



HM Revenue
& Customs

Tackling offshore tax evasion: A Requirement to Correct

Consultation document

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Closing date for comments: 19 October 2016

Subject of this consultation:	This consultation is about a 'Requirement to Correct' (RTC) obligation that aims to compel those with offshore interests who have yet to put their UK tax affairs in order to do so by September 2018 ahead of the widespread adoption of the Common Reporting Standard (CRS).
Scope of this consultation:	This consultation proposes to introduce new legislation requiring any person who has undeclared UK tax liabilities in respect of an offshore interest to correct that situation by disclosing the relevant information to HMRC, with new sanctions for those who 'fail to correct'. The aim is to get taxpayers with issues relating to offshore interests into a compliant position, where they are not already. At the end of the RTC period (September 2018) there would be a single, simplified and tougher set of sanctions for offshore tax evasion.
Who should read this:	This consultation will be of interest to individuals with offshore income, gains and assets; and their advisors and agents.
Duration:	24 August to 19 October 2016.
Lead official:	Steve Manning, HMRC Centre for Offshore Evasion Strategy
How to respond or enquire about this consultation:	consult.nosafehavens@hmrc.gsi.gov.uk or by post to: Steve Manning HMRC Centre for Offshore Evasion Strategy Room 1C/26 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	Please contact the lead official if you are interested in meeting to discuss this paper.
After the consultation:	A summary of responses will be published later in 2016.
Getting to this stage:	This consultation takes forward HMRC's strategy for tackling offshore evasion, <i>No Safe Havens</i> (as updated in 2014).
Previous engagement:	HMRC has met informally with a number of representative bodies and stakeholders which has helped shape this formal consultation.

Contents

Foreword	4
1 Executive Summary	5
2 Introduction	6
3 Policy Rationale & Objectives	9
4 Scope of Proposals	12
5 The consequences of not correcting - Penalties Models	21
6 Assessment of Impacts	26
7 Summary of Consultation Questions	27
8 The Consultation Process: How to Respond	28
Annex A Relevant Existing Legislation	30

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Foreword

Tax evasion is a crime which deprives the country of much needed funds to run our public services, unfairly placing a greater burden on the vast majority of people who pay their fair share of tax. The UK is committed to cracking down on tax evasion and will be relentless in its pursuit of evaders. We also recognise careless and unintentional behaviours can occur and by supporting voluntary compliance we will achieve better outcomes for all and put taxpayers back on a compliant footing.

For too long it has been too easy for people to hide their money overseas to evade tax. We are changing that. We now have agreement with over 100 countries to exchange information on financial accounts automatically every year. Starting this year for our Crown Dependencies and Overseas Territories, HMRC will receive a wide range of information on offshore accounts held by UK tax residents.

We are going further, the UK has initiated agreement with over 40 territories including Crown Dependencies and Overseas Territories that will see the exchange of data on the beneficial ownership of companies and trusts. These agreements will allow enforcement agencies around the world to work together to share information on who the real beneficiaries are behind these arrangements. The UK has established a new multi-agency taskforce to tackle offshore evasion that will have access to the most sophisticated technology, experts and resources in tackling money laundering and tax evasion specifically relating to the Panama Papers.

These latest actions, alongside the measures to toughen sanctions for offshore evasion in Finance Bill 2016, and the introduction of a new criminal offence to apply to corporates who fail to prevent their representatives from facilitating tax evasion, builds on the decisive action the UK has taken since 2010 to revolutionise tax transparency and tackle tax avoidance and evasion.

HMRC has given people ample opportunity to regularise their affairs. If they choose not to, it is right and fair that we make sure that the penalties they face, and the penalties for those who assist them, reflect the wider harm caused by their actions and act as an effective deterrent to others.

HMRC are today publishing a consultation proposing new legislation that will require taxpayers with outstanding tax liabilities relating to offshore matters to come forward and correct those liabilities. The consequences of not meeting this obligation are clear - if it is not carried out before September 2018, the taxpayer will be subject to a new, tougher, set of sanctions for "failing to correct". These will apply to all relevant years that have not been corrected.

The vast majority of people and businesses in the UK pay the tax they owe on time. Our message is clear – the days of any safe havens for tax evaders are numbered; HMRC will be receiving unprecedented amounts of data and will be using it to find those with undisclosed funds. HMRC is closing in on tax evaders, so they should come forward now or face tougher civil and criminal sanctions.

Jane Ellison MP
Financial Secretary to the Treasury

1. Executive Summary

The structure of this consultation document

- 1.1 This consultation document sets out the proposals to require any person who has undeclared UK tax liabilities in respect of an offshore matter to correct that situation by September 2018, or face tougher new penalties for their “Failure to Correct (FTC)”.
- 1.2 We have structured this document as follows:
 - Chapter 2 sets out HMRC’s offshore evasion strategy, No Safe Havens (as updated in 2014) and overview of recent changes in offshore policy developments.
 - Chapter 3 sets out the policy rationale for the Requirement to Correct (RTC) and the key objectives HMRC are looking to achieve through this policy.
 - Chapter 4 sets out the different elements of the design of the RTC, considering the scope, definitions and process for how the correction should work.
 - Chapter 5 sets out a number of principles in designing the FTC penalties alongside two possible alternative models which incorporate our thinking around the principles.
 - Chapter 6 sets out our initial analysis on the impact of the proposals.
 - Chapter 7 sets out a summary of the of consultation questions where we would welcome comments.
 - Chapter 8 sets out how to respond to the consultation.

