



HM Revenue
& Customs

Tackling offshore tax evasion: Strengthening civil deterrents for offshore evaders

Consultation document

Publication date: 16 July 2015

Closing date for comments: 8 October 2015

Scope of this consultation:	HMRC is consulting on further sanctions to deter non-compliance linked to income and gains arising and assets held offshore. We welcome views on the design of the proposed options. This supports and builds on the regime for increased penalties for non-compliance involving offshore matters. This will be considered in the context of responses to HMRC penalties: a discussion document that was published in February 2015.
Subject of this consultation:	The Government has published this consultation on options to further strengthen civil sanctions for those evading tax by using non-UK territories to hide taxable income, gains and assets offshore.
Who should read this:	HMRC would like to hear from its customers, in particular: individuals with offshore income, gains and assets; tax practitioners; representative bodies; and other interested parties.
Duration:	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:	A summary of responses will be published later in 2015.
Getting to this stage:	This consultation takes forward HMRC's strategy for tackling offshore evasion, <i>No Safe Havens</i> .
Previous engagement:	HMRC consulted in 2014 on a number of sanctions to more effectively deter tax non-compliance linked to income and gains arising and assets held offshore, publishing a summary of responses on 10 December 2014. That led to legislation in Finance Act 2015. HMRC consulted in 2015 on penalties more widely as part of the publication <i>HMRC Penalties: A discussion document</i> . We will ensure the outcomes from this consultation fit with the wider ongoing work. This is the first consultation on a new set of proposals.

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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

1. Executive Summary

The structure of this consultation document

- 1.1 This is the first consultation on a new set of proposals to toughen HMRC's range of civil deterrents for offshore evaders. We have structured this document as follows:
- Chapter 2 sets out HMRC's offshore evasion strategy, *No Safe Havens*.
 - Chapter 3 sets out the options for changing the way we calculate the penalties for offshore evasion and asks for your views on those and potential safeguards.
 - Chapter 4 sets out the range of non-financial deterrents and asks your views.
- 1.2 For the avoidance of doubt, options for criminal sanctions for evaders 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 offshore evaders, "*Tackling offshore tax evasion: a new criminal offence for offshore evaders*".

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 tackle enablers and a new corporate criminal offence for failure to prevent the

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](#).

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 consultations on:

- 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 This consultation sets out six options to build on HMRC’s efforts to tackle offshore evasion.

2.7 We are seeking your views on the options which fall into two broad categories:

- Changing the way that the penalty is calculated (options 1 to 4) – see Chapter 3.
- Applying non-financial deterrents, in particular widening the circumstances in which the names of deliberate defaulters are published (options 5 and 6) – see Chapter 4.

2.8 For a number of reasons offshore non-compliance remains 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.
- 2.9 Given these difficulties in detecting offshore non-compliance, there are additional deterrents and increased penalties for offshore tax evasion. The Government considers that this type of evasion is particularly deplorable and that there is a case for building on the reforms in Finance Act (FA) 2015 and further strengthening the deterrents and penalties for offshore evasion. The number of countries now committed to the Common Reporting Standard (CRS) means that HMRC will be able to detect evasion more easily than in the past. This will mean more than 90 countries will report information from 2017 but there are still many countries who are not committed to CRS and there are some assets that are not reported under CRS. The Government still believes it is right that those who do not come forward and disclose their offshore income and gains should be subject to increasingly tough action.
- 2.10 Criminal investigation and sanctions will play an increasingly prominent role in HMRC’s response to offshore tax evasion. There are two parallel consultations. *“Tackling offshore tax evasion: A new criminal offence for offshore evaders”* discusses the design of a new strict liability criminal offence of failing to declare offshore income and gains, which will help to increase the proportion of cases which are handled through the criminal justice system. *“Tackling offshore tax evasion: A new corporate criminal offence of failure to prevent the facilitation of evasion”* considers a new corporate criminal offence of failure to prevent tax evasion.
- 2.11 However, the majority of cases are still likely to be investigated and settled through civil means. This includes cases not covered by the scope of any new criminal offence – for example, because the revenue lost is below the qualifying threshold – and cases which, under its published criminal investigation policy, HMRC decides are not appropriate for criminal investigation. It is vitally important that the civil penalties framework provides a consistent, coherent and tough deterrent against offshore tax non-compliance, wherever it arises.
- 2.12 Opportunities are currently available to disclose unpaid tax liabilities on the most favourable terms available under the law. Those who fail to take the opportunity to disclose voluntarily and who are later identified through HMRC action should face tough consequences. This means ensuring that those who evade tax offshore face strong penalties, regardless of which tax is at stake, or how they seek to break the rules.

