



HM Revenue
& Customs

Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures

Summary of responses

1 December 2017

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Subject of this response document:	A summary of responses to a consultation which proposed a new legal requirement that intermediaries creating or promoting certain complex offshore financial arrangements must notify HMRC of those arrangements.
Who should read this:	This response document will be of interest to advisors, agents or businesses that create or promote complex offshore financial arrangements, and individuals who use such arrangements. It will also be of interest to those who took part in the consultation.
Duration:	5 December 2016 – 27 February 2017
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Additional ways to be involved:	Please send any comments to the lead officials at the email address above.
Getting to this stage:	The consultation Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures was announced in the Autumn Statement 2016. This consultation takes forward HMRC's strategy for tackling offshore tax evasion, No Safe Havens (as updated in 2014).
Previous engagement:	This document is a summary of responses received during the consultation period (5 December 2016 – 27 February 2017).

1. Executive Summary

- 1.1 This document contains:
- a summary of responses to the consultation on the proposal to require intermediaries creating or promoting certain complex offshore financial arrangements to notify Her Majesty's Revenue and Customs (HMRC) of these structures and their clients.
 - the Government's response to the issues raised in the consultation.
- 1.2 The Government's [No Safe Havens](#) strategy (updated in 2014) defined offshore tax evasion as "using another jurisdiction's systems with the objective of evading UK tax", including "the use of complex offshore structures to hide the beneficial ownership of assets, income or gains".
- 1.3 In the past, it was difficult for HMRC to detect offshore tax evasion or other forms of offshore non-compliance. However, following the Government's work with international partners, the Common Reporting Standard (CRS) is already providing greater levels of transparency through annual automatic exchange of information from financial institutions amongst jurisdictions including the UK.
- 1.4 In addition, from December 2016 to February 2017, the Government consulted on a proposed new measure. This would require businesses that have created certain defined types of offshore arrangements to notify HMRC of the details of the arrangement, including the clients who use it.
- 1.5 The Government will work with international partners and external stakeholders on the development of appropriate multinational rules to tackle the use of offshore structures to evade tax, including circumvention of the CRS (see details in paragraph 2.3).

2. Introduction

- 2.1 This document summarises responses to the consultation document [Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures](#). The consultation document set out the high level design principles for a proposal to require businesses that have created certain complex offshore arrangements to notify HMRC of the details of such arrangements and provide HMRC with a list of clients using them. The Government recognises that in many cases, these arrangements are used for legitimate purposes. The proposed measure aims to target those arrangements most at risk of being used for tax evasion purposes. The consultation document was published on 5 December 2016 and the consultation closed on 27 February 2017.
- 2.2 The Government is grateful to all those who responded or participated in meetings for taking the time to consider the issues raised by the consultation document.
- 2.3 Following the close of the consultation in February 2017, the G7 countries published the Bari Declaration¹ in May 2017 asking the Organisation for Economic Co-operation and Development (OECD) to consider ways to address arrangements used to circumvent reporting under the CRS² and the use of offshore structures to conceal ownership of assets. In June 2017, the EU published draft legislation under the Directive for Administrative Cooperation (DAC6) which is also concerned with addressing the use of offshore structures for tax planning arrangements and CRS circumvention.
- 2.4 Many of the respondents to the consultation thought that a requirement to notify tax authorities of certain structures would work more effectively if implemented multi-nationally instead of being solely a UK measure. The Government is now working with international partners and external stakeholders to develop appropriate rules, taking into account the responses received for this consultation, which have been carefully considered.

¹ G7 Finance Ministers published a declaration on 13 May 2017: “We ask the OECD to start discussing possible ways to address arrangements designed to circumvent reporting under the Common Reporting Standard or aimed at providing beneficial owners with the shelter of non-transparent structures, considering also model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS [Base Erosion and Profit Shifting] Action 12 Report, and to report back to the Group of Seven by our next meeting. We encourage the G20 to endorse this work”.

² The CRS requires that jurisdictions obtain information from their financial institutions and automatically exchange that information with other jurisdictions annually. The CRS already provides greater levels of information about offshore accounts, trusts, and shell companies that will be available for use in detecting irregularities with offshore income or gains. Over 100 countries are currently committed to automatically exchange financial account information and the first exchanges of CRS data took place in September 2017. By 2018, all signatories will be exchanging information.

