HM Revenue & Customs

Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures

Consultation document
Publication date: 5 December 2016
Closing date for comments: 27 February 2017

Subject of this consultation:	A proposed new legal requirement that intermediaries creating or promoting certain complex offshore financial arrangements notify HMRC of their creation.
Scope of this consultation:	This consultation aims to establish the high level design principles for a proposed legal requirement on businesses that create or promote certain complex offshore financial arrangements to notify HMRC of their creation, and provide a list of clients using them. Clients in their turn would be expected to notify HMRC of their involvement via a notification number on their personal tax account.
Who should read this:	This consultation will be of interest to advisors, agents or businesses who create or promote complex offshore financial arrangements, and individuals who use such arrangements.
Duration:	5 December 2016 – 27 February 2017
Lead official:	Jess Pearce, Centre for Offshore Evasion Strategy, HMRC
How to respond or enquire about this consultation:	consult.nosafehavens@hmrc.gsi.gov.uk or by post to: Dr Jess Pearce 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 early in 2017. Should the decision be taken to proceed, a further consultation would take place on the details.
Getting to this stage:	This consultation takes forward HMRC's strategy for tackling offshore tax evasion, *No Safe Havens* (as updated in 2014).
Previous engagement:	None.

Contents

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille format

1. Executive Summary

The structure of this consultation document

1.1 This consultation document sets out a proposal to require businesses who create certain complex offshore arrangements to notify HM Revenue and Customs (HMRC) of the details of such arrangements, and provide HMRC with a list of clients using them. The government recognises that in many cases these arrangements are used for legitimate purposes. The measure aims to target those arrangements which could easily be used for tax evasion purposes. Businesses would be provided with a notification number which they will in turn provide to their clients. Clients would be expected to include this number on their self-assessment tax return/on their personal tax account. Those who fail to comply with these requirements would incur civil sanctions.

1.2 We have structured this document as follows:

- Chapter 2 sets out the government's offshore tax evasion strategy, No Safe Havens (as updated in 2014) and an overview of recent policy changes.
- Chapter 3 sets out the policy rationale and objectives, including examples of the types of structure this measure intends to target.
- Chapter 4 sets out the high level design questions that will need to be addressed in agreeing the scope of the policy.
- Chapter 5 provides a summary of all questions.
- Chapter 6 provides an overview assessment of the impacts of the measure.

2. Introduction

The government's offshore tax evasion strategy

2.1 The government's No Safe Havens strategy (as updated in 2014) defined offshore tax 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 tax evasion:

- 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 tax evasion.

2.3 In the past it was very difficult for HMRC to detect offshore tax evasion or other forms of offshore non-compliance. However, following the government's work with international partners, the Common Reporting Standard (CRS) is already providing greater levels of information about offshore accounts, trusts and shell companies that will be available for use in detecting irregularities with offshore income or gains. Over 100 countries are currently committed to automatically exchange financial account information. For the 54 early adopters (including the UK), these exchanges will take place by 2017 with all others exchanging by 2018.

2.4 In addition to the CRS, the UK is leading the way in working with more than 50 jurisdictions to develop an initiative for the systematic sharing of beneficial ownership information following an announcement in April 2016 on a G5 pilot (UK, Germany, France, Italy and Spain). The UK published its own register of company beneficial ownership in June 2016.

2.5 In light of these measures, our approach is changing. The government has signalled its ambition to be tougher on those with offshore compliance issues, and those who enable offshore non-compliance.

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 offence removes the need to prove intent for the most serious cases of failure to declare offshore income and is included in Finance Act 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 Act 2016 introduced 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 tax evasion* – Finance Act 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. This offence is included in the Criminal Finances Bill currently being considered by Parliament.
- From 24 August to 19 October 2016 a consultation was open 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.

2.7 This extensive package of measures represents a significant toughening of the government's approach to tackling offshore tax evasion and its enablers. The introduction of CRS and other data sources signals a new era of global tax transparency. However, the government recognises that there is still more that could be done to increase tax transparency and specifically to target those who are enabling offshore tax evasion.

2.8 Recent high-profile data leaks have highlighted how frequently an 'enabler', a third party such as an accountant, law firm, advisor or wealth manager is involved in facilitating offshore tax evasion on the part of an individual. A single enabler may support a number of individuals in evading tax. Tackling these enablers will provide an additional tool to tackle offshore tax evasion on a "one to many" basis.

2.9 Despite the increase in international tax transparency engendered by exchange of information agreements, more can be done. More information is needed to understand highly complex offshore arrangements, especially where beneficial ownership is being deliberately hidden, making it difficult for financial institutions to establish the identity of the beneficial owner.

2.10 With this in mind, the government is consulting on a new measure. Currently, people seeking to hide their money offshore may be helped by businesses who create complex financial arrangements. While in many cases these arrangements are used for legitimate purposes, in some cases they may conceal the beneficial owner or the flow of money for tax evasion purposes.

2.11 The new measure would require that businesses who create certain, defined types of complex offshore arrangements notify HMRC with details of the arrangement, and provide HMRC with a list of clients using it.

This Consultation

2.12 This consultation seeks your views on the high level design principles, and the risks and benefits of such a requirement.

2.13 If, following consultation, the decision is taken to proceed, it is anticipated that there would be further public consultation on the details of the notification obligations.

