (c. X).

⁽⁴⁾ The standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the OECD”) is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>. The OECD Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information is available on OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/multilateral-competent-authority-agreement.pdf>.

- (ii) any other (bilateral) agreement to improve international tax compliance to which the Government of the United Kingdom of Great Britain and Northern Ireland is party which is substantially based on the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development;
- (b) “excluded income tax or capital gains tax” means income tax or capital gains tax chargeable on or by reference to offshore income, assets or activities which fall as excluded offshore income, assets or activities at the relevant time;
- (c) “excluded offshore income, assets or activities” means offshore income, asset or activities reportable to the Commissioners for Her Majesty’s Revenue and Customs pursuant to—
 - (i) the CRS, or
 - (ii) paragraph 3a of Article 8 of Council Directive 2011/16/EU⁽⁵⁾;
- (d) “relevant time” means the time when the event giving rise to a charge to income tax or capital gains tax on or by reference to offshore income, assets or activities occurs;
- (e) “TMA 1970” means the Taxes Management Act 1970.

Exclusion from offence under sections 106B to 106D of TMA 1970

3. A person is not guilty of an offence under section 106B, 106C or 106D of TMA 1970 (offences relating to certain failures to comply with sections 7 or 8 of TMA 1970 by a taxpayer chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities) if the only income tax or capital gains tax relevant for the purposes of those provisions for the year of assessment in question in relation to that person is excluded income or capital gains tax.

Threshold amount for the purposes of sections 106B to 106D of TMA 1970

4. The threshold amount for the purposes of sections 106B, 106C and 106D of TMA 1970 is £25,000.

5. Whether the threshold amount has been exceeded in relation to a person for the purposes of sections 106B, 106C and 106D of TMA 1970 must be determined by reference to —

- (a) regulations 6 and 7 for the purposes of section 106B of TMA 1970;
- (b) regulation 8 for the purposes of section 106C of TMA 1970;
- (c) regulations 9 and 10 for the purposes of section 106D of TMA 1970.

Calculation of the total amount of income tax and capital gains tax chargeable on or by reference to offshore income, assets or activities for the purposes of section 106B of TMA 1970

6. The total amount of income and capital gains tax chargeable for a year of assessment on or by reference to offshore income, assets or activities for the purposes of section 106B of TMA 1970 (offence of failure to give notification of being chargeable to tax) must be determined in accordance with paragraphs 7 and 11 of Schedule 41 to the Finance Act 2008⁽⁶⁾ (“paragraphs 7 and 11”) as if those paragraphs were modified as described in regulation 7.

7. The modifications referred to in regulation 6 are that paragraphs 7 and 11 must be construed as if—

- (a) they only have effect in relation to income tax and capital gains tax;
- (b) references made to “potential lost revenue” are references to “the total amount of tax chargeable on or by reference to offshore income, assets or activities”;
- (c) paragraphs 7(3) to (10) and 11(2)(b) to (d) are omitted; and
- (d) income tax and capital gains tax does not include excluded income tax and capital gains tax.

⁽⁵⁾ OJ No L 64, 11.3.2011, p1, relevantly amended by Council Directive 2014/107/EU, OJ No L 359, 16.12.2014, p1.

⁽⁶⁾ 2008 c. 9; paragraph 7 has been amended by paragraph 583(a) and (b) of Schedule 1 to the Corporation Tax Act 2010 (c. 4), paragraph 6(2) and (3) of Schedule 51 to the Finance Act 2013 (c. 29) and section 104(6) of the Finance Act 2015 (c. 11).

Calculation of the total amount of income tax and capital gains tax chargeable on or by reference to offshore income, assets or activities for the purposes of section 106C of TMA 1970

8. The total amount of income and capital gains tax chargeable for a year of assessment for the purposes of section 106C of TMA 1970 (offence of failing to deliver a tax return) is the amount of any liability to income tax or capital gains tax chargeable on or by reference to offshore income, assets or activities (other than excluded income tax or capital gains tax) which would have been shown in the return in question.

Calculation of the total amount of income tax and capital gains tax chargeable on or by reference to offshore income, assets or activities for the purposes of section 106D of TMA 1970

9. The increase in the amount of income and capital gains tax chargeable on or by reference to offshore income, assets or activities for a year of assessment for the purposes of section 106D of TMA 1970 (offence of making inaccurate return) must be determined in accordance with paragraphs 5, 6 and 7 of Schedule 24 to the Finance Act 2007⁽⁷⁾ (“paragraphs 5, 6 and 7”) as if those paragraphs were modified as described in regulation 10.

10. The modifications referred to in regulation 9 are that paragraphs 5, 6 and 7 must be construed as if—
- (a) they only have effect in relation to income tax and capital gains tax;
 - (b) references made to “potential lost revenue” are references to “the increase in the amount of tax chargeable on or by reference to offshore income, assets or activities”;
 - (c) paragraphs 5(3) and (4), 6(4)(a) and 7(4) are omitted;
 - (d) for the purposes of paragraph 6, the inaccuracy were a careless inaccuracy as described in paragraph 3(1)(a)⁽⁸⁾ of Schedule 24 to the Finance Act 2007; and
 - (e) income tax and capital gains tax does not include excluded income tax and capital gains tax.

Name

Name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on XXXX and have effect in relation to tax years beginning on or after 6th April XXXX.

A taxpayer will be guilty of an offence under sections 106B, 106C and 106D of the Taxes Management Act 1970 (c. 9) in respect of certain failures to comply with sections 7 or 8 of TMA 1970 where, as a result of the failure, the taxpayer does not notify the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) that the taxpayer is chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities (“relevant tax”). For an offence to be committed under those provisions, the relevant tax that is not reported to HMRC must exceed the “threshold amount”. Regulations 4 to 10 of these Regulations specify the threshold amount for each of the three offences as £25,000 together with the means of determining whether that threshold has been exceeded.

To avoid unnecessary calculations, regulation 3 provides that a person is not guilty of an offence under the relevant provisions if the only relevant tax not reported to HMRC is excluded income tax and capital gains tax.

⁽⁷⁾ 2007 c. 11; paragraph 5 has been amended by paragraph 7 of Schedule 40 to the Finance Act 2008 (c. 9), paragraph 3 of Schedule 57 to the Finance Act 2009 (c. 10) and paragraph 575(a) and (b) of Schedule 1 to the Corporation Tax Act 2010 (c. 4); paragraph 6 has been amended by paragraph 8(2) and (3) of Schedule 40 to the Finance Act 2008.

⁽⁸⁾ Paragraph 3 has been amended by paragraph 5(2)(a) and (b) and (3) of Schedule 40 to the Finance Act 2008.

A Tax Information and Impact Note covering this instrument was published on [xx]th December 2015 and is available on the gov.uk website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.