2. Introduction

HMRC's offshore evasion strategy

- 2.1 HMRC's [No Safe Havens](#) strategy (as updated in 2014) defined offshore evasion as "Using another jurisdiction's systems with the objective of evading UK tax. This includes a range of behaviours such as:
- potentially moving latent gains, or UK income or assets, offshore to conceal them from HMRC;
 - not declaring taxable income or gains that arise overseas, or taxable assets kept overseas; and
 - using complex offshore structures to hide the beneficial ownership of assets, income or gains."
- 2.2 The strategy then sets out five key objectives to tackle offshore evasion. These are:
- there are no jurisdictions where UK taxpayers feel safe to hide their income and assets from HMRC;
 - would-be offshore evaders realise that the balance of risk is against them;
 - offshore evaders voluntarily pay the tax due and remain compliant;
 - those who do not come forward are detected and face vigorously-enforced sanctions; and
 - there will be no place for the facilitators, or enablers, of offshore evasion.
- 2.3 In the past it was very difficult for HMRC to detect offshore evasion or other forms of offshore non-compliance, it was therefore appropriate that some previous disclosure facilities offered incentives to taxpayers to disclose. This situation is changing dramatically as HMRC will have access to greater levels of information about offshore accounts, trusts and shell companies held offshore by UK resident taxpayers than ever before and will be able to use that data to detect irregularities with offshore income or gains. The implementation of Common Reporting Standard (CRS) is a sea change with over 100 countries currently committed to the standard to automatically exchange taxpayer information. For the 54 early adopters, these exchanges will take place by 2017 with all others exchanging by 2018.
- 2.4 In addition to CRS, we will also be receiving data from registers of beneficial ownership. The UK is leading the way in working with other major countries to speed up progress towards sharing beneficial ownership information following an announcement in April 2016 on a G5 pilot (UK, Germany, France, Italy and Spain) on the automatic exchange of this information. The UK has committed to publish its own register of company beneficial ownership.
- 2.5 In light of the huge increases in information available, our approach is changing. The government has signalled its ambition to be tougher on those with offshore compliance issues. This consultation focuses on two key areas within the government's approach: disclosure and increasing the severity of sanctions.

- 2.6 The government has introduced a wide range of measures to toughen the sanctions for all those involved in offshore tax evasion. These include:
- *A new criminal offence for tax evasion* – this policy removes the need to prove intent for the most serious cases of failing to declare offshore income and gains is being introduced in Finance Bill 2016.
 - *New increased civil sanctions for offshore tax evaders* – Since 2010, offshore tax evasion has attracted a higher penalty and these penalties have been enhanced in recent years. Finance Bill 2016 introduces a new package of measures which increase civil penalties for offshore tax evasion, including the introduction of a new asset based penalty of up to 10% of the value of the underlying asset.
 - *New civil sanctions for those who enable offshore evasion* – Finance Bill 2016 also introduces civil sanctions for those who deliberately enable offshore tax evasion.
 - The introduction of a new criminal offence to apply to corporates who fail to prevent their representatives from facilitating tax evasion, where the corporation cannot show they took reasonable steps to prevent this. In April 2016, the (then) Prime Minister confirmed this offence will be introduced in legislation later this year and a [consultation on draft legislation and guidance](#) was open between 17 April – 10 July 2016.
- 2.7 In December 2015, HMRC closed the previous offshore disclosure facilities and will launch a new, tougher Worldwide Disclosure Facility on 05 September 2016.
- 2.8 This extensive package of measures represents a significant toughening of the government’s approach to tackling offshore tax evasion and its enablers. However, the government recognises that there are still taxpayers who have not put their offshore affairs in order. This includes those who have evaded tax offshore, those who have not taken care to get their tax right and some who may not realise they have not paid the correct tax on their offshore income or gains.
- 2.9 The government’s aim is to encourage and drive tax compliance across the whole spectrum of offshore behaviours. With this in mind, at Autumn Statement 2015 the government announced it would consult on the details of a new legal Requirement to Correct (RTC) past offshore non-compliance with new sanctions for those who fail to do so. This initiative provides a final opportunity for taxpayers to put their affairs in order before they are subject to significantly tougher penalties.

This Consultation

- 2.10 This consultation seeks your views on the approach to designing the RTC and accompanying sanctions for the failure to do so.
- 2.11 It considers a number of areas (see Chapters 4 and 5) including:
- What should be within scope of the requirement
 - How taxpayers would comply with the new legal requirement
 - The consequences of failing to comply with the requirement
 - Approaches to difficult or non-standard cases

2.12 In early 2016 HMRC informally met with a number of representative bodies and stakeholders to discuss this consultation for a RTC. We are grateful to those who took part in those discussions which have helped us formulate a number of common themes and principles:

- The RTC obligation should be clearly set out in statute, including the sanctions for failing to meet the obligation.
- There should be a reasonable period for taxpayers to correct past irregularities before the sanction for not correcting applies.
- There should be a right of appeal against any penalties as there is now.
- There should be no sanction where a taxpayer can show they did everything they could to get their tax right and an irregularity arose despite that.
- The new requirement will highlight the need for taxpayers to review their affairs and come forward where they have previously been unaware of irregularities or they have been careless in managing their tax liabilities.
- Taxpayers and their agents should be made aware of the new RTC obligation to ensure they know what they will be required to do.
- The RTC should incorporate a system of sanctions that is fair, easy to understand and encourages people with issues to come forward early.

