



HM Revenue
& Customs

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

Summary of Responses and Further Consultation

Publication date: 16 July 2015

Closing date for comments: 8 October 2015

Scope of this consultation:	At the 2015 Budget, the Government confirmed its intention to introduce a new strict liability criminal offence and announced a further consultation on the detail and legislation.
Subject of this consultation:	Following consultation in 2014, a further consultation on a new strict liability offence for failing to declare taxable offshore income and gains, which takes into account responses to the 2014 consultation and publishes draft legislation for comment.
Who should read this:	HMRC would be interested to hear from tax and legal professionals, and those involved in offshore investments.
Duration:	The consultation period runs from 16 July to 8 October 2015.
Lead official:	Timothy Holmes, HMRC Centre for Offshore Evasion Strategy,
How to respond or enquire about this consultation:	Please send responses by email to: Consult.nosafehavens@hmrc.gsi.gov.uk Or by post to Timothy Holmes HMRC Centre for Offshore Evasion Strategy Room 1C/26 100 parliament Street London SW1A 2BQ
Additional ways to be involved:	Please contact the lead official if you are interested in meeting to discuss this paper.
After the consultation:	HMRC will publish a response document later in 2015.
Getting to this stage:	This work forms part of HMRC's strategy for tackling offshore evasion, <i>No Safe Havens</i> , published in 2013 and updated the following year.
Previous engagement:	The first consultation on this topic ran from August to October 2014. The responses to that consultation have been taken into account in forming the proposals included in this consultation.

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Foreword

Tax evasion is a crime which deprives the Government of much needed funds to run our public services, unfairly placing a greater burden on the vast majority of people who pay their fair share of tax. This Government is committed to cracking down on tax evasion and will be relentless in its pursuit of evaders.

For too long it has been too easy for people to hide their money overseas to evade tax. We have changed that. Over the last two years the UK has led the drive in Europe, in the G20 and through its G8 Presidency to revolutionise international tax transparency. We now have agreement, reached among 94 countries, to exchange information on financial accounts automatically every year. Under these agreements, starting in 2016 for our Crown Dependencies and Overseas Territories, HMRC will receive a wide range of information on offshore accounts held by UK tax residents, including names, addresses, account numbers, interest and balances. This will be an unprecedented step change in HMRC's ability to tackle offshore tax evasion.

HMRC has given people ample opportunity to regularise their affairs. In advance of HMRC receiving this new data there will be one last chance for evaders to come forward and put their affairs in order. If they choose not to, it is right and fair that we make sure that the penalties they face, and the penalties for those who help them, reflect the wider harm caused by their actions and act as an effective deterrent to others.

HMRC are today publishing four consultations on new tougher penalties before they are introduced. These cover:

- A new criminal offence for corporations that fail to take adequate steps to prevent the facilitation of tax evasion by their agents;
- Tougher financial penalties for offshore evaders, including the possibility of a penalty based on the value of the asset on which tax was evaded as well as wider public naming of offshore evaders;
- A new penalty regime for those who enable tax evasion, based on the tax they have helped taxpayers to evade and naming of enablers;
- A new simpler criminal offence to make prosecution of offshore evaders easier.

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

David Gauke

Financial Secretary to the Treasury

Executive summary

The structure of this consultation document

- 1.1 This is the second consultation on a new criminal offence of failure to declare offshore income and gains. We have structured this document as follows:
- Chapter 2 sets out HMRC’s offshore evasion strategy, *No Safe Havens*.
 - Chapter 3 sets out the overview of the responses to the 2014 consultation.
 - Chapter 4 sets out a proposed model of the offence and considers appropriate safeguards.
 - Chapter 5 sets out the proposed draft legislation.
- 1.2 For the avoidance of doubt, options for criminal sanctions of enablers of offshore evasion are not considered as part of this consultation. However, HMRC is currently conducting a separate consultation, which considers a new criminal offence to apply to enablers, “*Tackling offshore tax evasion: A new corporate criminal offence of failure to prevent the facilitation of evasion*”.

2. Introduction

HMRC's offshore evasion strategy

2.1 Offshore evasion is illegal and harmful. It reduces revenue available for funding public services and increases the burden on honest taxpayers. A small minority of taxpayers fall short of meeting their obligations to society by taking advantage of offshore jurisdictions and exploiting complex structures to evade tax.

2.2 HMRC's strategy for tackling offshore evasion [No Safe Havens](#), sets out five key objectives:

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

2.3 Our ability to achieve these objectives and tackle offshore tax evasion will be significantly enhanced by the Common Reporting Standard (CRS). More than 90 countries have committed to the CRS and will automatically exchange taxpayer information from 2017. HMRC will have access to greater levels of information about offshore accounts, trusts and shell companies held offshore by UK resident taxpayers than ever before. In addition to CRS, we will also be receiving data under the central register of beneficial ownership.¹ These are game changers – HMRC will be able to detect offshore tax evasion much more easily than in the past. The days of hiding money offshore are coming to an end.

2.4 In preparation for the CRS, we are toughening our approach to tackling offshore tax evasion. Evaders are on notice that our existing disclosure facilities will close at the end of 2015 and be replaced by a final, tougher worldwide disclosure facility in advance of the first data exchange under CRS in September 2017. Those who do not take these opportunities to come forward will be caught and will face tougher sanctions, both criminal and civil. As well as tougher sanctions for evaders, we are also toughening our approach to those who enable or facilitate evasion with the introduction of new civil sanctions to

¹ From January 2016, the Small Business, Enterprise and Employment Act 2015 will require UK companies to create and maintain a register of people who have "significant control" over the company. For more information, [click here](#).

tackle enablers and a new corporate criminal offence of failure to prevent the facilitation of evasion. These actions shift the balance of risk against evaders and those who enable them and ensure HMRC can tackle offshore tax evasion much more effectively.