The December 2016 consultation

- 2.5 The consultation sought views on the high level design principles and the potential risks and benefits of introducing a requirement to notify HMRC of offshore structures. The consultation document provided the rationale behind, and the objectives of, the policy measure alongside certain details of the proposed scope.
- 2.6 In particular, the consultation document highlighted that people seeking to hide their money overseas may be helped by businesses that set up complex financial arrangements. In many cases, these arrangements are legitimate, and put to legitimate use. However, in some cases these arrangements may be used or misused for tax evasion purposes.
- 2.7 The measure would require any person or business that creates or promotes certain specified types of offshore arrangements to notify HMRC of the details of those arrangements, and of the clients using them. HMRC would then provide a notification number, which the person or business would share with any clients involved. These clients would need to notify HMRC of their involvement using the notification number, for example, including it on their tax return or through their personal tax account. Should the creator/promoter fail to notify, the responsibility would lie with the client. By requiring both the creator/promoter to notify, and the client to supply HMRC with a notification number, the measure would discourage non-compliance by creating a system of checks and balances. This would discourage both creators/promoters and users of such arrangements from attempting to conceal the arrangement from HMRC.
- 2.8 The consultation document included detailed information about how structures of specified offshore arrangements would allow HMRC to assess the use of a structure in its entirety, giving an end to end view of the flow of assets and a clearer picture of beneficiaries of the arrangement. This would allow HMRC to establish the tax consequences of the structure, thus increasing transparency around these arrangements and their usage. It would also allow HMRC to assess risk and combat offshore evasion on several fronts:
- data on the individuals who use these arrangements would enable HMRC to quickly identify those who use such arrangements for compliant purposes and better target the department's compliance activities against the minority who use or misuse such arrangements to conceal money or assets overseas;
 - data on the creators and promoters of complex offshore financial arrangements which are misused would also improve HMRC's ability to identify, and therefore to target, enablers of offshore tax evasion;
 - a better understanding of how complex offshore arrangements are structured will support HMRC in identifying and excluding arrangements that are deemed as low risk from this initiative. The policy will also aid HMRC in identifying structures or arrangements that pose a higher risk of evasion and which Ministers may want to address through legislative changes; and

- the information would be used to support HMRC's *Promote, Prevent, Respond* strategy through the creation of educational material to raise awareness and promote voluntary compliance.

2.9 The consultation document also provided a set of generic examples of arrangements which could be used for offshore tax evasion to facilitate discussion on the how the proposal might work in practice. It also sought respondents' views on the policy proposal through a set of 17 consultation questions.

3. Summary of Responses

- 3.1 The responses to the consultation questions are summarised by theme and a list of respondents are included in the [Annex](#).

Application of the policy to persons/businesses outside the UK

- 3.2 The consultation document set out the basic concept of the proposed measure. In the first instance businesses, agents, advisors or any other persons that create offshore arrangements for UK taxpayers (henceforth referred to as responsible persons) that exhibit certain specified characteristics would be required to notify HMRC of the creation of these arrangements and of any clients using them. Clients using these arrangements would also be required to notify HMRC by including their notification number on their tax returns or through their personal tax accounts.

- 3.3 The Government further proposed that this should apply to responsible persons both within and outside the UK, because excluding those operating offshore would significantly reduce the impact of the proposal.

Q1: Should the proposal apply only to UK-based persons/businesses that create offshore arrangements, or should offshore persons/businesses also be in scope?

- 3.4 The majority of respondents agreed that the proposal should apply to both UK-based and offshore persons/businesses, as excluding the latter would reduce the impact of the proposal and give offshore persons/businesses a competitive advantage over their UK-based counterparts. However, respondents also expressed some doubt as to how HMRC would be able to enforce the compliance of offshore persons/businesses in offshore jurisdictions. Given such difficulties, some respondents suggested leaving offshore persons/businesses out of scope.

Defining the parameters of the measure

- 3.5 The consultation document highlighted that this measure would be different from the Disclosure of Tax Avoidance Schemes (DOTAS) rules because DOTAS only applies to schemes with a UK tax advantage. As this proposal is not predicated on the identification of arrangements that seek a UK tax advantage, an alternative scope would be needed to catch arrangements used for offshore tax evasion. One illegitimate use of offshore structures is to hide that the taxpayer is the beneficial owner, who then fraudulently omits income and gains from their tax return. Suggestions were sought on how to identify the types of arrangements or clients that should fall within the scope of the

measure, then setting out the characteristics that arrangements must demonstrate to be notifiable.

