TACKLING OFFSHORE EVASION: A NEW CRIMINAL OFFENCE

Response by the Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the consultation document Tackling offshore tax evasion: A new criminal offence (the Consultation) that was published by HMRC on 19 August 2014.

1.2 The Consultation seeks views on the design of the new strict liability criminal offence of failing to declare taxable offshore income and gains which the Government intends to introduce. It is a Stage 2 consultation. Its purpose accordingly is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

1.3 Chapter 2 of the Consultation provides a helpful introduction to the concept of strict liability. It explains (in paragraph 2.5) that a strict liability offence is a criminal offence where it is not necessary for the court to ascertain the state of mind of the defendant before convicting. It notes (in paragraph 2.9) that there are currently no strict liability offences in the field of direct tax and very few within any area of tax law.

1.4 Chapter 4 of the Consultation draws attention to the fact (in paragraph 4.36) that although the strict liability nature of the offence removes the requirement for the court to establish the state of mind of the defendant in order to convict, there will still be a range of factors that make the failure to report the offshore income or gains more or less serious. In Box 5 on page 22, it quotes the guidance of the Sentencing Council that:

‘There are offences where liability is strict and no culpability need be proved for the purposes of obtaining a conviction, but the degree of culpability is still important when deciding sentence.’

1.5 In section 2 of this response, we highlight some general matters which we regard as significant before responding in section 3 to the specific questions posed by the Consultation.
2 General matters of significance

2.1 Although this is a Stage 2 consultation, we would like to record our serious concern about the Consultation’s proposal to introduce a strict liability. Quite apart from objections on principle, we think that there are significant practical issues that are not addressed in the Consultation. For example:

2.1.1 The proposal to introduce a strict liability offence at or about the same time as the proposals set out in Tackling Offshore Tax Evasion: Strengthening Civil Deterrents (the Parallel Consultation) will certainly confuse things and is likely to hamper HMRC’s ability to measure the behavioural impact of the strengthened civil penalty regime;

2.1.2 The threat of criminal sanctions in respect of non-disclosed offshore taxation liabilities may well discourage the voluntary disclosure of those liabilities that the strengthened civil penalty regime is designed to encourage;

2.1.3 The threat of prosecution might well result in responsibility for the conduct of HMRC enquiries transferring from a taxpayer’s regular tax advisers and accountants to a firm of specialist lawyers thereby requiring HMRC officers with different skills;

2.1.4 Where a taxpayer had failed to disclose offshore income or gains and had additionally failed to make other disclosures that were not within the scope of the new offence, the risk of prosecution under the new offence could impact the conduct of any enquiry in respect of the other matters;

2.1.5 The Consultation appears to anticipate the inclusion of a financial threshold and an HMRC discretion as to whether to prosecute, a combination which gives no certainty to the non-compliant but more significantly could result in the strict liability offence being used so seldom that its deterrent impact on the non-compliant and its reassurance value to the compliant majority are substantially diminished;

2.1.6 The criminalising of tax non-disclosures on a strict liability basis could act as a significant disincentive to making a disclosure for those taxpayers who have a professional obligation to report conviction to their professional body, their regulators or their insurers (or even charities for whom they undertook a voluntary role);

2.1.7 Whilst the strict liability nature of the offence will remove the requirement for the prosecution to prove the state of the taxpayer’s mind, satisfying the criminal standard of proof in respect of the actus reus will be unavoidably resource-heavy – particularly before a magistrates’ court that is unfamiliar with tax matters;

2.2 Until HMRC updates its current Criminal Investigation Policy (set out in Box 9 on pages 25 and 26 of the Consultation) in response to the introduction of the strict liability offence, it is impossible to know in what circumstances and how often HMRC might expect to prosecute under the new offence.

2.3 The Consultation raises no questions in respect of the possible timetable for the introduction of the strict liability offence. In our response to the Parallel Consultation, we make the case for a general and well publicised voluntary ‘last chance’ offshore disclosure facility in advance of the introduction of strengthened civil penalties. We see that recommendation as equally relevant in relation to the strict
liability offence. It makes good sense to use the prospective implementation of the new offence as a strong carrot to encourage voluntary disclosure under the existing civil penalty regime.