2.5 Accordingly, at Budget 2015 and in its publication “Tackling Evasion and Avoidance”, the Government announced a further package of measures to tackle offshore tax evasion. These will ensure that those who do not come forward face rigorous sanctions and will confirm that there is no place for facilitators, or enablers, of offshore evasion. That package includes four consultations:

- Tackling offshore tax evasion: Strengthening civil deterrents for offshore evaders
- Tackling offshore tax evasion: Civil sanctions for enablers of offshore evasion
- Tackling offshore tax evasion: A new corporate criminal offence of failure to prevent the facilitation of evasion
- Tackling offshore tax evasion: A new criminal offence for offshore evaders

This consultation

2.6 In August 2014, HMRC published “*Tackling offshore tax evasion: A new criminal offence*,” a consultation document which discussed a new strict liability criminal offence of failing to declare offshore income and gains.

2.7 This outlined a number of reasons why offshore non-compliance is more difficult to detect and tackle.

- 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 expeditions” 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.
- Those who knowingly facilitate offshore tax evasion have strong incentives to ensure that the evasion remains beyond detection – they are helping others to commit criminal activity and know they risk punishment. They deliberately make it difficult to find and track the flow of funds outside of the UK.
- This is aggravated by the fact that those who facilitate offshore tax evasion are often based outside the UK; it can be difficult to identify and tackle these facilitators.

- 2.8 Since the 2014 consultation there has been significant progress in the number of countries committing to automatic exchange of information under international agreements. The number of hiding places is reducing and the Government wishes to get tougher on those who continue to hide their assets offshore.
- 2.9 Despite these advances in international co-operation there still remain challenges for HMRC in detecting and countering offshore non-compliance over and above those faced for domestic non-compliance, particularly where the tax transparency of other jurisdictions is limited or non-existent. Although we may receive some information under the CRS, gathering supporting evidence to demonstrate the intent of the taxpayer will still be very difficult, particularly if the facilitator is based offshore.
- 2.10 This continues to be a major risk area for HMRC, as evidenced by the disclosure facilities – over 100 settlements made under the LDF were for amounts between £1m and £5m; seven were for more than £5m. HMRC has recovered over £1.5bn from offshore non-compliance over the past two years, yet the job is not done yet; the harm caused to society from such losses can be significant.
- 2.11 This follow-up consultation is taking place because the Government considers that there is a need to legislate for a strict liability criminal offence to provide HMRC with a valuable additional tool to tackle offshore evasion and help to increase the number of prosecutions for offshore evasion. It will also discourage would-be evaders by providing for serious consequences to offshore evasion and is in line with public opinion that tax cheats should be dealt with rigorously. This consultation proposes a model for the offence and includes draft legislation for consideration to ensure the offence is targeted effectively at the most serious cases of offshore tax evasion.
- 2.12 It may be noted that having a strict liability criminal offence is not a new concept for the UK tax system. For example, section 684(4A) ITEPA 2003 has an equivalent provision in relation to a failure to comply with certain PAYE regulations.

3. Overview of responses to 2014 consultation

- 3.1 The Government is grateful to the 13 groups of stakeholders who provided their views at face-to-face consultation meetings and all 32 stakeholders for their written responses to the first consultation. A list of respondents is at Annex A.
- 3.2 The first consultation set out a number of design options. Respondents generally supported the aim that offshore evaders should face serious consequences but raised a number of concerns about the impact of the proposed new offence, with many prefacing their answers to these design questions with a general objection to the principle of the policy. Concerns were expressed that a strict liability offence would criminalise taxpayers who merely made mistakes or who failed in a tax obligation despite taking care to get it right. These responses are summarised in greater detail in Annex B.
- 3.3 Because these responses raised points that needed serious reflection, the Government did not publish the response document within the usual 12-week period laid down by the Cabinet Office consultation principles.
- 3.4 The Government has taken these views and developments into account in proposing draft legislation for further consideration. In light of the concerns raised, the questions in this follow-up consultation focus on ensuring the offence is targeted at only the most serious offshore tax evaders.
- 3.5 In the first consultation, when discussing seriousness in terms of whether or not a custodial sentence should apply, we used the following examples of what type of cases we would want to be included in the scope of the offence, these views still hold. More serious cases could be characterised where very large amounts of tax are lost, where a person has ignored prompts to tell HMRC about their offshore income and gains, where they have repeatedly failed to tell HMRC about their offshore liabilities, or where they have moved their offshore investments with the aim of escaping greater tax transparency.
- 3.6 Overall, the first consultation responses can be summarised as follows (see Annex B for more detail):
 - The offence should apply only to income tax and capital gains tax, though this could be reviewed at a later date;
 - The offence should apply to all offshore income and gains and not just to under-declared investment returns;
 - There should be a minimum threshold amount of tax evaded, set in legislation and based on the 'potential lost revenue' model from the existing civil penalties for inaccuracies in returns;
 - The threshold should apply to each tax year separately;

- Fines should, in principle, not be less than the civil penalties that would have been chargeable but should be capped by relevant statutory limits;
- There should be an option for a prison sentence of up to 6 months;
- There should be effective safeguards to ensure taxpayers who make every effort to get their taxes right are not caught by the offence.

