



## Strengthening penalties for offshore non-compliance

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### Who is likely to be affected?

Individuals, personal representatives and trustees with hidden income, gains or assets overseas.

### General description of the measure

The measure will extend, update and complement the existing penalty regime for non-compliance which involves an offshore matter, supporting the overall offshore evasion strategy, ensuring taxpayers pay their fair share and penalising those who do not. There are four elements:

1. extending the existing offshore penalty regime to include inheritance tax (IHT);
2. extending the offshore penalty regime to offences where the proceeds of non-compliance are hidden offshore;
3. updating the territory classification system to reflect the new Common Reporting Standard (CRS); and
4. introducing a new aggravated penalty of moving hidden funds to avoid the CRS.

### Policy objective

This measure makes the tax system fairer, by strengthening civil sanctions for the small minority who evade tax by hiding taxable income, gains and assets offshore, and contributes to building the deterrent effect.

### Background to the measure

This measure was announced in Autumn Statement 2013. A consultation document entitled *Tackling offshore tax evasion: Strengthening civil deterrents* was published on 19 August 2014. The consultation closed on 31 October 2014.

## Detailed proposal

### Operative date

Following the numbering above:

1. this measure will have effect on and after 1 April 2016;
2. this measure will have effect on and after 1 April 2016;
3. this measure will have effect on and after 1 April 2016; and
4. this measure will have effect on and after the date that Finance Bill 2015 receives Royal Assent.

## Current law

Under Paragraphs 4, 6 and 6 of Schedule 24 to the Finance Act (FA) 2007, Schedule 41 to the FA 2008 and Schedule 55 to FA 2009 respectively, the rate of penalty applicable for non-compliance involving “an offshore matter” (defined at Paragraphs 4A, 6A and 6A of the above Schedules) may be higher than applying to domestic matters, but is restricted to income tax and capital gains tax only.

Paragraph 21A of Schedule 24 FA 2007 details the criteria which HM Treasury must consider in order to classify a territory into one of three categories, which link the existence of and level of information exchange to the rate of the penalty applicable.

## Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend FA 2007, FA 2008 and FA 2009, so that the offshore penalty regime:

1. includes IHT;
2. covers cases where the proceeds of domestic non-compliance are situated or held outside of the UK;
3. has four (instead of three) levels of penalty, where the existing lowest level will apply to territories that adopt automatic exchange of information under the CRS; territories will be re-classified in a new Statutory Instrument; and
4. includes a new type of penalty which is triggered following a movement of offshore assets to continue evading tax.

## Summary of impacts

<b>Exchequer impact (£m)</b>	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	nil	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer. This measure supports the Exchequer in its commitment to protect revenue.					
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts.					
<b>Impact on individuals, households and families</b>	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 or failing to notify HM Revenue & Customs (HMRC) about their taxable income or gains from activities and sources or assets held offshore.  Where applicable all current safeguards such as recourse to an HMRC Review, independent Tribunal, reasonable excuse and reasonable care claims will continue.  The measure is not expected to impact on family formation, stability or breakdown.					
<b>Equalities impacts</b>	Any affected equality groups are likely to be those over represented amongst those of above average wealth.					

<b>Impact on business including civil society organisations</b>	This measure is expected to have a negligible impact on businesses and civil society organisations.
<b>Operational impact (£m) (HMRC or other)</b>	HMRC will incur approximately £0.5 million in IT change costs.
<b>Other impacts</b>	Other impacts have been considered and none have been identified.

### **Monitoring and evaluation**

This measure will be monitored through information collected in compliance work to ensure the legislation operates as intended.

### **Further advice**

If you have any questions about this change, please contact Amit Puri on 03000 526801 (email: [amit.puri@hmrc.gsi.gov.uk](mailto:amit.puri@hmrc.gsi.gov.uk)).

## **1 Penalties**

- (1) Schedule 1 contains provisions amending—
  - (a) Schedule 24 to FA 2007 (penalties for errors),
  - (b) Schedule 41 to FA 2008 (penalties for failure to notify), and
  - (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc).
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (4) The power to make an order under this section is exercisable by statutory instrument.

## SCHEDULE 1

Section 1

## PENALTIES

*Penalties for errors*

- 1 Schedule 24 to FA 2007 is amended as follows.
- 2 (1) Paragraph 4 (penalties payable under paragraph 1) is amended as follows.
  - (2) After sub-paragraph (1) insert –
    - “(1A) If the inaccuracy is in category 0, the penalty is –
      - (a) for careless action, 30% of the potential lost revenue,
      - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
      - (c) for deliberate and concealed action, 100% of the potential lost revenue.”
  - (3) In sub-paragraph (2) –
    - (a) in paragraph (a), for “30%” substitute “37.5%”,
    - (b) in paragraph (b), for “70%” substitute “87.5%”, and
    - (c) in paragraph (c), for “100%” substitute “125%”.
  - (4) In sub-paragraph (5), for “3” substitute “4”.
- 3 (1) Paragraph 4A (categorisation of inaccuracies) is amended as follows.
  - (2) For sub-paragraph (1) substitute –
    - “(A1) An inaccuracy is in category 0 if –
      - (a) it involves a domestic matter,
      - (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax, capital gains tax or inheritance tax, or
      - (c) it involves an offshore matter and the tax at stake is a tax other than income tax, capital gains tax or inheritance tax.
    - (1) An inaccuracy is in category 1 if –
      - (a) it involves an offshore matter or an offshore transfer,
      - (b) the territory in question is a category 1 territory, and
      - (c) the tax at stake is income tax, capital gains tax or inheritance tax.”
  - (3) In sub-paragraph (2) –
    - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
    - (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
  - (4) In sub-paragraph (3) –
    - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and

