

Offshore penalties: updating territory designations

Who is likely to be affected?

Non-compliant individuals who become liable to penalties for evading tax on income or gains from sources, activities or assets outside the UK.

General description of the measure

An Order will be made, amending the table of Designated Territories by reference to which the level of penalties for tax non-compliance involving income or gains arising offshore is set. The amendments will change the categories into which 14 territories are placed for these purposes, to reflect the fact that new tax information exchange agreements and tax cooperation arrangements have been entered into between the UK and those 14 territories. These new arrangements mean that two territories will move from category 2 to category 1 and 12 territories will move from category 3 to category 2. In each case, the effect of this will be that the level of penalties will be reduced.

Policy objective

This measure supports the Government's objective of promoting fairness in the tax system, by ensuring that the penalties for non-compliance are adapted to take account of the underlying behaviours and circumstances. Because it can be more difficult to obtain tax information relating to overseas sources, activities and assets, non-compliance involving offshore income or gains can be harder to detect and remedy than non-compliance involving income or gains in the UK. This can influence behaviour and the penalty regime is designed to respond to this by applying increased sanctions where the non-compliance involves offshore activities. The level of sanction takes account of the existence and quality of any arrangements entered into between the UK and the overseas territory for the exchange of tax information or other forms of tax cooperation. Territories are placed in one of three categories for these purposes and, where new or improved arrangements for tax information sharing or other forms of enhanced tax cooperation are entered into between the UK and another territory, the category into which that territory is placed will change to reflect this. For example, a territory formerly having no arrangements in place for the exchange of tax information with the UK, but which later enters into a Tax Information Exchange Agreement with the UK, will move from category 3 to category 2. The level of penalty for non-compliance involving a category 2 territory is lower than for non-compliance involving a category 3 territory.

Background to the measure

The table of Designated Territories was first produced in March 2011 and is now being updated to reflect the subsequent negotiation and entry into force of tax information exchange and enhanced tax cooperation agreements with Antigua and Barbuda, Armenia, Bahrain, Barbados, Belize, Dominica, Grenada, Liechtenstein, Mauritius, San Marino, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Switzerland.

This measure is not subject to formal consultation.

Detailed proposal

Operative date

The changes to the table of Designated Territories will take effect from 24 July 2013.

Current law

The Penalties, Offshore Income etc. (Designation of Territories) Order 2011 (SI 2011/976) contains a table of Designated Territories, which identifies the territories placed in category 1 or category 3 for the purposes of the penalty provisions set out in Schedule 24 to Finance Act (FA) 2007. Every territory in the world, apart from the UK itself, is placed into one of category 1, category 2 or category 3 for those purposes and Schedule 24 to FA 2007 provides that any territory not listed in the table as either a category 1 or category 3 territory will automatically be placed in category 2. Category 2 territories are not therefore listed in the table in SI 2011/976.

Schedule 24 to FA 2007 sets out the level of penalties for non-compliance involving income or gains from activities, sources or assets in territories outside the UK. The level of penalty depends partly on whether the territory is in category 1, 2 or 3. For category 1 territories, the penalties are up to 100 per cent of the tax lost as a result of deliberate and concealed action, up to 70 per cent of the tax lost as a result of deliberate but not concealed action, and up to 30 per cent of the tax lost as a result of careless action. For category 2 territories, these factors are increased to 150 per cent, 105 per cent and 45 per cent, respectively. And for category 3 territories, they are increased to 200 per cent, 140 per cent and 60 per cent, respectively.

Schedule 24 to FA 2007, as amended by Schedule 10 to FA 2010 and section 219 of FA 2012, provides that the category into which a territory is placed is determined by reference to the existence and quality of arrangements between that territory and the UK for the exchange of tax information (and in particular whether they provide for information to be exchanged automatically or on request), or other forms of tax cooperation (and in particular the extent to which they assist or are likely to assist with the protection of UK tax revenue).

Proposed revisions

New secondary legislation in The Penalties, Offshore Income etc. (Designation of Territories) (Amendment) Order 2013 (SI 2013/[TBA]) will amend the table in SI 2011/976 to change the categories into which the 14 territories covered by the Order are placed. 12 territories currently in category 3 will be moved into category 2 and two territories currently in category 2 will be moved into category 1. This will be achieved by omitting the 12 territories from the list of category 3 territories in the table in SI 2011/976 and by adding the two territories to the list of category 1 territories in that table. Because category 2 territories are not listed and Schedule 24 to FA 2007 provides that all territories not listed in either category 1 or category 3 will automatically be in category 2, removing the 12 territories from the list of category 3 territories will have the effect of placing them in category 2. The two territories moving into category 1 are not currently listed in the table, which means they are currently placed in category 2. Including those two territories in the list of category 1 territories will mean that they move from category 2 to category 1.

The affected territories, the categories in which they are currently placed and to which they will be moved as a result of this change, and the reasons for the change of category in each case are:

Antigua and Barbuda	From category 3 to category 2	New Tax Information Exchange Agreement
Armenia	From category 3 to category 2	New Double Taxation Agreement

Bahrain	From category 3 to category 2	New Double Taxation Agreement
Barbados	From category 3 to category 2	New Double Taxation Agreement
Belize	From category 3 to category 2	New Tax Information Exchange Agreement
Dominica	From category 3 to category 2	New Tax Information Exchange Agreement
Grenada	From category 3 to category 2	New Tax Information Exchange Agreement
Liechtenstein	From category 2 to category 1	New Agreement providing for enhanced tax cooperation
Mauritius	From category 3 to category 2	New Double Taxation Agreement
San Marino	From category 3 to category 2	New Tax Information Exchange Agreement
Saint Kitts and Nevis	From category 3 to category 2	New Tax Information Exchange Agreement
Saint Lucia	From category 3 to category 2	New Tax Information Exchange Agreement
Saint Vincent and the Grenadines	From category 3 to category 2	New Tax Information Exchange Agreement
Switzerland	From category 2 to category 1	New Agreement providing for enhanced tax cooperation

These changes will mean that non-compliance involving income or gains from activities, sources or assets in the 14 affected territories will be subject to lower penalty loadings than previously, once the new secondary legislation comes into force.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible effect on the Exchequer.				
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 measure 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 in one or more of the 14 territories listed above. The impact in all cases is that the potential penalties will be lower after the change than before, reflecting the greater tax transparency and cooperation between those territories and the UK.
Equalities impacts	The impacted population of non-compliant individuals may include non-compliant individuals with historic and existing interests in or connections with the 14 affected territories. The impact in all cases is that the potential penalties to which these non-compliant individuals become liable will be lower after the change than before, reflecting the greater tax transparency and cooperation between those territories and the UK.
Impact on business including civil society organisations	There are no expected impacts on tax compliant businesses or civil society organisations.
Operational impact (£m) (HMRC or other)	This measure is expected to have negligible operational impact.
Other impacts	This measure is expected to have a negligible impact on firms. Any impact would be limited to non-compliant firms and would affect such firms in the same way whether they are small or large firms. It would not be appropriate for the measure to have a different impact on firms depending upon their size. No other impacts have been identified.

Monitoring and evaluation

The categories into which territories are placed under this measure will continue to be monitored and evaluated in the light of developments in the negotiation of new tax information exchange and tax cooperation agreements between the UK and other territories.

Further advice

If you have any questions about this change, please contact Lee Harley on 020 7147 2674 (email: lee.harley@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.