Territorial scope

- 3.7 The other main issue from the first consultation concerned whether the offence should apply to offshore income and gains generally or only to those jurisdictions which had not signed up to the Common Reporting Standard in relation to automatic exchange of information. The Government notes respondents' preference to limit the scope of the offence to either those jurisdictions that had not yet committed to the CRS or to those assets not reportable under the CRS (see paragraphs 12-14 in Annex B). However, at the time the first consultation was launched only 45 territories – including the UK – had committed to the new standard. This still left a number of very significant offshore financial centres which were yet to commit to the CRS, and to which the offence would have applied.
- 3.8 Since then, progress on tax transparency has been rapid. By the time of the meeting of the Global Forum on Tax Transparency in Berlin in October 2014, more than 90 jurisdictions including the UK had committed to implementing the CRS, with the first exchange of information in 2017 or 2018. This includes almost all major international banking centres.
- 3.9 In light of the continued toughening of its approach to tackling offshore evaders and those who enable them, the Government wishes to apply the offence to all offshore income and gains, whether or not the jurisdiction is committed to CRS. This ensures that those assets not reportable under the CRS are in scope and also means the offence is simple to apply. This consultation will consider the draft legislation to achieve this and further consider the appropriate thresholds and safeguards.

4. Proposed model and further consultation

- 4.1 The Government has taken into account the responses and is now able to propose a model containing appropriate safeguards. The Government considers that the proposals will provide a proportionate sanction, focussed clearly on those who try to cheat the system and avoid detection. This would add to HMRC's powers in the fight against offshore evasion.
- 4.2 The first consultation set the objectives of the new offence as one:
- whose applicability can be readily determined, both by taxpayers and the courts;
 - which is retained for use against conduct which causes significant revenue loss;
 - which is limited to individuals' conduct in relation to their personal tax affairs;
 - which will fit in the context of new agreements to share tax information automatically.
- 4.3 Some of these issues have become clearer as a result of the previous consultation, as explained in Chapter 2. However, in order to ensure the offence is effective and properly focussed, there are some further areas which need to be clarified and the Government would be grateful for views on how this might be achieved. In particular, this follow-up consultation looks at the thresholds, safeguards and proposed draft legislation.
- 4.4 The elements of the model are:
- The offence should apply only to income tax and capital gains tax (though this could be reviewed at a later date);
 - The offence should apply to all offshore income and gains and not just to under-declared investment returns;
 - There should be a minimum threshold amount, set in legislation and based on the 'potential lost revenue' model from the existing civil penalties for inaccuracies on returns;
 - The threshold should apply to each tax year separately;
 - We recommend and expect that, when setting fines in individual cases, courts would take account of the corresponding civil penalty to ensure that individuals subject to civil sanctions were not at risk of being treated more severely than corresponding individuals who were guilty of the crime;
 - There should be an option for a prison sentence of up to 6 months;

- There should be effective safeguards to ensure taxpayers who make every effort to get their taxes right are not caught by the offence.

Safeguards

- 4.5 It is important that the proposed offence² is effective and acts as an efficient deterrent to taxpayers considering not meeting their tax obligations. Safeguards are an important element in ensuring the offence is applied appropriately. But the proposed offence is designed to be simple to administer. Care must be taken to ensure that there will not be greater obstacles than at present to obtaining convictions in appropriate cases.
- 4.6 The previous consultation asked a number of questions concerning safeguards, including whether or not a threshold amount was appropriate and if so how much it should be, and whether there should be built in defences such as reasonable excuse or reasonable care.
- 4.7 Almost all respondents were in favour of such safeguards and some agreed with a threshold set at £5,000 of under-declared tax. The Government supports this view. The figure of £5,000 is used in the draft legislation in Chapter 5.
- 4.8 Box 1 below (taken from the first consultation) illustrates the typical scale of tax lost in offshore non-compliance cases.

Box 1: 2013/14 offshore penalty analysis

An analysis of penalties charged for offshore non-compliance in 2013/14 shows that the potential lost revenue was:

Potential lost revenue	All cases	Cases of deliberate non-compliance	Cases involving cat 2 or 3
£999 or less	34%	38%	42%
£1000 to £4999	38%	33%	28%
£5,000 to £9,999	11%	11%	11%
£10,000 to £19,999	8%	8%	10%
£20,000 or above	8%	10%	9%

Source: HMRC analysis, total 467 cases. Percentages may not sum due to rounding.

The median potential lost revenue (PLR) in all offshore penalty cases was around £2,100.

² There is some argument that statutory defences, depending on their nature, may remove the "strict liability" element of the offence. This consultation uses the term "strict liability" to describe offences that do not require the court to take the state of mind of the defendant into account when determining guilt.

- 4.9 The following table shows, at a set of sample interest rates and assuming a marginal tax rate of 40%, the underlying balance required to achieve different levels of return on a savings account.

Tax	Interest income	Corresponding starting balance at the stated annual interest rate	
		5%	1%
£100	£250	£5,000	£25,000
£1,000	£2,500	£50,000	£250,000
£10,000	£25,000	£500,000	£2,500,000
£100,000	£250,000	£5,000,000	£25,000,000