3. Policy Rationale & Objectives

3.1 Currently, people seeking to hide their money overseas may be helped by businesses who create complex financial arrangements. While in many cases these arrangements are legitimate, and put to legitimate use, in some cases these arrangements may be used or misused for tax evasion purposes.

3.2 In relation to UK tax avoidance we have two regimes which require certain persons to notify the existence of the arrangements and any persons who implement them. The Disclosure of Tax Avoidance Schemes (DOTAS) regulations are currently in force, and in Finance Bill 2017, the government is introducing a new VAT Disclosure Regime. We see potential benefits in developing a similar regime to provide information about certain offshore arrangements.

3.3 This new measure would require the business which creates or promotes specified offshore arrangements, to notify HMRC of the details of that arrangement, and of the clients using it. Should the creator/promoter fail to notify, responsibility would lie with the client. This would increase transparency around these arrangements and their usage, allowing HMRC to improve its ability to assess risk; targeting the non-compliant minority who undercut and disadvantage legitimate businesses, and tackling individuals who misuse the structures to evade tax.

3.4 This information would improve HMRC's ability to assess risk on several fronts. Understanding how such arrangements are structured would allow the department to assess the use of the structure in its entirety, giving an end to end view of the flow of money and a clearer picture of who benefits from the arrangement.

3.5 The information would be used in line with HMRC's Promote, Prevent, Respond strategy, through the creation of educational material to raise awareness and promote voluntary compliance. By requiring both the promoter to notify and the client to supply HMRC with a notification number provided by HMRC in response to the notification, the measure would prevent non-compliance by creating a system of checks and balances. This would discourage both creators and users of such arrangements from attempting to conceal the arrangement from HMRC.

3.6 Data on the individuals who use these arrangements will enable HMRC to better target their compliance activity. By quickly identifying those who use offshore financial arrangements for legitimate purposes, HMRC can focus its resource on the minority who are using or misusing such arrangements to conceal money or assets overseas.

3.7 Data on the creators and promoters of complex offshore financial arrangements would also improve HMRC's ability to identify and therefore to target enablers of offshore tax evasion. The policy would provide a deterrent both to those undertaking and to those enabling offshore tax evasion.

3.8 A better understanding of how complex offshore arrangements are structured will support HMRC in identifying and excluding legitimate typologies from this

initiative. This will enable HMRC to identify structures or arrangements that ministers may want to address through changes in legislation.

3.9 Offshore tax evasion is a crime. In recent years the government has taken an tough stance on those who hide their money overseas, and those who enable this. The new policy sends a strong message about the government's willingness to crack down on enablers of offshore tax evasion.

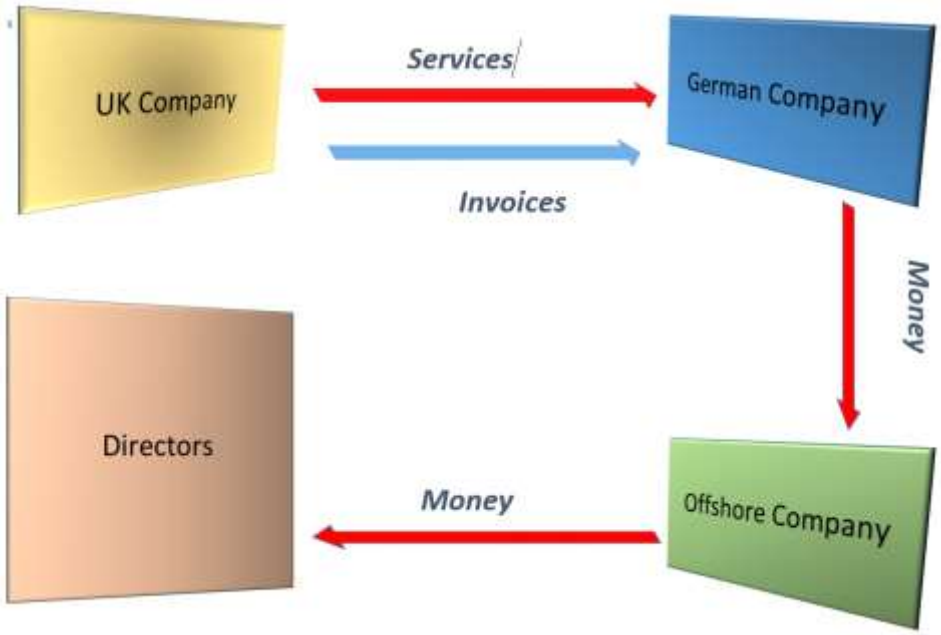
3.10 Work undertaken by HMRC's Risk Intelligence Service, and by HMRC in partnership with other countries through the Organisation for Economic Co-operation and Development, has identified a significant number of instances where complex offshore arrangements are used to evade UK tax.

3.11 These arrangements can frequently be classified under broad typologies; some examples of these typologies can be found below. This set of generic examples is designed to facilitate discussion on how the proposal might work in practice. Should the decision be taken to proceed with this proposal, further consultation will be invited on specific characteristics which should be targeted. At this stage, we would welcome views on how such arrangements might be captured.

3.12 We recognise that in some instances these examples may be captured under international information exchange initiatives. However, in some cases these arrangements would not be captured, or it would be difficult to see and understand the arrangement in its entirety.