2.4 During the course of preparing this response, we identified a number of wider questions which we think will need addressing in the preparation of the draft legislation relating to the new offence. We record them here in order to avoid complicating our replies to the Consultation questions:

2.4.1 What inter-relationship will there be between the new offence and existing civil penalties? If, for example, a civil penalty has been charged in respect of a non-disclosure of offshore income or gains, will that preclude prosecution under the new offence? If a prosecution under the new offence fails, will HMRC still be able to pursue civil penalties in respect of the same non-disclosure?

2.4.2 What would the implications be for any promoter, facilitator or adviser who had encouraged or assisted a taxpayer to pursue a course of action which resulted in the taxpayer being successfully prosecuted under the new offence?

2.4.3 How does the proposed new offence sit in relation to EU law?

2.4.4 How quickly will convictions under the strict liability provision become ‘spent’ under the Rehabilitation of Offenders Act 1974 in terms of someone having to disclose a criminal record? Would HMRC have to take any steps in respect of its internal records in order to comply with the provision? [Note: We understand that separate provisions apply in Scotland and Northern Ireland.]

2.5 In our responses in section 3 below, we proceed on the assumption that the strict liability offence will be introduced. Our replies to the Consultation questions should nevertheless be read against the background of our comments above.

3 Response to the Consultation Questions

Our comments in this section 3 follow the order of the (unnumbered) Consultation questions. For ease of reference, we have adopted a consecutive numbering for the questions from 1 to 22 and shown the relevant Consultation paragraph number for each question in square brackets. Section 3.1 below is accordingly in answer to the first question (which appears in paragraph 3.7 of the Consultation 1).

3.1 Do you agree that the applicability of the offence should be limited to income tax and capital gains tax? [3.7]

3.1.1 Yes. Extending the offence to Inheritance Tax (IHT) before the extended offshore civil penalty regime has had a chance to make any impact would only add complexity and could undermine the objective of extending that regime to IHT.

3.2 Do you agree that the offence should be restricted to taxable income and gains which arise offshore? [3.11]
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3.2.1 Yes. We consider that the extended civil penalty regime in respect of moving the proceeds of evasion offshore must be given a proper opportunity to achieve its objectives without the complication that would arise from introducing a strict liability criminal offence in respect of the same actions.

3.3 In your opinion, which option (to apply the offence only to investment income or gains, or to apply the offence to all offshore income and gains) would best deliver the policy intention? [3.19]

3.3.1 We note that paragraph 3.18 expresses a preference for Option 2 (the application of the new offence for all offshore income and gains) on the basis that it would bring a wide range of income and gains into scope (obviously) and reduce the risk of perceived unfair outcomes as between different types of income or gains.

3.3.2 In our opinion, Option 1 would be much more appropriate in terms of delivering the first and fourth of the Government’s objectives (as set out in paragraph 2.18 of the Consultation) of developing a new offence:

- ‘whose applicability can be readily determined, both by taxpayers and by the courts, and
- which will fit in the context of new agreements to share tax information automatically’.

3.3.3 We think that including employment, property and trading income and gains (concepts with which magistrates’ courts may not be particularly familiar) from the outset and before there is any certainty that HMRC will obtain relevant information to support prosecution could lead to failed prosecutions and thus discredit the effectiveness of the new offence. Confining the new offence to investment income and gains will significantly simplify the prosecution’s task and mean that documentary evidence is more readily available to support the prosecution.

3.4 Do you think that the offence should apply to income and gains which are reported under the Common Reporting Standard? [3.25]

3.4.1 No, we do not. We think that including income and gains that are reported under the Common Reporting Standard (CRS) would send the wrong message to the international community. It would confuse any message about the benefits of signing up to CRS and reduce the incentive on other jurisdictions to do so. We see both strict liability and the strengthened civil deterrents as useful levers towards the eventual achievement of virtually universal adoption of CRS. It would be counter-productive to do anything to reduce the incentive to adopt CRS.

