



HM Revenue  
& Customs

# Tackling offshore tax evasion: Strengthening civil deterrents for offshore evaders

**Summary of Responses**  
December 2015

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# Foreword

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

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

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

The Government will legislate for:

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

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

**David Gauke**

**Financial Secretary to the Treasury**

# 1. Introduction

- 1.1. This document summarises responses to the consultation '*Tackling offshore tax evasion: Strengthening civil deterrents for offshore evaders*', published in July 2015.
- 1.2. HMRC is grateful to all those who responded or participated in meetings for taking the time to consider the issues raised by that consultation document.
- 1.3. Responses to the consultations on the criminal offence for tax evaders and criminal or civil sanctions for the enablers of offshore evasion, are set out in separate response documents.

## Context for the consultation

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

- 1.8. Therefore, the Government believes that strengthening civil sanctions for offshore tax evasion will enhance their effectiveness as deterrents. Those with offshore tax issues should come forward now, to put their tax affairs in order, before increased sanctions come into force.
- 1.9. The Government's message is clear: if you need to tell us about income or gains offshore come forward now and put your affairs in order. Those who do not take the opportunities on offer to come forward will be caught, and will face tough sanctions.

## Background on the consultation

- 1.10. The Government has been clear in its commitment to tackle offshore tax evasion. To that end, at Budget 2015 the Government announced its intention to strengthen civil deterrents to offshore tax evasion. A consultation document was published in July 2015, this outlined a number of reasons why offshore non-compliance is more difficult to detect and tackle.
- 1.11. The consultation document contained six options to tackle offshore tax evasion, which fall into two broad categories:

### Changing the way that penalties are calculated for offshore non-compliance

- *Option 1* – Increasing the minimum level of penalty for offshore disclosures
- *Option 2* – Amending the factors taken into account in calculating the reduction for disclosures
- *Option 3* – Introducing an additional asset-based penalty for the most serious cases of offshore evasion
- *Option 4* – Introducing a new special penalty to be awarded by the Upper Tribunal in exceptional cases

### Non-financial deterrents

- *Option 5* – Amending naming provisions for offshore evaders so that only full, unprompted disclosures are out of scope.
  - *Option 6* – Amending naming provisions to allow naming of directing individuals
- 1.12. This consultation was published alongside three others on tackling offshore tax evasion: a new criminal offence for offshore evaders, civil sanctions for enablers of offshore evasion and a new corporate criminal offence of failure to prevent the facilitation of evasion.
- 1.13. Respondents generally supported the aims of the Government in tackling offshore evasion, but had a range of views on the particular options presented in the four consultations.

## Structure of the consultation response

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

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

## 2. Summary of responses

- 2.1. HMRC is grateful to the 9 groups of stakeholders who provided their views at face to face meetings, and all 18 stakeholders for their written responses.
- 2.2. Respondents recognised the challenges the Government is trying to address, and generally emphasised their support for the aims of the consultation; that offshore evaders should face serious consequences.
- 2.3. Overall, though responses supported the principle behind the consultation, respondents expressed the view that a perceived greater risk of detection would be a more effective deterrent to offshore tax evasion. It was noted by some respondents that the Automatic Exchange of Information (AEOI) and Common Reporting Standard (CRS) agreements would allow HMRC to identify offshore tax evasion more easily, and this would have a strong deterrent effect, if publicised effectively.
- 2.4. Respondents also noted that several changes to the offshore penalty regime were legislated for in Finance Act 2015. Not all of these have yet come into force, and they are unlikely to have an impact for some time. Several respondents felt that there was a case for evaluating the effectiveness of these changes once they had come in, before legislating further.
- 2.5. Several respondents went further by putting forward their view that the offshore penalty regime is already complex and not well understood. They felt that introducing further changes may add to that complexity, and may discourage taxpayers from coming forward to make voluntary disclosures.

### Government response

- 2.6. The Government has considered the responses to this consultation carefully. The Government recognises that views put forward by respondents, and the concerns raised. The Government needs to balance these concerns with the real harm that offshore tax evasion brings, and the need to tackle it more effectively.
- 2.7. Therefore, the Government still believes that the increasing civil deterrents to offshore evasion will provide a valuable additional tools to tackle offshore evasion. These will deter would be tax evaders and will ensure that people no longer think they can get away with ignoring their tax responsibilities when their income or gains are offshore.