Q2: How should HMRC define the scope according to which both UK-based and non-UK-based persons/businesses would be liable to report?

- 3.6 During the consultation, respondents generally understood why a different starting point to that used in DOTAS would be needed and stressed the importance of not duplicating existing reporting obligations. Some respondents suggested it was difficult to comment in detail on the scope of the proposal as the consultation was cast at a high level and the scope and associated impact would depend on the details of the measure. Respondents were clear about the need to ensure that the measure would be well targeted to avoid excessive reporting burdens. Some respondents accepted in principle that the starting point should be those arrangements most at risk of being used or misused for offshore tax evasion.
- 3.7 Respondents generally emphasised that as far as possible, the Government should seek to exclude those using offshore arrangements for legitimate purposes. There was, however, general concern that any arrangement could be used for evasion purposes and therefore HMRC was likely to find it very difficult to define the scope of the measure in such a way that it would only target 'abusive' structures.
- 3.8 Similar to the responses to question 1 (see paragraph 3.4 above), the majority of respondents highlighted the difficulties that HMRC might face in holding non-UK-based persons/businesses to account under the measure.

The proposed design concept

- 3.9 The consultation document gave a summary of the high level design principles under which the measure would operate. The proposal covered the following points:
- arrangements would be identified as notifiable by hallmarks;
 - who would be subject to notification requirements;
 - what details one would be expected to include in a notification;
 - safeguards and sanctions that would ensure compliance; and
 - how a notification reference number would be used.

The consultation document sought views on the following questions:

Q3: Are there any key circumstances missing from the proposed concept and can you see any opportunities to improve on this basic concept?

- 3.10 Respondents were broadly content with the principles behind the proposed process and the need for notification. They did not find any substantial gaps in the circumstances identified in the high level concept.

However, although respondents acknowledge that this could be achieved through careful design of hallmarks, most expressed concern about the

practicalities of making such an approach work. Respondents doubted that it would be possible for HMRC to design hallmarks that would be able to minimise the reporting burden for compliant taxpayers while effectively targeting areas of evasion risk, particularly as any offshore arrangement could potentially be used or misused by a taxpayer to evade UK tax obligations.

Q4: Do respondents have any concerns about this approach?

- 3.11 A number of respondents highlighted a concern that notification numbers issued as part of the measure could come with the negative connotation that the arrangement could be used for evasion. Respondents highlighted that clients would be worried about the consequences of having a notification number, the need to follow up matters with HMRC, or being marked out for enquiries even if the structure were entirely legitimate. Respondents argued that these issues could deter clients from using legitimate products, therefore adversely impacting UK businesses. Respondents highlighted that schemes disclosed under DOTAS, which also uses a scheme numbering system, are often discarded by firms and clients who are reluctant to use an arrangement that has an attached notification number.
- 3.12 A few respondents raised a slightly different point that an HMRC notification number could be seen as an endorsement or kite mark from HMRC. This would be unhelpful were the structure or arrangement then used for evasion.
- 3.13 Respondents also pointed out that those actively seeking to evade would be unlikely to use an arrangement that they know had been declared notifiable under the proposed measure, thereby reducing the likelihood that the measure would help to catch deliberate evaders. Respondents argued that, as a result of this measure, HMRC would only receive information about compliant taxpayers, as deliberate evaders would find ways to circumvent the reporting requirement.
- 3.14 Some respondents noted that if HMRC expected clients themselves to notify HMRC of their involvement in a notifiable arrangement, then the clients would need to have sufficient tax knowledge and awareness of the new requirement in order to do so.

Q5: Are there any other approaches we could consider?

- 3.15 One respondent suggested that instead of establishing a separate measure, the policy's objectives could be achieved through an extension of the DOTAS rules.
- 3.16 Several respondents proposed ways to further focus or target the measure, for example, focusing on instances where there is suspicion that the client intends to commit tax evasion.
- 3.17 One respondent suggested that in order to avoid the negative connotations that come with a notification number, taxpayers should be offered an alternative: a much fuller disclosure of all their financial affairs to HMRC. This full and frank disclosure would be used to give HMRC confidence that no evasion was occurring, and hence would remove the need for the notification number. It was suggested that taxpayers using offshore arrangements would prefer this alternative approach to being assigned a notification number in order to protect their privacy, even if it might result in a deeper level of disclosure.