- 4.10 Taking these two tables together, setting a threshold of at least £5,000 on an annual basis will pitch the threshold at an amount significantly above (more than double) the median potential lost revenue in all offshore penalty cases and represent a significant starting balance.
- 4.11 However, there was less agreement about other defences. While most respondents agreed with the principle of reasonable care and reasonable excuse defences, there was a variety of views about how these might apply.
- 4.12 Reasonable excuse is an existing safeguard in civil penalties. It principally applies to simple, time-bound obligations where particular events can intervene to prevent a taxpayer from complying with a requirement. This is less relevant in situations where a person is required to take care to provide correct information, such as an accurate return, and so the civil penalties for inaccurate returns and documents do not apply reasonable excuse as a safeguard. Instead there is no penalty if the taxpayer takes reasonable care to get the return right.
- 4.13 While some respondents favoured a defence of having sought and followed appropriate advice, this could be encompassed within a defence of reasonable care. A prudent taxpayer is expected to seek advice if there is any doubt about the tax treatment of any activity. Similarly, any taxpayer who had a reasonable belief that he did not need to do something (or had already done it) might be considered to have a reasonable excuse for a failure. Therefore, the Government believes defences of reasonable excuse and reasonable care provide sufficient safeguards in themselves. HMRC will continue to challenge what it sees as inappropriate claims to reasonable care or excuse, when the facts as it sees them do not support those claims, as it does elsewhere in the tax system.
- 4.14 In the draft legislation in Chapter 5, the offence is triggered in three possible ways (in each case where this leads to an understatement or underpayment of tax relating to relevant offshore income, assets or activities):
- failing to notify HMRC of chargeability to tax;
 - failing to file a return; and
 - filing an inaccurate return.

4.15 The civil penalties for failure to notify chargeability and failure to file a return are not applied if the taxpayer has a reasonable excuse, while there is no civil penalty for an inaccurate return if the taxpayer makes an error despite taking reasonable care. This provides a possible model for defences against the strict liability offence. See the draft legislation in Chapter 5: new sections 106B(2), 106C(2) and 106D(2) TMA 1970.

Q1. Do you agree that there should be a statutory defence of reasonable excuse for those parts of the offence arising from a failure to notify chargeability to tax and failure to file a return; and of reasonable care for that part of the offence arising from an inaccurate return?

4.16 For civil penalties arising from failure to file a return and filing an inaccurate return, there is an extended period during which taxpayers can comply or amend their return. Although they could still be subject to a civil penalty for the original misdemeanour, any actions taken to amend their position would be taken into account when calculating the penalty. In order for someone to be subject to criminal prosecution for this proposed offence, the period during which taxpayers can ask to be removed from Self-Assessment must have ended.

4.17 Some respondents pointed out that taxpayers would be discouraged from coming forward to notify HMRC about an understatement or underpayment of tax relating to an offshore matter because to do so would open them to possible prosecution, even if the understatement was a simple error.

4.18 HMRC's criminal investigation policy makes it plain that a complete and unprompted disclosure will be taken into account in any decision about whether or not to launch a criminal investigation, but some respondents to the first consultation stated that an exclusion from prosecution for full, unprompted disclosure should be built into the legislation. We do not agree that this is the right approach. Even a full unprompted disclosure cannot change the position that an offence (if within scope) has been committed. Furthermore, the decision on whether to prosecute is ultimately a matter for the Crown Prosecution Service (CPS) in England and Wales or the Crown Office and Procurator Fiscal Service (COPFS) in Scotland and the Public Prosecution Service Northern Ireland (PPSNI) in Northern Ireland. Accordingly, it is not considered that a legislative exemption for cases of full disclosure is appropriate.

4.19 The Government wishes to make it clear that the offence will not have retrospective effect. The draft legislation in subsections (4) to (8) of the new clause is in point – see Chapter 5.

4.20 The Government also considers that persons acting in the capacity of relevant trustees of a settlement, or as executor or administrator of a deceased person should be excluded from the offence. This is provided by proposed new section 106E(1) TMA 1970 – see Chapter 5.

Q2. Are there any other legislative safeguards that should be included in the offence?

Other questions

- 4.21 There are circumstances when HMRC is unable to determine how much of a particular gain or item of income relates to an offshore matter, or to which overseas territories it relates. When trying to determine this during a tax enquiry, if HMRC need to do so in order to verify a return, they can apportion the sum between territories or between the UK and overseas using a reasonable apportionment, which the taxpayer can challenge through an appeal.
- 4.22 Under this offence, anyone who understates tax relating to certain offshore income or assets by more than the threshold amount commits an offence. A criminal conviction is a serious matter. Any apportionment of income or gains to particular territories can have serious consequences, so must be done in a fair way that does not criminalise people not intended to be included in the offence. A reasonable apportionment calculated by HMRC might be a fair approach when calculating understated tax and penalties for civil purposes, but when the result of such an allocation could result in a criminal investigation and possible conviction, such a calculation could be considered unjust.
- 4.23 One potential approach to apportionment would be to use a certification regime, like that set out in the Serious Crime Act 2007, Schedule 4 paragraph 2(2), whereby the prosecution serve a certificate setting out the apportionment, which is then deemed correct and accepted unless the defence serve a notice saying it is not accepted and then the prosecution is required to show the apportionment. That would bring the matter to the attention of the Judge for case management purposes and relieve the prosecution of the burden of proving the issue until it was raised.

Q3. When HMRC cannot accurately apportion an item of income or a gain between the UK and overseas, or between different overseas jurisdictions, how should that sum be taken into account when deciding whether tax understated exceeds the threshold amount? Do you agree that the use of a certification regime, as outlined above, would be an appropriate way forward?

- 4.24 In calculating the offshore income of an individual, various provisions of anti-avoidance legislation may deem the income of another person to be income of that individual. Examples are the transfer of assets legislation in Chapter 2 of Part 13 of ITA 2007 and the Capital Gains rules in sections 86 and 87 TCGA 1992. In the Government's view any such deemed income should be counted as income of the individual in the normal way for the purposes of determining whether the tax threshold is reached. The usual safeguards, including 'reasonable excuse' will apply if appropriate.

Q4. Do you agree that overseas income and gains that are deemed to be that of the taxpayer under various anti-avoidance provisions should be taken into account in the normal way?

5. Draft legislation

A first draft of primary legislation concerning the proposed new offence is shown below. We welcome views on its effectiveness and the drafting.