## 3. Responses to questions posed in the consultation document

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

### Changing the way that the penalty is calculated for offshore non-compliance

**Question 1. What are your views on whether we should increase the minimum level of penalty for disclosures of deliberate offshore evasion? Are there any circumstances in which this approach should not be applied?**

- 3.2. Views from respondents mostly disagreed with the proposals to increase the minimum level of penalty for deliberate offshore evasion. However, some strongly supported the proposal.
- 3.3. Respondents who did not agree with the proposal suggested that an increase in minimum penalties would reduce the incentive for taxpayers to come forward. Others raised the increasing complexity of the offshore penalties system, which is already poorly understood by some taxpayers, and the potential reduction of the deterrent effect as a result.
- 3.4. Those who did agree that minimum penalty levels should increase were of the view that this would create a greater deterrent effect, and welcomed that it would only apply to deliberate behaviour linked to the evasion. It was felt that this change should be well publicised to encourage taxpayers to make use of the opportunities to disclose, citing the longer term positive impact on compliance this might have.
- 3.5. The consultation document suggested that minimum penalties should be increased from 20% to 30% or 35%. Respondents expressed the view that all penalties for “deliberate” and “deliberate and concealed” behaviour should all be uplifted by the same percentage. This would maintain the differential between categories, and ensure that the deterrent effect of penalties is not decreased and the incentive for unprompted disclosures is not reduced.



## Government response

- 3.6. The Government considers that taxpayers have had ample opportunity to come forward to ensure that their offshore tax affairs are in order, including via the various disclosure facilities. Those who deliberately evaded tax offshore and do not come forward, should face increasingly tougher sanctions.
- 3.7. HMRC wants to encourage taxpayers to come forward and disclose any as yet undeclared offshore tax issues. In advance of CRS there will be a time limited disclosure facility, which will allow taxpayers to come forward to HMRC, before increased sanctions come into force. This facility is expected to launch in April 2016.
- 3.8. The Government recognises the concerns raised about the increasing complexity of the offshore penalty regime. As we move to holding greater levels of data on taxpayers, HMRC continues to review and evaluate the penalty system.
- 3.9. The Government agrees with suggestions made by respondents on uplifting “deliberate” and “deliberate and concealed” penalties in the regimes set out in Schedule 24 Finance Act 2007 by the same percentage.

- 3.10. Therefore the Government view is that minimum deliberate and deliberate and concealed penalties for offshore matters should be raised by 10%. Penalties for offshore inaccuracies will be changed to the following rates (current rates shown in brackets):

**Category 1 (to the extent they relate to offshore matters)**

<b>Behaviour</b>	<b>Penalty range for unprompted disclosure</b>	<b>Penalty range for prompted disclosure</b>
Careless	0% - 30%	15% - 30%
Deliberate but not concealed	30% - 70% [20%-70%]	45% - 70% [35%-70%]
Deliberate and concealed	40% - 125% [30%-125%]	60% - 125% [50%-125%]

**Category 2**

<b>Behaviour</b>	<b>Penalty range for unprompted disclosure</b>	<b>Penalty range for prompted disclosure</b>
Careless	0% - 45%	22.5% - 45%
Deliberate but not concealed	40% - 105% [30% - 105%]	62.5% - 105% [52.5% - 105%]
Deliberate and concealed	55% - 150% [45% - 150%]	85% - 150% [75% -150%]

**Category 3**

<b>Behaviour</b>	<b>Penalty range for unprompted disclosure</b>	<b>Penalty range for prompted disclosure</b>
Careless	0% - 60%	30% - 60%
Deliberate but not concealed	50% - 140% [40% - 140%]	80% - 140% [70% - 140%]
Deliberate and concealed	70% - 200% [60% -200%]	110% - 200% [100% -200%]

- 3.11. The Government notes that raising minimum penalties for offshore inaccuracies without applying the same changes for offshore penalties for failure to notify and failure to make returns would create discrepancies in the offshore penalty system.
- 3.12. To ensure that there is consistency in HMRC's response to offshore non-compliance, the Government will amend the penalties for failure to notify rules contained in Schedule 41 Finance 2008, and the penalties for late returns rules contained in Schedule 55 Finance Act 2009. This will increase minimum penalties for deliberate offshore for failure to notify and failure to submit a return by the same amount as penalties for offshore inaccuracies.

