Institute of Financial Accountants

Corporate

Tackling offshore tax evasion: Strengthening civil deterrents

Response to Consultations

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Institute of Financial Accountants
Burford House, 44 London Road, Sevenoaks, Kent, TN13 1AS
T: +44 (0)1732 458080 **F:** +44(0)1732 455848 **E:** mail@ifa.org.uk
www.ifa.org.uk

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Introduction

1. The Institute of Financial Accountants (IFA) and the Federation of Tax Advisers (FTA) welcome the opportunity to comment on the consultation documents in respect of 'Tackling offshore tax evasion: Strengthening civil deterrents' published by HM Revenue & Customs (HMRC) on 19 August 2014.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. Information about the IFA and the FTA is given below.

Who we are

4. The IFA is an internationally recognised professional accountancy membership body whose members work for small and medium-sized enterprises (SMEs) or who run or work in small and medium-sized accounting practices (SMPs) that advise SMEs.

5. At the IFA, we put small and medium enterprises (SMEs) first, recognizing their role as vital wealth-creators, as employers to more than half of the UK's private sector workforce and as the power behind vibrant urban and rural communities. We hold the interests of small and medium practices (SMPs) in the accounting profession in equal regard.

6. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.

7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.

8. Founded in 1916, the IFA supports over 10,000 members and students in more than 80 countries with a programme of professional qualifications and education. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.

9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession. As such, the IFA takes it place alongside the UK and Ireland's six chartered accountancy bodies, as well as 135 national and regional accountancy organisations representing 125 countries and jurisdictions.

10. The IFA is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications; and is authorised by HM Treasury for Anti Money Laundering supervision.

General Comments

11. Thank you for the opportunity to respond the consultation.

12. Our overriding comment in relation to the consultation is that it continues to demonstrate HMRC's fixation that offshore tax non-compliance and evasion is somehow more heinous than onshore non-compliance and evasion.

13. Whilst recognising that there are increased costs in detecting non-compliance offshore, we consider it inappropriate that sanctions in the form of penalties designed on categorisation of 'behaviour' should again be used to fund/compensate for this additional cost.

14. We consider that the existing offshore penalty regime is sufficient and the introduction of the new global standard for the automatic exchange of information, the Common Reporting Standard (CRS) will improve detection.

Specific comments on the consultations

15. In addition to our general comments, our comments on specific questions set out in the consultation documents are set out below.

Extending the scope of penalties for offshore non-compliance

Option 1 – Extending the scope of the offshore penalties regime to Inheritance Tax

Question 1

Do you consider it appropriate to extend the offshore penalties regime in the case of offshore assets which are part of the death estate and liable to IHT? If you do not, please say why.

Response:

16. Offshore penalties should only be available to lifetime transfers where the transfers are made abroad or use offshore 'structures' and where HMRC can demonstrate that the transfer was to avoid UK taxes.

17. We consider that the position in relation to IHT on death is more complicated and problematic.

18. Higher penalties should not be available in either case study 1 or case study 2 in relation to the deceased and the personal representatives respectively. However, in relation to case study 3, the beneficiaries, clearly the deliberate withholding of the information from the executors resulted in increased amounts being capable of distribution to the beneficiaries. In these situations it would appear appropriate that the beneficiaries incurred some additional sanction. However, it is still debatable whether this offence should be included in the offshore penalty regime.

Question 2

Do you consider it appropriate to extend the offshore penalties regime in the cases of transfers of assets into offshore structures which give rise to IHT? If you do not, please say why.

Response:

19. We consider that the existing penalty regime is sufficient regarding the transfer of assets abroad.

Question 3

Do you agree that offshore penalties for IHT should be calculated using the same classification for territories as applies for IT and CGT? If you do not, what factors should a new classification take into account and why?

Response:

20. We consider that there would be very limited circumstances where the increased offshore penalty regime would apply to IHT (see responses above at 16-19). However, we accept that if such penalties were to be applied, these should be calculated using the same classification for territories as applies for IT and CGT if only to ensure that there is consistency.

Question 4

Do you agree with our view about the location of assets in relation to a death event? If you do not, what could constitute a better approach?

Response:

21. We do not accept that the higher offshore penalty regime should apply to a death event and any IHT on death should be calculated in accordance with existing legislation and practice. Without the ability to examine the intentions of the deceased, we consider that higher penalties should not apply.

Question 5

Do you agree with our view about the location of assets in relation to a transfer of value? If you do not, what could constitute a better approach?

Response:

22. Please see our response to Question 4

Option 2 – Extending the offshore penalties regime to cover inaccuracies in category 1 and category 2 territories where the proceeds are hidden in higher category territories

Question 6

Do you accept the principle that penalties should be strengthened to take account of where the proceeds of evasion are hidden? If you do not, please say why.