Existing offshore penalties

2.13 The offshore penalties regime (introduced by Schedule 10 FA 2010) has applied to liabilities arising from 6 April 2011. There are currently 3 levels of offshore penalty:

- Category 1: a penalty of up to 100% of the tax (the same as for domestic non-compliance)
- Category 2: a penalty of up to 150% of the tax
- Category 3: a penalty of up to 200% of the tax.

The penalties are payable in addition to the tax and interest due.

2.14 Within the above ranges, the level of penalty imposed in a particular case is based on two main factors. The first considers the type of behaviour that leads to the understatement of tax, and is linked to the tax transparency – the quality of tax information exchange – of the territory in which the income or gain arises. The less transparent the overseas territory concerned, the greater is the risk of the evasion being undetected and so the higher the penalty category applying. The second considers the extent to which the taxpayer discloses the inaccuracy. In certain cases of unprompted disclosure the penalty can be reduced to 0%.

2.15 FA 2015 introduced a number of changes to the offshore penalties regime, following consultation. Firstly, a new category 0, having the same penalty levels as the current category 1 was introduced. This new category applies to evasion linked to the most transparent countries (including the UK). To be within category 0 a country must have adopted the global Common Reporting Standard set out by The Organisation for Economic Co-operation and Development (OECD).

2.16 The maximum penalty under the new category 1 will be 125%. The maximum penalties under categories 2 and 3 will be unchanged.

- Category 0: a penalty of up to 100% of the tax (applies to evasion linked with the most transparent countries)
- Category 1: a penalty of up to 125% of the tax
- Category 2: a penalty of up to 150% of the tax
- Category 3: a penalty of up to 200% of the tax

2.17 Under section 121 of FA 2015, a new 'aggravated penalty' of moving the proceeds of tax evasion in order to escape tax transparency was introduced, with the penalty coming into effect for movements of funds occurring after 27 March 2015. This new aggravated penalty will, in appropriate cases, increase the total penalties faced by 50%.

2.18 The offshore penalty regime was also extended to include Inheritance Tax and to cover circumstances in which the proceeds of non-compliance are hidden offshore.

- 2.19 The FA 2015 changes, except the new ‘aggravated penalty’, take effect from a date to be specified by Statutory Instrument, expected to be in April 2016.
- 2.20 In 2014-15, 607 HMRC investigations were settled that included tax in respect of income and gains arising in category 2 and 3 territories and therefore liable to higher penalties for offshore evasion. Most of those cases covered years both before and after the introduction of higher offshore penalties in 2011-12. The total penalties applied in those cases was over £5.6m, representing an average of over £9,000 per case. It is considered that the existence of the higher penalties for 2011-12 onwards has encouraged people to come forward sooner rather than later. We will continue to monitor the effectiveness of the offshore penalties regime, particularly in light of increasing tax transparency, the Government’s toughening of approach to offshore tax evasion and the wider review of HMRC’s penalties.

Wider context

- 2.21 In February 2015, HMRC published “*HMRC Penalties: A discussion document*” which outlined our approach to compliance, the role of penalties, concerns about current penalties and some areas for discussion. This set out the core principles around penalties building on HMRC’s Powers Review that stated penalties should influence behaviour, be effective and be fair. This considers penalties in the context of a modern digital world and ever increasing access to data. Responses to the discussion document are being collated and will be published in due course.
- 2.22 The responses to this consultation will fit into that wider context of larger amounts of data that will be received on overseas accounts and how best to use that data in a modern, digital world. The Government wishes to continue to toughen its approach to offshore tax evaders, which is why it is consulting on increasing civil sanctions. However, we will continue to consider and evaluate the way offshore penalties work, ensuring they align with the broader principles of how HMRC penalties should apply. This may involve considering, once CRS is in place, elements such as the way we categorise offshore jurisdictions or how we deal with recalcitrant offshore evaders.