1 Offences relating to offshore income, assets and activities [j9509]

- (1) After section 106A of TMA 1970 insert –

“Offshore income, assets and activities

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

- (1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has not given that notice by the end of the notification period commits an offence if –
- (a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and
 - (b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.
- (3) In this section “the notification period” has the same meaning as in section 7 (see subsection (1C) of that section).

106C Offence of failing to deliver return

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if –
- (a) the return is not delivered by the end of the withdrawal period,
 - (b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and

- (c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.
- (3) In this section “the withdrawal period” has the same meaning as in section 8B (see subsection (6) of that section).

106D Offence of making inaccurate return

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period –
 - (a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
 - (b) the amount of that increase exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.
- (3) In this section “the amendment period” means the period for amending the return under section 9ZA.

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

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

- (3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

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

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

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

- (1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction –
 - (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and

(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or both.

(a) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1)(a) to 51 weeks is to be read as a reference to 6 months.

106H Regulations under sections 106E and 106F

(1) This section makes provision about regulations under sections 106E and 106F.

(2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.

(3) The regulations –

(a) may make different provision for different cases, and

(b) may include incidental, supplemental, consequential and transitional provision and savings.

(4) The regulations are to be made by statutory instrument.

(5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”

(2) The amendment made by this section comes into force on such day as the Treasury may by regulations appoint.

(3) The regulations –

(a) may appoint different days for the purposes of different purposes, and

(b) may include incidental, supplemental, consequential and transitional provision and savings.

- (4) The amendment made by this section does not have effect in relation to requirements under section 7 or 8 of TMA 1970 relating to a tax year before that in which the amendment comes into force.
- (5) A person is not guilty of an offence under section 106B of TMA 1970 unless the day appointed under subsection (2) of this section in relation to the offence falls at least 30 days before the end of the period that is the notification period in relation to the offence.
- (6) A person is not guilty of an offence under section 106C of TMA 1970 unless the day appointed under subsection (2) of this section in relation to the offence falls at least 30 days before the end of the period that is the withdrawal period in relation to the offence.
- (7) A person is not guilty of an offence under section 106D of TMA 1970 unless the day appointed under subsection (2) of this section in relation to the offence falls at least 30 days before the end of the period that is the amendment period in relation to the offence.
- (8) For the purposes of subsections (5) to (7), ignore any extension of time under section 118(2) of TMA 1970.

6. Assessment of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	negligible	negligible	negligible	negligible	negligible
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	No impacts are expected on tax compliant individuals or households.				
Equalities impacts	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 represented amongst those of above average wealth and include, in particular, non-UK nationals and those born or with significant family links outside the UK. Individuals will only be affected if they have not complied with their tax obligations.				
Impact on businesses and Civil Society Organisations	It is not expected that there will be any significant direct impact on businesses and Civil Society Organisations.				
Impact on HMRC or other public sector delivery organisations	The operational impact of investigating the new criminal offence has not yet been quantified in detail. This will depend on the parameters of the new offence and the number of cases.				
Other impacts	None.				

The policy will be monitored and assessed alongside other measures in the Government's package for tackling offshore evasion.

Q5. Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

7. Summary of consultation questions

Q1. Do you agree that there should be a statutory defence of reasonable excuse for those parts of the offence arising from a failure to notify chargeability to tax and failure to file a return; and of reasonable care for that part of the offence arising from an inaccurate return?

Q2. Are there any other legislative safeguards that should be included in the offence?

Q3. When HMRC cannot accurately apportion an item of income or a gain between the UK and overseas, or between different overseas jurisdictions, how should that sum be taken into account when deciding whether tax understated exceeds the threshold amount?

Q4. Do you agree that overseas income and gains that are deemed to be that of the taxpayer under various anti-avoidance provisions should be taken into account in the normal way?

Q5. Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

Comments are also welcome on the draft legislation in Chapter 5.

8. The consultation process: how to respond

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 2 and 3 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at Chapter 7.

Responses should be sent by 26 September 2015, by e-mail to consult.nosafehavens@hmrc.gsi.gov.uk or by post to Timothy Holmes, HMRC Centre for Offshore Evasion Strategy, Room 1C/26, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries can be addressed on 03000 522637 (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's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

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

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that 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:

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

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

Annex A: List of stakeholders consulted

HMRC thanks the following, who provided written responses to the first consultation:

Association of Accounting Technicians
Association of Chartered Certified Accountants
Association of Tax Technicians
AVN Venus Tax LLP
Bar Council
Baker Tilly LLP
BDO LLP
British Bankers' Association
Chartered Institute of Taxation
Criminal Bar Association
Fraud Lawyers' Association
Grant Thornton LLP
Hornbeam Accountancy Services Ltd
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Financial Accountants
Investment Management Association
KPMG LLP
The Law Society
The Law Society of Scotland
Low Incomes Tax Reform Group
London Society of Chartered Accountants
Moore Stephens LLP
Pinsent Masons LLP
PwC LLP
Reynolds Porter Chamberlain LLP
Smith & Williamson

Five named individuals also provided responses.

HMRC is grateful to the following, who provided responses at face to face meetings:

Association of Accounting Technicians
Association of Chartered Certified Accountants
Association of Taxation Technicians
British Bankers' Association
Chartered Institute of Taxation
Compliance Reform Forum: Fraud Forum
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
KPMG LLP
Law Society of Scotland
Low Incomes Tax Reform Group
PwC LLP
Tax Investigations Practitioners' Group

Annex B: Responses to the 2014 consultation

1. The consultation sought views on the design of a new strict liability offence of failing to declare offshore income and gains. However, most respondents also took the opportunity to comment on the policy rationale for the offence itself.