3. Policy Rationale & Objectives

- 3.1 The introduction of a new RTC and tougher penalties for the FTC aims to send a strong message that there is a step change in HMRC's approach to offshore tax compliance. The measure will introduce an obligation for taxpayers to put past affairs in order and strongly penalise those who do not meet this obligation. In doing so, the measure will drive taxpayers with offshore interests to review their affairs to either:
- assure themselves that their offshore interests have been treated correctly for tax purposes, or
 - to identify the incorrect tax treatment and put it right by notifying HMRC to ensure the appropriate tax, interest and penalties can be charged.
- 3.2 We believe the RTC proposal and increased sanctions for failing to correct set out in this document will provide a strong incentive for taxpayers to review their offshore affairs and come forward to put them in order before HMRC receives the full CRS data. Those who do not put their affairs in order will face the tougher failure to correct sanctions for any existing non-compliance and could also face the significantly tougher sanctions discussed in section 2 for any offences in subsequent years. The RTC period will end on 30 September 2018 by which point HMRC will be receiving CRS data from all those committed, which will allow it to identify and pursue those who have not come forward to regularise their affairs.
- 3.3 HMRC has provided a number of opportunities for taxpayers to disclose offshore issues in the past. These were appropriate for periods when HMRC had relatively little data on UK taxpayers' offshore interests and they were successful with over 59,000 people putting their affairs in order. These activities and other offshore work have raised over £2.9bn. In the future HMRC will receive significantly more data and any taxpayers who have not taken advantage of previous opportunities to disclose and do not comply with the new RTC should face much stiffer penalties. The RTC will introduce much tougher penalties and will also provide a strong legal underpinning to drive taxpayers to regularise their offshore affairs.

Regularising taxpayer's offshore affairs

- 3.4 HMRC believes there remain many UK taxpayers who still have to put their offshore tax affairs in order. Increased media attention on offshore tax evasion has raised awareness of these issues and the risk of tax evasion being exposed is likely to drive tax evaders to consider putting their affairs in order.
- 3.5 Yet our [research into previous disclosure facilities](#) suggests that many taxpayers with offshore compliance issues did not identify with "evasion" even where they knew they were not paying the right UK tax. Others may not yet realise they are not paying the right amount of tax. The RTC is intended to motivate such taxpayers to act (including seeking advice where appropriate), and to help agents explain the consequences of non-compliance.

This is on the understanding that if taxpayers do not come forward now, they will be caught and the penalties and sanctions imposed will be harsher than ever.

- 3.6 Discussions with advisors, financial institutions and other international partners have raised questions about taxpayer's readiness for CRS and understanding of its consequences for those who have offshore tax irregularities. People with overseas assets are often those with the most complex tax affairs and this can include tax structures which were compliant when they were set up but are not now. Information on many of these taxpayers' arrangements will be included within CRS data and they may not yet have engaged with the need to review their affairs and disclose any tax irregularities.
- 3.7 The RTC will provide a final chance to put right anything that may be amiss and act as a driver for taxpayers with international affairs to review their tax position, seek advice and ensure that everything is in order.

Clarity of Sanctions

- 3.8 Sanctions for tax non-compliance are there to deter undesirable behaviour and punish it where it does occur, whilst recognising that those who voluntarily correct their affairs should face less strict penalties than those who do not come forward. For the deterrent aim to be effective and to drive behaviour, it is important that the taxpayer (and their tax adviser if they have one) clearly understands the consequences of their actions and is able to correct their behaviour.
- 3.9 In the area of offshore evasion, there have been a number of changes in the penalties applicable over the last 10 years, many reflecting the toughening of approach explained in the introduction. Some of the key changes in this area are listed below:
 - New behavioural penalties were introduced in Finance Act 2007
 - Specific sanctions for offshore evasion were introduced in Finance Act 2010 increasing the penalties chargeable in respect certain territories.
 - Finance Act 2015 enhanced the offshore penalties to capture a wider set of behaviours
 - Finance Bill 2016 includes a package of measures to further toughen the sanctions for offshore evasion.
- 3.10 These changes reflected the position that using offshore jurisdictions, investments and structures to evade tax is unacceptable and should be strongly penalised. However, they have inevitably increased complexity in the sanctions applicable to offshore evasion. This complexity can reduce the deterrent effect of the penalties when taxpayers are considering the consequences of non-compliance limiting the impact on their behaviour.
- 3.11 The RTC provides an opportunity send a clear and simple message that early disclosure and getting back on a compliant footing is a much better option for taxpayers than continuing to delay.

Send a strong toughening message for offshore non compliance

- 3.12 The final element driving the RTC is that it allows HMRC to send a strong message around getting tougher on offshore tax evasion. Penalty changes for the future do not become fully effective for some time (up to 20 years) - this can water down their impact.
- 3.13 The proposal set out in this document provides a significant incentive for people to put their affairs in order and introduces a tougher approach which is simple to understand. This tougher approach will apply to existing tax offshore non-compliance that is not corrected before the point at which the new approach becomes effective.

Summary of the objectives of the policy

- 3.14 For the RTC HMRC is therefore aiming to design an obligation and set of associated sanctions that:
- Mark a step change in HMRC approach to offshore tax evasion and give a final chance to clear up issues for the past.
 - Remain fair and encourage taxpayers to act early and put their affairs in order.
 - Delivers a strong message that the government is getting tougher on offshore non-compliance and significantly increases the sanction for those who fail to correct compared to existing sanctions - this is appropriate for these taxpayers who will have failed to take advantage of any of HMRC's previous disclosure facilities and will then have failed to comply with the provisions of the RTC.
 - Are simple and easy to understand which will increase the deterrent effect and incentive to disclose.

4. Scope of Proposals

4.1 In this section we consider the different design elements of the RTC.

The basic concept

4.2 The overarching premise of the RTC is that:

- Any person with UK tax irregularities¹ related to offshore interests must come forward and correct those liabilities.
- The correction must be made on or before 30 September 2018.
- After September 2018, any person who is found to have failed to have corrected their affairs will be subject to a new set of sanctions for this “Failure to Correct (FTC)” (discussed in Chapter 5).
- The FTC sanctions will be tougher than the existing sanctions that apply in respect of the existing irregularities.