- 3.18 Another proposed alternative built on the existing Suspicious Activity Report (SAR) system for Anti-Money Laundering (AML) offences, which requires submission of a report to the National Crime Agency. The respondent suggested requiring advisors to disclose directly to HMRC if they had knowledge of, suspected, or had grounds for suspicion of offshore tax evasion committed by their client.

The use of hallmarks

- 3.19 The consultation document set out the key principles regarding the specific characteristics, i.e. hallmarks, by which an arrangement would be made subject to notification. Hallmarks should be designed to increase transparency around arrangements which could be used or misused for tax evasion purposes, recognising that such arrangements could also be wholly legitimate. The consultation document set out a non-exhaustive list of potential hallmarks and established that HMRC would not seek to duplicate any existing reporting requirements. The potential hallmarks mentioned in the document include:

- arrangements that have the effect of moving money outside of the CRS reporting, either through the use of different jurisdictions or non-reportable products and/or structures;
- arrangements that have the effect of obscuring or distancing legal and beneficial ownership (for example, through the use of a power of attorney or nominees); and
- arrangements that, if found unacceptable, would incur an increased penalty.

Regarding appropriate hallmarks and the use of hallmarks more generally, the consultation document set out the following questions.

Q6: Can you suggest any hallmarks to identify which arrangements would be subject to notification?

- 3.20 All respondents strongly emphasised the importance of carefully defining the hallmarks or characteristics by which arrangements would become notifiable under the measure. However, respondents gave varying views as to what these hallmarks should be.
- 3.21 The consultation considered the question whether the hallmarks should be objective or subjective in nature. Objective hallmarks would be based upon the factual elements of an arrangement, for example, “Does the structure give a UK taxpayer power of attorney over an offshore asset?” Subjective hallmarks would involve a value judgment on the part of the reporting party such as: “Does this arrangement pose a significant risk of offshore evasion?” The majority of respondents indicated that they would prefer hallmarks of an objective nature as this would prevent advisers from making value judgements. Conversely, a minority of respondents indicated a desire to include subjective hallmarks as they felt this could help to reduce reporting on compliant arrangements.

- 3.22 Some respondents indicated that they would like to see a set of objective hallmarks with a subjective “filter” hallmark as the final test for an arrangement judged to fall under the objective tests.
- 3.23 A number of respondents thought a hallmark based around combating avoidance of the CRS would be both useful and easy to implement. One respondent suggested linking this potential hallmark to the asset moves penalty: see details in [Schedule 21 to Finance Act 2015](#).
- 3.24 A minority of respondents also proposed to use cumulative hallmarks, whereby a structure exhibiting a single hallmark was not reportable, but a structure which met multiple hallmarks should be reported. This would enable more nuanced targeting and reduce the risk of reporting on low risk structures.
- Q7: Do respondents have any concerns about the use of hallmarks to identify which arrangements would be subject to notification?**
- 3.25 The majority of respondents sought to make the Government aware of the difficulties in using hallmarks to identify offshore structures more likely to be used for evasion. Respondents emphasised that any opaque structure could potentially be used or misused for illegitimate purposes. However, respondents did recognise that robust targeting would be necessary, but they urged the Government to avoid introducing a reporting requirement that would be burdensome for both taxpayers and HMRC.
- 3.26 Respondents felt it was likely that both compliant and non-compliant taxpayers would cease to use notifiable structures identified by hallmarks. Respondents highlighted that taxpayers would always seek more confidentiality by using structures outside the scope of the measure, thereby limiting its effectiveness.
- Q8: Are there any other approaches we could consider?**
- 3.27 Respondents were generally satisfied that, should the measure be developed further, the use of hallmarks would be a suitable method provided that the hallmarks themselves would be carefully considered.

The scope of the proposal

- 3.28 The consultation document defined the scope of the measure by specifying the types of arrangement or responsible person that would be within scope. The consultation document posed a set of questions on further defining the scope and alternative options.
- Q9: Should the requirement be limited to offshore?**
- 3.29 The majority of respondents were satisfied that the policy objectives would be met by targeting offshore arrangements. Some respondents indicated that they believed the Government could consider expanding the scope if necessary.
- Q10: Should the requirement be limited to individuals?**
- 3.30 Five respondents expressed the view that the requirement should be limited to individuals. Two respondents suggested that the scope could be expanded to cover arrangements set up both for companies and for individuals.