3.13 **Example 1: Ms A and Mr B**

Ms A and Mr B were the shareholders and directors of a UK robotics company, A&B Robotics. Both Ms A and Mr B were UK resident and domiciled in the UK. A&B Robotics had business with companies in the UK and a company in Germany. Ms A and Mr B used a Jersey Company Service Provider to set up a British Virgin Islands (BVI) company with a name indistinguishable from that of the UK Company. A&B Robotics Ltd issued invoices to the German customer but Ms A and Mr B then diverted payments into the offshore bank account of the BVI company. A&B Robotics Limited (UK) didn't declare the income from the German contracts which were diverted to the BVI company.

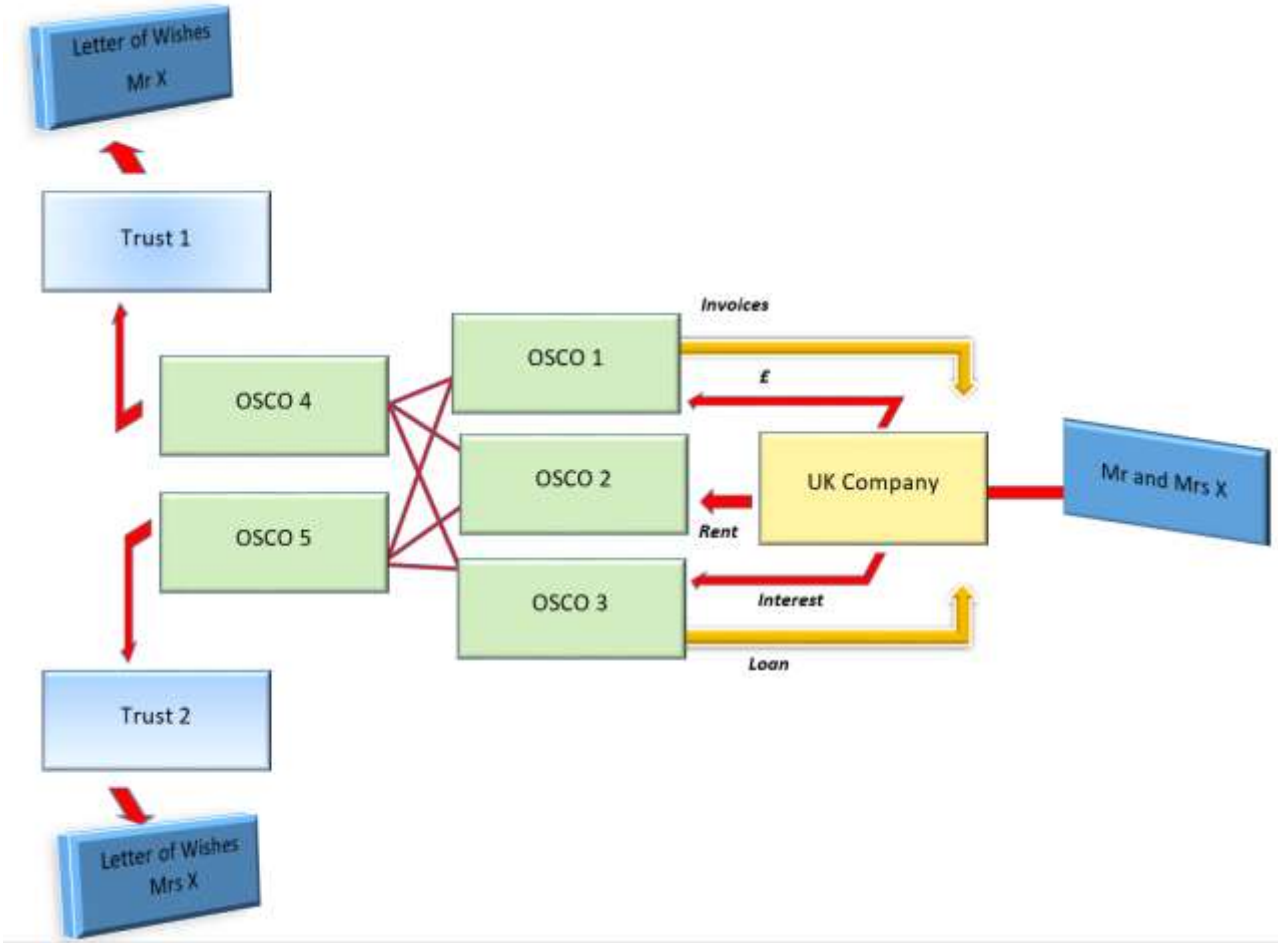


3.14 **Example 2: Mr and Mrs X**

Mr and Mrs X were directors of a UK food distribution business. Both were resident in the UK but non domiciled. Using an overseas agent and a UK accountant the Xs set up a network of offshore companies to extract money from the UK and protect their wealth:

- OSCO 1 – a company inserted into the supply chain to artificially increase the cost of all purchases.
- OSCO 2 – a company that owned and rented the business premises to the UK Company. It was funded from OSCO 1
- OSCO 3 – a company that provided back to back financing via a Jersey bank for a loan obtained by the UK Company. It was funded from OSCO 1
- OSCO 4 – a company holding shares in 1,2 and 3
- OSCO 5 – a company holding shares in 1,2 and 3

The Xs owned the whole structure by virtue of trusts. The UK profitability of the UK food distribution company was suppressed by the artificial cost of purchases together with rental income and interest payments from connected offshore companies.