- 
- (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
- (5) After sub-paragraph (4) insert –
- “(4A) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
- (4B) An inaccuracy “involves an offshore transfer” if –
- (a) it does not involve an offshore matter,
  - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
  - (c) the tax at stake is income tax, capital gains tax or inheritance tax, and
  - (d) the applicable condition in paragraph 4AA is satisfied.”
- (6) In sub-paragraph (5), for the words following “revenue” substitute “and does not involve either an offshore matter or an offshore transfer”.
- (7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.
- (8) In sub-paragraph (7), for ““Category 1” substitute ““Category 0 territory”, “category 1”.
- 4 After paragraph 4A insert –
- “4AA(1) This paragraph makes provision in relation to offshore transfers.
- (2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income –
- (a) is received in a territory outside the UK, or
  - (b) is transferred before the filing date to a territory outside the UK.
- (3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds –
- (a) are received in a territory outside the UK, or
  - (b) are transferred before the filing date to a territory outside the UK.
- (4) Where the tax at stake is inheritance tax, the applicable condition is satisfied if –
- (a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable is a transfer of assets, and
  - (b) after that disposition but before the filing date the assets, or any part of the assets, are transferred to a territory outside the UK.
- (5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred

are to be read as including references to any assets derived from or representing the income, proceeds or assets.

- (6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 4A is the highest category of territory by virtue of which the inaccuracy involves an offshore transfer.
- (7) “Filing date” means the date when the document containing the inaccuracy is given to HMRC.
- (8) “Assets” has the same meaning as in paragraph 4A.”

5 In paragraph 10 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert –

“37.5%           |   18.75%           |   0%”,

“87.5%           |   43.75%           |   25%”, and

“125%           |   62.5%           |   40%”.

6 In paragraph 12(5) (interaction with other penalties and late payment surcharges: the relevant percentage) –

- (a) before paragraph (a) insert –
  - “(za) if the penalty imposed under paragraph 1 is for an inaccuracy in category 0, 100%,” and
- (b) in paragraph (a), for “100%” substitute “125%”.

7 (1) Paragraph 21A (classification of territories) is amended as follows.

(2) Before sub-paragraph (1) insert –

“(A1) A category 0 territory is a territory designated as a category 0 territory by order made by the Treasury.”

(3) For sub-paragraph (2) substitute –

“(2) A category 2 territory is a territory that is not any of the following –

- (a) a category 0 territory;
- (b) a category 1 territory;
- (c) a category 3 territory.”

(4) For sub-paragraph (7) substitute –

“(7) An instrument containing (whether alone or with other provisions) the first order to be made under sub-paragraph (A1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

8 In paragraph 21B(2) (location of assets etc), for “and capital gains tax” substitute “, capital gains tax and inheritance tax”.

*Penalties for failure to notify*

- 9 Schedule 41 to FA 2008 is amended as follows.
- 10 (1) Paragraph 6 (amount of penalty: standard amount) is amended as follows.
- (2) After sub-paragraph (1) insert –
- “(1A) If the failure is in category 0, the penalty is –
- (a) for a deliberate and concealed failure, 100% of the potential lost revenue,
  - (b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and
  - (c) for any other case, 30% of the potential lost revenue.”
- (3) In sub-paragraph (2) –
- (a) in paragraph (a), for “100%” substitute “125%”,
  - (b) in paragraph (b), for “70%” substitute “87.5%”, and
  - (c) in paragraph (c), for “30%” substitute “37.5%”.
- (4) In sub-paragraph (5), for “3” substitute “4”.
- 11 (1) Paragraph 6A (categorisation of failures) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(A1) A failure is in category 0 if –
- (a) it involves a domestic matter,
  - (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax or capital gains tax, or
  - (c) it involves an offshore matter and the tax at stake is a tax other than income tax or capital gains tax.
- (1) A failure is in category 1 if –
- (a) it involves an offshore matter or an offshore transfer,
  - (b) the territory in question is a category 1 territory, and
  - (c) the tax at stake is income tax or capital gains tax.”
- (3) In sub-paragraph (2)(a), after “matter” insert “or an offshore transfer”.
- (4) In sub-paragraph (3)(a), after “matter” insert “or an offshore transfer”.
- (5) After sub-paragraph (4) insert –
- “(4A) A failure “involves an offshore transfer” if –
- (a) it does not involve an offshore matter,
  - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
  - (c) the tax at stake is income tax or capital gains tax, and
  - (d) the applicable condition in paragraph 6AA is satisfied.”
- (6) In sub-paragraph (5), for the words following “revenue” substitute “and does not involve either an offshore matter or an offshore transfer”.
- (7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.
- (8) In sub-paragraph (9), after “paragraph” insert “and paragraph 6AA”.

12 After paragraph 6A insert –

- “6AA(1) This paragraph makes provision in relation to offshore transfers.
- (2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income –
- (a) is received in a territory outside the UK, or
  - (b) is transferred before the calculation date to a territory outside the UK.
- (3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds –
- (a) are received in a territory outside the UK, or
  - (b) are transferred before the calculation date to a territory outside the UK.
- (4) In the case of a transfer falling within sub-paragraph (2)(b) or (3)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
- (5) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the failure involves an offshore transfer.
- (6) In this paragraph “calculation date” means the date by reference to which the potential lost revenue is to be calculated (see paragraph 7).”

