



HM Revenue  
& Customs

# Tackling offshore tax evasion: Strengthening civil deterrents

## **Consultation document**

Publication date: 19 August 2014

Closing date for comments: 31 October 2014

<b>Subject of this consultation:</b>	The Government has published this consultation on options to strengthen civil sanctions for those evading tax by using non-UK territories to hide taxable income, gains and assets offshore.
<b>Scope of this consultation:</b>	HMRC published an update to its offshore evasion strategy on 14 April 2014. This consultation is intended to explore the design of tailored sanctions to more effectively deter tax non-compliance linked to income and gains arising and assets held offshore. We welcome views on the design of the proposed options. This supports and builds on the regime for increased penalties for non-compliance involving offshore matters.
<b>Who should read this:</b>	HMRC would like to hear from its customers, in particular: individuals with offshore income, gains and assets; tax practitioners; representative bodies; and other interested parties.
<b>Duration:</b>	The consultation period runs from 19 August to 31 October 2014.
<b>Lead official:</b>	Amit Puri, Centre for Offshore Evasion Strategy, HM Revenue and Customs
<b>How to respond or enquire about this consultation:</b>	<p>Please send responses by email to:</p> <p><a href="mailto:consult.nosafehavens@hmrc.gsi.gov.uk">consult.nosafehavens@hmrc.gsi.gov.uk</a></p> <p>or via post to:</p> <p>Amit Puri Centre for Offshore Evasion Strategy HMRC Room 1C/26 100 Parliament Street London SW1A 2BQ</p>
<b>Additional ways to be involved:</b>	While the technical nature of several of the issues involved lends itself to a written response, the consultation team would be happy to meet to discuss the proposals.
<b>After the consultation:</b>	A summary of responses will be published later in 2014.
<b>Getting to this stage:</b>	This consultation takes forward HMRC's strategy for tackling offshore evasion, No Safe Havens. An update on this strategy was published in April 2014.
<b>Previous engagement:</b>	This is the first consultation on this topic. HMRC previously consulted about increased penalties for offshore non-compliance in December 2009.

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# 1. Introduction

- 1.1 A small minority of taxpayers fall short of meeting their obligations to society by taking advantage of offshore jurisdictions and unlawfully exploiting complex structures to evade tax, depriving public services of vital funds.
- 1.2 The objectives of HMRC's offshore evasion strategy are to ensure:
- 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 of offshore evasion.
- 1.3 For a number of reasons offshore non-compliance remains more difficult to detect and tackle.
- Those who facilitate offshore tax evasion are helping others to commit criminal activity, and those who do so knowingly run the risk of detection and punishment. These are strong incentives to ensure that the evasion remains beyond detection; it can be difficult to find and track the flow of funds outside of the UK.
  - This is aggravated by those who facilitate offshore tax evasion often being based outside of the UK. It can be difficult to identify and tackle these facilitators.
  - It can be difficult to obtain information from a number of jurisdictions for a range of reasons, including the nature of the exchange of information agreements in place or because of banking secrecy legislation.
  - Traditional exchange of information agreements include a "no fishing expedition" provision which means that tax authorities need to have already identified a risk of tax evasion. In some circumstances this can create a "Catch 22" situation where the tax authority needs the information from abroad to identify the tax risk.
  - A number of jurisdictions have yet to recognise tax evasion as a predicate offence under their anti-money laundering rules.
- 1.4 Given these difficulties in detecting non-compliance, the Government believes there is a case for increasing the costs of being caught to compensate. This is

a principle already embedded in the civil penalties regime for Income Tax and Capital Gains Tax, where undeclared income or gains arising overseas in a less transparent jurisdiction attract a higher penalty.

- 1.5 Criminal investigation and sanctions will play an increasingly prominent role in HMRC's response to offshore tax evasion. A parallel consultation, *Tackling offshore tax evasion: A new criminal offence*, discusses the design of a new strict liability criminal offence of failing to declare offshore income and gains, which will help to increase the proportion of cases which are handled through the criminal justice system.
- 1.6 However, the majority of cases are still likely to be investigated and settled through civil means. This includes cases not covered by the scope of the new criminal offence – for example, because the revenue lost is below the qualifying threshold – and cases which, under its published criminal investigation policy, HMRC decides are not appropriate for criminal investigation. It is vitally important that the civil penalties framework provides a consistent, coherent and tough deterrent against offshore tax non-compliance, wherever it arises.
- 1.7 Opportunities are available to disclose unpaid tax liabilities on the most favourable terms available under the law. Those who fail to take the opportunity to disclose voluntarily and who are later identified through HMRC action should face tough consequences. This means ensuring that those who evade tax offshore face strong penalties, regardless of which tax is at stake, or how they seek to break the rules.

## Existing offshore penalties

- 1.8 The offshore penalties regime (introduced by Schedule 10 to the Finance Act 2010) has applied to liabilities arising from 6 April 2011. The level of penalty is based on the type of behaviour that leads to the understatement of tax, and is linked to the tax transparency – the quality of tax information exchange – of the territory in which the income or gain arises. Chapter 4 gives further details about the different categories and classification criteria.
- 1.9 There are 3 levels of offshore penalty:
  - Category 1: up to 100% of the tax (the same as for domestic non-compliance)
  - Category 2: up to 150% of the tax
  - Category 3: up to 200% of the tax
- 1.10 A sample analysis of offshore disclosures in which penalties were charged shows 98% of them involved deliberate attempts by the taxpayer to evade tax.

## Safeguards

- 1.11 Safeguards come in a variety of forms and ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-

compliant. For penalties the onus is generally on HMRC to demonstrate the taxpayer's culpability based on fact, or in the absence of fact, on the balance of probabilities. More specifically, taxpayers who receive a penalty can ask for a review by HMRC and appeal to an independent tribunal. If a person has taken "reasonable care" or has a "reasonable excuse" they have no liability to a penalty. Generally, a "**reasonable excuse**" is when some unforeseeable or unusual event beyond a person's control has prevented them from complying with an obligation on time.

- 1.12 "**Reasonable care**" applies in relation to penalties for inaccuracies in returns and other documents submitted to HMRC. Every person must take "reasonable care" to ensure their return is correct, but "reasonable care" cannot be identified without consideration of the particular person's abilities and circumstances; an inaccuracy where there was no "reasonable care" incurs a penalty. HMRC recognises the wide range of abilities and circumstances of those persons completing returns or claims. So, whilst each person has a responsibility to take "reasonable care", what is necessary for each person to discharge that responsibility has to be viewed in the light of that person's abilities and circumstances. For example, we would expect a higher degree of care to be taken over large and complex matters than simple straightforward ones.

## Our consultation

- 1.13 The 2013 Autumn Statement announced that HMRC would consult on extending the scope of offshore penalties and other civil sanctions to increase the deterrent against offshore non-compliance. Our consultation sets out options which could build on HMRC's efforts to tackle offshore evasion.
- 1.14 We seek your views on six options, which fall into three broad categories:
- extending the scope of the existing penalty regime for offshore non-compliance (options 1 and 2);
  - deterring taxpayers from deliberately moving offshore assets to continue evading tax (options 3, 4 and 5); and
  - updating the existing offshore penalties regime to reflect the new global standard in tax information exchange (option 6).