The following sections cover a range of design points on which we would welcome your views.

Design Element 1: What should be within scope of the requirement?

4.3 Our starting point for the RTC is that it should be cast as widely as possible to ensure we capture as many instances of UK tax loss that involve offshore interests as possible.

4.4 We also believe that we should not try to link the scope of the RTC to particular classes of taxpayer (eg individuals, business etc). Instead we would propose it should apply to any taxpayers who have a UK tax loss relating to particular taxes and the use of territories outside the UK to generate or shelter those tax losses.

Relevant offshore interests

4.5 With respect to offshore interests, there are two definitions we have considered for what should be within the scope of the RTC. The first of these is the definition of offshore evasion as set out in No Safe Havens (see Chapter 2, page 6). For ease, this is presented as:

“Using another jurisdiction’s systems with the objective of evading UK tax. This includes a range of behaviours such as:

- potentially moving latent gains, or UK income or assets, offshore to conceal them from HMRC;
- not declaring taxable income or gains that arise overseas, or taxable assets kept overseas; and
- using complex offshore structures to hide the beneficial ownership of assets, income or gains.”

¹ “Irregularities” would cover a failure to notify chargeability, failure to make a return and the delivery of an inaccurate document which related to offshore tax.

- 4.6 A key challenge with using this definition to define the scope of the RTC is its strong focus on evasion and deliberate behaviour. We have seen in our research into disclosure facilities that there will be a large population of taxpayers who do not identify with “using another jurisdiction’s systems with the objective of evading UK tax” and we are looking for the RTC to address all non-compliance irrespective of the underlying behaviour or motivation.
- 4.7 The second definition we have considered is derived from two paragraphs of legislation in FA 2007. These paragraphs set out the definition of an “Offshore Matter” and an “Offshore transfer” for the purposes of the Schedule 24 offshore penalties. These definitions are as follows:

Offshore matter: paragraph 4A(4) of Schedule 24 FA 2007

An inaccuracy involves an offshore matter if it results in a potential revenue loss that is charged on or by reference to:

- a) income arising from a source in a territory outside the UK,*
- b) assets situated or held in a territory outside the UK,*
- c) activities carried on wholly or mainly in a territory outside the UK, or*
- d) anything having effect as if it were income, assets or activities of a kind described above*

Offshore transfer: paragraph 4AA(2) to (8) of Schedule 24 FA 2007

(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 involves 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) 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.

(7) ‘Filing date’ means the date when the document containing the inaccuracy is given to HMRC.

- 4.8 These definitions are more neutral in their view of taxpayer behaviour, simply focusing on a UK tax loss rather than evasion.

- 4.9 We propose that the scope of the RTC should be based around the legislative definitions of an offshore matter and transfer but we would also propose to expand the definition of transfers so that there is no restriction as to the timeframe in which the money was moved offshore. The definition of an offshore transfer in Schedule 24 currently requires that the movement happen “*before the filing date*” which limits its scope; this is therefore something we would remove for the RTC. Expanding the scope in this way would ensure that we captured taxpayers who had used an offshore structure to hide evaded UK tax but did not meet the definition of an offshore transfer as set out in FA 2007.
- 4.10 A summary of our proposed scope of the RTC is therefore that it should cover any taxpayers that have a UK tax liability that relates wholly or in part to an offshore issue, meaning:
- (1) A tax loss relating to:
 - Income arising from a source in a territory outside the UK
 - Assets situated or held in a territory outside the UK
 - Activities carried on wholly or mainly in a territory outside the UK, or
 - Anything having effect as if it were income, assets or activities of a kind described above
 - (2) Or, where funds connected to a tax loss not within (1) above are received in a territory outside the UK or are transferred to a territory outside the UK.
 - (3) Or are owned in a territory outside the UK.
- 4.11 This definition of the scope of the RTC focuses solely on any taxpayer that had a UK liability and deliberately does not refer to residence in the UK. In doing so we aim to ensure it would capture cases such as non-resident trustees who may have UK liabilities. We believe this is an important consideration as we would want to ensure we captured cases where a non-resident may have UK liabilities within scope of this obligation.

Q1: Are there any key circumstances missing from the proposed scope and definition or do you foresee any difficulties with applying this definition?

What taxes should be in scope of the RTC?

- 4.12 We envisage the RTC would cover the correction of any offshore issues relating to, at the very least, all the taxes that are currently in scope for the offshore penalties. This would put the following taxes within the scope of the RTC:
- Income Tax (IT)
 - Capital Gains Tax (CGT)
 - Inheritance Tax (IHT; in scope of offshore penalties from April 2016)
- 4.13 Once the scope of the RTC is defined, the correction of any onshore matters and liabilities for other taxes would not be within the scope of the RTC. However, HMRC would always aim to facilitate disclosure and the correction of previous compliance issues and will put in place processes that would allow taxpayers to make a full disclosure of all outstanding UK tax liabilities when meeting their RTC obligations.
- This would have benefits for both taxpayers and HMRC and avoid HMRC having to enquire into wider issues not included in a disclosure solely related to offshore issues. In essence, HMRC would expect the inclusion of any other outstanding liabilities when meeting the RTC obligations.

4.14 The introduction of the RTC could include other taxes in addition to those covered by existing offshore penalties. However, to include such taxes within the scope would risk increasing the complexity of the RTC as we are building on and referring to the existing offshore penalties legislation. There remain other routes for those who are not captured by the RTC to regularise their affairs and therefore we propose to limit the scope of the RTC to those taxes for which there are already clear offshore frameworks in place, i.e. income tax, capital gains and inheritance tax.