**Question 2. From September 2018, HMRC will hold information from all those jurisdictions committed to the CRS. What are your views on that being the basis of the specified date from which this option - increased minimum penalties for deliberate/deliberate & concealed - would apply? Are there more suitable dates that we should consider?**

3.13. Though not all respondents agreed with increasing minimum penalty levels, all agreed that September 2018 would be an appropriate date for the higher rate to apply from, given that HMRC will be receiving data from all CRS countries from that date. It was noted that this is far enough in the future to allow taxpayers sufficient time to ensure that their offshore tax affairs are in order.

### **Government response**

3.14. The Government notes stakeholder responses, and the need for taxpayers to have enough time to put their affairs in order before tougher penalties come into force. There are a number of other HMRC changes taking place in relation to offshore evasion, including the simple criminal offence for offshore evaders and the new disclosure facility announced at March Budget 2015. It is important that changes to penalty rates come into force at a time which works alongside those changes and provides as much clarity to taxpayers as possible about the potential repercussions of tax evasion.

**Question 3. What are your views on amending the statute to make it clear that maximum reduction for disclosure requires the taxpayer to give a ‘full account’ of the evasion?**

3.15. Responses were split between those for and against requiring a “full account” to give maximum penalty reductions. Respondents noted that requiring this information would provide HMRC with a greater level of insight into how evasion takes place and the behaviours behind this. This knowledge could be used to further strengthen HMRC’s operational approach to tackling offshore evaders and those that enable the evasion.

3.16. Some respondents questioned whether such reductions could be granted under current penalty rules, without the need for further legislation. Others expressed concern that in order to receive maximum penalty reductions, taxpayers would feel that they had to tell HMRC about those who enabled or were connected to the evasion, and this might discourage taxpayers from coming forward to HMRC to disclose offshore inaccuracies if they had to incriminate others.

3.17. Several respondents expressed the view that taxpayers who did not involve others in the evasion, such as an enabler, should not be excluded from receiving the reduction. Similarly, it was felt by one respondent that the

restriction of the penalty reduction could make taxpayers feel that they have to provide details of a fraudulent motive in order to receive the full reduction.

## Government response

- 3.18. The Government considers that by the time tougher sanctions come into force taxpayers would have had ample opportunity to come forward to HMRC. Those who do not come forward to HMRC should face tougher sanctions and be required to provide a full account of the evasion, such as details of structures used and enablers, if applicable.
- 3.19. HMRC cannot currently restrict penalty reductions for disclosure beyond those listed in Paragraph 9 Schedule 24 Finance Act 2007. In order to restrict penalty reductions in the way set out above, further legislation is required.
- 3.20. The Government will legislate to require taxpayers to provide ancillary details of the evasion, such as structures used and enablers/facilitators, if present, to receive maximum penalty reductions. This will apply only where the penalty is levied for “deliberate” or “deliberate and concealed” behaviour. This removes penalties for careless inaccuracies from the restriction of maximum penalty reductions. “Full account” was not defined in the consultation document. Most responses commented on this, and suggested that a definition would have enabled a deeper discussion. The Government recognises this, and has changed the wording in the draft legislation to refer to “additional information”. This will be built upon in regulations. A draft of the regulations will be published in early 2016.
- 3.21. The government recognises concerns over the potential for restricting penalty reductions for taxpayers who did evade their UK tax liability offshore, but did not use an enabler, facilitator or involve other parties in the evasion. Further details will be provided in regulations to ensure that full penalty reduction remains available in such cases.
- 3.22. The mechanism by which the penalty reduction is restricted for those that do not provide additional details of the evasion will be set out in regulations.
- 3.23. To ensure that there is consistency in HMRC’s response to offshore non-compliance, the Government will amend the reductions for offshore for failure to notify rules contained in Schedule 41 Finance 2008, and the penalties for late returns rules contained in Schedule 55 Finance Act 2009. This will restrict penalty reductions for deliberate offshore for failure to notify and late returns in the same way as penalties for offshore inaccuracies.