13 In paragraph 13 (standard percentage reductions for disclosure), in the Table in sub-paragraph (3), at the appropriate places insert –

“37.5%	case A: 12.5%	case A: 0%
	case B: 25%	case B: 12.5%”,
“87.5%	43.75%	25%”, and
“125%	62.5%	40%”.

*Penalties for failure to make returns etc*

14 Schedule 55 to FA 2009 is amended as follows.

- 15 (1) Paragraph 6 (penalty for failure continuing 12 months after penalty date) is amended as follows.
- (2) In sub-paragraph (3A) –
- (a) before paragraph (a) insert –

- “(za) for the withholding of category 0 information, 100%,” and
      - (b) in paragraph (a), for “100%” substitute “125%”.
    - (3) In sub-paragraph (4A) –
      - (a) before paragraph (a) insert –
        - “(za) for the withholding of category 0 information, 70%,” and
      - (b) in paragraph (a), for “70%” substitute “87.5%”.
    - (4) In sub-paragraph (6), for “3” substitute “4”.
- 16 (1) Paragraph 6A (categorisation of information) is amended as follows.
  - (2) For sub-paragraph (1) substitute –
    - “(A1) Information is category 0 information if –
      - (a) it involves a domestic matter,
      - (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax, or
      - (c) it involves an offshore matter and it is information which would enable or assist HMRC to assess P’s liability to a tax other than income tax, capital gains tax or inheritance tax.
    - (1) Information is category 1 information if –
      - (a) it involves an offshore matter or an offshore transfer,
      - (b) the territory in question is a category 1 territory, and
      - (c) it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax.”
  - (3) In sub-paragraph (2) –
    - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
    - (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
  - (4) In sub-paragraph (3) –
    - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
    - (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
  - (5) After sub-paragraph (4) insert –
    - “(4A) If the liability to tax which would have been shown in the return is a liability to inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
    - (4B) Information “involves an offshore transfer” if –
      - (a) it does not involve an offshore matter,

- (b) it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax,
  - (c) by failing to make the return, P deliberately withholds the information (whether or not the withholding of the information is also concealed), and
  - (d) the applicable condition in paragraph 6AA is satisfied.”
- (6) In sub-paragraph (5), for the words following “if” substitute “it does not involve an offshore matter or an offshore transfer”.
- (7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.
- (8) In sub-paragraph (9), after “paragraph” insert “and paragraph 6AA”.

17 After paragraph 6A insert –

“6AA(1) This paragraph makes provision in relation to offshore transfers.

- (2) Where the liability to tax which would have been shown in the return is a liability to income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income –
  - (a) is received in a territory outside the UK, or
  - (b) is transferred before the relevant date to a territory outside the UK.
- (3) Where the liability to tax which would have been shown in the return is a liability to capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds –
  - (a) are received in a territory outside the UK, or
  - (b) are transferred before the relevant date to a territory outside the UK.
- (4) Where the liability to tax which would have been shown in the return is a liability to inheritance tax, the applicable condition is satisfied if –
  - (a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable is a transfer of assets, and
  - (b) after that disposition but before the relevant date the assets, or any part of the assets, are transferred to a territory outside the UK.
- (5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets.
- (6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the information involves an offshore transfer.
- (7) “Relevant date” means the date on which P becomes liable to a penalty under paragraph 6.”

- 18 In paragraph 15 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert –

“87.5% | 43.75% | 25%”, and

“125% | 62.5% | 40%”.

- 19 In paragraph 17(4) (interaction with other penalties and late payment surcharges), omit the “and” at the end of paragraph (b) and after that paragraph insert –

“(ba) if one of the penalties is a penalty under paragraph 6(3) or (4) and the information withheld is category 1 information, 125%, and”.

## EXPLANATORY NOTE

### PENALTIES

#### SUMMARY

1. Clause [X] and Schedule [A] amend the existing penalty regime that applies to non-compliance involving an offshore matter. They extend its scope by applying it to inheritance tax, and to where the proceeds of non-compliances are hidden offshore. The territory classification system is also updated to reflect advances in international tax transparency through the implementation of the Common Reporting Standard (CRS). It is anticipated that the provisions will commence in April 2016.

#### DETAILS OF THE CLAUSE

2. Subsection (1) introduces Schedule [A] which amends the offshore penalty provisions relating to errors in returns, failure to notify liability, failure to make returns in Schedule 24 to Finance Act 2007 (Schedule 24), Schedule 41 to Finance Act 2008 (Schedule 41) and Finance Act 2009 (Schedule 55).

3. Subsections (2) to (4) provide that the Schedule comes into force on a day specified by a Statutory Instrument made by the Treasury: different times may be specified in respect of different provisions or for certain purposes. It is anticipated that the provisions will commence in April 2016.

#### DETAILS OF THE SCHEDULE

##### *Penalties for errors.*

4. Paragraph 1 provides for Schedule 24 to be amended. Schedule 24 imposes penalties for inaccuracies in a return or other document submitted to HM Revenue & Customs (HMRC). Penalties for inaccuracies currently fall into any one of 3 categories for the purposes of determining the level of penalty applicable. Penalties arising from a “domestic matter” in relation to income tax and capital gains tax and for all inaccuracies relating to other taxes subject to the penalty regime in Schedule 24, currently attract the lowest level of penalty set by category 1.

5. Inaccuracies involving an offshore matter in relation to income tax and capital gains tax may be liable for a higher penalty than for a domestic matter relating to those taxes depending upon the extent of any information sharing arrangements between the territory concerned and the UK. Territories currently designated as category 1 territories pursuant to

an Order made under paragraph 21A of Schedule 24, have the highest level of information sharing arrangements so that penalties for inaccuracies arising in connection with those territories are the same as for penalties involving domestic matters and so fall as category 1 inaccuracies. Territories in categories 2 and 3 have correspondingly poorer information exchange arrangements. Inaccuracies relating to income tax and capital gains tax involving those territories attract consequentially higher category 2 and 3 penalty levels.