### A note on case studies and illustrative examples

Our consultation uses real cases – anonymised, simplified and marked as "case studies" – and hypothetical scenarios – marked as "illustrative examples" – to help explore the issues at hand.

Where the case study or illustrative example discusses penalty consequences, it does so using the current law. This may not have been the applicable treatment when the case was actually settled.

## 2. Extending the scope of the existing penalty regime for offshore non-compliance

- 2.1 HMRC's offshore evasion strategy calls for tough, rigorously enforced sanctions against offshore non-compliance. Schedule 10 to the Finance Act 2010 (FA 2010) provided for new increased penalties for offshore non-compliance ("offshore penalties") which came into force on 6 April 2011. HMRC can apply these penalties to those who fail to declare taxable offshore income and gains arising in the 2011-12 tax year onwards.
- 2.2 The offshore penalties regime as set out in Schedule 24 to the Finance Act 2007, Schedule 41 to the Finance Act 2008 and Schedule 55 to the Finance Act 2009, covers inaccuracies in returns, failure to notify chargeability and late filing. The regime takes into account:
- the behaviour that gave rise to the inaccuracy or failure;
  - how much the person helped to establish the correct amount of tax due; and
  - the circumstances which may have caused the inaccuracy or failure.
- 2.3 These penalties also have important safeguards embedded in them including a reasonable excuse provision and a right to appeal against a penalty. The offshore penalties brought in by FA 2010:
- are behaviour-based;
  - only apply for Income Tax (IT) and Capital Gains Tax (CGT) on income and gains which arise outside of the UK; and
  - are linked to the tax transparency of the territory in which the undeclared income or gain arises. The less transparent the jurisdiction, the higher the penalty will be for failing to declare income or gains arising in that jurisdiction.
- 2.4 The underlying premise is that where it is harder for HMRC to get information from another territory, the more difficult it is to detect and remedy non-compliance and therefore the penalties for failing to declare income and gains arising in that territory will be higher.
- 2.5 The last statutory date for submitting 2011-12 personal tax returns was 31 January 2013. As a result the new offshore penalties have only been charged on a relatively small number of cases to date. Because of their recent introduction the evidence base on the application of these penalties is relatively small, but it is growing all the time. However, HMRC is monitoring penalties

charged under this regime to learn more about the territories involved and how compliance activities should be developed for the future.

- 2.6 HMRC believes that the same policy rationale – that it is harder for HMRC to detect and remedy non-compliance in respect of matters where the relevant activity is outside of the UK – applies for strengthening sanctions to other elements of personal taxation. This chapter considers the case for bolstering the sanctions and deterrents against offshore tax evasion by extending the principle of increased penalties for offshore matters to include:

(1) Inheritance Tax, and

(2) undeclared income and gains arising in the UK but hidden offshore.

### **Option 1 - Extending the scope of the offshore penalties regime to Inheritance Tax**

- 2.7 While people should be free to spend, save and invest their money wherever they want, we expect them to tell us about taxable income, gains and assets and pay any tax due. The majority of taxpayers are fully compliant in this regard. However, some taxpayers invest offshore in order to place those assets out of HMRC's reach, sometimes in an attempt to evade tax during their life, and sometimes in the hope of transferring the assets to the next generation without paying Inheritance Tax (IHT).

- 2.8 IHT is, alongside IT and CGT, one of the most significant tax regimes evaded through the use of offshore territories and complex structures. A sample analysis of 700 offshore disclosures concluded since the Liechtenstein Disclosure Facility started shows that approximately two-thirds included IHT implications.

- 2.9 In this section, we:

- describe the current penalty regime for IHT (paragraphs 2.10 – 2.13);
- set out the case for extending the offshore penalties regime to assets held offshore at death (paragraphs 2.14 – 2.17) and chargeable transfers of value offshore (paragraphs 2.18 – 2.21); and
- seek your views on the best approach to calculating offshore penalties (paragraphs 2.22 – 2.28).

### **Penalties chargeable in relation to Inheritance Tax**

- 2.10 IHT is payable on death, providing the net value of the estate, after deduction of reliefs and exemptions, is in excess of the nil-rate band threshold.

- 2.11 IHT can also be payable when certain transfers are made, for example:



- when assets are settled into trust, commonly known as an entry charge, or transferred other than to an individual;
- when assets leave a trust, commonly known as an exit or proportionate charge; and
- when a trust reaches a 10 year anniversary from when it was created and at the same interval thereafter, commonly known as a 10 year anniversary or periodic charge.

2.12 In each case, under Schedule 24 to the Finance Act 2007, inaccuracies in IHT accounts and other documents are subject to a penalty based on the potential lost revenue and the behaviour of the person liable to complete the IHT account or document. A penalty would also be in point if an IHT account is not filed under section 245 of the Inheritance Tax Act 1984.

2.13 The following persons are potentially liable to paying penalties:

- in relation to a death estate and the requirement to submit an IHT account – usually the “personal representative” or, in certain circumstances, a third party if that person is responsible for the inaccuracy;
- in relation to settling funds into a trust or a transfer other than to an individual – usually the “settlor” or “transferor”;
- in relation to an exit or proportionate charge – usually the “trustee” or in certain circumstances, a person who has received the assets / distributions; and
- in relation to a 10 year anniversary or periodic charge – the “trustee”.

## Inheritance Tax due following a death

2.14 As with other personal taxes, the opportunity to evade IHT arises due to the increased opportunity to hide assets held overseas from HMRC. Generally, personal representatives of the deceased are accountable, as they are required to complete and return an IHT account for the deceased’s estate. Offshore penalties apply in respect of IT and CGT payable, however any IHT also payable does not yet attract a higher penalty, despite the assets concerned being hidden offshore.

2.15 IHT is due six months after the end of the month in which the death occurs (when the transfer of assets is deemed to have taken place) and the IHT account is due to be filed within 12 months. There may be several people with an interest in, and the opportunity to, exploit offshore secrecy to evade tax. In the case of a death estate, offshore secrecy may have been taken advantage

of by the deceased, the personal representatives, or the beneficiaries, as the following case studies show.

### The deceased

#### Case study 1

The son and daughter of the late Mrs A were executors of her estate. They had always thought Mrs A to be successful, although she appeared to have very few assets on record.

Out of the blue, a letter arrived from Liechtenstein to say Mrs A had owned a Liechtenstein bank account. Their late mother had previously evaded IT and CGT. Mrs A's children approached HMRC through the LDF and settled the tax due, with interest. They have use of the remaining funds which were previously unavailable to them.

**Penalty consequences:** *The children were not liable to penalties, because they had taken reasonable care to ensure the IHT account was complete and accurate.*

### The personal representatives

#### Case study 2

Mr B inherited his late mother's bank account in Switzerland and was also the named executor. He decided not to include the bank account on the IHT account for his mother's estate in the hope that HMRC would never come to know of it. He had also not returned any investment income arising on that account to HMRC.

After the existence of the account had become known to HMRC and Mr B admitted to having hidden it, he agreed he had personally failed to notify his chargeability to IT and that he had returned an incorrect IHT account in respect of the death estate.