**Question 4. What are your views on introducing an additional asset-based penalty of 10% for offshore evasion? What are your views on limiting the scope to the most serious cases? Do you have any other suggestions on how best to measure seriousness?**

- 3.24. Responses to the proposed asset-based penalty were mixed, with around 60% of respondents in favour. Respondents noted the strong deterrent effect a penalty related to asset value could create, due to the emotional attachment evaders may have to assets such as property. The use of similar penalties in other jurisdictions was also considered to be a useful precedent.
- 3.25. Concerns raised by other stakeholders related to the proportionality of such a penalty. As the value of the asset is not necessarily linked to the tax at stake, it was felt that a 10% asset-based penalty could, in some circumstances be disproportionate to the potential lost revenue.
- 3.26. Respondents generally welcomed the proposed £25,000 potential lost revenue *de minimis* and “deliberate” behaviour needed to apply the penalty. However, it was felt by some that this £25,000 *de minimis* was not high enough.
- 3.27. Concerns were raised by several respondents over how the penalty would be applied in practice, particularly for assets which can vary in value over time, such as bank accounts. Similarly, concerns were raised over cases where the evasion took place over a number of years. For example, if the 10% penalty were applied for each year, the asset could be effectively confiscated if the evasion took place over 10 years.
- 3.28. Respondents were keen to ensure that the penalty would be applied consistently, such as cases where the asset is no longer held by the taxpayer or no longer exists.

### **Government response**

- 3.29. There is a small minority of taxpayers who deliberately evade UK tax using offshore structures and assets. It is the Government’s view that these individuals are less likely to be deterred by financial penalties alone. The asset-based penalty seeks to tackle this. The emotional attachment a taxpayer may have to an asset could have a stronger deterrent effect, as it would be akin to taking a portion of the asset away from the taxpayer.
- 3.30. The Government recognises the concerns over proportionality, and agrees that the asset-based penalty should apply only to the most serious cases of offshore evasion. Additionally, the Government’s view is that to achieve the policy intent, the offence should initially apply only to those taxes where there is a clear link between the income or gain and the underlying assets.

3.31. The Government is grateful for all the views on the rate that should be applied, the *de minimis* limits and the practical application of the asset-based penalty. The Government will be holding further, informal consultation on the draft clauses of the asset-based penalty, which will be published in early 2016 and would welcome further feedback on the design.

**Question 5. What are your views on the proposal for a new special penalty to be awarded by the Upper Tribunal in exceptional cases? If there is to be such a special penalty above 10% of the asset value, what percentage would be appropriate?**

3.32. The majority of respondents were not in favour of this option. The lack of certainty for taxpayers on the level of penalty that might be awarded by the Upper Tribunal was a concern for many respondents

3.33. Several respondents put forward the view that a penalty of up to the value of the asset levied alongside normal civil penalties would push civil settlements closer to the criminal spectrum. Respondents felt that if the evasion were sufficiently serious to warrant a penalty akin to confiscation of an asset, the case should be dealt with by a HMRC criminal investigation. It was noted that the combination of the Upper Tribunal penalty, normal civil penalties and the Section 121 FA 2015 “aggravated penalty” might lead to total penalties for a civil offence being higher than those charged under a criminal offence.

3.34. Similarly, the Upper Tribunal penalty could award a level of penalty which is confiscatory in intent. It was suggested by one respondent that this could lead to challenges under Human and EU Charter Rights.

3.35. One respondent felt that the Upper Tribunal should not have a role in awarding penalties. Instead they felt that the right to charge penalties should remain with HMRC and the taxpayer should have a right of appeal to the Tribunal.

3.36. It was noted by one respondent that the referral of penalties to the Upper Tribunal may place additional strain on the Tribunal system.

### **Government response**

3.37. Although a penalty up to 100% of the value of the asset awarded by the Upper Tribunal could be an effective deterrent to offshore evasion, the Government recognises the concerns raised, and is not taking forward this option. A package of measures including; a 10% asset-based penalty, strengthened civil penalties and stronger naming provisions provides sufficient additional sanctions.