6. Paragraph 2 amends paragraph 4 of Schedule 24 by inserting sub-paragraph (1A) and amending sub-paragraphs (2) and (5) so as to increase the levels of penalty in respect of a category 1 inaccuracy as a result of the lowest level of penalty now being attached to the new category 0 described below. No change is made to current levels of penalty in relation to inaccuracies falling within categories 2 and 3. A consequential amendment is made so that paragraph 4(5) of Schedule 24 refers to 4 categories of inaccuracy (0, 1, 2 and 3)

7. Paragraph 3 amends paragraph 4A of Schedule 24 by—

- inserting the new category of inaccuracy (category 0) which carries the lowest level of penalty as described above (equivalent to those currently in category 1) (see newly inserted sub-paragraph (A1) (which creates category 0) and consequential amendment to sub-paragraph (7));
- determining the penalty for an inheritance tax inaccuracy by reference to whether the inaccuracy involves a domestic matter, an offshore matter or an offshore transfer in the same way as for income tax and capital gains tax (see new sub-paragraph (A1)(b) and (c), the consequential amendments made to sub-paragraphs (2)(c) and (3)(c) and the provision made by newly inserted sub-paragraph (4A) for determining where assets are treated as situated or held for the purposes of penalties relating to inheritance tax); and
- inserting, in categories (0, 1, 2 and 3), the concept of an “offshore transfer” (see the definition in newly inserted sub-paragraph (4B) and consequential amendments made to sub-paragraphs (2)(a), (3)(a), (5) and (6)(a)) which is separate from the existing concept of “offshore matter”.

8. The newly inserted sub-paragraph (4A) requires that where the tax at stake is inheritance tax, the question of the territory where assets are situated or held is determined by reference to where they are situated or held immediately after the transfer of value giving rise to the charge to inheritance tax.

9. The newly inserted sub-paragraph (4B) provides that an inaccuracy only involves an “offshore transfer” if it does not involve an “offshore matter”, is deliberate (whether or not concealed), results in a potential loss of income tax, capital gains tax or inheritance tax and the “applicable condition” in newly inserted paragraph 4AA is satisfied.

10. Paragraph 4 inserts paragraph 4AA into Schedule 24. It sets out the “applicable condition” referred to by newly inserted paragraph 4A(4B). The applicable condition will be

satisfied if, by the date when the document containing the inaccuracy is given to HMRC (“filing date”)-

- income (or any part of it) chargeable to income tax is received in, or transferred to, a territory outside the UK;
- the proceeds (or any part of them) of a disposal giving rise to a charge to capital gains tax are received in, or transferred to, a territory outside the UK; or
- the disposition giving rise to transfer of value by reason of which inheritance tax is chargeable is a transfer of assets and after the disposition the assets (or part of them) are transferred to a territory outside the UK.

11. Paragraph 4AA(5) extends the applicable condition by providing that references to income, proceeds or assets transferred must be read as including any assets derived from or representing the income, proceeds or assets.

12. Paragraph 4AA(6) ensures that where more than one category of territory is involved in an “offshore transfer”, the level of penalty for the inaccuracy will be determined by reference to the highest category of territory involved.

13. Paragraph 4AA(8) provides that references to income or the proceeds of a disposal or transfer of value must be read as including references to any assets (as defined in section 21(1) of the Taxation of Capital Gains Act 1992) derived from or representing the income or proceeds.

14. Paragraph 5 amends the Table in paragraph 10 of Schedule 24 which specifies the minimum percentages to which a penalty in paragraph 4 may be reduced on account of disclosures made by a taxpayer who is liable to a penalty. The amendment to the table is made in consequence of the new level of penalties applying to a category 1 inaccuracy so as to specify the minimum percentages to which those penalties may be reduced depending upon whether or not the taxpayer made a prompted or unprompted disclosure.

15. Paragraph 6 makes consequential amendments to paragraph 12 of Schedule 24 so that where penalties are imposed under paragraphs 1 and 1A of that Schedule in respect of the same inaccuracy, the aggregate amount of the penalties must not exceed 100% of the potential lost revenue in respect of a category 0 inaccuracy and 125% in respect of a category 1 inaccuracy.

16. Paragraph 7 makes consequential amendments to paragraph 21A of Schedule 24 which determines the category in which a territory falls for the purposes of offshore matters. A new sub-paragraph (A1) is inserted and sub-paragraph (2) is substituted so that a territory will fall as a category 2 territory unless designated by Treasury Order as a category 0, 1 or 3 territory. Sub-paragraph (7) is substituted so that the first Treasury Order specifying territories in category 0 must, before it is made, be laid in draft before, and approved by a resolution of, the House of Commons.

17. Paragraph 8 amends paragraph 21B(2) of Schedule 24 so that the Treasury, when exercising the power to make regulations for determining the place where an income source is located, asset is situated or held, or activities wholly or mainly carried on, may make different provision for inheritance tax as well as for income tax and capital gains tax.

*Penalties for failure to notify*

18. Paragraphs 9 to 13 make amendments to Schedule 41 in relation to the new category 0 and an offshore transfer that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 of this Explanatory Note. Since Schedule 41 does not apply to inheritance tax, there are no amendments in relation to that tax.

