

Explanatory Note

Clause 69: Offshore tax errors etc: publishing details of deliberate tax defaulters

Summary

1. This measure makes changes to the naming provisions in section 94 Finance Act 2009, so that where there is an inaccuracy in a taxpayer's document, or failure to notify which relates to offshore matters or offshore transfers, only full, unprompted disclosures will be outside the scope of the provisions. Section 94 is also amended to allow the naming of certain people who have benefited from the inaccuracy or failure.

Details of the clause and Schedule

Schedule 1: Para 1: Amendments to Section 94 to the Finance Act 2009

2. Subsection (2) inserts subsections (4A) and (4B) into section 94 Finance Act 2009 to provide HMRC with the power to publish the details of an individual who controls a body corporate or a partnership. This applies where that body corporate or partnership has been charged a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.
3. Subsection (2) also inserts subsection (4C) and (4D) into section 94 to provide HMRC with the power to publish the details of one or more trustees of a settlement where the trustee has incurred a penalty for a deliberate failure to notify HMRC of a tax charge or deliberate inaccuracy in a return, and the trustee as an individual would have obtained a tax advantage from the inaccuracy or failure had it not been corrected. The failure or inaccuracy must involve an offshore matter or transfer.
4. Subsection (4) inserts subsection (6A) into section 94. Section 94(6A) provides that before publishing any information about an individual who falls under subsection (4B) and (4D) HMRC must inform that the individual that they are considering doing so. The individual must also be given a reasonable opportunity to make representations to HMRC on whether their details should be published. A consequential amendment is made to subsection (6) of Section 94 by subsection (3).
5. Subsection (5) amends section 94(1) to provide that no information will be published in instances of inaccuracies or failures relating to an offshore matter or transfer if the full penalty

reduction is given for disclosure, and the taxpayer was unprompted in disclosing the failure or inaccuracy to HMRC.

6. Subsection (7) provides that the amendments made by this section come into force on a day appointed by regulations made by the Treasury.

Background note

7. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.
8. The clause will strengthen naming provisions to enable HMRC to name those that hide behind entities, such as companies and trusts, when committing offshore tax evasion, and restrict protection from naming for those offshore evaders who do not come forward to HMRC unprompted.
9. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise in the UK, but are transferred offshore and not declared to HMRC.
10. If you have any questions about this change, or comments on the legislation, please contact Timothy Holmes on 03000 522 637 (email: timothy.holmes@hmrc.gsi.gov.uk).