**Penalty consequences:** *Mr B had deliberately filed inaccurate personal tax returns, so he suffered increased penalties in relation to the income arising offshore in a category 2 jurisdiction (at the time). However, the under-declared IHT was treated in the same way as domestic non-compliance for penalty purposes – increased offshore penalties were not chargeable.*

## The beneficiaries

### Case study 3

Mrs C and her brother Mr D inherited their late father's bank accounts in Switzerland through legal succession, via a private arrangement with the offshore bank. A solicitor was appointed as an executor, but the siblings did not inform him of the existence of the offshore accounts, which were not included in the IHT account. The siblings had not returned any investment income arising from those accounts to HMRC.

Both Mrs C and Mr D agreed with HMRC that they had failed to notify their chargeability to IT and that the IHT account submitted many years ago was incorrect too. The under-declared IHT was subsequently collected from those in whom the assets vested (Mrs C and Mr D).

**Penalty consequences:** *The solicitors were not liable to penalties, because they had taken reasonable care to ensure the IHT account was complete and accurate.*

*Both Mrs C and Mr D were aware of the hidden assets and had deliberately not informed the executor of the estate, causing the IHT account to be incorrect. They had also deliberately failed to declare the investment income, so they suffered offshore penalties in relation to that income arising in a category 2 jurisdiction (at the time).*

*Mrs C and Mr D deliberately supplied false information or withheld information, with the intention of the IHT account to be inaccurate. Therefore, they suffered a penalty as third parties, but this was calculated in the same way as for domestic non-compliance.*

- 2.16 Often, family members or close relatives of the deceased are the personal representatives of the estate too, and they benefit from inheriting some, if not all, of the hidden assets concerned.
- 2.17 In each case above, the current penalty system creates an incentive – or at least adds no disincentive – to leave offshore assets out of an IHT account, in the knowledge that these assets are harder for HMRC to discover. As with the existing offshore penalties, HMRC's view is that there is a case for increasing the scale of the sanction where non-compliance is more difficult to detect. We therefore propose aligning sanctions for personal taxes – IT, CGT and IHT, by increasing the level of penalty where assets omitted from the IHT account are located offshore. As with existing IHT penalties, penalties would only apply to taxpayers – either personal representatives or other accountable persons – who had not taken reasonable care in the preparation of their IHT account, with the most serious penalties reserved for those who deliberately failed to comply.

**Q1 Do you consider it appropriate to extend the offshore penalties regime in the case of offshore assets which are part of the death estate and liable to IHT? If you do not, please say why.**

## Inheritance Tax on chargeable transfers of value

2.18 There are other opportunities to evade IHT where assets are transferred into often complex offshore structures. For example:

- where a person transfers an asset into a trust, they are generally liable for an entry charge, if the value of the asset exceeds the nil-rate band threshold; and
- where a settlor was originally UK domiciled when they settled funds into a non-UK resident trust, the trustees are generally liable for periodic and proportionate IHT charges.

2.19 As with death estates, there may be several people with an interest in, and the opportunity to, exploit offshore secrecy to evade tax in such scenarios. In the case of establishing an offshore trust, these opportunities may be exploited by:

### The settlor (and trustees)

#### Case study 4

Mr E was resident and deemed domiciled in the UK. He established and settled funds in a trust in the British Virgin Islands for his own benefit as well as his wife's and children's thereafter. The trustees were not resident in the UK.

When investigated, the existence of the offshore trust was discovered and Mr E admitted to HMRC he had made an immediately chargeable lifetime transfer. The trust was not an excluded property trust, so the trustees were strictly liable to IT because there was UK sourced income and IHT in relation to anniversary and exit charges. Mr E was however also liable to IT on income arising on the trust's assets, because it was settlor-interested for UK tax purposes; and an IHT entry charge became due in relation to the immediately chargeable transfer when first settling assets in the trust.

**Penalty consequences:** *Mr E suffered offshore penalties for deliberately failing to declare income arising in a category 2 jurisdiction. The non-resident trustees and Mr E had also failed to deliver IHT accounts, which were treated in the same way as domestic non-compliance for penalty purposes.*

## The beneficiaries

### Case study 5

Mr F was resident and domiciled in the UK, and a beneficiary of a Panamanian trust. The trust had been established for his benefit by his father many years before. The trustees were not resident in the UK but this was a relevant property trust.

He admitted to HMRC that he had received several large distributions, which should have been subject to IT. IHT exit charges were payable by the trustees, however they were not engaging with HMRC having knowingly delivered incorrect IHT accounts, believing they were acting in the best interests of Mr F. In order to conclude the investigation Mr F also paid the IHT corresponding to the taxable distributions he had received.

**Penalty consequences:** *Mr F had failed to notify HMRC of his chargeability to tax, so he suffered increased penalties in relation to the distributions arising from a category 3 jurisdiction. Despite the IHT being under-declared, it was treated in the same way as domestic non-compliance for penalty purposes, although the penalty was collected from the trustees for their error not that of Mr F.*

- 2.20 In the two case studies above, offshore penalties could only be charged on additional IT or CGT due. As with the death estate, there is a case for increasing the level of penalty where assets are moved or located offshore, as it is harder to detect the non-compliance, for example as HMRC's information powers are not enforceable against trustees outside the UK.
- 2.21 As with existing IHT penalties, penalties would only apply to taxpayers – either trustees, settlors or other accountable persons – who had not taken reasonable care in the preparation of the IHT account, with the most serious penalties reserved for those who deliberately failed to comply.

**Q2 Do you consider it appropriate to extend the offshore penalties regime in the case of transfers of assets into offshore structures which give rise to IHT? If you do not, please say why.**

## Calculating offshore penalties for Inheritance Tax

- 2.22 The level of offshore penalty for failure to declare IT and CGT is based on the territory where the income or gains arise, and whether the UK has an information sharing agreement with that territory, as well as the quality of the arrangement. (See paragraphs 1.8 and 1.9).
- 2.23 Typically, Double Taxation Agreements and Tax Information Exchange Agreements provide for information exchange for the purposes of IT (and CGT) only, although newer treaties have started to cover all taxes. Similarly, data

received annually under the European Union Savings Directive provides for information exchange, but on savings income only, not account balances. While such factors make it easier to find out about income and gains arising offshore they do not necessarily apply directly in the case of obtaining asset values for IHT purposes. However, the comprehensive information due to be exchanged under the Common Reporting Standard will include account balances too, which are more appropriate for IHT matters as this will include non-interest-bearing accounts.

- 2.24 Offshore penalties for IHT could be linked to a new table of designated territories, based on the newer treaties or include those that specifically cover IHT too. However, for simplicity and to remain consistent with the other taxes, our preference is to retain one table for all the personal taxes covered – IT, CGT and IHT – despite the lack of alignment with provisions to obtain asset values.

**Q3 Do you agree that offshore penalties for IHT should be calculated using the same classification for territories as applies for IT and CGT? If you do not, what factors should a new classification take into account and why?**

- 2.25 The category of offshore penalty for IT and CGT depends on where the income or gain arises. For IHT, we would need to consider the location of assets. There are, depending on the unpaid liability giving rise to a penalty, choices about which location needs to be taken into account.
- 2.26 For a death estate, it would appear reasonable to consider the location of assets outside of the UK at the date of death.

