**EXPLANATORY MEMORANDUM TO**

# THE OFFSHORE ASSET MOVES PENALTY (SPECIFIED TERRITORIES) (AMENDMENT) REGULATIONS 2024

**2024 No. 1195**

## 1. Introduction

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

## 2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 John Shuker, Deputy Director for the International Collaboration and Transparency Team at HMRC confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Oliver Pizer at HMRC Telephone: 03000 514112 or email: oliver.pizer@hmrc.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 This instrument amends the Offshore Asset Moves Penalty (Specified Territories) Regulations 2015 (SI 2015/866) ("the 2015 Regulations"). It amends the Schedule of territories defined as a "specified territory" for the purposes of determining whether a "relevant offshore asset move" has occurred.

***Where does the legislation extend to, and apply?***

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

## 5. Policy Context

***What is being done and why?***

5.1 HMRC may charge penalties in certain cases where income, gains and chargeable transfers of assets etc. are not declared or notified to HMRC. The maximum and minimum penalties vary according to the extent the jurisdiction to which the non-compliance relates meets international standards for the exchange of tax information with the UK. The higher penalties apply where, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance.

5.2 As more territories enter into agreements to exchange UK residents' overseas financial account information automatically with the UK under the Common Reporting Standard[1], there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements. 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.

5.3 Schedule 21 to the Finance Act 2015 (c. 11) ("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. Territories were originally 'specified' once they had committed to exchanging information under the Common Reporting Standard. The amendments made by these Regulations update the list to reflect territories that are committed and expected to exchange information with the UK under the Common Reporting Standard.

***What was the previous policy, how is this different?***

5.4 Changes are required to reflect territories that are committed and expected to exchange information under the Common Reporting Standard with the UK. There is no change in the policy.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 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 1 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.

6.2 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".

6.3 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.

6.4 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 2015 Regulations to remove three territories (Bonaire, Sint Eustatius and Saba, Russia, Trinidad and Tobago) originally specified in the 2015 Regulations (so that those territories become non-specified) and to add seventeen others (Albania, Azerbaijan, Ecuador, Georgia, Jamaica, Kazakhstan, Kenya, Maldives, Moldova, New Caledonia, Nigeria, Oman, Pakistan, Peru, Taiwan, Thailand, Ukraine), that were not

[1] The global standard for the automatic exchange of financial account information

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.

***Why was this approach taken to change the law?***

6.5 This is the only possible approach to make the necessary changes.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 A consultation document entitled Tackling offshore tax evasion: Strengthening civil deterrents was published on 19 August 2014. A summary of responses was published on 10 December 2014. Most of the respondents 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 committed to the Common Reporting Standard. This instrument simply amends the list of specified territories to reflect the policy intention, therefore there was no consultation on these changes.

## 8. Applicable Guidance

8.1 HMRC has produced guidance in relation to the 2015 Regulations which is accessible on the gov.uk website[2].

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

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A Tax Information and Impact Note has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards with minimal impacts on business.

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the legislation will only apply in cases where deliberate non-compliance has taken place and assets have been moved to prevent or delay the discovery by HMRC.

9.3 The legislation does not impact compliant small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the legislation only applies to deliberate non-compliance relating to income tax, capital gains tax and inheritance tax, where a relevant offshore asset move has occurred to prevent or delay discovery by HMRC.

[2] Guidance to the 2015 Regulations: https://www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch119000

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The operation of the 2015 Regulations and this instrument listing "Specified territories" will be monitored through information collected in compliance work to ensure that they operate as intended.

10.2 The instrument does not include a statutory review clause in accordance with section 28(3)(a) of The Small Business, Enterprise and Employment Act 2015 because the power by which this instrument is made is being exercised to make or amend provisions imposing, abolishing, or varying any tax duty, levy, or other charge or provisions in connection with such provisions.

## Part Three: Statements and Matters of Particular Interest to Parliament

## 11. Matters of special interest to Parliament

11.1 None.

## 12. European Convention on Human Rights

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

## 13. The Relevant European Union Acts

13.1 This This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").