3.5 Should all income and gains in CRS jurisdictions be exempted from the offence, or should the offence apply to any income and gains which are not automatically reported to HMRC? [3.30]

3.5.1 Yes, We find the Government’s preference of exempting all income and gains arising in CRS jurisdictions to be very convincing. The alternative would add to the complexity of the new offence, sit uncomfortably with the proposals in respect of strengthening civil deterrents and discourage non-CRS jurisdictions from signing up.

3.6 Are there any further issues or impacts which should be taken into account when introducing the offence into Scottish and Northern Irish law? [3.32]
3.6.1 We are unable to respond to this question as we do not have sufficiently specialist understanding of relevant Scottish and Northern Irish law.

3.7 Proportionality and sanctions

Do you agree that a de minimis threshold is appropriate? [4.4]

3.7.1 Yes. Without a de minimis threshold, it would be impossible for taxpayers and their advisers to know whether they might be prosecuted under the new offence. All citizens are entitled to know what constitutes a criminal offence.

3.8 Should the de minimis be set by reference to the potential lost revenue arising from the failure/inaccuracy, or some other measure? If so, should the potential lost revenue be calculated in the same way as it is for the purposes of determining civil penalties? [4.6]

3.8.1 We think that the case for setting the de minimis threshold by reference to the measure of potential lost revenue for civil penalties is overwhelming for all practical purposes. Any alternative measure would add significantly to complexity, make the task of providing guidance and advice more problematical and could risk bringing the new offence into disrepute.

3.9 Should the threshold be incorporated in statute or guidance? [4.10]

3.9.1 Given that the proposal concerns the introduction of strict liability into the field of direct taxes for the first time (see paragraph 2.9 of the Consultation), we think it is essential that any threshold is contained in statute. Providing for the threshold simply in HMRC guidance would send the wrong message.

3.9.2 We think that some of the arguments against a statutory threshold could be overcome by, for example:

- Incorporating an inflation (upward-only) adjustment mechanism;
- Providing for adjustment in the threshold within defined parameters to be by way of secondary legislation;
- Setting the initial threshold at the level at which HMRC would definitely expect to prosecute (at least in the absence of very exceptional circumstances).

3.10 Are there any further options (for setting the threshold)? [4.18]

3.10.1 We respond to this question by first commenting on each of the three approaches advanced in the Consultation.

3.10.2 Approach 1 (basing the threshold on results of investigations):

3.10.2.1 This appears to be the most scientific of the three approaches;

3.10.2.2 It has the merit of enabling Government and policy makers to determine what proportion of compliant taxpayers with undisclosed overseas income should be brought within the scope of strict liability;
3.10.2.3. It does not, however, cater appropriately for capital gains. A median Potential Lost Revenue (PLR) of £2,100 could readily arise on a capital gain of only £7,500. So someone who invested just £2,500 of UK-taxed income in offshore shares and sold them for £10,000 could be liable to prosecution if they forgot to disclose the particular offshore gain and had already used their annual CGT exemption against gains which they had disclosed properly. Would they really be an intended target for the new offence? They hardly look like someone whose conduct causes significant revenue loss (paragraph 2.18 of the Consultation).

3.10.2.4. As an aside, it is worth observing that if the new offence was not reserved for investment income and gains, it would mean that if Jo(e) bought a painting for £4,500 for their overseas holiday home (on which they properly declared any income on their UK tax return) and then received £12,000 for it (either upon sale or as a result of an insurance claim or notionally because they gave it away when it was worth that much), they would similarly be within the scope of the offence if they failed to disclose the gain and had already used their annual CGT exemption.