**Q4 Do you agree with our view about the location of assets in relation to a death event? If you do not, what could constitute a better approach?**

- 2.27 For a transfer, the penalty could be based upon either the initial or the final location of the assets. Our preference is to base the penalty on the destination of the assets, which would mean that both transfers out of the UK and those keeping assets out of the UK (moving them from one non-UK territory to another) fall within the remit of this option.

**Q5 Do you agree with our view about the location of assets in relation to transfers of value? If you do not, what could constitute a better approach?**

- 2.28 In further developing this approach, we will need to consider the definition of the destination, and in particular whether it should refer to the actual location of any assets, or the location or place of establishment of any entity (such as a bank, company or trust) to which ownership is transferred.

## Option 2 - Extending the offshore penalties regime to cover inaccuracies in category 1 or 2 territories where the proceeds are hidden in higher category territories

2.29 HMRC's offshore evasion strategy defines "offshore evasion" as:

*"...using a non-UK jurisdiction with the objective of evading UK tax. This includes moving UK gains, income or assets offshore to conceal them from HMRC; not declaring taxable income or gains that arise overseas, or taxable assets kept overseas; and using complex offshore structures to hide the beneficial ownership of assets, income or gains."*

2.30 For the purpose of the offshore penalties regime an "offshore matter" is defined by the Finance Act 2007, Schedule 24 at Paragraph 4A(4). An inaccuracy "involves an offshore matter" if it results in a potential loss of revenue that 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.

2.31 As noted above in the chapter 2 preamble, identifying income and gains arising offshore presents challenges to HMRC. For the same reasons – the limitations in obtaining information from some other jurisdictions – it can also be difficult to identify untaxed amounts arising in the UK which are then hidden offshore. There can also be less of a UK footprint for HMRC to detect the evasion.

2.32 We consider there is a case for amending the offshore penalties regime so that a higher penalty is chargeable where the proceeds of non-compliance are held offshore.

2.33 In this section, we:

- describe how the offshore penalties regime currently works;
- set out the case for introducing the higher penalties where the proceeds of non-compliance are moved to or are received in a category 2 or category 3 territory, even if later income or gains are reported in the UK; and
- consider some practical questions about making links between the original proceeds of non-compliance and amounts held offshore and about the calculation of offshore penalties in these circumstances.

## Penalties currently chargeable

### Case study 6

Mr G had suppressed cash takings from his UK second-hand car sales business for many years. Rather than depositing sales proceeds in the business bank account and declaring the profits to HMRC, he had flown regularly to Jersey to deposit the cash in accounts there.

Mr G agreed that additional IT was payable on the under-declared profits, as well as IT and CGT on the investment income arising offshore.

#### **Penalty consequences:**

*1) Mr G had failed to submit accurate personal tax returns in respect of income and gains arising on investment income from a source in a category 2 jurisdiction. This inaccuracy suffered category 2 penalties of up to 150%.*

*2) The additional tax payable on suppressed profits was treated as domestic non-compliance and therefore a category 1 inaccuracy, even though the proceeds of that evasion were hidden offshore. Penalties of up to 100% only were charged, despite Mr G taking calculated steps to hide evidence of his evasion by putting the money concerned offshore.*

### Case study 7

Mr M operated a business with customers solely in the UK. He asked most of his customers to pay him by electronic transfer to his UK bank account, and declared this income in his tax return.

However, Mr M asked other customers to pay him through an internet payments service linked to another account which, unbeknown to them, was located in a category 3 territory. He had not declared this income to HMRC. However, he settled his affairs with HMRC, agreeing that the source of the funds offshore was his UK business.

**Penalty consequences:** *Mr M had failed to submit accurate personal tax returns in respect of income which had a UK source. The additional tax payable on suppressed profits was treated as domestic non-compliance and therefore only domestic level penalties applied, even though Mr M took calculated steps to hide evidence of his evasion.*

- 2.34 The examples above demonstrate the effect of current legislation, which does not reflect the fact that a taxpayer is hiding the proceeds of evasion in a more opaque territory, in determining the penalty rate for the original inaccuracy or failure. Our view is that this gives rise to an imbalance in the consequences: deliberately concealing UK income in a hidden offshore account (one form of offshore evasion) can attract significantly lower penalties than failing to declare interest income arising on that account (another form of offshore evasion).



**Q6 Do you accept the principle that penalties should be strengthened to take account of where the proceeds of evasion are hidden? If you do not, please say why.**

## Proposal

- 2.35 We propose that, where a taxpayer fails to declare income or gains which arise in the UK – a “domestic matter” – **and** those proceeds are moved to or are received in another territory, an additional factor should be taken into account in setting the level of penalty applicable, according to the territory in which the proceeds of the non-compliance are located. The level of penalty would be that which would apply to taxable income arising in that territory under the offshore penalties regime. Given the focus on income and gains, this proposal would apply where Income Tax or Capital Gains Tax are at stake.

## Income or gains arising offshore before being moved to another territory

- 2.36 The examples above have centred on a scenario where the original non-compliance takes place in the UK. However it is potentially even more difficult to identify taxable income and gains arising offshore and where those untaxed amounts are moved from a comparatively transparent jurisdiction to a less transparent one – for example, where under-declared income arising in a category 1 territory is banked in a category 3 territory, making it harder for HMRC to find it.

### Illustrative example 1

Mrs H owns a property in France, a category 1 territory, about which she has not informed HMRC. She sells the property, realising a large capital gain, and puts the proceeds into a Monaco (category 3 territory) bank account, on which she earns interest.

#### **Penalty consequences:**

*1) Mrs H fails to submit accurate personal tax returns in respect of income and gains arising on investment income sourced in a category 3 jurisdiction, so she suffers (higher) offshore penalties.*

*2) The CGT payable on the sale of the property is treated as a category 1 inaccuracy, even though the proceeds are hidden in a category 3 jurisdiction. Penalties of up to 100% only are chargeable, despite Mrs H taking calculated steps to hide evidence of her evasion by putting the proceeds into a less transparent territory.*

- 2.37 It would seem inconsistent if income arising and hidden in a category 3 territory ended up attracting a significantly higher penalty than income arising in a category 1 territory which is hidden in the same category 3 territory.