Policy rationale

2. A significant majority of respondents were unconvinced by the case for a strict liability offence. Many responses offered a view that it was inappropriate for a taxpayer to commit an offence without having the intention – or in some cases the knowledge – of having done so. This view was expressed even more strongly when considering the case for a custodial sentence. Several respondents suggested that the complexity of tax made it especially unsuitable for a strict liability offence. The interaction of a simple offence with complex regimes (particularly residence and domicile) was often cited as problematic.

“We consider that tax evasion is an offence that requires a mens rea. Ordinarily, this should be dishonesty. There are already a number of offences that could be used to prosecute such behaviour. This proposal is an unnecessary change which is fraught with unfairness and inconsistency.”

3. The Government accepts the strength of feeling on this matter, but considers that the addition of safeguards such as a defence that a taxpayer took reasonable care with his tax affairs or has a reasonable excuse for a failure and the threshold amount mean that only the most serious cases of non-compliance will be caught by the offence.
4. Others suggested that the complexity of tax made it inappropriate for summary proceedings, with suggestions that magistrates’ courts (and the equivalents in Scotland and Northern Ireland) would not have the capability to decide whether a taxpayer had indeed failed to tell HMRC about taxable income or gains, as this could require significant technical expertise in determining whether the income or gain was taxable. In meetings with consultation respondents, HMRC asked whether these concerns could be addressed through HMRC’s targeted approach to criminal investigation. A number of written responses addressed this possibility. All suggested that these factors were so important that they must be present in legislation.
5. Some respondents questioned whether HMRC had put forward a sufficiently strong evidence base as to why the new offence was required. Two respondents disputed HMRC’s contention that there had been opportunities to disclose and therefore that it was right to increase sanctions. They cited the time-limited nature of the current offshore disclosure facilities in doing so. Some suggested that such a strong sanction would not have the desired effect but could instead inhibit disclosures. One respondent suggested that if the offence

were to be introduced, it should only be introduced after a long lead time to raise awareness and allow taxpayers to change their behaviour. The Government notes these comments and is taking them on board in considering how best to design its new time-limited worldwide disclosure facility, in advance of the CRS. By the time the new offence comes into force, there will have been ample opportunities to disclose via the current and future offshore facilities. Customers will also have been notified by their financial institutions that their data on offshore accounts is being sent to HMRC.

6. Several respondents stated that their subsequent comments on the questions put forward for consultation should not be read as implying support for the introduction of the measure. The Government is happy to make this clear.

Scope of the offence

Do you agree that the applicability of the offence should be limited to income tax and capital gains tax?

7. All responses supported the limitation of the offence to income tax and capital gains tax. One respondent suggested applying the offence to corporation tax. Only one respondent favoured extending the offence to inheritance tax, on the grounds that there was no justification for distinguishing between the same behaviour over different taxes; some suggested that applying the offence to inheritance tax would be inappropriate given that liability can attach to several people.
8. The Government notes these views and considers the offence should initially apply only to income tax and capital gains tax.

Do you agree that the offence should be restricted to taxable income and gains which arise offshore?

9. Most responses agreed with this contention. One respondent cited concerns about applying the offence more broadly when there was currently no legal definition of income and gains being moved offshore.

In your opinion, which option would best deliver the policy intention?

10. Views were fairly evenly divided on whether the offence should apply to all offshore income and gains or solely to undeclared investment returns. Some suggested that it would most closely match the policy intention if the scope were limited to investment income and gains, and this would increase simplicity for taxpayers. Others thought that an offence that applied to all offshore income and gains would be simplest.
11. The Government notes these views. The Government believes that that the offence should apply to all offshore income and gains on the basis that it is simpler and targets the mischief the offence is intended to counter.

Do you think that the offence should apply to income and gains which are reported under the Common Reporting Standard?

12. All but one of the responses were of the view that income and gains reported under the CRS should be excluded from the offence. Respondents felt there was no policy rationale for including such income and gains and to do so would send the wrong message about tax transparency.

“The principal stated rationale of the new offence is to ensure disclosure of offshore taxable income and gains. In circumstances where the income and gains will already fall to be reported under the CRS, the criminalisation of taxpayers who will in any event be liable to civil penalties is not justified.”

13. Conversely, a number of respondents suggested it would be inequitable to differentiate between offshore investors on the basis of the existence (or otherwise) of information sharing rather than the taxpayer’s behaviour.

Should all income and gains in CRS jurisdictions be exempted from the offence, or should the offence apply to any income and gains which are not automatically reported to HMRC?

14. While some respondents could see the theoretical argument for differentiating between income and gains which are reported under CRS and those which are not, most respondents thought the simplest approach would be to exclude all income and gains from CRS countries from the scope of the offence. The Government noted the comments raised around the scope of offence but considers that the offence should apply to all offshore income and gains. Since the first consultation, the number of countries committed to the CRS has risen from 45 to more than 90. In this context, there is still a case for tough sanctions, including enhanced criminal sanctions to increase the deterrent and signal the continuing toughening of approach to offshore tax evasion. Although HMRC will hold more offshore information, the difficulty in proving the intent of the taxpayer in relation to offshore remains. Applying equally across all countries and income and gains (whether or not reportable) is the simplest and most effective application of the offence.

Are there any further issues or impacts which should be taken into account when introducing the offence into Scottish and Northern Irish law?

15. One respondent mentioned the interaction with the ongoing Smith Commission deliberations on the further devolution of tax raising powers to Scotland. Another pointed out the differences in sentencing powers between Magistrates in England and Wales and sheriffs in Scotland.

Proportionality and sanctions

Do you agree that a de minimis threshold is appropriate?

16. Almost all respondents welcomed a threshold, and accepted that this was an important step in ensuring proportionality.

