

**EXPLANATORY MEMORANDUM TO**  
**THE OFFSHORE ASSET MOVES PENALTY (SPECIFIED TERRITORIES)**  
**(AMENDMENT) REGULATIONS 2017**

**2017 No. 989**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Offshore Asset Moves Penalty (Specified Territories) Regulations 2015 (SI 2015/866), which came into force on 27 March 2015. It amends the Schedule of territories falling as a "specified territory" for the purposes of determining whether a "relevant offshore asset move" described in paragraph 4 of Schedule 21 to the Finance Act 2015 (c.11) has occurred.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Schedule 21 to the Finance Act 2015 (c. 11) ("Schedule 21") created 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.
- 4.2 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".
- 4.3 Paragraph 4(1) of Schedule 21 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.
- 4.4 Paragraph 4(5) and (6) of Schedule 21 provides for territories to be specified by Regulations. In exercise of the power conferred by that paragraph, these Regulations amend the Offshore Asset Moves Penalty (Specified Territories) Regulations 2015 (SI 2015/866) (“the 2015 Regulations”) to remove two territories originally specified in the 2015 Regulations (so that those territories become non-specified) and to add eight others that were not specified in 2015 (so that they become specified territories). The amendments have effect in relation to relevant offshore asset moves occurring on or after the day when these Regulations come into force.

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

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

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

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

## **7. Policy background**

### *What is being done and why*

- 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 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.
- 7.3 Schedule 21 addresses the issue by imposing a further penalty for a relevant 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. The 2015 Regulations listed the territories that had made or were expected to make such a commitment at that time (March 2015). The amendments made by these Regulations updates the list of territories that currently have or are expected to make that commitment.

### *Consolidation*

- 7.4 HMRC has no current plans to consolidate but will keep this under review.

## **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.

## **9. Guidance**

- 9.1 HMRC has produced guidance in relation to the 2015 Regulations which is accessible at <http://internal.active.hmrci/manual/compliance-handbook/ch119000>.

HMRC will amend the guidance to reflect changes made by these Regulations at the next update.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 No impact on the public sector is foreseen.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 alongside the draft Finance Bill and is available on the HMRC website at <http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this statement.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The legislation will however only apply in cases where small businesses have been deliberately non-compliant and then tried to hide their assets by moving them to avoid reporting. There will therefore be no additional burden on the compliant small business.

## **12. Monitoring & review**

- 12.1 The operation of 2015 Regulations and this instrument listing “**Specified territories**” will be monitored through information collected in compliance work to ensure that they operate as intended.

## **13. Contact**

- 13.1 Bruce Marsh at the Centre for Offshore Evasion Strategy can answer any queries regarding the instrument. Contact details are as follows:

Telephone: 03000 542484 or email: [bruce.marsh@hmrc.gsi.gov.uk](mailto:bruce.marsh@hmrc.gsi.gov.uk)