

## Explanatory Note

# Clause 67: Civil penalties for enablers of offshore tax evasion

## Summary

1. This clause of the Finance Bill 2016 introduces new civil penalties for deliberate enablers of offshore tax evasion, including a new financial penalty, and a new power to publish information about the enabler. The penalties will be applicable in relation to income tax, capital gains tax and inheritance tax. This will be enacted through the Finance Bill 2016.

## Details of the clause

Section 7 (1) introduces the Schedule that makes provision for civil penalties for enablers of offshore tax evasion.

Section 7 (2) and (3) provide that the Schedule comes into force on a day appointed by the Treasury in regulations. The regulations may appoint different days for different purposes and make such transitional provisions as the Treasury consider appropriate.

## Schedule 1: Penalties for enablers of offshore evasion

### Part 1 - Liability for penalty

#### *Paragraph 1: Liability for penalty*

2. Part 1 sets out the circumstances where a financial penalty is payable.
3. Paragraph 1 sets out that Conditions A and B need to be met for a penalty to be payable.
4. Paragraph 1(2) sets out condition A, which is that an enabler has enabled another person to evade tax offshore and they knew at the time that their actions enabled or were likely to enable that evasion.
5. Paragraph 1(3) sets out the actions required for a person to have enabled another person to carry out offshore tax evasion. These are encouraging, assisting or otherwise facilitating a person to carry out offshore tax evasion.
6. Paragraph 1(4) sets out what is meant by the evader carrying out "offshore tax evasion". This is either where they have committed a relevant offence in relation to income tax, capital gains tax or inheritance tax, or have been liable to a relevant penalty charged in relation to those taxes.
7. Paragraph 1(5) lists the relevant offences.

8. Paragraph 1(6) lists the relevant penalties.
9. Paragraph 1(7) sets out the second condition, B, which has to be met (along with condition A) if an enabler is to be liable to a penalty. This condition is met where either: the evader has been convicted of a relevant offence and that conviction, in terms of the evader themselves, is final; or where the evader is liable to a civil penalty for offshore tax evasion, their penalty has been assessed and notified and the penalty is final.
10. Paragraphs 1(8) and (9) set out when a conviction and penalty become final.

### *Paragraph 2: Meaning of 'involving offshore activity' and related expressions*

11. Paragraph 2(2) sets out the meaning of "involving offshore activity" for the purpose of interpreting whether the criminal offences and civil penalties listed at paragraphs 1(5) and (6) are relevant to showing that the evader committed offshore tax evasion. Conduct involves an offshore activity if it involves an offshore matter, an offshore transfer, or a relevant offshore asset move. Paragraph 2(3) to (8) sets out further detail on this definition.
12. Paragraph 2(3) sets out what is meant by conduct involving an offshore matter, for the purpose of paragraph 2(2)(a).
13. Paragraph 2(4) sets out the circumstances where inheritance tax is to be treated as an offshore matter for the purposes of paragraphs 2(2)(a) and 2(3)(b).
14. Paragraph 2(5) sets out what is meant by conduct involving an offshore transfer, for the purpose of paragraph 2(2)(b).
15. Paragraph 2(6) defines what is meant by conduct involving a relevant offshore asset move for the purpose of paragraph 2(2)(c).
16. Paragraph 2(7) applies a number of provisions from Schedule 21 Finance Act 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).
17. Paragraph 2(8) applies the definition of "specified territory" in Schedule 21 Finance A 2015 (penalties in connection with offshore asset moves) for the purposes of the definition of conduct involving a relevant offshore asset move at paragraph 2(6).

### *Paragraph 3: Amount of penalty*

18. Paragraph 3 sets out the amount of the penalty. This is to be the greater of 100% of the potential loss revenue, as set out in paragraph 4, or £3,000.

### *Paragraph 4: Meaning of "potential lost revenue"*

19. Paragraph 4(1) to (3) sets out what is meant by 'potential lost revenue', for the purpose of paragraph 3. This is the additional amount due or payable as a result of correcting any inaccuracy in a taxpayer document or from a failure to notify an under-assessment.

### *Paragraphs 5 to 7: Reduction of penalty for disclosure etc by P*

20. Paragraph 5(1) sets out that reductions to the penalty payable by the enabler must be made according to the quality of disclosure or assistance provided to HMRC by the enabler. Where disclosures made by the enabler assist HMRC in an investigation, leading to the evaders being

charged with a relevant offence or found liable to a relevant penalty, the penalty on the enabler must be reduced accordingly.