**Q6. Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?**

- 3.38. The vast majority of respondents felt that the current safeguards would be sufficient if expanded to the proposed increased penalties and new asset-based penalty.
- 3.39. One respondent felt that the proposed asset-based penalty represented a significant expansion of the penalty regime. They felt that this would warrant additional safeguards, such as ensuring that the penalties would only be used in the most serious cases.

**Government response**

- 3.40. The government agrees that current safeguards should apply to the proposed increased civil penalties for offshore evasion and asset-based penalty, and considers these sufficient.
- 3.41. As discussed in 3.31, the asset-based penalty would only be applied in the most serious cases of offshore evasion; where taxpayers have evaded at least £25,000 per annum of UK tax offshore, and the behaviour that lead to the evasion is deliberate. The Government believes there criteria for applying the asset-based penalty ensures it only applies to the most serious cases of offshore tax evasion.

**Question 7. What are your views on the proposals to amend naming provisions for offshore evaders so that only full, unprompted disclosures are out of scope and the proposal to amend naming provisions to allow naming of directing individuals? To what extent do you believe these would be an effective deterrent to offshore evasion? Do you think there is a case for either proposal to apply to onshore as well as offshore evasion?**

- 3.42. Views on these proposals were mixed, with approximately half of those who commented in favour and the other half expressing concerns.
- 3.43. Respondents supporting the proposals suggested that the potential impact on a taxpayer's reputation would be an effective deterrent beyond financial penalties. This might help to encourage unprompted disclosures.
- 3.44. It was noted by several respondents that the proposals might reduce the incentive for offshore evaders to make full disclosures where they have been prompted by HMRC. This could have an impact on HMRC's efforts to ensure that the right amount of tax is assessed during investigations. One respondent suggested a window for full cooperation following prompted disclosure to minimise the effect of this.

- 3.45. Some respondents felt that amending naming provisions to allow naming of directing individuals would be effective in deterring some offshore evaders who might otherwise hide behind a company or trust to escape detection. One respondent was supportive of this approach if there were provisions to ensure that directing individuals who could show that they were not part of the evasion would not be named.
- 3.46. Several respondents felt that there was a need for further evidence on naming provisions as a whole, and that a review should be carried out to judge the provisions effectiveness, before the provisions are amended further.

### Government response

- 3.47. The Government believes the naming provisions to be an effective non-financial deterrent. It is the Government's view that some individuals are less likely to be deterred by financial penalties alone. Strengthening these provisions in cases of deliberate offshore evasion will help to create additional deterrent effects.
- 3.48. The potential impact on disclosures from taxpayers who have made a prompted disclosure is noted. However, the Government is of the view that the penalty reductions for disclosure still offer enough of an incentive for taxpayers to cooperate and provide information during enquiries.
- 3.49. The suggestion of a window for cooperation following a prompted disclosure has been considered. The Government's view is that allowing a window would undermine the policy aim of increasing unprompted disclosures from taxpayers. This is in line with the increasingly tough approach and clear message that taxpayers should come forward now, before being promoted by HMRC.
- 3.50. The Government recognises concerns raised in relation to naming of directing individuals not involved in the evasion. To ensure that the provisions only target the individuals involved in offshore evasion, the Government will publish details of only those who have control of the entity or are trustees of a trust and have personally secured a tax advantage from the evasion.
- 3.51. The naming provisions will be subject to the safeguards in existing PDDD legislation; £25,000 of potential tax loss and deliberate behaviour. There are no appeal rights against the naming provisions. However taxpayers can make representations to HMRC before any decision to publish taxpayer's details is named.

### **Question 8. Do you have ideas for new non-financial deterrents? If so, we would like to receive them**

- 3.52. No responses were received to this question.



## 4. Next Steps

- 4.1. After listening to feedback from the consultation, the Government has decided to make a number of changes to the policy. These will be reflected in legislation and guidance. A draft of the primary legislation for inclusion in Finance Bill 2016 has been published alongside this response document. The Government would welcome any technical comments on the draft legislation. Guidance will be produced in due course, closer to the time of introduction. The guidance will, where possible, be consistent with guidance which already exists in relation to other penalties. The introduction of these sanctions will then be subject to a commencement order.
- 4.2. The introduction of the offence will be subject to a commencement order. There are a number of other HMRC changes taking place in relation to offshore evasion, not least the new simple criminal offence for offshore evaders and the new disclosure facility. It is important that these sanctions comes into force at a time which works alongside those changes and provides as much clarity to taxpayers as possible about the potential repercussions of tax evasion. The Government would welcome views on the best time for the offence to come into effect.
- 4.3. The Government will be holding further, informal consultation on the draft clauses of the asset-based penalty, which will be published in early 2016 and would welcome further feedback on the design.