Safeguards

- 2.23 Safeguards come in a variety of forms and ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-compliant. For penalties, the onus is generally on HMRC to demonstrate the taxpayer’s culpability, based on the facts and on the balance of probabilities. Taxpayers who receive a penalty can ask for a review by HMRC and appeal to an independent tribunal. If a person has taken “reasonable care” or has a “reasonable excuse” they have no liability to a penalty.
- 2.24 Generally, a “reasonable excuse” is when some unforeseeable or unusual event beyond a person’s control has prevented them from complying with an

obligation on time, provided also that the situation is remedied without unreasonable delay after the reasonable excuse ceases to apply.

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

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

- 3.1 HMRC's offshore evasion strategy calls for tough, rigorously enforced sanctions against offshore non-compliance. Schedule 10 FA 2010 provided for increased penalties for offshore non-compliance ("offshore penalties") which came into force on 6 April 2011. HMRC can apply these penalties to those who fail to declare taxable offshore income and gains arising in the 2011-12 tax year onwards. From the commencement of Schedule 20 FA 2015, the term "offshore non-compliance" will include domestic non-compliance where the proceeds are hidden offshore.
- 3.2 The offshore penalties regime, covering inaccuracies in returns, failure to notify chargeability and late filing, takes into account:
- the behaviour that gave rise to the inaccuracy or failure;
 - how much the person helped to establish the correct amount of tax due;
 - the circumstances which caused the inaccuracy or failure; and
 - the tax transparency of the territory in which the undeclared income or gain arises or is hidden. The less transparent the jurisdiction, the higher the penalty will be for failing to declare income or gains.
- 3.3 HMRC's approach is to encourage voluntary disclosure of irregularities by providing reductions for voluntary disclosures from the maximum penalty set out in the legislation. The penalty (as a percentage of the tax lost) applied in any given case is reduced where the taxpayer disclosed their evasion and co-operated with HMRC to quantify the amount of tax involved. The amount of the reduction reflects the nature and extent of the taxpayer's co-operation. The legislation sets out the minimum penalty level below which the penalty payable must not fall. That minimum varies according to the maximum penalty percentage chargeable.
- 3.4 With automatic exchange of information between tax authorities becoming increasingly common as countries adopt the CRS, it will be easier for HMRC to uncover past evasion and tackle non-compliance. Evaders are strongly urged to come forward now and gain the benefit of the lower minimum percentage penalties applying in the case of unprompted disclosures.

Option 1: Increasing the minimum level of penalty for offshore disclosures?

- 3.5 By 2018, individuals with undeclared offshore income and gains will have had ample opportunity to come forward via HMRC's offshore disclosure opportunities. HMRC will start to receive data automatically under international agreements from September 2016 and customers of UK financial institutions will be notified about their data being exchanged by their institution.
- 3.6 To ensure the penalties for offshore evasion are tough and rigorously enforced one option is to legislate so that from a future date all disclosures in respect of offshore income and gains are subject to a higher minimum penalty of, say, 30% or 35% where the current rules provide for a minimum penalty of 20%. This option would reflect the fact that taxpayers have had opportunities to disclose inaccuracies and in future HMRC will automatically receive a great deal of data from offshore – because of this the justification for a reduced penalty as an incentive to taxpayers to disclose is reduced.
- 3.7 The actual level of penalty will continue to take account of the extent of the taxpayer's disclosure and co-operation in the course of an investigation.
- 3.8 As previously indicated, as we move towards a modern, digital world with ever increasing access to data, we will continue to evaluate both offshore and onshore penalties and look at where differences are still merited or where further alignment might be appropriate. In the short term however, in advance of automatic exchange and new sanctions to tackle enablers of offshore evasion being introduced, the Government wishes to continue to toughen its approach to offshore evasion, encouraging voluntary disclosure now and deterring future non-compliance.

Q1. 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?

Q2. 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 would apply? Are there more suitable dates that we should consider?

Option 2: Amending the factors taken into account in calculating the reduction for disclosures

- 3.9 Paragraph 9(1) of Schedule 24 FA 2007 outlines the factors taken into account when considering reductions in penalties where a person makes a disclosure. This covers factors such as giving HMRC reasonable help in quantifying the inaccuracy and access to records.
- 3.10 Individuals have had ample opportunity to come forward via HMRC's offshore disclosure opportunities and will have one last chance before we receive data under the CRS. As we progress towards tax transparency, we believe there is a

case for expanding what is required to achieve the maximum reduction. We could, for example, only allow the maximum reduction for disclosure where the taxpayer provides a full account of the evasion including details of how the monies were moved offshore (if applicable) and evidence of who assisted with the evasion. We do not discuss civil sanctions for enablers of offshore evasion in this consultation, as we are consulting on this separately.