21. Paragraph 5(2) sets out the minimum levels to which the penalty may be reduced. That is the higher of 10% of the potential lost revenue or £1,000 for unprompted disclosure or assistance and 30% or £3,000 for prompted disclosure or assistance.
22. Paragraphs 6(1) to (5) outlines what constitutes disclosure for the purposes of paragraph 5. This includes telling, giving reasonable help and allowing access to records.
23. Paragraph 6(3) sets out how a person would assist HMRC in relation to an investigation leading to an offshore evader being charged with a relevant offence or found liable to a relevant penalty. This consists of assisting or encouraging the evader to disclose all relevant facts, allowing access to records and any other conduct which HMRC considers assisted them.
24. Paragraphs 6(4) and (5) sets out what is meant by unprompted and prompted disclosure or assistance by the enabler, and that the quality of disclosure or assistance includes timing, nature and extent.
25. Paragraphs 7(1) to (3) sets out that HMRC may reduce the penalty under paragraph 1 because of special circumstances, and clarifies what does not fall within the term 'special circumstances'.

### *Paragraphs 8 to 9: Procedure for assessing penalty, etc*

26. Paragraphs 8(1) to (7) sets out the procedures for assessing the penalty. An assessment of the penalty is to be treated, procedurally, in the same way as an assessment to tax (except where expressly provided otherwise) and may be enforced as it were such an assessment.
27. Paragraph 9 sets out that an assessment may not be made more than 2 years after the fulfilment of the conditions set out in paragraph 1(1) first came to the attention of HMRC.

### *Paragraphs 10 to 12: Appeals*

28. Paragraph 10 sets out what may be appealed against in respect of a penalty under paragraph 1.
29. Paragraphs 11(1) and (2) provides that an appeal against a penalty imposed on the enabler is subject to the same appeal rights and procedure, as an appeal against an assessment to tax. However, this does not require the appellant to pay a penalty before an appeal is determined, nor does it apply in respect of any matters expressly provided for by the Schedule.
30. Paragraphs 12(1) to (5) sets out the treatment of an appeal when it is notified to the tribunal.

### *Paragraph 13: Double jeopardy*

31. Paragraph 13 sets out that a person is not liable to a penalty under paragraph 1 in respect of conduct for which they have already been convicted of an offence, or have been assessed to a penalty under any other provision.

### *Paragraph 14: Application of provisions of TMA 1970*

32. Paragraph 14 sets out the provisions in Taxes Management Act 1970 (TMA 1970) that apply for the purposes of this Part.

### *Paragraph 15: Interpretation of Part 1*

33. Paragraph 15 provides that reference to an assessment to tax in the Schedule, in relation to inheritance tax, are to a determination.

## **Part 2: Penalties for enablers of offshore evasion**

### *Paragraphs 16 to 17: Naming etc of persons assessed to penalty or penalties under paragraph 1*

34. Part 2 sets out the circumstances in which HMRC may name enablers of offshore tax evasion, who are found to liable for a penalty under paragraph 1.
35. Paragraph 16(1) provides that HMRC may publish information about a person if one or more penalties under paragraph 1 is found to have been incurred by that person, and the potential lost revenue involved exceeds £25,000.
36. Paragraph 16(2) establishes that where a person has been found liable for 5 or more penalties in the past 5 years, in relation to enabling offshore evasion under paragraph 1, then HMRC may publish information about that person.
37. Paragraph 16(3) sets out the information that may be published.
38. Paragraph 16(4) sets out that HMRC may publish information in any manner HMRC considers appropriate.
39. Paragraph 16(5) provides that HMRC must inform the person before publishing any information about them, and must give them an opportunity to make representations.
40. Paragraphs 16(6) and (7) set out the time limits for publication.
41. Paragraph 16(8) sets out that no information may be published if the penalty is reduced by the maximum amounts allowed under paragraph 5, or is reduced to nil or stayed under the special circumstances provision at paragraph 7.
42. Paragraph 16(9) establishes when a penalty becomes final for the purposes of this Schedule.
43. Paragraph 17 provides that the Treasury may, by regulations, vary the amount of potential lost revenue set out in paragraph 16(1)(b). Such regulations must be made by statutory instrument and are subject to annulment in the House of Commons.

## **Background note**

44. Following consultation, this [clause] has been introduced to support the Government's wider offshore tax evasion strategy. The [clause] will establish new civil penalties for enablers of offshore tax evasion. These penalties are a new financial penalty, and a new naming power.
45. The penalties will only apply in relation to income tax, capital gains tax and inheritance tax. This will be enacted through the Finance Bill 2016. Where the enabler makes an unprompted disclosure of the fact that they enabled offshore tax evasion and assists HMRC, reductions in penalties will apply, and the enabler will not be named. The clause is intended to encourage enablers to come forward to HMRC, and make a maximum disclosure of information.

46. If you have any questions about this change, or comments on the legislation, please contact Philippa Madelin by email at [philippa.madelin@gsi.gov.uk](mailto:philippa.madelin@gsi.gov.uk) or by telephone on 03000 585507.