Q2: What are your views on limiting the scope of the RTC to those taxes currently covered by offshore penalties?

Q3: What, if any, other taxes should we look to include within scope?

Design element 2: How would the correction work?

The window to correct

4.15 The intention is for the RTC to be introduced in Finance Bill 2017 and it will provide for a window during which taxpayers must correct their affairs before they are subject to the new FTC penalties.

4.16 We recognise the need for this window to be sufficiently long to give taxpayers time to review and assess their affairs and then put them right. We therefore propose that the window for taxpayer to correct runs until 30 September 2018 providing 18 months for the taxpayer to act. The end date of 30 September 2018 also corresponds with the date by which all countries committed to the CRS will be exchanging data and hence HMRC will then have the information to pursue those who have chosen not to act.

4.17 With these dates in mind, we would therefore expect the RTC to cover all instances where there are outstanding UK tax liabilities or obligations on or before April 2017 that relate to offshore interests. Within this definition, we expect the RTC to include the following;

- Failing to notify chargeability (the relevant legislation is at section 7 TMA 1970)
- Delivery of an inaccurate document (for example, an inaccurate return that would be within the scope of paragraph 1 of Schedule 24 to FA 2007 (where there are errors in a taxpayer's document)
- Failing to make a return. The relevant legislation is at sections 8 (personal return), 8A (trustee's return), 12AA (partnership return) and 12ZB of TMA 1970 (non-resident capital gains tax), and returns for purposes of the PAYE regulations².

4.18 The consequence of setting the dates in this way would mean that in the vast majority of cases, taxpayers would be correcting any outstanding irregularities relating to the tax year 2015-16 and earlier. Any future years should be dealt with under the normal filing process.

² Provisions in Schedule 20 of FA 2015, which bring inheritance tax within scope of the existing offshore penalties and bring into force the legislation concerning "Offshore transfers" came into force in April 2016 – The Finance Act 2015, Schedule 20 (Appointed Days) Order 2016 – SI2016/456.

- Q4: Do you foresee any issues with a window to correct covering the period April 2017 to September 2018? Should we consider any other dates for the window?**
- Q5: What is your view on capturing all compliance issues that exist up to and including 5th April 2017? Do you foresee any circumstances that this may miss?**

The Method for correcting

- 4.19 The legislation will set out clearly what a taxpayer is required to do to correct their affairs. Rather than creating a completely new process, we believe there are benefits in leaving the method for correcting relatively open and envisage that the correction could be made by utilising existing routes available to disclose or settle with HMRC. In doing so, we would ensure HMRC would have a record of the correction which could be cross referenced against offshore data HMRC will receive, such as CRS data.
- 4.20 To meet the obligations of the requirement, we would expect the taxpayer or their representative to correct the inaccuracy or failure by disclosing any outstanding tax, interest and relevant penalties due. HMRC expect the majority of cases meeting their obligation under the RTC to be via a disclosure either through the digital disclosure portal, or via another route such as the Contractual Disclosure Facility. However, there will be other ways in which the taxpayer could fulfil their RTC such as:
- Direct discussion with HMRC, for example through an existing Customer Relationship Manager or similar arrangements.
 - Disclosing the relevant information during an ongoing enquiry.

Q6: Do respondents have any concerns about this approach to correcting?

Q7: Are there any other approaches to correction we could consider?

Design element 3: The contents of a correction

Tax years

- 4.21 We would expect the 'correction' to cover any outstanding UK tax liabilities that are 'in date' for assessment under the normal rules for tax assessment. This is typically:
- Up to 4 years after the end of the relevant year of assessment for errors made despite taking reasonable care,
 - 6 years where the tax loss is due to carelessness,
 - 20 years where the tax loss was brought about deliberately

While these are the typical assessment periods, different periods can apply in certain circumstances. The principle we proposed to follow is that a correction should follow the assessment periods as currently set out in law.

Q8: What are your views on using the standard assessment periods to define the contents of the RTC?

4.22 While we believe we should use the standard assessment periods within the RTC, we recognise that having a window to correct that runs from April 2017 to 30 September 2018 means that some years will go “out of date” as regards assessing time limits during the window. This could create a significant incentive to delay correcting until the end of the defined window. We therefore propose to measure the assessment time limits for the requirement from the date at which the window opens (6 April 2017) and fix it at that point. This would then encourage earlier disclosure and settlement of any issues and mean anyone coming forward at the end of the window would not benefit from having waited.

Q9: What are your views on handling the issue of taxpayers delaying to allow years to pass out of assessment time limits in this way? Are there any other approaches you believe we should consider?

4.23 A further issue we have identified is that immediately following the end of the correction window, tax years could once again drop out of date for assessment before HMRC has had a chance to review the CRS data and follow up on anyone who has failed to correct. This would create the perverse situation where the taxpayer was required to correct an issue which we would then be unable to assess if they failed to correct it. We are therefore considering a one off extension to the assessment periods for tax and penalties following the RTC to allow HMRC to review the Automatic Exchange of Information data and challenge those who have not corrected. We propose this extension should be 5 years.

Q10: What are your views on a proposal to extend the assessment period for tax and penalties to ensure years do not drop out of assessment as the CRS data arrives? Could we address this issue in any other way?

Information to include

4.24 We would expect the requirement to correct to be similar in nature to a disclosure and therefore we’d expect the taxpayer to disclose details of any outstanding tax liabilities, but also any relevant interest and penalties relating to their past behaviour with supporting evidence. HMRC are considering specifying the exact information that will be required within the legislation.

4.25 The penalties applicable where the taxpayer meets their obligation to correct under the new requirement would be those, if any, currently set out in statute for the relevant behaviour and tax year. These are summarised below (the table on page 18), including by the current [territory categorisation](#).