“A de minimis is not only appropriate, it is vital. The Government and HMRC must ensure that, if introduced, the new criminal offence is only prosecuted

where the failure to declare taxable offshore income and gains leads to a tax loss over a certain amount and that low-income individuals are protected.”

One respondent expressed the contrary view that there was no place for a de minimis level with a strict liability offence.

Should the de minimis be set by reference to the potential lost revenue arising from the failure/inaccuracy, or some other measure? If so, should the potential lost revenue be calculated in the same way as it is for the purposes of determining civil penalties?

17. Most respondents agreed that a model along the lines of the “potential lost revenue” calculation was the best option. No respondents suggested a viable alternative approach. Several raised concerns that a tax liability may be successfully defended in a civil action only for HMRC to subsequently impose a criminal penalty. One respondent suggested that complex cases should only be resolved through civil means, including through tax tribunals, to prevent criminal courts having to deal with technical matters.

Should the threshold be incorporated in statute or guidance?

18. All but one of the responses favoured the threshold being enshrined in statute. Some respondents suggested that HMRC could operate a higher threshold in practice, with a lower (although still substantial) threshold in the legislation.

“The threshold should be a question for Parliament, not the Executive. The Executive should have not have any discretion where the liberty of a citizen is at stake.”

Which approach to setting the threshold do you favour? Are there any further options?

19. Most responses began with the view that the threshold should be significant. There was some support for the statutory threshold to be aligned with the threshold of £5,000 tax for entry into the Managing Serious Defaulters programme; although some responses preferred a significantly higher threshold, with some citing the £25,000 ‘Publishing the Names of Deliberate Defaulters’ threshold.
20. Taking account of the support for a statutory threshold and the range of views on its quantum, the Government considers that a threshold of at least £5,000 tax would be appropriate, though the legislation should allow for that threshold to be set higher.

The Government’s view is that the threshold should apply for each tax year, rather than in respect of a cumulative amount of potential lost revenue, as a new offence would be committed for each tax period – e.g. each time an incorrect return is filed. Do you agree?

21. Most responses agreed with this view, though some respondents felt this could lead to unfair outcomes in comparing a repeat, though sub-threshold, “offender” against someone who entered one return that was significantly incorrect.

The Government's view is that the available criminal sanction for offshore non-compliance should never be seen as more lenient than the available civil sanction. Do you agree with this principle?

22. While many responses did agree with this principle, several reinforced the point that a criminal conviction is significantly more serious for the person involved than a civil penalty would be, and that this must be taken into account in assessing the appropriate magnitude of any sanction.

Should an unlimited financial penalty be available to the courts in England and Wales?

23. Some responses questioned the appropriateness of the term "unlimited" given the Government's stated ambition to provide for penalties proportionate to the tax lost. The Government is happy to clarify that the intention was that the amount should remain in proportion to the tax lost, but given that the tax lost is without limit, as a matter of mechanics statute would have to provide for an unlimited maximum penalty.

"We do not support the use of the term 'unlimited', which gives the impression that a limitless financial penalty could be levied. This is not the case. That said, we can see that a penalty based on the level of PLR would be a logical approach."

24. The Government notes the support in principle for a financial penalty which is no less lenient than the civil penalty applicable to the circumstances of the case and proposes that the level of fines be left to the courts. It would expect that, when settling fines in individual cases, courts would take account of the corresponding civil penalty to ensure that individuals subject to civil sanctions were not at risk of being treated more severely than corresponding individuals who were guilty of the crime.

As part of this consultation, HMRC would be interested in views as to how the policy intention of a tax geared penalty could best be delivered in Scotland and Northern Ireland.

25. No views were received.

Is the harm which could be caused by a failure to declare offshore income and gains sufficient that a custodial sentence could be justified in the most serious cases?

26. The proposal of a custodial sentence met with general opposition from respondents, even having allowed for general objections to the offence itself. Again, respondents cited the inappropriateness of a custodial sentence for someone who has not sought to do anything wrong, or who sought to get things right but did not.

"We consider that the imposition of a custodial sentence would be disproportionate in the context of the proposed strict liability offence and would

in many cases impair the prospects of recovery of back tax and reduce future receipts.”

27. A minority of responses supported the custodial sentence on the grounds that it would underline the seriousness of the offence.

If a custodial element is appropriate, should the maximum sentence be six months?

28. Those who felt a custodial sentence was appropriate broadly supported a six month sentence. There was no support for a longer maximum custodial sentence. “We certainly do not think that it would be appropriate for the maximum sentence for a strict liability offence to exceed six months.”
29. The Government recognises that a number of respondents were against the concept of a custodial sentence. However it remains persuaded that in serious cases there is a place for such a sentence and considers that it would be appropriate for a custodial sentence of up to six months to be available on conviction on indictment.
30. Many respondents felt that the complexity of taxation and the detailed technical nature of some tax disputes mean it is not appropriate for cases to be heard in the magistrates’ courts. The Government notes these concerns but considers that the district judges and lay magistrates (assisted by legal advisers) of the magistrates’ courts are well equipped to adjudicate on complex matters and already do so in many areas of criminal and civil law.

Safeguards and defences

Should it be a defence for (i) a person to demonstrate that they had taken reasonable care in conducting their tax affairs, or (ii) a person to demonstrate that they had sought and followed appropriate professional advice? What would be the impact on the likelihood of successful prosecutions if statutory defences are included? Should any other statutory defences be introduced?

