

Offshore penalties

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Why we are doing this

Why is this penalty necessary?

Tax information from overseas is often more difficult to obtain than information from the UK. This means offshore non-compliance is harder to detect and remedy.

Recent disclosure facilities (such as the Offshore Disclosure Facility, New Disclosure Opportunity and Liechtenstein Disclosure Facility) have demonstrated that offshore non-compliance poses a significant risk to tax revenues.

These enhanced penalties for income tax and capital gains tax will help to strengthen the deterrent against non-compliance where information is harder for HMRC to obtain.

What is the legislation?

Schedule 10 of the 2010 Finance Act provides for increased penalties for offshore non-compliance on Income Tax and Capital Gains tax.

The new offshore penalties will apply for the tax years 2011-12 onwards.

HMRC is carrying out a review of its Powers, Deterrents and Safeguards and this new penalty is one outcome of that review. There was a full consultation process before HMRC introduced the penalty. The consultation document and responses to it are [here](#), and [here](#).

Who is affected

Who is affected?

HMRC can apply these penalties to taxpayers who fail to tell HMRC about undeclared offshore income or gains arising in the 2011-12 tax year, onwards.

The new penalty will not affect taxpayers who already declare all income and gains to HMRC, and pay the tax due, or who have no additional liability on the offshore income.

When would a Capital Gain arise offshore?

A Capital Gain can arise if you sell or dispose of an asset. Where the offshore penalty is concerned this is most likely to happen if you own property, but it could apply to land, a boat, a painting, shares, or any asset held outside the UK. Capital Gains Tax does not apply to certain items and there are allowances that can reduce the tax due. You can find more information on [Capital Gains](#) on the HMRC website.

Am I liable to UK tax on income and gains abroad?

If you normally live in the UK then you are liable to UK tax on your income and taxable gains, whether they arise in the UK or abroad.

What if I don't normally live in the UK?

If your permanent place of residence is not in the UK then you will need to establish whether you are resident in the UK for tax purposes. You may have a choice about which country you pay tax in. You can find out more in the '[Tax on income and gains outside the UK](#)' section on the HMRC website.

What about the foreign tax already deducted?

If you have a bank account abroad or foreign dividends it is possible that tax will be deducted in that country. We sometimes call this 'withholding tax'. If there is a Double Taxation Agreement (DTA) between the UK and the foreign country, the UK tax authorities will often set the foreign tax deducted against the tax due in the UK. This may mean there is no additional UK tax to pay. There is more information on [tax treaties and DTAs](#) on the HMRC website.

I receive rental income from abroad but I don't make a profit

If you receive rental income from an overseas property you will be liable to UK tax on the income. You must complete a Self Assessment return to declare this income. You can deduct certain expenses and allowances in the same way as you can from income from UK property. If foreign tax has been paid you can also claim tax relief for the tax paid. There is more information on the [Directgov](#) website.

I don't know whether I'm due to pay additional UK tax

If you are unsure whether you have additional UK liability because of income or gains from abroad you should contact HMRC with the details. It is important you do this immediately as a full disclosure, before HMRC contact you, can greatly reduce any subsequent penalty. You can find your tax office by using the tax office locator [tool](#).

How can a taxpayer declare offshore income to HMRC?

Through the Self Assessment system – see our [SA information](#) on the website.

How the offshore penalty works

Is it a new penalty?

The new offshore penalty builds on the existing penalties for 'inaccuracies in returns' and 'failure to notify'. It also enhances a new element to the penalty for 'failure to make a return on time' where the Return is more than one year overdue.

The amount that HMRC charge under these penalties is a percentage of the tax underpaid. The tax underpaid is known as the potential lost revenue (PLR).

The penalties take account of the taxpayer's behaviour as HMRC will consider

- the behaviour that gave rise to the inaccuracy or failure
- how much the person helped to establish the correct amount of tax due
- circumstances which may have caused the failure or inaccuracy

These penalties also have important safeguards embedded in them such as the reasonable excuse provision and the right to appeal against a penalty.