For tax years pre 2008-09:

100% maximum penalty with reductions given for:

- Cooperation
- Size and Gravity (seriousness)
- Disclosure

For tax years 2008-09 to 2010-11:

Behaviour Category	Standard %	Minimum % for prompted disclosure	Minimum % for unprompted disclosure
Careless	30%	15%	0%
Deliberate	70%	35%	20%
Deliberate with Concealment	100%	50%	30%

For tax years 2011-12 onwards

Behaviour category	Standard %	Minimum % for prompted disclosure	Minimum % for unprompted disclosure
Category 1 territory - Careless	30%	15%	0%
Category 2 territory - Careless	45%	22.5%	0%
Category 3 territory - Careless	60%	30%	0%
Category 1 territory - Deliberate	70%	35%	20%
Category 2 territory - Deliberate	105%	52.5%	30%
Category 3 territory - Deliberate	140%	70%	40%
Category 1 territory - Deliberate with concealment	100%	50%	30%
Category 2 territory - Deliberate with concealment	150%	75%	45%
Category 3 territory - Deliberate with concealment	200%	100%	60%

4.26 We would expect interest to be calculated and applied in the normal way.

4.27 In addition to a disclosure of the tax, interest and penalties due, we are considering also requiring the taxpayer to provide information about any third party that has enabled or facilitated their offshore non-compliance.

Q11: What are your views on the proposed contents of a correction? Do you foresee any issues or further information we should seek?

Follow up to any correction and using the CRS data

4.28 It is important that the corrections made to meet the requirement are appropriately checked to ensure they are correct and complete. Receipt of a correction will therefore require follow up work by HMRC and we are considering how checking following up the requirement might work.

4.29 HMRC is considering whether it might need any new information powers or changes to existing powers to support discovery assessments relating to corrections made under the RTC or the use of the CRS data.

Q12: We would be interested in views on whether HMRC should consider further information powers to support the RTC or more widely the CRS?

Non Standard Situations

Enquiry cases

4.30 HMRC recognises situations will occur where there are complexities in relation to particular taxpayers meeting their RTC. An issue we have identified affects those taxpayers who are under enquiry during the requirement window (April 2017- September 2018). For those who settle before the end of the window, there is no issue as they will have met their RTC by the full and complete settlement of their enquiry. However, there could be situations where the enquiry is still underway as the window for the RTC is drawing to a close. There are a number of ways we could look to handle this issue.

- We could take a strict approach and force the settlement of their outstanding liabilities before the requirement window closes. This is not an attractive solution. While it would accelerate the progress of the enquiry and settlement, it is likely that the reason the enquiry has not settled is that there are outstanding issues and discussions. Forcing the taxpayer to settle may not ensure a fair result.
- A second option would be to allow the requirement window to extend for anyone who is still under enquiry without the imposition of the FTC penalties. This would address the issue above by allowing the conclusion of any outstanding issues. It does however raise a risk that it creates an incentive for taxpayers to stall discussions or prompt HMRC to open unnecessary enquiries to extend the requirement window for the taxpayer.
- A further option would be allow the enquiry to run over the end of the requirement window, but require the taxpayer to provide HMRC with all the relevant information in relation to the RTC before the window closes. This would remove any incentive to stall as the taxpayer has to provide the information anyway, but allows any unfinished discussions to be concluded and does not prejudice them.

Any offshore non-compliance disclosed or identified by HMRC after the end of the requirement window could then be subject to the relevant FTC penalties. This is the option we prefer at the moment.

Q13: Do respondent have any alternative ways of handling the issue of ongoing enquiries? Are there alternatives to extending the window in these circumstances?

Q14: Are there other complex situations we need to give special consideration to?

5. The consequences of not correcting – Penalties Models

- 5.1 The RTC provides a final chance for taxpayers to put their past issues in order before HMRC's response to offshore evasion gets much tougher. Those who continue to drag their feet, fail to act and break the rules should face a harsher treatment than those who did correct their non-compliance as required by the new rule.
- 5.2 The RTC will therefore be introduced with a corresponding set of new sanctions to apply to taxpayers who fail to meet the RTC by the end of the defined period. We propose that these sanctions should apply to any relevant years which have not been corrected.
- 5.3 In effect the RTC will create a situation where the taxpayer has committed an additional offence on top of their original non-compliance by not correcting that situation by the end of the relevant window. In this situation we would not want to charge two sets of penalties so the new FTC sanction would usually be charged in place of the sanction for the original offence (for example, inaccuracy, failure to notify or failure to make a return).
- 5.4 In designing the new sanctions, it is important that these penalties are consistent with HMRC's wider approach to future penalties, and there are also opportunities to consider some of the challenges faced with current penalties in designing a penalty framework for failing to correct.
- 5.5 HMRC published 'HMRC Penalties: a Discussion Document' in February 2015. It sought views on how to change the way that penalties are applied as HMRC is transformed to deliver more digital services, based around our customers. The discussion document proposed five broad principles that HMRC considered should underpin any new penalty regime. The subsequent summary of responses to the discussion document committed HMRC to designing future penalties with these principles in mind. We therefore intend to follow these in the design of the FTC penalties. The principles are:
 1. The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non compliance. Penalties are not to be applied with the objective of raising revenues.
 2. Penalties should be proportionate to the offence and may take into account past behaviour.
 3. Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.
 4. Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner.
 5. Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.

5.6 The key to ensuring the RTC has the desired effect and acts as a prompt for taxpayers to review their affairs and come forward in cases where there are issues is ensuring there are clear incentives for disclosing during the RTC window. The consequence of not acting is therefore a vital element to the design of the RTC and forms a key part of this consultation. We are very open to thoughts and ideas around the design of these penalties, but have suggested two possible penalty models below.