Response:

23. We do not consider that the current penalty system requires strengthening. We do not agree with the proposals that failures involving onshore 'domestic matters' and the proceeds moved to another territory should incur higher penalties. We consider that this blurring of the onshore/offshore offence will lead to ambiguity, confusion and complexity. This goes against the policy requirement for taxpayer certainty.

Question 7

Do you agree that the extension of offshore penalties should apply to cover all inaccuracies arising and failures relating to category 1 or category 2 territories where the proceeds of that non-compliance are hidden in higher category territories? If you do not, please say why.

Response:

24. Please see out response at 23.

Question 8

Do you favour the introduction of such a statutory rule? How else might the link between non-compliance and offshore funds be demonstrated?

Response:

25. We consider that the legislation is sufficient and that there is no merit in the introduction of a statutory rule.

Question 9

Which of the above two methods for ascertaining the category/level of penalty do you consider to be the best way of applying the extension to offshore penalties? Please say why.

Response:

26. We consider that neither method adequately addresses the issue.

Question 10

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

Response:

27. In light of the above response we consider that the current safeguards are sufficient for the current legislation.

Deterring taxpayers from deliberately moving offshore assets to continue to evade tax

Question 11

Do you agree that there should be strengthened sanctions for those who deliberately move assets with the intention of continuing to evade tax? If you do not, please say why.

Response:

28. In principal we do agree that there should be strengthened sanctions for those who deliberately move assets with the intention of continuing to evade tax.

29. HMRC should be required to demonstrate that the funds were moved with the intention of evading tax.

30. However, we do not consider that the options put forward adequately address this issue.

Option 3 – Introducing a new offshore surcharge to complement the offshore penalties regime where offshore assets have been deliberately moved to continue to evade tax.

Question 12

Do you consider that option 3 meets the policy objectives set out above? If you do not, please say why.

Response:

31. It is our opinion that there is no requirement for a new offshore surcharge and that the late payment of tax which already attracts interest is sufficient restitution.

Option 4 – Extending the 20 years assessing time limits where offshore assets have been deliberately moved to continue evading tax

Question 13

Do you consider that option 4 meets the policy objectives set out above? If you do not, please say why.

Response:

32. The 20 years is written into statute of limitation and provides certainty and clarity. To change this time limit by introducing new limits that initially would not cover even 20 years will lead to confusion.

33. From the analysis provided in the consultation, only 19% of the most serious tax cases covered disclosures of between 10 and 20 years. It would therefore seem unnecessary to consider changing the 20 year time limit.

34. It is also difficult to obtain information that is more than 20 years old and this would result in estimates and assumptions being needed which in itself would undermine the credibility of the figures.

Option 5 – Increasing the quantum of offshore penalties to reflect the number of times offshore assets have been deliberately moved to continue to evade tax.

Question 14

Do you consider that option 5 meets the policy objectives set out above? If you do not, please say why.

Response:

35. Whilst in theory this appears to be a sensible solution to taxpayers transferring funds from one jurisdiction to another to avoid tax, in practice it may be very difficult to demonstrate the movement of funds from one jurisdiction to another has been undertaken in an attempt to deliberately avoid tax.

Question 15

Do you have a preferred calculation method for option 5? If you do, please say which one and why.

Response:

36. We consider that applying a higher penalty on the entire offshore non-compliance by reference to the number of steps taken would be too simplistic.

Question 16

Do you have a preference between options 3, 4 and 5? If you do, please say why.

Response:

37. Although in principal we accept that HMRC should strengthen the sanctions against taxpayers deliberately moving funds offshore, we do not consider that the three options put forward would address this.

Question 17

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?

Response:

38. On the basis that we do not agree with any of the options put forward, we do not consider that there needs to be a change in the current safeguards.

Updating the offshore penalties regime to reflect the new global standard in tax information exchange

Option 6 – Introducing a new category into the table of Designated Territories

Question 18

Do you consider it appropriate to update the offshore penalties regime to reflect the new global standard? If you do not, please say why.

Response:

39. Yes – we agree that the offshore penalty regime should be updated to reflect the new global standard.

Question 19

Recognising the step change in automatic exchange of information standards, which method do you consider better achieves the policy objectives set out above and please say why?

Response:

40. We consider that option 1, maintaining the current range of penalties and incorporating a category 0 to be the best way of setting the penalties. However, whilst it is recognised that categories 1 and 2 would need to be increased, there should be some consultation as to how much these figures should be raised to.

Question 20

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?

Response:

41. We consider that the current safeguards would be sufficient and do not need amending.

Assessment of Impacts

Question 21

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

Response:

42. We have no further comments or evidence which may help in your understanding of likely impacts

Question 22

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

Response:

43. We have no further comments or evidence which may help in your understanding of likely equalities impacts

Should you wish to discuss our responses further, please contact AdamL@ifa.org.uk in the first instance.