# Annex A: List of consultation respondents

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

- Association of Accounting Technicians
- Baker Tilly
- BDO
- Chartered Institute of Taxation
- Deloitte LLP
- Ernst & Young LLP
- Grant Thornton
- Institute of Chartered Accountants Scotland
- Investment Association
- KPMG LLP
- The Law Society
- Mazars LLP
- Moore Stephens LLP
- Oxfam GB
- Peters & Peters Solicitors LLP
- PwC LLP
- Scottish Courts and Tribunal Service
- Society of Trust and Estate Practitioners

## Annex B: Draft legislation

The draft legislation follows on the next page. The draft clauses for the asset based penalty are not included in this document and will be published in early 2016 for further comment, alongside the regulations outlining what 'additional information' means for the purposes of a full disclosure. The draft legislation on the following page should not be viewed as final and we welcome comments on the legislation, in writing, to [consult.nosafehavens@hmrc.gsi.gov.uk](mailto:consult.nosafehavens@hmrc.gsi.gov.uk) by 3<sup>rd</sup> February 2016.

**1 Penalties in connection with offshore matters and offshore transfers [j7009a]**

- (1) Schedule [j7009as] contains provisions amending –
  - (a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
  - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
  - (c) Schedule 55 to FA 2009 (penalties for failure to make return etc).
- (2) That Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under subsection (2) –
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.

## SCHEDULE 1

Section {j7009a}

PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS  
[j7009AS]*Amendments to Schedule 24 to the Finance Act 2007 (c. 11)*

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 (1) Paragraph 9 (reductions for disclosure) is amended as follows.
  - (2) For sub-paragraph (A1) substitute –
    - “(A1) Paragraph 10 provides for reductions in penalties –
      - (a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,
      - (b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and
      - (c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.
    - (A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.
    - (A3) Sub-paragraph (1) applies where a person discloses –
      - (a) an inaccuracy that involves a domestic matter,
      - (b) a careless inaccuracy that involves an offshore matter,
      - (c) a supply of false information or withholding of information, or
      - (d) a failure to disclose an under-assessment.”
  - (3) In sub-paragraph (1), in the words before paragraph (a), for the words from “an inaccuracy” to “under-assessment” substitute “the matter”.
  - (4) After sub-paragraph (1) insert –
    - “(1A) Sub-paragraph (1B) applies where a person discloses –
      - (a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or
      - (b) an inaccuracy that involves an offshore transfer.
    - (1B) A person discloses the inaccuracy by –
      - (a) telling HMRC about it,
      - (b) giving HMRC reasonable help in quantifying the inaccuracy,
      - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and
      - (d) providing HMRC with additional information.
    - (1C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (1B)(d).
    - (1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

3 In paragraph 10 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
70%	35%	20%
100%	50%	30%

4 After paragraph 10 insert –

“10A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –

- (a) in the case of a prompted disclosure, in column 2 of the Table, and
- (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
37.5%	18.75%	0%
45%	22.5%	0%
60%	30%	0%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

*Amendments to Schedule 41 to the Finance Act 2008 (c. 9)*

5 Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.

6 (1) Paragraph 12 (reductions for disclosure) is amended as follows.

(2) For sub-paragraph (1) substitute –

“(1) Paragraph 13 provides for reductions in penalties –

- (a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and
- (b) under paragraphs 2 to 4 where P discloses a relevant act or failure.

(1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where P discloses –

- (a) a relevant failure that involves a domestic matter,
- (b) a non-deliberate relevant failure that involves an offshore matter, or
- (c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.”

(3) In sub-paragraph (2), for “a” substitute “the”.

(4) After sub-paragraph (2) insert –

“(2A) Sub-paragraph (2B) applies where P discloses –

- (a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or
- (b) a relevant failure that involves an offshore transfer.