*Penalties for failure to make returns etc*

19. Paragraphs 14 to 19 make amendments to Schedule 55 in relation to the new category 0, an offshore transfer and inheritance tax that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 of this Explanatory Note.

**BACKGROUND NOTE**

20. HMRC may charge penalties in cases where income, gains etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. Schedules 24, 41 and 55 of FA 2007 (errors in tax returns etc.), FA 2008 (failure to notify liability) and FA 2009 (returns not filed on time) respectively (“the penalty Schedules”) set out the minimum and maximum penalties that may be charged.

21. In each case the penalty is a percentage of the amount of revenue potentially lost or, in relation to a penalty under Schedule 55 FA 2009, which would have been shown in the return in question. Schedule 10 to FA 2010 amended the penalty Schedules to categorise conduct giving rise to a penalty in relation to income tax or capital gains tax by reference to whether the conduct involved an offshore matter. Maximum penalties are higher for penalties relating to territories falling within categories 2 and 3 than in relation to territories falling within category 1 (which also includes penalties in relation to a “domestic matter”). The legislation provides that a territory falls within category 2 unless designated as category 1 or 3 by Treasury Order. Designation of a territory is made by reference to the level of information exchange arrangements (if any) between the UK and the territory. Territories within category 1 (which include EU member States) have entered into arrangements for automatic exchange of information with the UK broadly comparable with information provided automatically to HMRC within the UK. The higher penalties corresponding to categories 2 and 3 reflect the fact that, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance and that the choice of such territories by those failing to report accurately their tax obligations may well have been influenced by that factor.

22. This measure makes the tax system fairer, by strengthening civil sanctions for the small minority who evade tax by hiding taxable income, gains and assets offshore, and contributes

to building the deterrent effect. This Schedule builds on the increased penalties for offshore non-compliance introduced in FA 2010 in three ways.

23. First, a new category 0 is introduced, having the same penalty levels as the current category 1. The intention is that only overseas territories making arrangements with the UK that meet the new Common Reporting Standard will fall into category 0. The penalty levels in new category 1 are raised slightly, those in categories 2 and 3 will stay the same. It is envisaged that most or all territories currently in category 1 will, over time, make arrangements so as to fall within category 0.

24. Second, penalties relating to inheritance tax are brought within the scope of the scheme already existing for income tax and capital gains tax so that penalties involving assets in category 1-3 territories will be higher than those for failures in relation to assets in the UK or category 0 territories.

25. Third, the provisions will cover not only income and gains arising offshore, but also non-compliance in the UK where the payment is made overseas or received in the UK and then moved offshore.

26. If you have any questions about this measure, or comments on the draft legislation, please contact Amit Puri on 03000 526801 (email: [Amit.Puri@hmrc.gsi.gov.uk](mailto:Amit.Puri@hmrc.gsi.gov.uk)).

## **1 Penalties in connection with offshore asset moves**

Schedule 1 contains provision for imposing an additional penalty in cases where—

- (a) a person is liable for a penalty for a failure to comply with an obligation or provide a document, or for providing an inaccurate document, relating to income tax, capital gains tax or inheritance tax, and
- (b) there is a related transfer of, or change in the ownership arrangements for, an asset situated or held outside the United Kingdom.

## SCHEDULE 1

Section 1

## PENALTY IN CONNECTION WITH OFFSHORE ASSET MOVES

*Penalty linked to offshore asset moves*

- 1 (1) A penalty is payable by a person (“P”) where Conditions A, B and C are met.
- (2) Condition A is that—
  - (a) P is liable for a penalty specified in paragraph 2 (“the original penalty”), and
  - (b) the original penalty is for a deliberate failure (see paragraph 3).
- (3) Condition B is that there is a relevant offshore asset move (see paragraph 4) which occurs after the relevant time (see paragraph 5).
- (4) Condition C is that—
  - (a) the main purpose, or one of the main purposes, of the relevant offshore asset move is to prevent or delay the discovery by Her Majesty’s Revenue and Customs (“HMRC”) of a potential loss of revenue, and
  - (b) the original penalty relates to an inaccuracy or failure which relates to the same potential loss of revenue.

*Original penalties triggering penalties under this Schedule*

- 2 The penalties referred to in paragraph 1(2) are—
  - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (penalty for error in taxpayer’s document) in relation to an inaccuracy in a document of a kind listed in the Table in paragraph 1 of that Schedule, where the tax at stake is income tax, capital gains tax or inheritance tax,
  - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify etc) in relation to the obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax), and
  - (c) a penalty under paragraph 6 of Schedule 55 to FA 2009 (penalty for failures to make return etc where failure continues after 12 months), where the tax at stake is income tax, capital gains tax or inheritance tax.

*“Deliberate failure”*

- 3 The original penalty is for a “deliberate failure” if—
  - (a) in the case of a penalty within paragraph 2(a), the inaccuracy to which it relates was deliberate on P’s part (whether or not concealed);
  - (b) in the case of a penalty within paragraph 2(b), the failure by P was deliberate (whether or not concealed);

- (c) in the case of a penalty within paragraph 2(c), the withholding of the information, resulting from the failure to make the return, is deliberate (whether or not concealed).