**Q7 Do you agree that the extension of offshore penalties should apply to cover all inaccuracies arising and failures relating to category 1 or category 2 territories where the proceeds of that non-compliance are hidden in higher category territories? If you do not, please say why.**

### **Establishing the link between the original non-compliance / source and the funds held in offshore accounts or other structures**

- 2.38 Paragraphs 2.29 to 2.37 set out the proposed policy framework and invite views. However, it is critical that the proposals are deliverable in practice. There would be a number of issues to resolve in legislation and guidance. In order to give taxpayers certainty about the penalty treatment they can expect, we recognise the need to give clarity on what is in scope, particularly with regard to what constitutes a transfer offshore.
- 2.39 Sometimes there will be a clear link between the original proceeds of non-compliance and the transfer of funds offshore. For example, a European company pays out a large dividend to a UK taxpayer, but they fail to declare that income to HMRC. They bank the cheque in a category 3 territory. There is a clear and demonstrable link between the original non-compliance (failure to declare the dividend – an understatement) and the jurisdiction where the funds are subsequently hidden.
- 2.40 However, the situation is often more complex, as shown in illustrative example 2 below.
- 2.41 In practice, HMRC's guidance deals with the recalculation of profits where it is shown that the underlying business records are inaccurate. HMRC will, for example, look at the sole trader's private bank statements to establish whether takings have been diverted from the business to private accounts. It would often not be possible to demonstrate scientifically that every single deposit, transfer or monetary movement corresponding to the domestic evasion is linked with the funds found offshore. However, in the absence of satisfactory evidence to the contrary HMRC is likely to be able to argue successfully before the Tribunal, that on the balance of probabilities and making inferences based on the available evidence, the amount on which tax is evaded is at least equal to the funds found in the UK and those in the offshore accounts. However, while this process allows for an investigation to deduce the amount of tax which should have been paid, it does not necessarily demonstrate a robust link between the original proceeds of non-compliance and the funds held offshore.
- 2.42 This issue of calculating amounts understated is already faced by HMRC, taxpayers and agents when considering whether funds are the proceeds of non-compliance, rather than other non-taxable amounts. This process is resource intensive, but in the majority of cases it leads to outcomes which are agreed between HMRC and the taxpayer.

### Illustrative example 2

Miss J, a UK-based consultant, suppresses cash takings of £10,000. She puts this cash into a non-interest-bearing UK account which already contains £30,000 of taxed income. She then transfers £6,000 from the UK account to an offshore account in a category 3 jurisdiction.

Miss J would contend that the £6,000 comprises the taxed income which was already in the account, so offshore penalties for the £10,000 inaccuracy should not apply.

HMRC could contend that the £6,000 represents a 60% portion of the suppressed cash takings, so offshore penalties should apply to 60% of the potential lost revenue.

- 2.43 One way to create greater certainty would be to introduce a statutory rule to determine whether a link should be presumed to exist between non-compliance and funds held offshore. This would create a presumption that, where offshore funds cannot be demonstrated to have arisen from taxable sources, and where domestic non-compliance has been demonstrated, those offshore funds represent the proceeds of the non-compliance.
- 2.44 This would ensure more predictable outcomes, while still allowing taxpayers the opportunity to demonstrate that any offshore funds are tax compliant.

**Q8 Do you favour the introduction of such a statutory rule? How else might the link between non-compliance and offshore funds be demonstrated?**

### Which category of penalty should apply?

- 2.45 We consider there is a need to give taxpayers sufficient certainty about what level of penalty could apply in these circumstances. Where there has been one inaccuracy, and all the proceeds of that non-compliance are transferred immediately to an offshore account, the applicable penalty category is clear: it will be the category applicable to income arising in the territory to which the proceeds were transferred.
- 2.46 In the case where there is one inaccuracy on a return, but not all the proceeds of that non-compliance are placed offshore, or where the proceeds are sent to different territories, we have identified two possible methods for determining which penalty category should apply.
- 1. The category of the jurisdiction in which the majority of the proceeds are transferred or received*
- 2.47 In considering the penalty treatment of an inaccuracy where the proceeds have been transferred to different places, there are parallels with the application of rules on concealment. Where a taxpayer has deliberately failed to bring some

income into account, and has sought to hide the proceeds of this non-compliance – for example by diverting the monies to a hidden bank account and covering the traces – then the taxpayer has sought to conceal the inaccuracy.

- 2.48 This is the case even if only a proportion of the proceeds are hidden. The behaviour ascribed to determine the level of the penalty is thus deliberate with concealment, and this level of penalty is applicable to the entire potential lost revenue from that inaccuracy. This maintains the principle that for one inaccuracy, there can only be one behaviour.
- 2.49 We could apply the same principle in determining the classification for offshore penalties in these circumstances by applying the category 3 level of penalty if any part of the proceeds of evasion is moved to a category 3 territory. However, this might be seen as disproportionate. If a small fraction of the proceeds of the non-compliance is invested in a category 3 territory, this might still constitute concealment, but the majority of the proceeds could more easily be detected by HMRC, making the non-compliance easier to remedy.
- 2.50 We consider that it would be more proportionate to determine the classification of the penalty in relation to the degree of transparency of the jurisdictions in which the largest part of the proceeds of the non-compliance can be found. This would maintain the principle of one penalty rate for each inaccuracy.

## *2. The categories of each jurisdiction in which the proceeds were transferred or received*

- 2.51 An alternative would be to use a just and reasonable apportionment as set out in the example below. This method would take each territory's arrangements for tax information exchange into account and follows the way in which offshore penalties are currently calculated – Paragraph 4A(6), Schedule 24 to the Finance Act 2007 states that where “a single inaccuracy is in more than one category... (a) it is to be treated for the purposes of this Schedule as if it were separate inaccuracies, one in each relevant category according to the matters that it involves, and (b) the potential lost revenue is to be calculated separately in respect of each separate inaccuracy.”

### Illustrative example 3

For example, of undeclared income of £10,000:

- 35% is banked in a UK account;
- 35% is banked in a category 2 jurisdiction; and
- 30% is banked in a category 3 jurisdiction.

The potential lost revenue on the undeclared £10,000 would attract pro-rata penalty loadings corresponding with the ratio of untaxed amounts in each territory to the total untaxed amounts.

- 2.52 This would give rise to more complex calculations, as potential lost revenue would have to be apportioned across territories. However this would be consistent with the current offshore penalties regime.

**Q9 Which of the above two methods for ascertaining the category / level of penalty do you consider to be the best way of applying the extension to offshore penalties? Please say why.**

## **Safeguards**

- 2.53 As referred to at paragraphs 1.11 and 1.12 safeguards ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-compliant.
- 2.54 If the offshore penalty regime were extended to cover Inheritance Tax or the domestic non-compliance, the proceeds of which are moved offshore, then the safeguards present in the current regime would also be extended. No penalty would be due where a taxpayer has taken reasonable care with their affairs; reasonable excuse provisions would also apply where they apply in the current rules. Existing review and appeal procedures would remain. With this in mind, it is our belief that existing safeguards would remain sufficient if the offshore penalties regime was extended as proposed in this chapter.