3.10.3. Approach 2 (basing the threshold on the amount of capital generating the undeclared income and gains):

3.10.3.1. The Consultation is silent on how this would work in relation to capital gains. In that context, it would be important to be clear on whether the relevant underlying capital value was the consideration received on the undisclosed disposal, the base cost relevant to that particular gain or possibly the current (or historic) value of the holding out of which the gain arose upon a disposal of only part.

3.10.3.2. In relation to income, the linking of the threshold to the underlying capital fails to take account of the potentially large variations in respect of return on the capital.

3.10.3.3. It is unclear from paragraph 4.16 how this approach would work. If the threshold was set by reference to an assumed single rate of return on capital (so that income of (say) £2,500 brought non-disclosure into scope), it would bring both a 5% return on £50,000 and a 1% return on £250,000 into scope. Alternatively, if the threshold was set by reference to the actual underlying capital (on which see 3.10.3.1 above), it would mean that a non-disclosure of £500 of interest (at 0.5% on £100,000) would be viewed in the same way as a non-disclosure of £5,000 of interest (at 5% on the same capital). Neither outcome appears be particularly logical. The first of the two alternatives would be more consistent with the aim (in paragraph 2.18 of the Consultation) of targeting conduct that causes significant revenue loss but the threshold could rapidly become inappropriate if there was a significant increase in interest rates.

3.10.4. Approach 3 (basing the threshold on other thresholds):

3.10.4.1. This has the attraction of the greatest simplicity;

3.10.4.2. The suggestion of linking the threshold to that for the PLR condition for entry into the Managing Serious Defaulters (MSD) programme does not itself seem particularly appropriate as none of the other criteria for entry into that programme would necessarily
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applying. Extending the MSD criteria to include taxpayers who had been convicted under the new offence would involve some circularity. That said, a simple even arbitrary limit would be simple to understand.

3.10.4.3. Again, the Consultation does not indicate how this would apply in relation to capital gains. An undisclosed gain of some £17,857 would (at 28%) produce a PLR of £5,000 if no annual exemption was available. Our comments in 3.10.2.3 above have some relevance here.

3.10.5 Our comments above on the three suggested approaches lead us to conclude that more detailed consultation (possibly including workshops) is required in order to identify one or more thresholds that meet the Government’s aims for the new offence and work for both income and gains.

3.10.6 In terms of possible further options (to an extent a variant on Approach 3), the threshold for undisclosed gains could be a multiple of the CGT Annual Exemption.

3.10.7 Specific consideration may be needed as to the relevant threshold where a taxpayer has failed to disclose both offshore income and offshore gains.

3.11 Which approach to setting the threshold do you favour? [4.19]

3.11.1 We are unconvinced that any of the three suggested approaches produces a wholly appropriate result in terms of delivering the policy objectives. We have accordingly recommended specific consultation on the threshold point.

3.11.2 Of the three approaches, we are inclined to dismiss Approach 2 as impractical. Although Approaches 1 and 3 establish the threshold through different routes, the subsequent mechanics would be identical as both would simply require checking the PLR against the threshold. As noted, neither currently makes an appropriate distinction between undisclosed income and undisclosed gains.

3.12 The Government’s view is that the threshold should apply for each tax year, rather than in respect of a cumulative amount of potential lost revenue, as a new offence would be committed for each tax period – eg each time an incorrect return is filed. Do you agree? [4.20]

3.12.1 Because we are dealing with a tax-related matter, it is natural to think in terms of tax years. However, we are not certain that this is appropriate. In particular, in the context of criminal law (an area in which we claim no expertise), we think that consideration may be required of the concept which we understand is referred to as a continuing offence. In the context of strict liability offences, it commonly arises in relation to speeding and determines whether in the course of a single journey there is only one offence or a succession of offences. We think that specific legal advice needs to be taken on the possible implications of the continuing offence concept for non-disclosure of offshore income and/or gains on tax returns.

3.12.2 Applying the threshold to each tax year without reference to the continuing offence concept would appear to mean that:

3.12.2.1. Non-disclosure in two consecutive tax years where the aggregate non-disclosure exceeded the threshold but the amount for neither year did on its own (for example a term deposit
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that straddled two tax years and paid interest monthly) would mean that the offence had not been committed but that

3.12.2.2. Non-disclosure in two or more tax years of income from the same source where the threshold was (unsurprisingly) breached in each year would mean that a separate offence had been committed in each year.