Under the new legislation, these penalties will be linked to the tax transparency of the territory in which the income or gain arises where the penalty relates to income tax or capital gains tax. Where it is harder for HMRC to get information from another country, the penalties for failing to declare income or gains arising in that country will be higher.

Could I get more than one penalty on the same undeclared income?

It is possible for a person to incur more than one penalty on the same tax liability. For example:

- a person fails to notify chargeability, and
- when eventually issued with returns is very late in submitting them, and
- understates the liability when they do finally submit them

A person might also be liable to an SA surcharge for late payment of some or all of the same tax.

However, HMRC will reduce any second penalty on the same tax liability by the amount of the first penalty, the third penalty by the amount of the first two and so on. So that the total penalties on the same liability will not be greater than the highest single penalty.

What are behaviour based penalties?

The 'inaccuracy' and 'failure to notify' penalties are behaviour based penalties. An element of the 'failure to file a return on time' penalties is also behaviour based.

HMRC will assess the taxpayer's behaviour that caused them not to pay the correct amount of tax. If the taxpayer took reasonable care with their tax affairs, no penalty is due. If the taxpayer was careless, acted deliberately or acted deliberately and concealed their actions, the penalties may be due. The more serious the behaviour, the higher the penalty can be.

HMRC will also consider how much the customer helped to establish the amount of tax underpaid before deciding where, within the percentage range, the penalty will fall.

For example, under the existing penalty model, if a person deliberately fails to declare taxable income on their return, they would be liable to a penalty of between 20% and 70% of the tax not declared, assuming that they had not taken steps to conceal their action. If the person has not helped HMRC establish the amount of tax not declared the penalty would be at the higher end of that range.

What are 'reasonable excuse' and 'reasonable care'?

HMRC will not apply an inaccuracy penalty if you can show that an error occurred in spite of you taking reasonable care to make a full and accurate declaration of your income. Examples of reasonable care would include making sure that:

- your accounting records and systems are accurate and complete

- you have effective systems and processes which you follow
- you can show your decision making processes in relation to the returns and documents you submit
- you find out the correct tax treatment in relation to your circumstances or seek advice from HMRC or a competent advisor

HMRC will not apply a failure to notify penalty if you have a reasonable excuse for not telling HMRC about the income or gain, and you informed HMRC as soon as the reasonable excuse ended. A reasonable excuse will be an unusual event that is either unforeseeable or beyond your control, which prevents you from complying with the obligation. Examples might include the death of a partner or close relative, or a serious illness. HMRC will not consider reasonable excuse where the failure to notify is deliberate and will not accept:

- pressure of work
- lack of information
- ignorance of basic law
- lack of funds
- reliance on another person

How much will the penalties be?

As with the existing penalties, the level of penalty will be based on the behaviour that leads to the understatement of tax.

Under the new legislation, penalties for income tax and capital gains tax will also be linked to the tax transparency of the territory in which the income or gain arises. Where it is harder for HMRC to get information from another country, the penalties for failing to declare income or gains arising in that country will be higher.

There will be three new levels of penalty:

- where the income or gain arises in a territory in 'category 1', the penalty rate will be the same as under existing legislation
- where the income or gain arises in a territory in 'category 2', the penalty rate will be 1.5 times that in existing legislation - up to 150 per cent of tax
- where the income or gain arises in a territory in 'category 3', the penalty rate will be double that in existing legislation - up to 200 per cent of tax

Information on how the categories work can be found in the next section.

All existing safeguards will still apply. There will be no penalty if a person can demonstrate they have taken reasonable care to get their tax right or have a reasonable excuse for a failure to notify taxable income.

Where penalties are due, HMRC can reduce them depending on how helpful the individual is in assisting it to establish the correct amount of tax due. The largest reductions will be for unprompted disclosures. Unprompted means when you tell us about a tax issue you have no reason to believe we have discovered or are about to discover it.

Is this retrospective? How will it affect cases now coming to light?

This is not retrospective. HMRC will apply the offshore element for tax periods commencing from 6 April 2011.

Non-compliance from previous tax periods will attract penalties according to the rules that were in place at the time.

Does this create new offences I need to be aware of?

