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WHITE PAPER

# Enablers Legislation

Consequences and penalties for enablers of  
offshore tax evasion and non-compliance

EFFECTIVE FROM JANUARY 2017

# Introduction

The recovery of unpaid offshore taxes has been an ongoing strategy for HMRC for many years. Those who do not pay the relevant taxes due on income or gains arising outside of the UK have a significant impact on government funds and place a great burden on honest taxpayers. Revenue Authorities, including HMRC, have recently turned their attention to taking action against those who enable UK residents to commit offshore tax evasion and non-compliance.

Section 162 and Schedule 20 of the Finance Act 2016 contains new penalties directed at enablers of offshore tax evasion and non-compliance. These penalties apply to offences involving income tax, capital gains tax and inheritance tax and have been brought into force by statutory instrument as of 1 January 2017.

This inclusion in the Finance Act 2016 introduces new civil penalties and naming provisions for both individuals and businesses who have knowingly assisted taxpayers to hide assets and taxable income and gains outside of the UK to evade their UK taxes.

These new penalties will allow HMRC, for the first time, using civil rather than criminal action, to tackle those who aid in the evasion of offshore taxes. It is anticipated HMRC will use this as a valuable tool in providing a strong deterrent against any individual or business enabling evasion or non-compliance of this sort. It is intended these new civil penalties targeting enablers will complement the existing corporate criminal offence of Facilitation of Offshore Tax Evasion.

## What is an enabler and how do they enable?

Any person (whether natural or legal) who, whether knowingly or unknowingly, provides services which assist a UK taxpayer to evade UK tax.

There are a number of ways in which an individual or business might knowingly or unknowingly enable someone to evade tax through the use of offshore structures. They are, as quoted by HMRC\*:

- Acting as a “middleman”– arranging introductions and providing access to others who may provide services relevant to evasion.
- Bespoke tax advice - Providing planning and tailoring advice on jurisdictions, investments and structures that will enable the taxpayer to hide their money and any income, profit or gains.
- Delivery of infrastructure – including setting up companies, trusts and other vehicles that are used to hide beneficial ownership; opening bank accounts; providing legal services and documentation which underpin the structures used in the evasion such as notary services and powers of attorney.
- Maintenance of infrastructure – providing professional trustee or company director services including nominee services; providing virtual offices, IT structures, legal services and documentation which obscures the true nature of the arrangements such as audit certificates.
- Financial assistance – helping the evader to move their money or assets out of the UK, and/or keep it hidden by providing ongoing banking services and platforms; providing client accounts and escrow services; moving money through financial instruments, currency conversions etc.
- Non-reporting – not fulfilling their reporting, regulatory or legal obligations, which in itself helps to hide the activities of the evader from HMRC.

## When do penalties apply?

Penalties apply where any of the following has arisen:

- The tax evaded relates to income tax, capital gains tax or inheritance tax.
- An enabler has enabled another person to carry out offshore tax evasion or other non-compliance activities. In this situation the following conditions are met:
  - The enabler was fully aware at the time of their actions that they contributed and ‘enabled’ the tax evasion. An enablers actions include encouraging, assisting or facilitating a person in carrying out the tax evasion.
  - The evader, or person who carried out the evasion or non-compliance, must be liable to a civil penalty for

\* Tackling offshore tax evasion: a new corporate criminal offence of failure to prevent the facilitation of evasion – HMRC 16th July 2015

offshore tax evasion (e.g. failure to notify or failure to make a return) or be convicted of an offence in relation to the tax evasion.

## What are the penalties?

The penalty for the enabler can be up to 100% of the tax evaded or £3,000, whichever is higher. Where the evasion has given rise to a penalty under Schedule 21 of the Finance Act 2015 (offshore asset moves), the penalty will be the greater of 50% of the potential lost revenue and £3,000.

In addition to the civil penalties mentioned, HMRC may name and shame enablers for their involvement in the evasion by publishing their details. This publishing will apply where the enabler has incurred at least one penalty for enabling offshore tax evasion and the potential lost revenue exceed £25,000. Additionally, where the enabler has incurred five or more penalties relating to enabling offshore tax evasion in the past five years.

Penalty reductions and non-publication may however be available where any enabler makes full disclosures to HMRC

## How can LANCE help?

As an evaluator of compliance and risk, the use of LANCE ensures the limited ability of HMRC to penalise trustees under the enabler's legislation. In using LANCE to review any structure shows proactive compliance procedures within a trust company. By then undertaking the remediated actions as suggested by LANCE, a trust company will not exhibit enabling actions of abusive tax arrangements and will therefore not fall under the scope of the enabler's penalty legislation.