31. Most respondents supported strong statutory defences. Most preferred defences of having taken reasonable care; several suggested it should be a defence to have a reasonable excuse for the failure. Several respondents supported the idea of a specific defence of having taken appropriate professional advice, although two respondents suggested that the advice should not have to be defined as “appropriate” in legislation. Some responses offered a belief that a general reasonable care defence would capture the taking of professional advice. Two responses suggested a defence of “reasonable belief” that the tax affairs were correct. One response suggested a defence of “due diligence” should be introduced.
32. In this context, responses highlighted circumstances where, in the absence of such defences, people who they felt were not the target of the policy might be affected. This included technical disputes where a person had adopted what appeared to them to be a reasonable tax position, but which was successfully

challenged by HMRC. Residence and domicile disputes were mentioned by several respondents.

33. Other responses highlighted situations where a taxpayer may have a liability of which they were unaware, for example due to the actions of a trustee of a trust of which they were a beneficiary. One respondent suggested a number of further defences should be available, including defences of having relied on another person, of only acting recklessly, and if disclosing the non-compliance to HMRC. Another suggested it should be a defence to show duress, or of being unaware of the taxable income or gain.

“If an individual has taken reasonable care or sought and followed professional advice, this should be a defence. Those who have tried to get it right should not be punished.”

34. The majority of respondents felt that any protections for such taxpayers should be present in the law rather than the subject of HMRC’s policies or guidance.
35. The Government notes that the majority of respondents supported statutory defences and accepts this view. This issue is considered further in Chapter 4.

Are further safeguards appropriate? What should these be?

36. Several respondents suggested that HMRC’s criminal investigation policy should be revisited in light of the new offence. Two responses suggested investigations of this offence should be subject to stringent authorisation procedures, with investigations signed off at HMRC Director General level.
37. Some respondents pointed out that any taxpayer who approached HMRC to disclose tax underpaid on offshore assets or income could open themselves up to prosecution and that this would act as a disincentive to such disclosures.
38. The Government understands this view and wishes to ensure taxpayers are not discouraged from coming forward. Chapter 4 asks for views on how best to achieve this.

Impact assessment

39. Some respondents expressed the view that HMRC’s Impact Assessment was insufficiently detailed, particularly in terms of capturing the impact on groups (such as non-UK nationals, and those born or with family links outside the UK) who are more likely to hold assets offshore.
40. The government will consider this further in developing the offence.

Appendix C: HMRC's criminal investigation policy

Where a case is adopted by HMRC for criminal investigation, its officers must comply with the Criminal Procedures and Investigations Act. This act places an obligation on officers to investigate, not only lines of enquiry that aids the prosecution but also lines of enquiry that aid the defence case.

If there was a genuine misunderstanding in someone's tax affairs, this would be brought out by the investigation and the prosecutor would give due weight to it. It is only in this way that a balanced view can be taken of all the evidence (for and against) in order for the prosecuting authority to reach their decision. In coming to their decision, on whether to charge or not and for what offence, the prosecuting authority will look at whether there is sufficiency of evidence, they will apply the prosecution code test and consider whether it is in the public interest to mount a prosecution.

HMRC's conduct of criminal investigations is governed by its criminal investigation policy, as follows.

HMRC's aim is to secure the highest level of compliance with the law and regulations governing direct and indirect taxes and other regimes for which they are responsible. Criminal investigation, with a view to prosecution by the [Crown Prosecution Service \(CPS\) \(Opens new Window\)](#) in England and Wales or the [Crown Office and Procurator Fiscal Service \(COPFS\) \(Opens new Window\)](#) in Scotland and the [Public Prosecution Service Northern Ireland \(PPSNI\) \(Opens new Window\)](#) in Northern Ireland, is an important part of HMRC's overall enforcement strategy.

It is HMRC's policy to deal with fraud by use of the cost effective civil fraud investigation procedures under [Code of Practice 9 \(PDF 320K\)](#) wherever appropriate. Criminal Investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate.

However, HMRC reserves complete discretion to conduct a criminal investigation in any case and to carry out these investigations across a range of offences and in all the areas for which the Commissioners of HMRC have responsibility.

Examples of the kind of circumstances in which HMRC will generally consider commencing a criminal, rather than civil investigation are:

- *in cases of organised criminal gangs attacking the tax system or systematic frauds where losses represents a serious threat to the tax base, including conspiracy*
- *where an individual holds a position of trust or responsibility*

- *where materially false statements are made or materially false documents are provided in the course of a civil investigation*
- *where, pursuing an avoidance scheme, reliance is placed on a false or altered document or such reliance or material facts are misrepresented to enhance the credibility of a scheme*
- *where deliberate concealment, deception, conspiracy or corruption is suspected*
- *in cases involving the use of false or forged documents*
- *in cases involving importation or exportation breaching prohibitions and restrictions*
- *in cases involving money laundering with particular focus on advisors, accountants, solicitors and others acting in a 'professional' capacity who provide the means to put tainted money out of reach of law enforcement*
- *where the perpetrator has committed previous offences / there is a repeated course of unlawful conduct or previous civil action*
- *in cases involving theft, or the misuse or unlawful destruction of HMRC documents*
- *where there is evidence of assault on, threats to, or the impersonation of HMRC officials*
- *where there is a link to suspected wider criminality, whether domestic or international, involving offences not under the administration of HMRC*

When considering whether a case should be investigated using the civil fraud investigation procedures under Code of Practice 9 or is the subject of a criminal investigation, one factor will be whether the taxpayer(s) has made a complete and unprompted disclosure of the offences committed.

However, there are certain fiscal offences where HMRC will not usually adopt the civil fraud investigation procedures under Code of Practice 9. Examples of these are:

- *Vat 'Bogus' registration repayment fraud*
- *Organised Tax Credit fraud*

See also: [HM Revenue & Customs: criminal investigation powers and safeguards.](#)