This measure does not change the offences which give rise to penalties. It changes how much the penalty will be, where the offence is in respect of an offshore matter.

Is it true that a person’s evasion could also be made public?

There are circumstances when HMRC is able to publish the details of a person who they charge with an inaccuracy or a failure to notify penalty.

HMRC will only consider publishing details if:

- a person is liable to an inaccuracy or failure to notify penalty
- the behaviour which gave rise to the penalty was deliberate or deliberate and concealed
- the amount of tax evaded was more than £25,000

However, even where the above criteria are met HMRC will not publish details where individuals make a full disclosure, either unprompted or immediately when challenged, and receive the maximum penalty reduction for cooperating fully throughout the enquiry.

You can find additional details by using the link at the end of this page.

Jurisdictions and categories

Each offshore territory will fall into one of three categories. HMRC will list which category each territory is in. The criteria used are clear and objective and are set out in the primary law. HMRC will make the list available on their website. There is a link at the bottom of this page.

How do I find out which category a country is in?

The Treasury has laid legislation before Parliament which describes [which territories are in 'category 1' and 'category 3'](#). All other territories (except the UK) will be in 'category 2'.

This classification is subject to approval by Parliament.

HMRC has published the proposed list of countries in categories 1 and 3 on their website. Any territories - except the UK - not in category 1 or 3 are in category 2.

How were the territories categorised?

HMRC used the objective criteria given in the table below. The table also shows the impact the category has on the penalty.

Category	Membership	Penalties
Category 1	<ul style="list-style-type: none"> • UK • Territories with automatic exchange of information on savings income with the UK 	Penalties unchanged - up to 100%
Category 2	<ul style="list-style-type: none"> • Territories which exchange information on request with the UK • Least Developed Countries 	Penalties increased by a factor of 1.5 - up to 150%
Category 3	<ul style="list-style-type: none"> • Territories which don't exchange information with the UK • Territories whose agreements 	Penalties increased by a factor of 2 - up to 200%

	with the UK do not allow exchange of information to the international standard	
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How frequently will you update the classification?

HMRC will regularly review, and update the classifications when appropriate to reflect changed circumstances (for example, where countries sign new agreements to share tax information).

Why are some territories in category 2 even though they have no information sharing agreements with the UK?

The Government can - where no information sharing arrangement is in place - consider the benefit to the UK if an agreement were to exist. This provision has been used to make sure some of the world's poorest countries are not classified in category 3. This addresses a concern raised during consultation that these countries would be disproportionately affected.

Why are some territories in category 3 even though they have information sharing agreements with the UK?

Some of our agreements to exchange information, especially old agreements, do not meet the 'international standard' on exchange of information. Territories with whom we have such agreements are in category 3. The UK is working with territories to address deficiencies in these treaties.

How we tackle offshore compliance

What else are you doing about offshore compliance?

HMRC has a strategy for dealing with offshore non-compliance which will:

- make offshore investors aware of their UK tax obligations
- encourage UK residents to voluntarily disclose income, gains and assets hidden offshore and pay any tax owed through the Offshore Disclosure Facility, New Disclosure Opportunity and Liechtenstein Disclosure Facility
- use information from financial institutions to identify individuals who make incomplete disclosures or who fail to make a disclosure
- investigate people who make incomplete disclosures or who fail to make a disclosure when they should
- increase the cost for the individual of non-compliance
- make individuals aware of that potential cost
- introduce new measures to maintain HMRC's knowledge of offshore assets

What about disclosure facilities?

HMRC has run two previous disclosure facilities which offered a reduced penalty rate for people who made a full disclosure of offshore assets and accounts. The first of these ran from 17 April 2007 to 22 June 2007. In that time people could tell HMRC they intended to make a disclosure. A second disclosure facility ran from September 2009 to 12 March 2010.

The Liechtenstein disclosure facility commenced on 1 September 2009 and will close on 31 March 2015. You can find out more about the terms and benefits of the facility on the [HMRC website](#).

More information

[List of territories](#)

[Publishing details of deliberate defaulters](#)

[Q & A for the Liechtenstein disclosure facility](#)