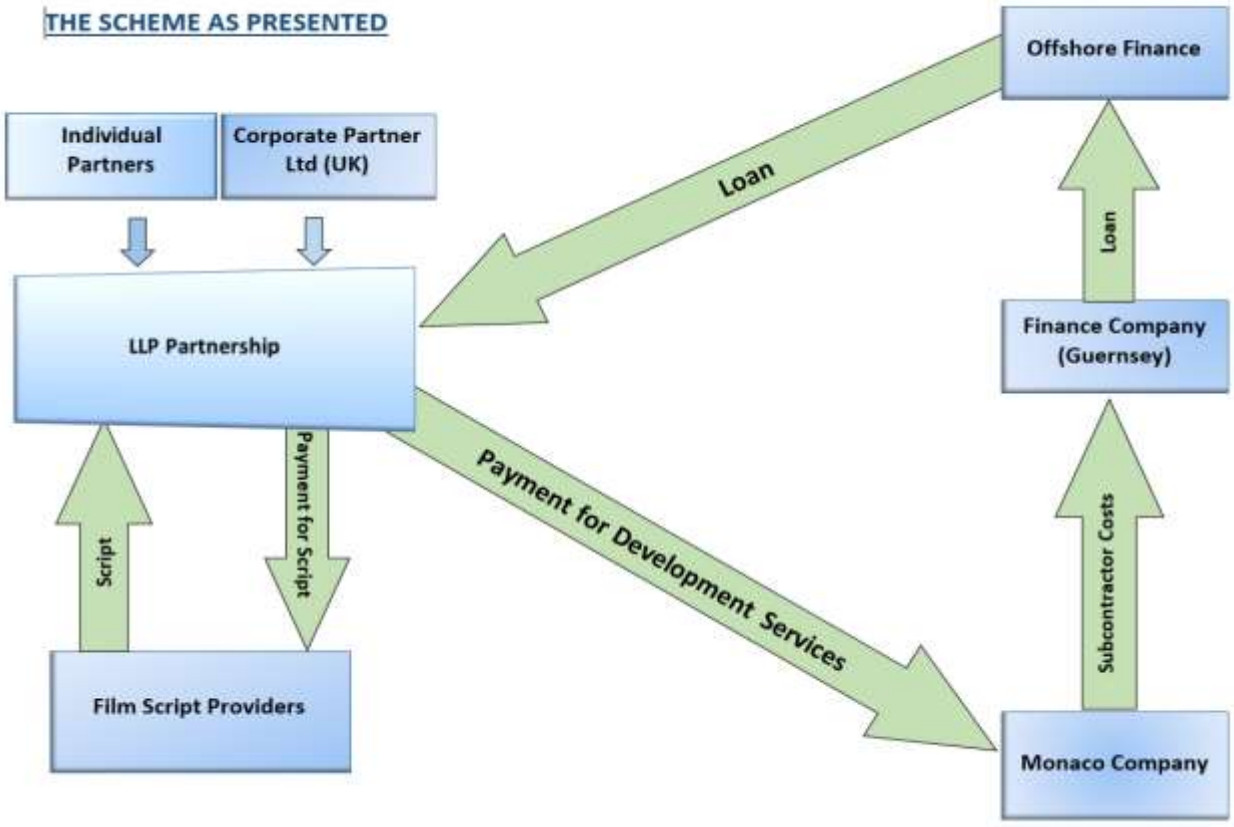


3.15 **Example 3: Lucky Chance Films**

Lucky Chance Films were promoters within the film industry. They were representative partners in a scheme they devised and promoted to wealthy individuals. The individuals invested in the partnership. The partnership acquired rights to film scripts, paying around £50,000 per film. It entered into an agreement with a Monaco company for it to provide film development services at approximately £1 million per film. The balance of the money for each film between the investors' money and that sent to Monaco was met by a loan, to the investors, from a Guernsey company.

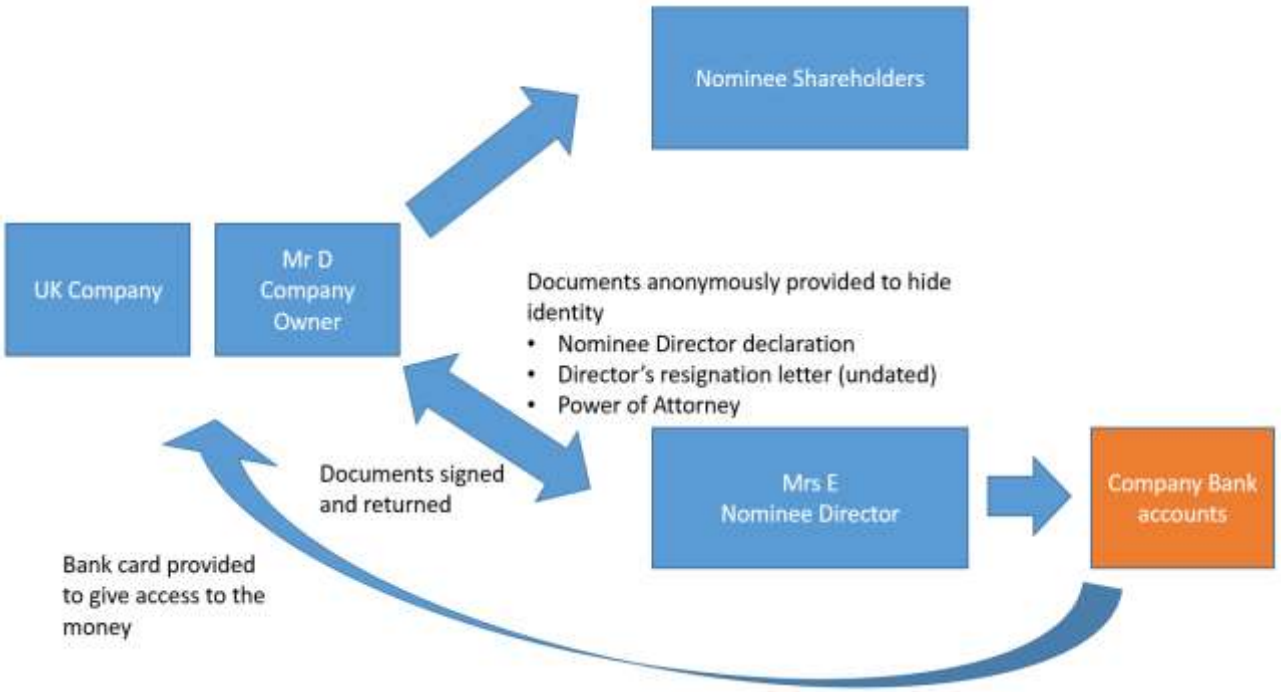
The Monaco company then subcontracted the services to a company operating from Guernsey. (The same £1 million less charges). The Guernsey company did not actually provide the services. The money it had received, less charges, was lent on to another Guernsey company.