**Q10 Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

### 3. Deterring taxpayers from deliberately moving offshore assets to continue evading tax

- 3.1 Under the UK's leadership of the G8, there have been significant steps forward in international tax transparency. These steps will make it easier for HMRC to promote good offshore compliance, prevent offshore non-compliance, and respond to offshore non-compliance where it occurs.
- 3.2 We anticipate that many offshore evaders will recognise this step change and settle their tax affairs before new information sharing agreements come into force. However, there are individuals who will try to stay ahead of HMRC by deliberately moving funds between offshore jurisdictions. We have seen Liechtenstein Disclosure Facility disclosures which provide evidence of funds intentionally being moved out of jurisdictions with which the UK has announced agreements, to ones in which individuals mistakenly thought their evasion would still be protected by local banking secrecy rules. Recently, the Swiss authorities passed details of the top 10 destinations to which Swiss funds belonging to UK customers were moved before the UK-Swiss agreement came into force, which provides further evidence of this particular type of behaviour.
- 3.3 Although there are downsides to deliberately moving funds – individuals are more likely to face criminal investigation or may face a higher penalty because it is taken into account in determining the taxpayer's behaviour, there is no specific deterrent against this type of behaviour. In fact, the current framework can actually provide an incentive to keep moving untaxed funds to defer or even reduce liabilities.
- 3.4 Currently, the law allows for the collection of the previous 20 years' tax liabilities, where the taxpayer's behaviour is deliberate or deliberate with concealment. The following two examples demonstrate the additional steps individuals take to continue hiding income, gains and assets offshore and how in these circumstances the oldest tax liabilities fall out of charge altogether. They also highlight the difficulties that remain in obtaining relevant tax information from other territories despite some territories taking positive steps to increase tax transparency.

#### Illustrative example 4

A taxpayer had been hiding income and gains arising in Liechtenstein since the mid-1980s, having inherited family wealth. He decided to move those assets to one of the Crown Dependencies in 2010 following publicity about the special tax agreement between the UK and Liechtenstein – rather than disclosing voluntarily.

However, in 2013 all three Crown Dependencies agreed to automatically exchange comprehensive information in line with the new global standard.

The taxpayer decided in 2015 to move his assets once more to a category 3 jurisdiction, which had no information exchange arrangements with the UK.

If HMRC were to discover these liabilities in 2016-17, we would only be able to collect unpaid tax going as far back as 1996-97 under current legislation. This would mean over 10 years of tax payable before 1996-97 not being collected, and every additional year that the taxpayer's activities escaped detection would mean one less year for which we could collect unpaid tax.

- 3.5 It is unfair that those evading taxes offshore and moving their assets from a newly-transparent jurisdiction to one which has not committed to a new automatic information exchange agreement should be able to gain a tax advantage compared with those who come forward sooner. The penalties system should encourage disclosure, not onwards movement of assets. The options set out below propose new measures intended to remove the benefit of moving funds to less transparent jurisdictions and to strengthen sanctions against this kind of behaviour. The options are:

- a new offshore surcharge;
- extending the assessing time limit; and
- increasing penalties to reflect the number of times assets are moved.

- 3.6 These measures should only apply where

a) the assets are the proceeds of deliberate non-compliance (i.e. an offshore penalty for deliberate non-compliance has been applied); **and**  
b) the movement is in response to the increased tax transparency of the jurisdiction in which the assets were located with the intention of continuing to hide them.

- 3.7 They should not penalise genuine investment or business activity. This means that HMRC would be required to demonstrate that, in addition to the non-compliance being deliberate, the movement of funds was with the intention of avoiding greater tax transparency.

**Q11 Do you agree that there should be strengthened sanctions for those who deliberately move assets with the intention of continuing to evade tax? If you do not, please say why.**

**Option 3 - Introducing a new offshore surcharge to complement the offshore penalties regime where offshore assets have been deliberately moved to continue evading tax**

- 3.8 Late payment of tax already attracts interest. While this can be a significant sum where liabilities are settled several years later, interest simply represents commercial restitution for the Exchequer for not having use of the money at the right time. It is explicitly not a sanction, nor intended to carry a deterrent effect in the way penalties do.
- 3.9 One option would be to apply a new penal surcharge where assets have been moved between jurisdictions in order to keep offshore assets hidden for longer. This would be chargeable in addition to existing behaviour-based penalties for inaccuracies and failure to notify chargeability, as well as the late payment interest which accrues on tax liabilities that remain outstanding from the statutory due and payable dates. The level of the surcharge would reflect the difficulty of uncovering evasion involving non-UK territories. The aim is to encourage earlier voluntary disclosure and to penalise those who choose not to come forward by removing some of the advantage associated with keeping offshore assets hidden for longer.

**Who would this change affect and how?**

- 3.10 This could be a fixed percentage surcharge, for each whole year for which tax liabilities remain unpaid. The surcharge would be imposed when the non-compliance has attracted a penalty for deliberate non-compliance involving an “offshore matter”, and where the proceeds of evasion have moved from one offshore jurisdiction to another. We believe that this option addresses the most serious conduct and where the oldest tax liabilities have remained unregularised and unpaid – specifically targeting the commercial benefit of offshore non-compliance.
- 3.11 Combined with the benefits of making a voluntary disclosure to HMRC, we consider that the introduction of this sanction will act as a significant deterrent, because the effect of its application will be a marked increase in the downside for taking steps to continue evading tax.

**Q12 Do you consider that option 3 meets the policy objectives set out above? If you do not, please say why.**



## **Option 4 - Extending the 20 years assessing time limit where offshore assets have been deliberately moved to continue evading tax**

- 3.12 HMRC can issue assessments and raise determinations for a maximum of 20 years from the end of the year of assessment for IT and CGT purposes. For IHT, this figure is 20 years from the later of the date on which the last IHT payment was made and accepted, and the date on which IHT became due. However, where an IHT account has not been delivered, and the failure was deliberate, there is no time limit. As an alternative to option 3, we could seek to extend these statutory time limits in the case of deliberate non-compliance where assets are moved to escape greater tax transparency.
- 3.13 Finality is an important principle in the tax system. Assessing time limit restrictions should not be removed altogether. We are considering instead establishing a clear limit beyond which HMRC could not seek unpaid liabilities but could continue to assess as far back as this period without time limits expiring. This could be, for example:
- 1996-97 – this could be an appropriate limit because HMRC can currently take formal action in the case of deliberate tax evasion for this year until 05/04/2017, which is six months after we receive the first information exchanges on offshore accounts under new agreements; or
  - 1999-00 – this is the earliest year for which tax is due under the terms of the current offshore disclosure facilities. This baseline would only come into effect after 05/04/2020.
- 3.14 In practice only a limited number of tax evaders are impacted by the 20 year assessing rule. A sample analysis of 2,500 penalties charged in offshore disclosures shows that in 98% of them the behaviours involved were deliberate, which means that HMRC could potentially have assessed the past 20 tax years. A sample analysis of 745 of the most serious tax investigations shows that between 10 and 20 years are covered in approximately 19% of those cases. It is clear from these figures that, in practice, most serious tax evaders would not be affected by this change, so its deterrent effect may be limited. For this reason we believe it is not as effective as option 3.

## Who would this change affect and how?

### Illustrative example 5

Mrs J has been in the interior design business since 1989-90. She acquired her clients by word of mouth in France, Germany, Italy and Spain, but when the European Union Savings Directive came into effect she moved her undeclared funds out of those territories and into Switzerland.

When Switzerland signed a tax cooperation agreement with the UK she moved her funds into another territory, which later entered into an agreement with the UK to share comprehensive bank and financial account information.

In an attempt to stay one step ahead of HMRC she quickly moved her funds from one jurisdiction to another.