*“Relevant offshore asset move”*

- 4 (1) There is a “relevant offshore asset move” if, at a time when P is the beneficial owner of an asset (“the relevant time”) –
- (a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,
  - (b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
  - (c) there is a change in the arrangements for the ownership of the asset, and P remains the beneficial owner of the asset, or any part of it, immediately after the relevant time.
- (2) Whether a territory is a “specified territory” or “non-specified territory” is to be determined, for the purposes of sub-paragraph (1), as at the relevant time.
- (3) Where –
- (a) an asset of which P is the beneficial owner (“the original asset”) is disposed of, and
  - (b) all or part of any proceeds from the sale of the asset are (directly or indirectly) reinvested in another asset of which P is also the beneficial owner (“the new asset”),
- the original asset and the new asset are to be treated as the same asset for the purposes of determining whether there is a relevant offshore asset move.
- (4) “Asset” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- (5) “Specified territory” means a territory specified in regulations made by the Treasury by statutory instrument; and references to “non-specified territory” are to be construed accordingly.
- (6) Regulations under sub-paragraph (5) are subject to annulment in pursuance of a resolution of the House of Commons.

*“Relevant time”*

- 5 (1) “The relevant time” has the meaning given by this paragraph.
- (2) Where the original penalty is under Schedule 24 to FA 2007, the relevant time is –
- (a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the beginning of the tax year to which the document containing the inaccuracy relates, and
  - (b) if the tax at stake as a result of the inaccuracy is inheritance tax, the time when liability to the tax first arises.
- (3) Where the original penalty is for a failure to comply with an obligation specified in the table in paragraph 1 of Schedule 41 of FA 2008, the relevant time is the beginning of the tax year to which that obligation relates.

- (4) Where the original penalty is for a failure to make a return or deliver a document specified in the table in paragraph 1 of Schedule 55 to FA 2009, the relevant time is –
- (a) if the tax at stake is income tax or capital gains tax, the beginning of the tax year to which the return or document relates, and
  - (b) if the tax at stake is inheritance tax, the time when liability to the tax first arises.

#### *Amount of the penalty*

- 6 (1) The penalty payable under paragraph 1(1) is 50% of the amount of the original penalty payable by P.
- (2) The penalty payable under paragraph 1(1) is not a penalty determined by reference to a liability to tax (despite the fact that the original penalty by reference to which it is calculated may be such a penalty).

#### *Assessment*

- 7 (1) Where a person becomes liable for a penalty under paragraph 1(1), HMRC must –
- (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice the tax period in respect of which the penalty is assessed.
- (2) A penalty under paragraph 1(1) must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment –
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (4) An assessment of a penalty under paragraph 1(1) must be made within the same period as that allowed for the assessment of the original penalty.
- (5) If, after an assessment of a penalty is made under this paragraph, HMRC amends the assessment, or makes a supplementary assessment, in respect of the original penalty, it must also at the same time amend the assessment, or make a supplementary assessment, in respect of the penalty under paragraph 1(1) to ensure that it is based on the correct amount of the original penalty.
- (6) In this paragraph –
- (a) a reference to an assessment to tax, in relation to inheritance tax, is to a determination, and
  - (b) “tax period” means a tax year, accounting period or other period in respect of which tax is charged.

### *Appeal*

- 8 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.
- (2) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to, or determination of, the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (3) Sub-paragraph (2) does not apply in respect of a matter expressly provided for by this Schedule.
- (4) On an appeal under this paragraph, the tribunal may affirm or cancel HMRC's decision.

### *Commencement and transitionals*

- 9 (1) This Schedule has effect in relation to relevant offshore asset moves occurring after the day on which this Act is passed.
- (2) For the purposes of this Schedule, it does not matter if liability for the original penalty first arose on or before that day, unless the case is one to which sub-paragraph (3) applies.
- (3) The original penalty is to be ignored if P's liability for it for arose before the day on which this Act is passed and before that day –
- (a) if the original penalty was under Schedule 24 to FA 2007, any tax which was unpaid as a result of the inaccuracy has been assessed or determined;
  - (b) if the original penalty was under Schedule 41 to FA 2008 or Schedule 55 to FA 2009, the failure to which it related was remedied and any tax which was unpaid as a result of the failure has been assessed or determined.





## EXPLANATORY NOTE

### PENALTIES IN CONNECTION WITH OFFSHORE ASSET MOVES

#### SUMMARY

1. Clause [X] and Schedule [Y] introduce a new penalty for income tax, capital gains tax and inheritance tax where assets are moved from a ‘specified territory’ to a ‘non-specified territory’ and the main, or one of main purposes, of the movement is to prevent the discovery of a loss of revenue by HM Revenue & Customs (HMRC). The Schedule has effect from the day after Finance Bill 2015 receives Royal Assent.

#### DETAILS OF THE CLAUSE

2. Clause [X] introduces Schedule [Y] which imposes an additional penalty where:
- a person is liable for an earlier penalty for a failure to comply with certain income tax, capital gains tax or inheritance tax obligations; and
  - there is a related transfer of, or change in the ownership arrangements for, an asset situated or held outside the UK.

#### DETAILS OF THE SCHEDULE

3. Paragraph 1 provides that a penalty is payable, in addition to a penalty for an earlier deliberate failure, where an asset is moved from one territory to another (a ‘relevant offshore asset move’) to prevent or delay the discovery of that original failure.

4. Paragraph 2 specifies which penalties for the earlier failure potentially trigger the additional penalty.

5. Paragraph 3 defines the term ‘deliberate failure’ in relation to the ‘original penalty’.

6. Paragraph 4 defines the term ‘relevant offshore asset move’. Such an event occurs when an asset is moved from a specified territory to a non-specified territory, the person holding the asset makes a corresponding change of residence, or there is an a change in ownership arrangements but the taxpayer remains beneficial owner of the asset. In applying the tests, any second or later asset purchased with all or part of the proceeds of sale of the original asset will be regarded as the original asset. Paragraph 4(5) and (6) provide that HM Treasury will make Statutory Instruments setting out which territories are ‘specified’.