This company then lent the money back to the partnership in the UK. The partnership then "invested" in more films, none of which were actually made, repeating the cycle over and over again. As would be expected, the "business" was not successful as no films were made and no film development service actually purchased. Instead the money circulated around the structure generating losses on the money paid to Monaco purportedly for film development services. The partnership claimed to have made a loss on the payments to Monaco and the investors received tax repayments/reductions greater than their investment.



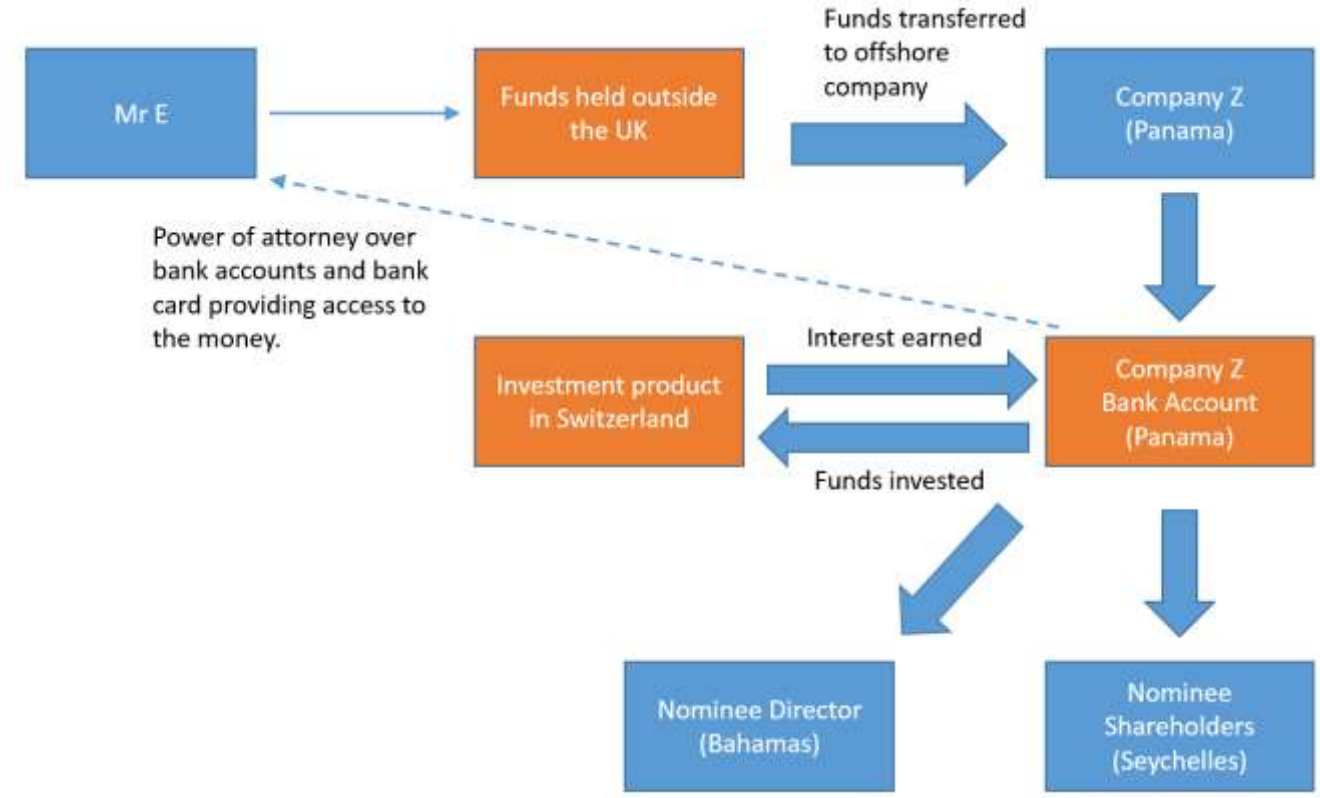
3.16 **Example 4: Mr D**

Mr D was a UK company owner, resident and domiciled in the UK. He wished to conceal his ownership of a company. He used a bank in the Cayman Islands to appoint nominee shareholders and a nominee director, Mrs E. Mr D sent Mrs E three documents, a nominee director declaration (where the nominee promises to act only as directed by the owner), a director's resignation letter (which, left undated, allows a nominee to escape liability, as well as enabling the owner to drop the nominee at any time), and a power of attorney ceding control back from the nominee to the owner. Mrs E signed all three documents, leaving the resignation letter undated, and returned them to Mr D. She was the signatory on all official documents relating to the company, and opened a company bank account, providing Mr D with a bank card so he was able to access money in the account. Mr D even elected to keep his identity secret from Mrs E by using a courier to transport documents.