HMRC identifies Mrs J in 2020-21 when the jurisdiction in which her assets are located starts to share information with the UK. Mrs J agrees with HMRC that her conduct has been deliberate with attempts to conceal, and so she suffers increased penalties for offshore non-compliance. Under current law, she can only be assessed back to 2000-01 – 20 years from the end of the relevant tax year – meaning over ten previous tax years have fallen out of charge.

- 3.15 Mrs J has taken advantage of local secrecy principles and systematically used various non-UK territories to keep her offshore income and assets hidden. However, if legislation were in place to extend the assessing time limits, then HMRC would be able to assess her as far back as the new baseline date – as set out at paragraph 3.13 above.

**Q13 Do you consider that option 4 meets the policy objectives set out above? If you do not, please say why.**

### **Option 5 - Increasing the quantum of offshore penalties to reflect the number of times offshore assets have been deliberately moved to continue evading tax**

- 3.16 As explained at paragraph 3.13, modifying the number of years for which HMRC could seek to collect unpaid tax would only impact on those whose behaviour encompassed more than 20 years of liabilities by the time they were caught.
- 3.17 There is another possible approach which would apply in the case of deliberate non-compliance which involves an “offshore matter”, and where the proceeds of evasion have been moved from one jurisdiction to another. This is to change the penalty rate on the original non-compliance, increasing it for every movement of funds.
- 3.18 In the example above, Mrs J moved the proceeds of her evasion at least twice to remain ahead of HMRC. If she faced a penalty before the money was moved

out of Switzerland, under this proposal that amount would be increased by a proportion. Following the move out of Switzerland, the penalty level on potential lost revenue after that date would be increased again by a higher proportion. The proportion would be increased each time Mrs J moved her assets between jurisdictions to stay ahead of HMRC.

- 3.19 Alternatively, the higher proportion could apply in respect of all the liabilities arising. On this basis, the total penalties chargeable would be increased by that same proportion.

**Q14 Do you consider that option 5 meets the policy objectives set out above? If you do not, please say why.**

- 3.20 For this particular option, the second calculation method (see paragraph 3.19 above) would appear to be better, because it penalises the entire offshore non-compliance by reference to the total number of steps taken to stay ahead of HMRC.

**Q15 Do you have a preferred calculation method for option 5? If you do, please say which one and why.**

- 3.21 We would not expect to introduce all three of the measures described in this chapter so we would welcome views on which of them you would expect to be most effective. Our overall preference is for option 3 – which we consider would be simpler to operate in practice.

**Q16 Do you have a preference between options 3, 4 and 5? If you do, please say why.**

## Safeguards

- 3.22 As referred to at paragraphs 1.11 and 1.12 safeguards ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-compliant. For all the measures described in this chapter, we would expect the current penalty related safeguards to apply.
- 3.23 If the offshore surcharge measure described in this chapter was adopted, then the safeguards present in the current penalty regime would also apply to it. In the case of the assessing time limit restriction and stepped increase in penalty rate measures being extended, the current safeguards would be extended too. No penalty would be due where a taxpayer has taken reasonable care with their affairs; reasonable excuse provisions would also apply where they apply in the current rules. Existing review and appeal procedures would remain. With this in mind, it is our belief that existing safeguards would remain sufficient if the measures proposed in this chapter were taken forward.

**Q17 Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

## 4. Updating the offshore penalties regime to reflect the new global standard in tax information exchange

4.1 Currently there are three categories of penalties for offshore non-compliance, which reflect the quality of the information exchange arrangements with the jurisdiction in which the income or gains arise. Jurisdictions which have agreed to share information on income automatically with the UK – for example under the European Union Savings Directive – are currently designated in category 1. Since the legislation was introduced, 12 territories have moved from category 3 to category 2, and two from category 2 to category 1, to reflect the fact that new information sharing arrangements have been entered into between the UK and those territories. In each case, the effect of the change was that the level of offshore penalty was reduced.

4.2 Currently, the criteria for the 3 categories are broadly:

	Penalties of up to 'X' of the potential lost revenue
Category 1: Automatic exchange of information (AEOI) and other tax cooperation agreements, which have similar effect	100%
Category 2: Exchange of Information (EOI) on request to the international standard, and certain less developed territories	150%
Category 3: No EOI or EOI agreements that do not meet international standards	200%

4.3 The Organisation for Economic Co-operation and Development (OECD) recently unveiled a new global standard for the automatic exchange of information, the Common Reporting Standard (CRS). This standard provides for marked increase in the volumes and detail of information to be shared with other jurisdictions also adopting the standard. To date, 45 jurisdictions, including the UK, and the British Crown Dependencies and all Overseas Territories which have financial centres, have committed to early adoption of the CRS.

4.4 We consider that the categorisation of non-UK territories for offshore penalty purposes should be revised to reflect this new global standard in automatic exchange of information. Offshore penalties should influence behavioural change in taxpayers, for example, their choice as to whether they declare taxable income, gains and assets invested there. Those who hold or place the proceeds of tax evasion in a jurisdiction which has not adopted the new standard, with the hope of escaping scrutiny, should face tougher consequences.

## Option 6 - Introducing a new category into the table of Designated Territories

- 4.5 We could introduce a new category to recognise the fact that a new standard has been set, and include those territories which are ready to exchange comprehensive tax information under bilateral agreements with the UK or the Multilateral Convention underpinned by the CRS. We could move jurisdictions into the new category when we have finalised arrangements allowing for AEOI on this basis.
- 4.6 One possible consequence of a change is that offshore evaders hiding money in territories which are not in the new category but which meet the current category 1 standards would face a penalty percentage which is higher than the current maximum of 100%. Eight category 1 territories have not yet committed to early adoption of the CRS (Aruba, Australia, Canada, Japan, South Korea, New Zealand, Switzerland and the US) and would potentially not be included in the new category, although some are EU Member States and some are part of the G20, which have strongly endorsed the new standard and may have moved forward by the time any new classification took effect. 13 category 2 and category 3 territories (Argentina, Bermuda, British Virgin Islands, Croatia, Columbia, Faroe Islands, Gibraltar, Iceland, India, Jersey, Mexico, South Africa and Turks & Caicos Islands) have already committed to adopt the new standard and would potentially find themselves in the new category.

### **Q18 Do you consider it appropriate to update the offshore penalties regime to reflect the new global standard? If you do not, please say why.**

- 4.7 The new category would be populated by the most transparent jurisdictions – those whose commitment to the CRS means that it is easiest to detect and respond to offshore non-compliance involving those jurisdictions. This category would naturally attract the lowest penalty rate; i.e. that which is equivalent to the current rate applied to domestic non-compliance, with a limit of 100% of tax.
- 4.8 This would create a new “category 0”, as illustrated in the box below.