Proposed penalties models

5.7 The penalties we are proposing in the two models below are set at a high level compared with the standard penalties as they stand at the moment. While they are high in comparison, it is worth noting that these penalties are being charged after a taxpayer has failed to correct. Taxpayers in this situation will have committed an original offence, they will have failed to come forward under any previous disclosure facility and will now also have failed to correct under the new legal obligation. This is a significant failure on the taxpayer's part and we feel it should therefore attract increased rates of penalty compared with the standard penalties for offshore evasion. This makes it very clear that correcting before the end of the requirement window is the best option.

Reasonable excuse

5.8 In any penalties model we consider for the RTC, we believe that there should be no penalty if the taxpayer has a reasonable excuse for not having met the obligation to correct in the defined time period. We are however considering what issues should be included within the definition of a reasonable excuse and expect that given the considerable publicity concerning offshore tax this would be rare.

Q15: What do you think should be included within the scope of reasonable excuse for not having met the obligations of the RTC? What do you think should not be included as a reasonable excuse?

Model 1

5.9 Model 1 proposes a much simplified penalties framework for the RTC, giving an unambiguous and clear message that if you do not come forward and put your offshore affairs in order before the end of the requirement window you face serious consequences.

5.10 The key design elements for this model would be:

- The legislation for the RTC would set out a maximum and minimum penalty applicable in circumstances where the taxpayer has failed to correct.
- An initial proposal for the range of tax geared penalties in this model would be a minimum penalty of 100% and a maximum penalty of 200% of the tax that has not been corrected.
- A penalty would be chargeable within the range on any taxpayer who had failed to correct, irrespective of behaviour, unless they could show they had a reasonable excuse for not meeting the obligation.
- Penalties would start at the maximum of the range and would be reduced within the range based on the extent of disclosure and cooperation provided by the taxpayer.

- We would define and set high standards for the level of information taxpayers have to provide to receive the full reduction to the minimum of the range.
- There would be no categorisation of penalty by territory. All taxpayers who had failed to correct would therefore face the same penalty range irrespective of where they had held their money.
- In addition to tax geared penalties, an asset based penalty of up to 10% would be applicable for any FTC with a Potential Loss of Revenue (PLR) of over £25,000 that had not been corrected³.
- An enhanced penalty of 50% of the amount of the standard penalty above would apply if HMRC could show that assets or funds had been moved to attempt to avoid either reporting under the CRS, or under the the requirement to correct.
- Taxpayers who had failed to correct would also be liable to have their details published under rules similar to those at Section 94 FA 2009.

5.11 We believe this option provides a clear and simple message for the taxpayer. If you come forward and meet your obligation under the RTC, you will face a penalty at the current rates (see table in chapter 4). However, if you do not comply and ignore your obligation under the RTC, the minimum penalty you'd face is 100% and you could also now face an asset based penalty and being named by HMRC for your failure to correct.

Model 2

5.12 Model 2 considers a different approach in which while we still give a clear message that correcting under the requirement is the best option, there are additional elements added to the penalty framework to be more prescriptive around the level of penalty that would apply in certain circumstances. These elements explicitly address some of the differences in severity of case.

5.13 For this model the key design features are:

- Penalties should be charged at 3 levels (“Lower”, “Standard” and “Higher”) and the categories should be defined in legislation such that it is unambiguous what is captured in each category.
- Penalties would vary depending on whether the disclosure was prompted or unprompted with clear definitions of what constitutes each of these behaviours. This model proposes a fixed penalty for unprompted disclosure and to be treated as unprompted, we would require full cooperation as well. Any disclosure made while under enquiry should be considered prompted.
- Penalties for each category would be set in ranges with reductions from the maximum to apply to take account of co-operation from the taxpayer.
- Any FTC would be automatically subject to a penalty at the “standard” level.
- Only cases in which the taxpayer could show they had a reasonable excuse would not attract a penalty (see question above).
- Certain defined conditions would have to be met to charge either the “lower” or “higher” category of penalties and these would be clearly set out in legislation.

³ One starting point for considering such a rule would be Schedule 22 in Finance (No. 2) Bill 2016

- Additionally, certain defined conditions could also apply to automatically exclude access to the lower category.
- Access to the “lower” category may require elements such as:
 - PLR being below a certain threshold
 - the FTC covering fewer than a set number of years
 - the taxpayer remedying their FTC quickly following the end of the requirement window
- For the “higher” category to apply it would require elements such as:
 - PLR to be over a certain threshold
 - the FTC covering more than a set number of years
 - the taxpayer having been subject to previous tax geared penalties within a defined period
 - HMRC could show the failure was as a result of deliberate behaviour
- This framework could have one or two categories for territories. If there were two categories, we would propose category 1 included all countries signed up to Automatic Exchange of Information and category 2 covered any other country. We do not see a need in this case to further distinguish territories. We also propose that an unprompted disclosure of their FTC should not distinguish by category as the transparency of jurisdiction is of less relevance if the disclosure is voluntary.
- An asset based penalty would apply to any taxpayer who fell into the higher category.
- An enhanced penalty of 50% of the amount of the standard penalty below would apply in addition to any case in which HMRC can show the taxpayer moved money to avoid either reporting under the CRS or their obligations under the RTC.
- FTC would be subject to publishing taxpayer details.

5.14 The table below shows an illustrative framework for this model of penalties. If we were to go with a single category, we would propose all penalties were charged at the Category 2 level.