Example 5: Mr E

3.17 Mr E had money outside the UK which he wanted to hide from the tax authorities. He transferred the money to company Z which was incorporated in the British Virgin Islands with nominee shareholders in another jurisdiction and nominee directors in a third. Company Z invested the money in a bank account in yet another country earning interest. The intermediary who devised the structure arranged for Mr E to be given power of attorney over the bank account and a bank card so he could access the money from the UK if he chose to. Although he remained beneficial owner of the money and the interest being earned Mr E did not declare the interest on his UK tax returns.



4. Scope of Proposals

4.1 In this section we outline proposals for the high-level principles of the policy. This consultation is focused on the policy concept, rather than detailed design characteristics. We are interested in views on how the policy could be designed in broad terms. If the decision is taken to proceed, interested parties would be offered the opportunity to comment on the specifics of design in a further consultation.

The basic concept

4.2 Businesses, agents, advisers or any other person who creates offshore arrangements for UK taxpayers that exhibit certain characteristics specified by HMRC would be required to notify HMRC of the creation of these arrangements and of any clients using them. These characteristics would be the subject of a further consultation. Clients using these arrangements would also be required to notify HMRC on their tax returns or through their personal tax accounts.

The proposal

4.3 In the first instance, the requirement to notify would sit with the person/business who created a specified arrangement (henceforth referred to as the creator). HMRC will specify in legislation the defining characteristics by which arrangements that are in scope of the measure will be identified. The characteristics will be carefully defined to target only those arrangements which could easily be used for tax evasion purposes. The creator would be responsible for establishing whether the arrangement they have created has any of the characteristics specified by HMRC.

4.4 We envisage that this would apply to creators both within and outside the UK, as to exclude offshore creators would significantly reduce the impact of the proposal, however we would welcome views on whether offshore creators should be in scope.

Q1: Should the proposal apply only to UK-based persons/businesses who create offshore arrangements, or should offshore persons/businesses also be in scope?

4.5 The broader scope would align the proposal with the approach taken under DOTAS, where DOTAS identifies a promoter and applies a duty to that person or business, regardless of where they are based. However under DOTAS the rules only apply to the extent that the scheme enables or is expected to enable a UK tax advantage to be obtained.

4.6 Such a rule would be inappropriate for this measure as many of the arrangements used for tax evasion purposes do not have any tax impact if the taxpayer properly declares their taxable income and gains. Instead, for example, the arrangements can be used for tax evasion by making it difficult to identify the taxpayer as the beneficial owner. The taxpayer then fraudulently omits the income and gains from their tax return. Where the taxpayer completes their returns accurately, such arrangements can have no tax impact at all.

4.7 We recognise that arrangements which distance legal and beneficial ownership do have legitimate uses. In addition, the person/business designing and implementing these arrangements may well believe that they are being used for legitimate purposes whether that is the case or not. The fact that an arrangement has characteristics which render it notifiable to HMRC does not mean it is being used for tax evasion purposes, or that it is somehow egregious. However it is at risk of being used or misused for tax evasion purposes. Notifying HMRC of its creation will ensure that it is possible to check that it is only put to legitimate use.

4.8 Information provided to HMRC under this proposal will, like all taxpayer information, be subject to the strict confidentiality rules set out in law[1].

4.9 As this proposal is not predicated on the identification of arrangements that seek a UK tax advantage, an alternative scope would be needed. Options could include identifying the types of arrangements or clients who are in scope then setting out the characteristics that arrangements must demonstrate to be notifiable.

Q2: How should HMRC define the scope according to which both UK-based and non-UK-based persons/businesses would be liable to report?

4.10 HMRC would target this policy at those arrangements most likely to be used or misused to hide money overseas by specifying identifying characteristics, or hallmarks.

4.11 If the arrangement demonstrates certain characteristics, the creator would be liable for notifying HMRC of the arrangement within a specified timeframe, providing details of the arrangement, and a list of clients using it. They would be required to advise their clients that they have taken this action and provide clients with a notification number. Details of the arrangement that must be notified could include:

- Details of all the entities involved in the arrangement
- Which characteristic(s) in the notification rules the arrangement displays
- The transactions involved in the arrangement and their nature (for example loans, subscriptions for share capital etc), and
- The purpose of the arrangement and an explanation of how it achieves this purpose.

4.12 Should the creator fail to notify HMRC, the responsibility for notifying HMRC of the arrangement, and of the list of clients involved, would fall to any promoter or marketer of the arrangement. The promoter/marketer would be responsible for establishing whether the arrangement meets specific criteria, and for providing details of it to HMRC, along with their client list. They would also be responsible for advising clients that they have taken this action and of the notification number.