Q11: Are there any further opportunities to change the scope of the measure in order to maximise its effectiveness?

- 3.31 The majority of respondents did not see a need to change the scope of the measure, though a minority of respondents did have suggestions as to how improvements could be made.
- 3.32 A minority of respondents expressed a desire for a much broader measure sponsored by different countries, in a similar manner to the introduction of the CRS, which would increase global transparency around complex offshore structures.

Legal Professional Privilege

- 3.33 The consultation document set out the challenges concerning legal professional privilege and proposed that this measure take a similar approach to DOTAS.
- 3.34 Under DOTAS, where a promoter who is a lawyer is prevented by reason of legal professional privilege from providing the information needed to make the disclosure, the duty to disclose is lifted unless the client chooses to waive privilege. If privilege is not waived, then unless there is another promoter who has an obligation to disclose the scheme, the arrangements must be disclosed by any person in the UK who enters into any transaction forming part of them. In relation to legal professional privilege, the consultation document asked the following questions of respondents.

Q12: In your view, what impact will issues of Legal Professional Privilege have on the effectiveness of the requirement?

- 3.35 Respondents emphasised that the measure should not give one sector of the advisory industry a marketable advantage. They were concerned that those whose advice is covered by legal professional privilege would not need to comply with the reporting requirement, and could use this exemption to attract clients.

Q13: How might HMRC address the issue of Legal Professional Privilege?

- 3.36 Respondents were generally satisfied by the approach suggested by the Government, which would be similar in nature to that taken by DOTAS.

Q14: In your view, what impact will this measure have on UK resident but non-domiciled individuals?

- 3.37 The majority of respondents felt the measure should have the same impact on resident but non-domiciled individuals (RNDs) as on other UK taxpayers, though some expressed concerns that the RND community might feel disproportionately targeted by the measure, as they would be more likely to use complex offshore structures to manage their tax affairs, and that this in turn might discourage RNDs from coming to or investing in the UK.
- 3.38 It was not generally felt that RNDs should be excluded from the measure. Some respondents pointed out that the creator/promoter of a structure may not know whether their client was an RND.

Q15: How might HMRC address the impact on UK resident but non-domiciled individuals?

3.39 Respondents emphasised the importance of communicating any new policy to taxpayers.

Feedback regarding whether existing structures should be in scope

3.40 The consultation document asked whether the measure should bring existing structures into scope, accounting for the fact that those seeking to avoid the CRS might have already moved their assets.

Q16: Do you agree the measure should apply to existing arrangements and not just new ones?

3.41 The majority of respondents emphasised that requiring the advisory industry to retrospectively review all existing structures would impose a significant burden. However, most respondents also recognised that leaving existing structures out of the measure's scope might reduce its effectiveness.

3.42 One respondent suggested that a workable solution might be for existing arrangements to become notifiable under specific circumstances, for example, if changes were made to the structure.

Q17: In your view, are there any other considerations that HMRC should take into account when considering the feasibility and design of a requirement to notify HMRC of offshore structures?

3.43 Respondents stressed that effective targeting of the measure through carefully designed hallmarks and adequate resourcing to process notifications would be essential to the success of this measure. A minority of respondents reflected that they did not think this measure could be successful. Many respondents raised the difficulty of enforcing this measure outside the UK, pointing out that an international approach would render it more effective.

Government Response

3.44 The Government is grateful for the responses to the consultation and the questions set out above. Many respondents believed that an international approach would render this measure more effective.

3.45 Since the consultation was undertaken, both the OECD and EU have undertaken work on measures similar to the one proposed in the consultation. The Government therefore intends to work with international partners on the development of appropriate multi-national rules, taking into account the responses received for this consultation. The Government will also continue to work with external stakeholders on these new multilateral proposals and is grateful for their input into the consultation thus far.

Annex: List of Consultation Respondents

Alternative Investment Management Association, The
Association for Financial Markets in Europe, The
BDO UK LLP
British Bankers' Association
Chartered Institute of Taxation
Deloitte LLP
Ernst & Young
HKO Mercury
Institute of Chartered Accountants of Scotland, The
Institute of Chartered Accountants in England and Wales, The
International Financial Centres Forum, The
Investment Association, The
KPMG
Mazars
Peters and Peters Solicitors LLP
Pinsent Masons LLP
PricewaterhouseCoopers
Society of Trust and Estate Practitioners, The
Smith & Williamson