3.12.3. In the 3.12.2.1 scenario, the Government’s view produces a favourable outcome for the taxpayer. In the 3.12.2.2 scenario, the taxpayer’s possibly unintentional but continuing failure produces what may be considered a harsh result in the context of a strict liability offence.

3.13. Do you agree with the principle that the available criminal sanction for offshore non-compliance should not be seen as more lenient than the available civil sanction? [4.22/23]

3.13.1. Provided that the criminal sanction was not being imposed on top of a civil sanction in respect of the same act, we agree with this basic proposition but this comment is subject to our more detailed points in section 3.14 below.


3.14.1. Consistent with the proposition that the available criminal sanction should not be more lenient than the available civil sanction, it would follow that the court dealing with the strict liability offence would need to have power to impose an unlimited financial penalty (since there is no monetary limit on civil penalties). However, we question whether this would work in practice. Our concerns are as follows:

3.14.1.1. Paragraph 4.27 of the Consultation refers to the situation where ‘hundreds of thousands of pounds of tax has been undeclared’. By reference to the Government’s indicated intention to stipulate a penalty of up to twice the Potential Lost Revenue (PLR), that would mean that the court could impose a penalty of up to one million pounds on lost revenue of £500,000. This raises the following questions:

3.14.1.1.1. Is strict liability appropriate for such a large amount of PLR?

3.14.1.1.2. Could a financial sanction of one million pounds (or more) ever be seen by the magistrates’ court (or on appeal up to and including the European Court of Justice) as proportionate for a strict liability offence (see in this connection paragraph 4.35 of the Consultation)?

3.14.1.1.3. Would the magistrates’ court be the appropriate forum to determine the amount of tax that had been lost?

3.14.1.1.4. Why is the taxpayer not being indicted for fraudulent evasion of tax or under the Fraud Act?

3.14.1.2. Our answers to our own questions are as follows:

3.14.1.3. Once the amount of PLR reaches a certain figure, it must justify a wholly different approach. The Consultation suggests (in paragraphs 4.11 to 4.17) a threshold of PLR of
perhaps £2,100 or £5,000. Those non-disclosures are in a wholly different league from a non-disclosure resulting in a PLR of hundreds of thousands of pounds of undeclared tax. Attempting to deal with such an enormous range of non-disclosures on a one-size-fits-all basis seems to us to invite inconsistencies in decisions to prosecute and to sentencing.

3.14.1.4. Once the amount PLR exceeds a certain limit, it must be appropriate for HMRC to commit sufficient resources into establishing the evidence to demonstrate the taxpayer’s intention to evade tax.

3.14.1.5. Setting the maximum financial criminal sanction at twice the PLR on the basis that an offshore civil penalty could be 200% completely ignores the fact that such a level of civil penalty would only apply to:

- the under-declaration of income/gains from a Category 3 jurisdiction where
- that non-reporting was deliberate and involved concealed and where
- the eventual disclosure was ‘prompted’ and where
- the taxpayer had given no assistance at all to HMRC in establishing the PLR.

Using the twice PLR formula to establish the maximum penalty for the strict liability offence could mean that it could apply (at its extremity) to a taxpayer who had:

- carelessly (but certainly not deliberately) failed to report income/gains that
- arose in a Category 2 jurisdiction which
- the taxpayer had then disclosed on an unprompted basis and where
- the taxpayer had provided HMRC with every possible assistance in establishing the PLR.

Given that such a situation might produce no civil penalty at all and that even if the disclosure was prompted the civil penalty would be between 22.5% and 45%, the imposition of a criminal financial sanction of 200% would be demonstrably disproportionate.