Q3. What are your views on option 2 – to amend the statute to make it clear that maximum reduction for disclosure requires the taxpayer to give a ‘full account’ of the evasion?

Option 3: An additional asset-based penalty for the most serious cases of offshore evasion

- 3.11 The Government considers that the prospect of a penalty equivalent to a proportion of the value of the asset linked to the evasion could be a strong deterrent against evasion. Behaviourally, individuals are more likely to have an emotional attachment to losing an asset or part of it.
- 3.12 A third option (option 3), either stand-alone or in conjunction with option 1 or 2, would be to impose an additional penalty based on the value of any undeclared asset where the asset consists of the proceeds of evasion (including UK evasion proceeds hidden offshore). A number of countries impose penalties based on the value of an undeclared asset. For example, in addition to a penalty based on tax lost, France imposes a 5% penalty on the value of the underlying asset and Italy has penalties from 3% up to 15% of the value of unreported foreign assets. In USA, penalties of up to 50% of the account balance can be charged in certain circumstances. In this context, we believe a flat rate of 10% of the asset value is therefore appropriate.
- 3.13 The Government considers that an asset-based penalty should only apply to the most serious cases of evasion. As a proxy for what constitutes serious behaviour, we consider that a combination of the criteria used to establish who is within the scope of HMRC’s “Managing Serious Defaulters Programme” and “Publishing the Details of Deliberate Defaulters” may be appropriate. One possibility is that this penalty would only be able to apply where the tax lost exceeds £25,000 and the behaviour is deliberate. Another possibility for identifying serious cases is that this penalty should only apply where the disclosure is prompted and not apply where the taxpayer makes an unprompted disclosure.

Q4. What are your views on option 3 – to impose 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?

Option 4: A new special penalty to be awarded by the Upper Tribunal in exceptional cases

- 3.14 Although we are considering a flat-rate of 10%, if asset-based penalties are considered to apply, we could in exceptional cases, consider a penalty beyond the normal maximum is appropriate. We could, for example, introduce a new special penalty payable in addition to the normal offshore penalty. The maximum amount of the new special penalty might be up to the amount that together with the duty and interest and normal penalty thereon was equivalent to the value of the assets linked to the offshore evasion. The effect of a penalty of that level would be that the maximum total payable would be equivalent to the amount recoverable if a confiscation order for the assets were made in a successful criminal prosecution. In effect, this would take 100% of the asset value from the customer. Alternatively, such a special penalty may be set at a level less than 100% but more than the proposed flat-rate of 10%.
- 3.15 As a model for this, HMRC consider that the special tax-related penalty for failure to supply information is a suitable precedent (paragraph 50, Schedule 36 FA 2008). If that approach were followed, an additional penalty beyond the standard maximum could only be awarded on application to the Upper Tribunal, in an amount that the Tribunal itself decides. HMRC would only make application in exceptional cases but the existence of this penalty could prove a strong deterrent.
- 3.16 As for option 3, the scope to whom this might apply will need to be carefully considered. It is envisaged that this would only apply to the most serious cases of evasion.

Q5. What are your views on option 4 – 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?

Safeguards

- 3.17 As referred to at paragraphs 2.23 and 2.24 safeguards ensure that taxpayers are treated fairly and in accordance with the law. They must be adequate, appropriate and effective in order to protect everyone: both the compliant and the non-compliant.
- 3.18 No penalty would be due where a taxpayer has taken reasonable care with their affairs; reasonable excuse provisions would also apply where they apply in the current rules. Existing review and appeal procedures would remain. With this in mind, we consider that existing safeguards would remain sufficient if the offshore penalties regime was amended as suggested in this chapter.

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?