7. Paragraph 5 defines the ‘relevant time’ after which the occurrence of a ‘relevant offshore move’ will cause Condition B of paragraph 1 of this Schedule to be met. For income

tax and capital gains tax, the 'relevant time' is the beginning of the tax year relevant to the failure or inaccuracy giving rise to the 'original penalty'. For inheritance tax, the 'relevant time' is the time when the liability for the tax at stake first arises.

8. Paragraph 6 provides that the amount of additional penalty is 50% of the original penalty. It also makes clear that although the original penalty is determined by reference to a liability to tax, the penalty under this Schedule is not (further distinguishing between the conduct giving rise to the two penalties).

9. Paragraph 7 provides for the assessment and notification of the penalty. The time limits for HMRC to assess the penalty are the same as those applying to the relevant 'original penalty'. Payment must be made before the expiry of 30 days beginning on the day of notification. Procedurally, the penalty is treated in the same way as a tax assessment and may be enforced in the same way. An amendment must be made to the amount of penalty if the 'original penalty' is amended (up or down).

10. Paragraph 8 affords a right of appeal against HMRC's decision to impose a penalty under this Schedule which may be either affirmed or cancelled by a tribunal. Except where express provision is made in the Schedule, an appeal will be treated in the same way as an appeal against an assessment or determination of the tax concerned (including HMRC review of the decision and determination of the appeal by the First-tier Tribunal or Upper Tribunal).

11. Paragraph 9 provides that the Schedule has effect in relation to 'relevant offshore asset moves' occurring after the day on which Finance Bill 2015 receives Royal Assent. Apart from two exceptions, it does not matter if the liability for the original penalty arose before or after that day. The two cases in which a person will not be liable to the additional penalty are where:

- the tax unpaid as a result of an inaccuracy giving rise to an 'original penalty' under Schedule 24 FA 2007 has been assessed or determined before this legislation comes into effect; and
- the tax unpaid as a result of a failure giving rise to an 'original penalty' under Schedule 41 FA 2008 and Schedule 55 FA 2009 has been assessed or determined before this legislation comes into effect and the failure relating to it has been remedied by that day.

## **BACKGROUND NOTE**

12. HMRC may charge penalties in cases where income, gains and assets etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. The maximum and minimum penalty vary according to the transparency of the jurisdiction in which the income etc. arises or is hidden. The higher penalties apply where owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance (which may have formed part of the reason for choosing the territory concerned).

## FINANCE BILL 2015

13. As more overseas territories enter into agreements to provide greater automatic exchange of information with the UK under the new Common Reporting Standard (with first information exchanges to be made in 2017), there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements in order to continue to 'hide' past failures to pay tax lawfully payable. While the past failures are already liable to penalties there would be no further sanction for new, additional steps taken to continue hiding the original failures. These provisions address this by imposing a further penalty for an offshore asset move irrespective of whether the conduct giving rise to the 'original penalty' occurred before or after the day on which Finance Bill 2015 receives Royal Assent, but only in cases where the original penalty reflected a deliberate failure. It is intended that territories will be 'specified' once they have committed to exchanging information under the Common Reporting Standard.

14. The Explanatory Note to a related Schedule (published alongside this one) contains a fuller explanation of the offshore penalty regime and other measures being taken to deter non-compliance involving offshore matters.

15. If you have any questions about this measure, or comments on the draft legislation, please contact Amit Puri on 03000 526801 (email: [Amit.Puri@hmrc.gsi.gov.uk](mailto:Amit.Puri@hmrc.gsi.gov.uk)).

**2015 No.**

**CAPITAL GAINS TAX**

**INCOME TAX**

**INHERITANCE TAX**

**The Offshore Asset Moves Penalty (Specified Territories)  
Regulations 2015**

<i>Made</i> - - - -	** April 2015
<i>Laid before the House of Commons</i>	** April 2015
<i>Coming into force</i> - -	** April 2015

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 4(5) and (6) of Schedule X to the Finance Act 2015(a).

**Citation and commencement**

1. These Regulations may be cited as the Offshore Asset Moves Penalty (Specified Territories) Regulations 2015 and come into force on \*\* April 2015.

**Territories specified**

2. The territories listed in the Schedule to these Regulations are specified for the purposes of Schedule XX to the Finance Act 2015.

\*\* April 2015

*Lord Commissioner of Her Majesty's Treasury*  
*Lord Commissioner of Her Majesty's Treasury*  
Two of the Lords Commissioners of Her Majesty's Treasury

# SCHEDULE

## **Territories specified**

Albania, Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, The Bahamas, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Grenada, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea (South), Latvia, Liechtenstein, Lithuania, Luxembourg, Macau, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montserrat, Netherlands (not including Bonaire, Sint Eustatius and Saba), New Zealand (not including Tokelau), Niue, Norway, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Seychelles, Singapore, Sint Maarten, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Turks and Caicos Islands, United Arab Emirates and Uruguay.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations specify the territories falling as a “specified territory” for the purposes of determining whether a “relevant offshore asset move” described in paragraph 4 of Schedule XX to the Finance Act 2015 (c. XX) (“the Schedule”) has occurred. Under the Schedule, a person becomes liable to a penalty if there is “relevant offshore asset move” after the relevant time (determined in accordance with paragraph 5 of the Schedule) if the purpose or one of the main purposes of the move is to prevent or delay the discovery by Her Majesty’s Revenue and Customs of a potential loss of income tax, capital gains tax or inheritance tax for which that person is liable for the penalties specified in paragraph 2 of the Schedule in respect of a “deliberate failure” (see paragraph 3 of the Schedule).