3.14.1.6. We cannot see that the magistrates’ court would be an appropriate forum for determining the amount of PLR (in order to establish the maximum available penalty) in anything other than in a very straightforward case. By contrast, the tax tribunal would be a far more appropriate forum so we suggest that it would be sensible to devise a procedure that enabled the tribunal to establish at least the PLR and ideally the maximum relevant civil penalty as well. In that way, the criminal court would have a much simpler task and would not need to hear expert witness evidence concerning the PLR.

3.15 As part of this consultation, HMRC would be interested in views as to how the policy intention of a tax geared penalty could best be delivered in Scotland and Northern Ireland. [4.32]

3.15.1 We are unable to respond to this question as we do not have sufficiently specialist understanding of relevant Scottish and Northern Irish law.
3.16  *Is the harm which could be caused by a failure to declare offshore income and gains sufficient that a custodial sentence could be justified in the most serious cases? [4.37]*

3.16.1 By reference to the Government’s stated policy, a custodial sentence could be justified in ‘the most serious cases’. However, for the reasons set out in section 3.14.1.3 above, we seriously question the appropriateness of a strict liability offence for anything that might reasonably be classed as one of ‘the most serious cases’. Almost by definition, any such case would contain elements that supported proof of the taxpayer’s deliberate intention to evade tax of their offshore income or gains.

3.16.2 Without knowing in what situations HMRC might consider a custodial sentence appropriate in the context of strict liability, it is impossible to answer this question more fully. It is essential that this point is clarified when HMRC’s criminal investigation policy is updated.

3.16.3 We think that there is very strong case for considering community service orders as part of the sanctions available to the court. On top of the financial sanction, this might help the taxpayer who had been found guilty of the offence to appreciate that their action had caused harm to the community. A further option might be to introduce the additional sanction of attendance at a tax evasion awareness course (akin to the courses available to the courts in relation to certain motoring offences).

3.17  *If a custodial element is appropriate, should the maximum sentence be six months? [4.39]*

3.17.1 We have questioned (in section 3.16.1 above) the appropriateness of a strict liability offence for anything that might properly be described as one of the most serious cases. This necessarily influences our response to this question. We cannot get away from the view that the most serious cases should be dealt with upon indictment for fraud thereby requiring the prosecution to prove the taxpayer’s intention to evade tax and at the same time giving the prosecution the prospect of securing a significant custodial sentence.

3.17.2 We have no evidence base from which to make the following comment but we question how frequently a magistrates’ court would be inclined to impose a custodial sentence for a strict liability offence. If the prosecution was able to produce evidence that was sufficient to convince the court that the taxpayer had ignored prompts to tell HMRC about their offshore income and gains or repeatedly failed to tell HMRC about their offshore liabilities or moved their offshore investments with the aim of escaping greater tax transparency (all given in paragraph 4.36 of the Consultation as characterising the more serious cases and therefore justifying a custodial sentence), they would in many cases have established the taxpayer’s deliberate intention to evade tax and at the same time giving the prosecution the prospect of bringing more serious charges. The magistrates’ court might well wonder why the prosecution had not pursued more serious charges if it had such compelling evidence of intentional evasion.

3.17.3 We certainly do not think that it would be appropriate for the maximum sentence for a strict liability offence to exceed six months. However, we question whether sentences limited to that short period would fulfil the Government’s objective (stated in paragraph 2.4 of the Consultation) of creating a ‘tough response, both to build the deterrent effect for those engaged in offshore evasion and in order to visibly demonstrate to the compliant majority that the Government is
taking action against those who unfairly cheat the tax system’. If a custodial sentence of six months was imposed in a case that involved hundreds of thousands of pounds of lost revenue, we cannot think that others engaged in or contemplating evasion would necessarily be deterred or that the compliant majority would be greatly reassured. We think that the Government’s message would be much more effectively delivered by a successful prosecution upon indictment (ie in the Crown Court rather than the magistrates’ court) that resulted in a sentence that comprised both a substantial financial sanction and a custodial sentence of significantly more than six months.