		Category 1	Category 2
Unprompted	Lower	30%	
	Middle	40%	
	Higher	50%	
Prompted	Lower	50-100%	60-140%
	Middle	60-120%	90-170%
	Higher	80-140%	120-200%

5.15 This model does not have the simplicity of model 1, but provides for some additional categorisation of penalties to differentiate cases more clearly. We believe it will be important in this model to clearly define what should fall into the lower and higher categories to avoid any doubt or confusion and would welcome views on what should fall into these definitions. HMRC still sees a role for incentivising unprompted disclosure from the taxpayer, charging lower penalties if the taxpayer voluntarily tells us about their FTC but these should be set higher than current levels.

Q16: What are your views on the two penalty models proposed? We would welcome other ideas on a penalties model for FTC.

Further design considerations for penalties

5.16 We are also considering whether we should extend the civil enabler penalties (see clause 150 and Schedule 20 of Finance (No.2) Bill 2016) to cover situations in which an enabler has helped the taxpayer circumvent the RTC.

Q17: What are your views on extending the civil enablers penalties to cover the RTC?

Q18: Are there any other design considerations you feel we should consider?

6. Chapter name or Assessment of Impacts

Summary of Impacts

6.1 Please note we are working to fully quantify the impact and will be developing our analysis as the detailed proposals are developed.

Exchequer impact (£m)	2016-17	2017-18	2018-19	2019-20	2020-21
	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	<p>This measure will have an impact on individuals with offshore interests reviewing their tax affairs to satisfy they are compliant.</p> <p>The measure is not expected to impact on family formation, stability or breakdown.</p>				
Operational Impacts	The impact on HMRC resources will be considered further once the proposals are fully developed.				
Equalities impacts	<p>Any affected equality groups are likely to be those represented amongst those of above average wealth.</p> <p>Individuals will only be affected if they have not complied with their tax obligations.</p>				
Impact on businesses and Civil Society Organisations	This measure will have no impact on businesses and civil society organisations who are undertaking normal commercial transactions; it will only impact on businesses with income or gains offshore who evade their UK tax responsibilities.				
Other impacts	Other impacts have been considered and none have been identified.				

7. Summary of Consultation Questions

- Q1:** Are there any key circumstances missing from the proposed scope and definition or do you foresee any difficulties with applying this definition?
- Q2:** What are your views on limiting the scope of the RTC to those taxes currently covered by offshore penalties?
- Q3:** What, if any, other taxes should we look to include within scope?
- Q4:** Do you foresee any issues with a window to correct covering the period April 2017 to September 2018? Should we consider any other dates for the window?
- Q5:** What is your view on capturing all compliance issues that exist up to and including 5th April 2017? Do you foresee any circumstances that this may miss?
- Q6:** Do respondents have any concerns about this approach to correcting?
- Q7:** Are there any other approaches to correction we could consider?
- Q8:** What are your views on using the standard assessment periods to define the contents of the RTC?
- Q9:** What are your views on handling the issue of taxpayers delaying to allow years to pass out of assessment time limits in this way? Are there any other approaches you believe we should consider?
- Q10:** What are your views on a proposal to extend the assessment period for tax and penalties to ensure years do not drop out of assessment as the CRS data arrives? Could we address this issue in any other way?
- Q11:** What are your views on the proposed contents of a correction? Do you foresee any issues or further information we should seek?
- Q12:** We would be interested in views on whether HMRC should consider further information powers to support the RTC or more widely the CRS?
- Q13:** Do respondent have any alternative ways of handling the issue of ongoing enquiries? Are there alternatives to extending the window in these circumstances?
- Q14:** Are there other complex situations we need to give special consideration to?
- Q15:** What do you think should be included within the scope of reasonable excuse for not having met the obligations of the RTC? What do you think should not be included as a reasonable excuse?
- Q16:** What are your views on the two penalty models proposed? We would welcome other ideas on a penalties model for FTC.
- Q17:** What are your views on extending the civil enablers penalties to cover the RTC?
- Q18:** Are there any other design considerations you feel we should consider?

8. The Consultation Process

8.1 This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- | | |
|---------|---|
| Stage 1 | Setting out objectives and identifying options. |
| Stage 2 | Determining the best option and developing a framework for implementation including detailed policy design. |
| Stage 3 | Drafting legislation to effect the proposed change. |
| Stage 4 | Implementing and monitoring the change. |
| Stage 5 | Reviewing and evaluating the change. |

This consultation is taking place during stages 1 and 2 of the process. The purpose of the consultation is to seek views on the detailed policy design, any suitable possible alternatives and a framework for implementation of a specific proposal.

How to respond

8.2 A summary of the questions in this consultation is included at Chapter x.

Responses should be sent by **19 October 2016**, by e-mail to consult.nosafehavens@hmrc.gsi.gov.uk or by post to:

Steve Manning
HMRC Centre for Offshore Evasion Strategy
Room 1C/26
100 Parliament Street
London SW1A 2BQ.

Telephone enquiries can be addressed on 03000 535682 or 03000 589244 (from a text phone prefix this number with 18001).

- 8.3 Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations. When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.
- 8.4 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

- 8.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 8.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).
- 8.7 HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

- 8.8 This consultation is being run in accordance with the government's consultation principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].
- 8.9 The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>
- 8.10 If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs,
100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant Existing Legislation

Definitions

Finance Act 2007, Schedule 24, paragraphs 4A and 4AA

Finance Act 2008, Schedule 41, paragraph 6A (4)

Finance Act 2009, Schedule 55, paragraph 6A (4)

Finance Act 2015, Schedule 20

Penalties

Taxes Management Act (TMA) 1970 s.7, s.93, s.95

Finance Act 2007, Schedule 24

Finance Act 2008, Schedule 41

Finance Act 2009, Schedule 55

Finance Act 2015, Schedule 20