A “relevant offshore asset move” occurs upon the happening of any of the three events set out in paragraph 4(1) of the Schedule at the time when the person concerned beneficially owns the asset in question and remains its beneficial owner immediately after. One of the cases occurs where an asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory. Another case occurs where the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory. The final case occurs where there is a change in the arrangements for the ownership of the asset. Any territory not specified by these Regulations falls as a “non-specified territory” for these purposes.

A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/tiins.htm>. It remains an accurate summary of the impacts that apply to this statement.

**EXPLANATORY MEMORANDUM TO  
THE OFFSHORE ASSET MOVES PENALTY (SPECIFIED TERRITORIES)  
REGULATIONS 2015**

**2015 [xxxx]**

**1.** This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC).

**2. Purpose of the instrument**

2.1 The purpose of these Regulations is to specify the territories falling as a “specified territory” for the purposes of determining whether a “relevant offshore asset move” described in paragraph 4 of Schedule XX to the Finance Act 2015 (c. XX) has occurred.

2.2 These Regulations come into force on XX April 2015.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

3.1 These Regulations are made upon the first exercise of the power contained in paragraph 4(5) and (6) of Schedule xxx (“the Schedule”) to the Finance Act 2015 (“the Act”) which was passed on XXX March 2015. Paragraph 9(1) of the Schedule provides that the Schedule has effect in relation to “relevant offshore asset moves” occurring the day after the Act is passed.

3.2 Whether a “relevant offshore asset move” has occurred can only be determined in certain cases by reference to whether a particular territory is a “specified territory”. As the Schedule has effect in relation to income tax, capital gains tax and inheritance tax, no resolution pursuant to the Provisional Collection of Taxes Act 1968 (c. 2) has been made. Accordingly, it has been necessary to make the regulations as soon as possible after the passing of the Act and for them to come into force on the day after the Act is passed without laying the Regulations for 21 days before they come into force.

**4. Legislative Context**

4.1 The Schedule introduces an additional penalty where, after the “relevant time”, a “relevant offshore asset move” occurs in relation to a person who is already liable to a penalty under paragraph 1 of Schedule 24 to the Finance Act 2007 (c. 11), paragraph of Schedule 41 to the Finance Act 2008 (c. 9) or paragraph 6 of Schedule 55 to the Finance Act 2009 (c. 10) for a deliberate (whether or not concealed) inaccuracy in a document or failure to comply with a tax obligation or notify a tax liability. The penalty only arises if the main purpose (or one of the main purposes) of the relevant offshore asset move is to prevent or delay the discovery by HMRC of the potential loss of revenue arising from the failure giving rise to the “original penalty”.

4.2 Paragraph 4(1) of the Schedule provides that a “relevant offshore asset move” occurs if (at the time when “P” (the person liable to the “original penalty”) is the owner of the asset in question)-

- the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,
- the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
- there is a change in the arrangements for the ownership of the asset,

and P remains the beneficial owner of the asset, or any part of it immediately after.

4.3 Paragraph 4(5) and (6) of the Schedule provide for territories to be specified by Regulations made by the Treasury subject to annulment in pursuance of a resolution of the House of Commons. As the Schedule (by virtue of paragraph 9(1)) has effect in relation to “relevant offshore asset moves” occurring after the day on which the Act is passed, it is necessary for the territories to be specified for the purposes of determining whether a “relevant offshore asset move” has occurred in all the situations covered by paragraph 4(1) with effect from the same time as the Schedule.

## **5. Territorial Extent and Application**

These Regulations apply to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 HMRC may charge penalties in cases where income, gains and chargeable transfers of assets etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. The maximum and minimum penalty vary according to the transparency of the jurisdiction in which the income etc. arises or is hidden. The higher penalties apply where, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance (which may have formed part of the reason for choosing the territory concerned).

7.2 As more overseas territories enter into agreements to provide greater automatic exchange of information with the UK under the new Common Reporting Standard (with first information exchanges to be made in 2017), there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements in order to continue to “hide” past failures to pay tax lawfully payable. While the past failures are already liable to penalties there would be no further sanction for new additional steps taken to continue hiding those failures. The Schedule

addresses the issue by imposing a further penalty for an offshore asset move from a specified territory to a non-specified territory. It is intended that territories will be ‘specified’ once they have committed to exchanging information under the Common Reporting Standard. These Regulations list the territories that have made that commitment.

## **8. Consultation outcome**

8.1 Most of the respondents understood the policy intention, and agreed that there should be a deterrent against the movement of a person’s hidden offshore funds from a jurisdiction that has committed to adopting the new global standard for the automatic exchange of information to another jurisdiction that has not similarly committed to the Common Reporting Standard, because the latter is less transparent for tax purposes.

8.2 The Government reconsidered the proposals on which it consulted in light of the responses received, particularly the view that the options proposed were too complex, and developed the simplified measure set out in the Schedule.

## **9. Guidance**

HMRC published guidance will be amended to reflect the Schedule and associated list of specified territories.

## **10. Impact**

10.1 Negligible impact on businesses, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note (TIIN) was published on 10 December 2014 on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

## **11. Regulating small business**

The legislation does not apply to business, it only applies to individuals.

## **12. Monitoring & review**

The operation of the Schedule and this instrument listing “Specified territories” will be monitored through information collected in compliance work to ensure that they operate as intended.

## **13. Contact**

If you have any queries regarding the application of the instrument, please contact Amit Puri on 03000 526 801 (email: [amit.puri@hmrc.gsi.gov.uk](mailto:amit.puri@hmrc.gsi.gov.uk)).