4.13 Creators and promoters/marketers who failed to comply with the requirement would face civil sanctions such as a penalty, as well as other options including public naming.

[1] Sections 18 to 20 Commissioners for Revenue and Customs Act 2005

4.14 Should both the creator, and any promoter/marketer of the arrangement fail to comply with the requirement, then the responsibility for notification would fall to the client using the arrangement. It would be the client's responsibility to notify HMRC of the details of the arrangement.

4.15 At the point of notification, HMRC would provide a unique reference number by which the arrangement could be identified. The creator, promoter or marketer who made the notification would be required to provide this reference number to any client using the arrangement. If it is the client who notifies HMRC of the arrangement, the client would be provided with the reference number. All clients who are provided with a reference number would be required to enter the reference number on their self-assessment return/into their personal tax account.

4.16 Any clients becoming involved in existing arrangements which have a unique reference number attached would be provided with the number and required to enter it onto their self-assessment return/into their personal tax account. Creators would be required to notify HMRC of any new clients becoming involved in existing arrangements.

Q3: Are there any key circumstances missing from the proposed concept and can you see any opportunities to improve on this basic concept?

Q4: Do respondents have any concerns about this approach?

Q5: Are there any other approaches we could consider?

Which arrangements would have to be notified to HMRC?

4.17 The full details of the policy design, including the specific characteristics by which an arrangement would be made subject to notification (henceforth referred to as hallmarks), would be the subject of a future consultation, if the decision is taken to proceed. However we set out the key principles we are considering below and would welcome views.

4.18 One policy objective is to increase transparency by giving HMRC information and insight into a range of complex financial arrangements. This would be targeted at those which could be used or misused for tax evasion purposes, recognising that such arrangements could also be wholly legitimate. Examples of such arrangements are included at Chapter 3.

4.19 While no hallmarks have yet been devised, the hallmarks would be used to maximise the policy's ability to meet its objectives. For example straightforward transactions such as the purchase of shares in a company based in another country might be expected to be exempt from notification as such a transaction is unlikely to be one which, on its own, could easily be used for tax evasion purposes. The hallmarks will be carefully targeted in order to avoid imposing an unreasonable compliance burden on intermediaries and taxpayers.

4.20 Similarly, we do not want to duplicate existing reporting requirements, for example the CRS or the DOTAS rules. We are therefore considering ways to ensure this measure provides only additional information to HMRC.

4.21 The policy would support HMRC's efforts to target the non-compliant minority who use or abuse complex offshore financial arrangements in order to evade

tax, and the hallmarks would be expected to enable this. Potential hallmarks might include but are not limited to the following:

- Arrangements which have the effect of moving money outside of CRS reporting, either through the use of different jurisdictions or non-reportable products and/or structures.
- Arrangements which have the effect of obscuring or distancing legal and beneficial ownership (for example through the use of a power of attorney or nominees)
- Arrangements which, if defeated, would incur an increased penalty.

4.22 We expect that flexibility will be needed in setting the hallmarks so that we can learn from experience and adapt them as new arrangements emerge.

Q6: Can you suggest any hallmarks to identify which arrangements would be subject to notification?

Q7: Do respondents have any concerns about the use of hallmarks to identify which arrangements would be subject to notification?

Q8: Are there any other approaches we could consider?

Breadth of scope for the proposal

4.23 We do not believe that the scope of this proposal should be defined by which taxes are impacted. For example, some of the arrangements may have no tax impact if used correctly or may be used for different reasons. In addition the intermediary setting up the arrangement might not be aware of the possible tax implications as, unlike tax avoidance schemes, tax might not be the focus of their design (for example, keeping beneficial ownership confidential could be the focus). Instead of specifying the taxes involved, it might be appropriate to specify the types of arrangement or UK person that would be within scope. For example, the measure could apply where the client is a UK individual. However, as the examples included above show, companies and partnerships can also be involved.

4.24 We envisage that the requirement would apply to arrangements with an offshore element. However, there is scope to broaden the requirement to cover any arrangements provided they meet one or more of the hallmarks. This extension of scope would be appropriate only if there is evidence that onshore arrangements are used to facilitate tax evasion.

Q9: Should the requirement be limited to offshore?

4.25 We envisage that the requirement would apply to arrangements marketed or supplied to individuals. However, there is scope to broaden the requirement out to cover corporates.

Q10: Should the requirement be limited to individuals?

Q11: Are there any further opportunities to change the scope of the measure in order to maximise its effectiveness?

Further issues for consideration

4.26 The policy will explicitly target arrangements which could be used or misused for tax evasion purposes. There are some further factors which would need to be taken into consideration when designing this policy and the hallmarks.

Legal professional privilege

4.27 In common law jurisdictions, legal professional privilege protects communications between a professional legal adviser (a solicitor, barrister or attorney) and his or her clients from being disclosed without the permission of the client. The privilege is that of the client and not that of the lawyer. Similar protections also exist in other jurisdictions. We recognise that this issue exists, but do not believe it to be insurmountable.

4.28 The proposal could follow the approach taken in DOTAS. Arrangements promoted by lawyers are within the scope of DOTAS in the same way as arrangements promoted by others. However, where a promoter who is a lawyer is prevented by reason of legal professional privilege from providing the information needed to make the disclosure, the duty to disclose is lifted unless the client choses to waive legal privilege. If privilege is not waived, then unless there is another promoter who has an obligation to disclose the scheme, the arrangements must be disclosed by any person in the UK who enters into any transaction forming part of them.