(2B) P discloses the failure by –

- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,
- (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
- (d) providing HMRC with additional information.

- (2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).
- (2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.
- (2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

- “(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.
- (6) In this paragraph “relevant failure” means a failure to comply with a relevant obligation.”

7 In paragraph 13 (amount of reduction for disclosure), for the Table in sub-paragraph (3) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%”

8 After paragraph 13 insert –

- “13A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –
- for a prompted disclosure, in column 2 of the Table, and
  - for an unprompted disclosure, in column 3 of the Table.
- (3) Where the Table shows a different minimum for case A and case B –
- the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;
  - otherwise, the case B minimum applies.



<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

*Amendments to Schedule 55 to the Finance Act 2009 (c.10)*

- 9 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows
- 10 (1) Paragraph 14 (reductions for disclosure) is amended as follows.
- (2) At the beginning insert—
- “(A1) In this paragraph, “relevant information” means information which has been withheld by a failure to make a return.”
- (3) In sub-paragraph (1)–
- (a) after “6(3) or (4)” insert “where P discloses relevant information that involves a domestic matter”;
- (b) for the words from “information which” to the end substitute “relevant information”.
- (4) After sub-paragraph (1) insert—
- “(1A) Paragraph 15A provides for reductions in the penalty under paragraph 6(3) or (4) where P discloses relevant information that involves an offshore matter or an offshore transfer.
- (1B) Sub-paragraph (2) applies where—

- (a) P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves a domestic matter, or
- (b) P is liable to a penalty under any of the other provisions mentioned in sub-paragraph (1) and P discloses relevant information.”

(5) After sub-paragraph (2) insert—

“(2A) Sub-paragraph (2B) applies where P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves an offshore matter or an offshore transfer.

(2B) P discloses relevant information by—

- (a) telling HMRC about it,
- (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld,
- (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
- (d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(6) At the end insert—

“(5) Paragraph 6A(4) to (5) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

11 In paragraph 15 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute—

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	35%	20%
100%	50%	30%”

12 After paragraph 15 insert—

“15A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –
- (a) in the case of a prompted disclosure, in column 2 of the Table, and
  - (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

- (3) But HMRC must not under this paragraph reduce a penalty below £300.”

**1 Offshore tax errors etc: publishing details of deliberate tax defaulters [j7009b]**

- (1) Section 94 of FA 2009 (publishing details of deliberate tax defaulters) is amended as follows.
- (2) After subsection (4), insert –
  - “(4A) Subsection (4B) applies where a person who is a body corporate or a partnership has incurred –
    - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
    - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
  - (4B) The Commissioners may publish the information mentioned in subsection (4) in respect of any individual who –
    - (a) controls the body corporate or the partnership (within the meaning of section 1124 of CTA 2010), and
    - (b) would have obtained a tax advantage as a result of the inaccuracy or failure.
  - (4C) Subsection (4D) applies where one or more trustees of a settlement have incurred –
    - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
    - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
  - (4D) The Commissioners may publish the information mentioned in subsection (4) in respect of any trustee who is an individual and who would have obtained a tax advantage as a result of the inaccuracy or failure.”
- (3) In subsection (6), after “information” insert “about a person under subsection (1),”.
- (4) After subsection (6), insert –
  - “(6A) Before publishing any information about an individual under subsection (4B) or (4D), the Commissioners –
    - (a) must inform the individual that they are considering doing so, and
    - (b) afford the individual reasonable opportunity to make representations about whether it should be published.”
- (5) In subsection (10) –
  - (a) omit the word “or” at the end of paragraph (a), and after that paragraph insert –

- 
- “(aa) paragraph 10A of that Schedule to the full extent permitted following an unprompted disclosure;”
      - (b) after paragraph (b) insert “, or
      - (c) paragraph 13A of that Schedule to the full extent permitted following an unprompted disclosure.”
    - (6) For subsection (16) substitute –
      - “(16) In this section –
        - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
        - “tax advantage” has the meaning given by section 208 of FA 2013.”
    - (7) The amendments made by this section come into force on such day as the Treasury may appoint by regulations made by statutory instrument.