Proposed new criteria for 4 categories:

- Category 0: jurisdictions which share information to the Common Reporting Standard
- Category 1: jurisdictions which automatically share tax information short of the CRS (e.g. information on savings income) or operate tax cooperation agreements
- Category 2: jurisdictions which exchange information on request, and some of the least developed countries
- Category 3: jurisdictions which do not exchange tax information, or which have agreements to share information on request with the UK, but those agreements do not meet international standards

- 4.9 The question then becomes what rate of penalty is charged for each category. We consider there are two methods for setting the maximum level of penalties chargeable. One option would be to maintain the current range of penalties, meaning category 0 would carry a maximum of 100% and category 3 a maximum of 200%. The maximum penalty for category 1 would increase, as would the maximum penalty for category 2.
- 4.10 An alternative approach would be to recognise that the expectations of both the public and governments in respect of tax transparency have significantly increased since 2013. Despite the options set out in chapter 3, determined tax evaders may still see advantages in seeking to move funds to jurisdictions in category 3 on the basis that HMRC will be unable to identify the tax evasion. We could therefore establish new penalty rates with category 0 at 100% and category 3 at a higher rate than the current 200%.

**Q19 Recognising the step change in automatic exchange of information standards, which method do you consider better achieves the policy objectives set out above and please say why?**

## **Safeguards**

- 4.11 As referred to at paragraphs 1.11 and 1.12 safeguards ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-compliant.
- 4.12 If this proposal to update the criteria by which the categories for offshore penalty purposes are defined is adopted, then the safeguards present in the current regime would also be extended. No penalty would be due where a taxpayer has taken reasonable care with their affairs; reasonable excuse provisions would also apply where they apply in the current rules. Existing review and appeal procedures would remain. With this in mind, it is our belief that existing safeguards would remain sufficient if the offshore penalties regime was extended as proposed in this chapter.

**Q20 Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

## 5. Assessment of Impacts

### Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	The final costing of this measure will depend on the outcome of the consultation and will be subject to scrutiny by the Office for Budget Responsibility.				
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts.				
<b>Impact on individuals and households</b>	There are no expected impacts on tax compliant individuals and households. The option will only affect non-compliant individuals who become liable to a penalty for carelessly or deliberately submitting inaccurate information about their taxable income or gains from activities, sources or assets held offshore.				
<b>Equalities impacts</b>	We do not have data which will indicate who might be affected by this measure. However, any affected equality groups are likely to be those over represented amongst those of above average wealth.				
<b>Impact on businesses and Civil Society Organisations</b>	It is not expected that there will be any significant direct impact on businesses and Civil Society Organisations.				
<b>Impact on HMRC or other public sector delivery organisations</b>	The cost of these changes to HMRC will depend on the outcome of the consultation. They are currently estimated to be of the order £0.5m for the IT changes.				
<b>Other impacts</b>	Other impacts have been considered and none have been identified.				

**Q21 Do you have any views, comments or evidence which may help inform our understanding of likely impacts?**

**Q22 Do you have any views, comments or evidence which may help inform our understanding of likely equalities impacts?**



## 6. Summary of Consultation Questions

### Extending the scope of penalties for offshore non-compliance

#### Option 1 - Extending the scope of the offshore penalties regime to Inheritance Tax

- 1. Do you consider it appropriate to extend the offshore penalties regime in the case of offshore assets which are part of the death estate and liable to IHT? If you do not, please say why.**
- 2. Do you consider it appropriate to extend the offshore penalties regime in the case of transfers of assets into offshore structures which give rise to IHT? If you do not, please say why.**
- 3. Do you agree that offshore penalties for IHT should be calculated using the same classification for territories as applies for IT and CGT? If you do not, what factors should a new classification take into account and why?**
- 4. Do you agree with our view about the location of assets in relation to a death event? If you do not, what could constitute a better approach?**
- 5. Do you agree with our view about the location of assets in relation to transfers of value? If you do not, what could constitute a better approach?**

#### Option 2 - Extending the offshore penalties regime to cover inaccuracies in category 1 or category 2 territories where the proceeds are hidden in higher category territories

- 6. Do you accept the principle that penalties should be strengthened to take account of where the proceeds of evasion are hidden? If you do not, please say why.**
- 7. Do you agree that the extension of offshore penalties should apply to cover all inaccuracies arising and failures relating to category 1 or category 2 territories where the proceeds of that non-compliance are hidden in higher category territories? If you do not, please say why.**
- 8. Do you favour the introduction of such a statutory rule? How else might the link between non-compliance and offshore funds be demonstrated?**
- 9. Which of the above two methods for ascertaining the category/ level of penalty do you consider to be the best way of applying the extension to offshore penalties? Please say why.**
- 10. Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how should they be amended?**



## **Deterring taxpayers from deliberately moving offshore assets to continue evading tax**

**11. Do you agree that there should be strengthened sanctions for those who deliberately move assets with the intention of continuing to evade tax? If you do not, please say why.**

Option 3 - Introducing a new offshore surcharge to complement the offshore penalties regime where offshore assets have been deliberately moved to continue evading tax

**12. Do you consider that option 3 meets the policy objectives set out above? If you do not, please say why.**

Option 4 - Extending the 20 years assessing time limits where offshore assets have been deliberately moved to continue evading tax

**13. Do you consider that option 4 meets the policy objectives set out above? If you do not, please say why.**

Option 5 - Increasing the quantum of offshore penalties to reflect the number of times offshore assets have been deliberately moved to continue evading tax

**14. Do you consider that option 5 meets the policy objectives set out above? If you do not, please say why.**

**15. Do you have a preferred calculation method for option 5? If you do, please say which one and why.**

**16. Do you have a preference between options 3, 4 and 5? If you do, please say why.**

**17. Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

## **Updating the offshore penalties regime to reflect the new global standard in tax information exchange**

Option 6 - Introducing a new category into the table of Designated Territories

**18. Do you consider it appropriate to update the offshore penalties regime to reflect the new global standard? If you do not, please say why.**

**19. Recognising the step change in automatic exchange of information standards, which method do you consider better achieves the policy objectives set out above and please say why?**

**20. Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

### **Assessment of Impacts**

**21. Do you have any views, comments or evidence which may help inform our understanding of likely impacts?**

**22. Do you have any views, comments or evidence which may help inform our understanding of likely equalities 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 stages 1 and 2 of the process. The purpose of the consultation is to seek views on the detailed policy design, any suitable possible alternatives and a framework for implementation of a specific proposal.

### How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 31 October 2014, by e-mail to [consult.nosafehavens@hmrc.gsi.gov.uk](mailto:consult.nosafehavens@hmrc.gsi.gov.uk) or by post to: Amit Puri, HMRC Centre for Offshore Evasion Strategy, Room 1C/26, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries can be addressed on 03000 526801 (from a text phone prefix this number with 18001).

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 Inside Government](#). 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 confidentiality 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:

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Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

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

# Annex A: Relevant Government Legislation

Finance Act 2007, Schedule 24, Paragraphs 4, 4A, 10, 12, 21A, 21B and 23B

Finance Act 2008, Schedule 41, Paragraphs 6, 6A and 13

Finance Act 2009, Schedule 55, Paragraphs 6, 6A, 15, 17,

Finance Act 2010, Schedule 10 and Section 35

Finance Act 2012, Section 219

Finance Act 2008, Schedule 39

Finance Act 2009, Schedule 51, Part 3

Inheritance Tax Act 1984

Statutory Instrument 2011/976 – The Penalties, Offshore Income etc. (Designation of Territories) Order 2011

Statutory Instrument 2013/1618 – The Penalties, Offshore Income etc. (Designation of Territories) (Amendment) Order 2013