Q12: In your view, what impact will issues of Legal Professional Privilege have on the effectiveness of the requirement?

Q13: How might HMRC address the issue of Legal Professional Privilege?

UK resident but non-domiciled individuals

4.29 Like other taxpayers, UK resident but non domiciled individuals, may order their financial affairs through complex offshore structures to remain compliant with UK tax law, or for non-tax purposes such as privacy. Non-domiciled individuals may see this measure as unnecessary for them as they may not be taxable on income and gains arising outside the UK. It is important that the proposal has the appropriate coverage to make an impact, and information is needed by HMRC to risk assess non-domiciled individuals who are still liable for UK tax. Any attempt to exclude non-domiciled individuals is also likely to require the intermediaries involved to establish the tax status of UK individuals who are their clients. This would be burdensome and possibly involve the individual disclosing confidential information. For similar reasons, the Common Reporting Standard applies in respect of all individuals and does not distinguish non-domiciled people. We therefore propose to include UK resident but non-domiciled individuals in the scope, but would welcome views on the impact.

Q14: In your view, what impact will this measure have on UK resident but non-domiciled individuals?

Q15: How might HMRC address the impact on UK resident but non-domiciled individuals?

Existing structures when the rules commence

4.30 Under the CRS, jurisdictions will start to collect data from 1 January 2017 at the latest so that data for the calendar year 2017 can be exchanged with other jurisdictions by the end of September 2018. Tax evaders who have hidden their assets outside the UK to avoid detection may well take steps to try and evade CRS reporting. As mentioned above, one hallmark might well concern arrangements that avoid CRS reporting to help tackle this issue.

4.31 Where a taxpayer enters into an arrangement to avoid CRS reporting they will have to do this before 31 December 2016 at the latest, so their data is not collected. If the proposal in this consultation goes ahead, it will not be in force at 31 December 2016 . If this proposal only applies to new arrangements after it comes into force, any arrangements entered into in order to avoid CRS reporting will not be caught. We think this would seriously undermine the policy's effectiveness so believe it should also apply to existing arrangements.

Q16: Do you agree the measure should apply to existing arrangements and not just new ones?

4.32 We would welcome views on any other considerations around designing such a requirement, and invite respondents to share any more general comments not covered under the specific questions above.

Q17: In your view, are there any other considerations that HMRC should take into account when considering the feasibility and design of a requirement to notify HMRC of offshore structures?

5. Summary of Questions

Q1: **Should the proposal apply only to UK-based persons/businesses who create offshore arrangements, or should offshore persons/businesses also be in scope?**

Q2: **How should HMRC define the scope according to which both UK-based and non-UK-based persons/businesses would be liable to report?**

Q3: **Are there any key circumstances missing from the proposed concept and can you see any opportunities to improve on this basic concept?**

Q4: **Do respondents have any concerns about this approach?**

Q5: **Are there any other approaches we could consider?**

Q6: **Can you suggest any hallmarks to identify which arrangements would be subject to notification?**

Q7: **Do respondents have any concerns about the use of hallmarks to identify which arrangements would be subject to notification?**

Q8: **Are there any other approaches we could consider?**

Q9: **Should the requirement be limited to offshore?**

Q10: **Should the requirement be limited to individuals?**

Q11: **Are there any further opportunities to change the scope of the measure in order to maximise its effectiveness?**

Q12: **In your view, what impact will issues of Legal Professional Privilege have on the effectiveness of the requirement?**

Q13: **How might HMRC address the issue of Legal Professional Privilege?**

Q14: **In your view, what impact will this measure have on UK resident but non-domiciled individuals?**

Q15: **How might HMRC address the impact on UK resident but non-domiciled individuals?**

Q16: **Do you agree the measure should apply to existing arrangements and not just new ones?**

Q17: **In your view, are there any other considerations that HMRC should take into account when considering the feasibility and design of a requirement to notify HMRC of offshore structures?**

6. Assessment of Impacts

Summary of Impacts

5.1 Please note we will not be able to fully quantify the impact until after consultation, when the scope of the policy has been clarified, 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
	This measure is expected to have a negligible impact on the Exchequer. The final costing will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	This measure will have an impact on individuals only when they buy a complex offshore financial structure. The measure is not expected to impact on family formation, stability or breakdown.				
Operational Impacts	The impact on HMRC resources will be considered further once the proposals are fully developed.				
Equalities impacts	Any affected equality groups are likely to be those represented amongst those with offshore assets or interests.				
Impact on businesses and Civil Society Organisations	This measure will have no impact on civil society organisations; it will only impact on businesses that create or promote complex offshore financial arrangements, who will be required to notify HMRC of the creation of these arrangements, and the list of clients to whom they have provided them.				
Other impacts	Other impacts have been considered and none have been identified.				

7. The Consultation Process

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 stage 1 of the process. The purpose of the consultation is to seek views on the feasibility and high level design principles of the consultation.

How to respond

A summary of the questions in this consultation is included at Chapter 5.

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

Dr Jess Pearce
HMRC Centre for Offshore Evasion Strategy
Room 1C/26 100 Parliament Street
London
SW1A 2BQ.
Telephone enquiries can be addressed on 03000 580071 (from a text phone prefix this number with 18001).

Please do not send consultation responses to the Consultation Coordinator.

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.

Confidentiality

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.

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 confidentially 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).

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

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

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.