3.17.4 According to GOV.UK, ‘A prisoner serving a determinate sentence is normally released automatically halfway through their sentence’. That adds to the relevance of our comments in 3.17.3 above. We understand (from the Sentencing Guidelines Council’s publication New Sentences: Criminal Justice Act 2003 Guideline) that a magistrates’ court may decide to suspend any sentence of no more than six months. That possibility would also need to be taken into account in considering the deterrent effect of the new offence.

3.18 Safeguards and defences

Should it be a defence for (i) a person to demonstrate that they had taken reasonable care in conducting their tax affairs, or (ii) a person to demonstrate that they had sought and followed appropriate professional advice? What would be the impact on the likelihood of successful prosecutions if statutory defences are included? [5.8]

3.18.1 Yes. We think that it would be appropriate for reasonable care and the seeking of appropriate professional advice to constitute defences.

3.18.2 We do not think that the inclusion of such statutory defences would impact the likelihood of prosecutions being successful although HMRC would obviously need to consider the strength of such possible defences before deciding to prosecute.

3.18.3 If the defences were not specifically provided for by statute, we think that the court would effectively factor them into their consideration of the appropriate sanction (even if the HMRC officer did not first do so in considering whether prosecution was appropriate). That could result in light touch sanctions which would undermine the perception of the offence so there should be no disadvantage to HMRC by including the statutory defences.

3.19 Should any other statutory defences be introduced? [5.9]

3.19.1 We understand that there are general defences (such as duress) that are applicable to the majority of criminal offences. We are assuming that these would all be available in relation to the new strict liability offence without specific provision in the legislation. [We mention duress as we can envisage situations where a domineering family member might effectively compel another family member to fail to disclose an offshore account.]

3.19.2 We think that consideration should be given to the possibility that a taxpayer might not even be aware that an investment or account was an offshore one or that it was in a higher category jurisdiction. Such situations might be unusual but we can see how they might arise – for example if the particular account or investment was within some wrapper or package arrangement.
3.20 Are further safeguards appropriate? What should these be? [5.16]

3.20.1 We have not identified any but that does not mean that there are none.

3.21 Assessment of impacts

Do you have any views, comments or evidence which may help inform our understanding of likely impacts? [Page 28]

3.21.1 The ‘Impact on HMRC or other public sector delivery organisations’ section of the Impact Assessment states:

‘The operational impact of investigating the new criminal offence has not yet been quantified in detail. This will depend on the parameters of the new offence and the number of cases.’

It goes without saying that the impact on HMRC will depend on the parameters of the new offence and the number of cases that are considered for prosecution. However, unless there is going to be a sufficient number of cases to make a significant impact on HMRC’s limited resources, we would seriously question the merit of introducing such potentially problematic legislation in the first place.

3.21.2 Consideration should also be given to the potential impact on the court system. We would expect any prosecution under the strict liability offence to place significant demands on court time and resources.

3.22 Do you have any views, comments or evidence which may help inform our understanding of likely equalities impacts? [Page 28]

3.22.1 We have not identified any but that does not mean that there are none.

4 Summary

4.1 We have responded to all the Consultation questions. Their detailed and varied nature makes summary of our answers inappropriate.

4.2 In addition to our answers to the specific questions, we have raised other points in this response. These largely centre upon the common themes of:

- the practicality of the proposal to introduce a strict liability offence;
- the identification of the types of case where prosecution will be considered appropriate;
- the implications for HMRC resources;
the inter-relationship of the strict liability offence with both the civil penalty regime (in its strengthened form) and the existing criminal sanctions available to the courts upon indictment.

4.3 We strongly recommend the provision of a well-publicised ‘last chance’ general disclosure facility in advance of the introduction of the strict liability offence.

4.4 We would be pleased to join in any discussion with HMRC in relation to these very fundamental proposals including any more detailed consideration of the threshold. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Will Silsby, on 01905 612098 or at: wsilsby@att.org.uk.

Yours sincerely

Paul Hill
Chairman, ATT Technical Committee

5  Note

5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 7,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.