EXPLANATORY MEMORANDUM TO

THE OFFSHORE ASSET MOVES PENALTY (SPECIFIED TERRITORIES) REGULATIONS 2015

2015 No. 866

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty

2. Purpose of the instrument

2.1 The purpose of these Regulations is to specify the 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.

2.2 These Regulations come into force on 27th March 2015.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations are made upon the first exercise of the power contained in paragraph 4(5) of Schedule 21 ("the Schedule") to the Finance Act 2015 ("the Act") which was passed on 26th March 2015. Paragraph 9(1) of the Schedule and section 4 of the Interpretation Act 1978 (c. 30) ensure that the Schedule has effect in relation to "relevant offshore asset moves" occurring from the beginning of the day after the Act is passed (thereby reducing, as far as it is possible to do so, the risk of assets being moved before the legislation has effect for the purpose of avoiding the penalty).

3.2 Whether a "relevant offshore asset move" has occurred for the purposes of the new penalty can only be determined by reference to whether a particular territory is a "specified territory". As the Schedule has effect in relation to capital gains tax and inheritance tax as well as in relation to income tax, no resolution pursuant to Section 1 of the Provisional Collection of Taxes Act 1968 (c. 2) has been possible. Accordingly, it has been necessary to make the regulations as soon as possible after the passing of the Act and for them to come into force on the day after the Act is passed without laying the Regulations for 21 days before they come into force.

3.3 Although the Regulations were made as soon as practicable after Royal Assent was given, it was not possible to lay them before the House of Commons rose on that day and so they were laid as soon as it was practicable to do so on the 27th March. Sections 4 and 7 of the Statutory Instruments Act 1946 (c. 36) provide that statutory instruments which must be laid before Parliament must be laid before the instrument comes into operation but goes on to say that, if it is essential that an instrument comes into operation before it

is laid, it may do so but notification must be sent forthwith to the Speaker of the House of Commons. The Speaker has been notified accordingly.

4. Legislative Context

4.1 The Schedule introduces 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. 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".

4.2 Paragraph 4(1) of the Schedule 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.

4.3 Paragraph 4(5) and (6) of the Schedule provide for territories to be specified by Regulations made by the Treasury subject to annulment in pursuance of a resolution of the House of Commons. As the Schedule (by virtue of paragraph 9(1)) has effect in relation to "relevant offshore asset moves" occurring after the day on which the Act is passed, it is necessary for the territories to be specified for the purposes of determining whether a "relevant offshore asset move" has occurred in all the situations covered by paragraph 4(1) with effect from the same time as the Schedule.

5. Territorial Extent and Application

These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

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 new 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. The Schedule addresses the issue by imposing a further penalty for an 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. These Regulations list the territories that have made that commitment.

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.

8.2 The Government reconsidered the proposals on which it consulted in light of the responses received, particularly the view that the options proposed were too complex, and developed the simplified measure set out in the Schedule.

9. Guidance

HMRC published guidance will be amended to reflect the Schedule and associated list of specified territories.

10. Impact

10.1 Negligible impact on businesses, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note (TIIN) was published on 10 December 2014 on the HMRC website at http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

The legislation does not apply to business, it only applies to individuals.

12. Monitoring & review

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

13. Contact

If you have any queries regarding the application of the instrument, please contact Philippa Madelin on 03000 585507 (email:Philippa.madelin@hmrc.gsi.gov.uk).