4. Non-financial deterrents

Naming of offshore evaders

- 4.1 The Government wishes to consider whether non-financial deterrents have a greater part to play in combatting offshore evasion. Legislation for publishing the names of deliberate defaulters was enacted in section 94 FA 2009. It applies where the tax lost exceeds £25,000, but not if full reduction for disclosure is given in the penalty calculation (in cases of both prompted and unprompted disclosure).
- 4.2 The Government believes that taxpayers who hide income, gains or assets offshore and do not make a full unprompted disclosure should be subject to increased naming. There are a number of ways in which this could be achieved and two possible rule changes are suggested below. They are not mutually exclusive. It is proposed that any changes made would apply to penalties for 2015-16 onward.
- 4.3 It should be noted that if option 2 above is implemented, the result of tightening the definition of what constitutes full disclosure will be that the maximum reduction is given less frequently. A major effect would be more cases of offshore evasion meeting the criteria for publication of the name of the defaulter.

Option 5: Amending naming provisions for offshore evaders so that only full, unprompted disclosures are out of scope

- 4.4 Option 5 would be to remove the protection for those whose disclosure of offshore evasion is prompted, so only those who make an unprompted disclosure could be protected from publication. This would incentivise evaders to come forward unprompted to HMRC and make a full disclosure. There would be a potential downside in that, in the case of a prompted disclosure, exclusion from publication would not be available as an incentive to full disclosure (although the incentive of a lower penalty would remain). Removing the protection in respect of prompted disclosures would however be in line with the approach taken by the Irish Revenue.²

Option 6: Amending naming provisions to allow naming of directing individuals

- 4.5 Where the evasion is carried out by a company or other entity, the law currently only allows naming of the entity, not for example naming the company directors. Those engaged in offshore evasion sometimes hide behind offshore structures and the ability to name the directing UK individuals would be a significant deterrent. Option 6 is for legislation allowing the naming of directing individuals. HMRC recognises that framing appropriate legislation might be

² Section 1086 of the Taxes Consolidation Act, 1997.

challenging, but consider that this is an option that should be explored further. This option could potentially apply to both onshore and offshore evasion.

Q7. What are your views on options 5 and 6 above? To what extent do you believe each option would be an effective deterrent to offshore evasion? Do you think there is a case for either option to apply to onshore as well as offshore evasion?

Other financial deterrents

4.6 The Government would welcome ideas about any other non-financial deterrents that respondents consider might be an effective deterrent to offshore evasion. Consideration should be given as to targeting of these penalties – would a focus on serious and persistent evaders or on larger groups be more effective? Possibilities might include community service or exclusion from bidding for Government contracts. The Government would also welcome ideas to make offshore evasion less attractive to potential evaders. Possibilities could include a programme of aftercare for all those who disclose through the proposed new disclosure facility. Respondents are encouraged to put forward innovative ideas for possible new deterrents.

Q8. Do you have ideas for new non-financial deterrents? If so, we would like to receive them.

5. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	The final costing of this measure will depend on the outcome of the consultation and will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	There are no expected impacts on tax compliant individuals and households. The option will only affect non-compliant individuals who become liable to a penalty for carelessly or deliberately submitting inaccurate information about their taxable income or gains from activities, sources or assets held offshore.				
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 cost of these changes to HMRC will depend on the outcome of the consultation. They are currently estimated to be of the order £0.5m for the IT changes.				
Other impacts	None.				

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

Q9. Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

6. Summary of Consultation Questions

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

Q1. 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?

Q2. 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 would apply? Are there more suitable dates that we should consider?

Q3. What are your views on option 2 – to amend the statute to make it clear that maximum reduction for disclosure requires the taxpayer to give a ‘full account’ of the evasion?

Q4. What are your views on option 3 – to impose 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?

Q5. What are your views on option 4 – 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?

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?

Non-financial deterrents

Q7. What are your views on options 5 and 6 above? To what extent do you believe each option would be an effective deterrent to offshore evasion? Do you think there is a case for either option to apply to onshore as well as offshore evasion?

Q8. Do you have ideas for new non-financial deterrents? If so, we would like to receive them.

Assessment of Impacts

Q9. Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

7. 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 1 and 2 of the process. The purpose of the consultation is to seek views on the detailed policy design, any suitable possible alternatives and a framework for implementation of a specific proposal.

How to respond

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

Responses should be sent by 8 October 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

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

Annex A: Relevant legislation

Penalties

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

Finance Act 2008, Schedule 41, paragraphs 6, 6A, 12 and 13

Finance Act 2009, Schedule 55, paragraphs 6, 6A, 15 and 17

Finance Act 2010, Schedule 10 and section 35

Finance Act 2015, Schedule 20 and section 120

Other

Finance Act 2008, Schedule 36, paragraph 50

Finance Act 2009, section 94