**EXPLANATORY MEMORANDUM TO**

# THE SECTIONS 106B, 106C AND 106D OF THE TAXES MANAGEMENT ACT 1970 (SPECIFIED THRESHOLD AMOUNT) REGULATIONS 2017

**2017 No. 988**

## 1. Introduction

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

## 2. Purpose of the instrument

2.1 This instrument sets £25,000 of income tax or capital gains tax chargeable on or by reference to offshore income, assets or activities ("offshore tax") for a year of assessment as the "threshold amount" for the purposes of offences under sections 106B of the Taxes Management Act 1970 (c. 9) ("TMA 1970") (relating to a failure to give notification of being chargeable to tax), 106C of the TMA 1970 (relating to a failure to deliver a tax return) and 106D of the TMA 1970 (relating to making an inaccurate return).

2.2 It makes provision for calculating whether the threshold amount has been exceeded.

## 3. Matters of special interest to Parliament

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

3.1 None.

***Other matters of interest to the House of Commons***

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

## 4. Legislative Context

4.1 This instrument has been made exercising powers in sections 106F (as amplified by section 106H) of the TMA 1970 for the first time. Sections 106B to 106H of the TMA 1970 were inserted by section 166 of the Finance Act 2016 (c. 24) ("FA 2016").

4.2 The amendment made to the TMA 1970 by section 166 of the FA 2016 came into force on 7th October 2017 and has effect in relation to the tax year commencing on 6th April 2017 and subsequent tax years (see The Finance Act 2016, Section 166 (Appointed Day) Regulations 2017 (S.I. 2017/970 (C. 91)) ("the Appointed Day Regulations")).

4.3 The amendment made to the TMA 1970 by section 166 of the FA 2016 creates three criminal offences: failure to give notice of being chargeable to income tax/capital gains tax required by section 7 of the TMA 1970 (see section 106B), failure to deliver a tax return required by section 8 of the TMA 1970 (see section 106C) and making an inaccurate section 8 of the TMA 1970 tax return (see section 106D).

4.4 By virtue of the Appointed Day Regulations, none of the offences can be committed before 5th October 2018 (i.e. 6 months after the end of the tax year commencing on 6th April 2017), which is relevant for the offence under section 106B of the TMA 1970 (see sections 106B(1) and (3) and 7(1C) of the TMA 1970). The earliest dates when offences under sections 106C and 106D can be committed are 5th April 2020 in the case of section 106C (see sections 106C(1)(a) and (3) and 8B(6) of the TMA 1970) and 31st January 2020 in the case of section 106D (see sections 106D(1) and (3) and 9ZA(3) of the TMA 1970).

4.5 To ensure the offences have effect in relation to the tax year commencing on 6th April 2017, section 166(4) of the FA 2016 requires the amendment made by section 166 to come into force before 6th April 2018 because it provides that none of the offences can have effect in relation to a tax year commencing before the one in which the amendment made by that section comes into force.

4.6 In addition to the "reasonable excuse" defences relating to the offences (see sections 106B(2), 106C(2) and 106D(2)), sections 106B(1)(b), 106C(1)(c) and 106D(1)(b) ensure that only serious failures are within the scope of the offences. They require that the total amount of income tax or capital gains tax (or both) that is chargeable on or by reference to "offshore income, assets or activities" (as defined by section 106F(4) and (5)) for the year of assessment in question must exceed the "threshold amount". Section 106F(2) and (3) allows the Treasury, by Regulations, to specify the threshold amount (which must not be less than £25,000) and to provide for the calculation of the amount of tax chargeable on or by reference to "offshore income, assets or activities" for the purposes of sections 106B to 106D.

4.7 Regulation 3 specifies the "threshold amount" for the offences under sections 106B, 106C and 106D as £25,000. For the purposes of section 106B, regulations 5 and 6 require the calculation to be undertaken in accordance with paragraphs 7 and 11 of Schedule 41 to the Finance Act 2008 (c. 9) construed as if those paragraphs have effect only in relation to income tax or capital gains tax chargeable on or by reference to offshore income, assets or activities (other than excluded offshore income tax and capital gains tax (as defined in regulation 2(1)(c))). Regulation 7 provides for the calculation for the purposes of section 106C. For the purposes of section 106D, regulations 8 and 9 use a similar approach to that taken in relation to section 106B but refer to paragraphs 5, 6 and 7 of Schedule 24 to the Finance Act 2007 (c. 11).

## 5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

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

## 6. European Convention on Human Rights

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

## 7. Policy background

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

7.1 As part of HMRC's "No Safe Havens" initiative (https://www.gov.uk/government/publications/no-safe-havens), new criminal offences targeting offshore tax evasion and non-compliance were created by the FA 2016. The

new criminal offences should make prosecution for failures to report offshore tax exceeding £25,000 in relation to a tax year easier because there is no requirement to prove dishonesty on the part of the taxpayer in question.

7.2 The Government believes that the new criminal offences provide an additional means to tackle offshore evasion and tax non-compliance, which will help to improve tax compliance and discourage would-be tax evaders.

7.3 Setting £25,000 of offshore tax as the threshold amount ensures that only serious cases are within the scope of the new offences. Excluding from that calculation tax on income or gains which will be reported to HMRC under the OECD's Common Reporting Standard (CRS) or by member States under Article 8 of Council Directive 2011/16/EU is a further proportionate safeguard.

***Consolidation***

7.4 This instrument is not amending another instrument so consolidation is not necessary.

## 8. Consultation outcome

8.1 In August 2014 HMRC published a consultation on a proposal to introduce a new simple criminal offence for offshore tax evaders: "Tackling offshore evasion: A new criminal offence" (https://www.gov.uk/government/consultations/tackling-offshore-tax-evasion-a-new-criminal-offence). Respondents to the consultation were broadly supportive of the Government's objective of taking tough action against offshore evaders but raised a number of concerns over the proposal. Recognising these concerns, HMRC published a second consultation on the offence on 16th July 2015: 'Tackling offshore tax evasion: A new criminal offence for offshore evaders' (https://www.gov.uk/government/consultations/tackling-offshore-evasion)This closed on 8th October 2015 and was supplemented by meetings with stakeholders.

8.2 The Government received written responses from 22 businesses, professional bodies and individuals and held 11 meetings and events on this consultation. The Government has considered the responses to this consultation carefully, as well as the responses to the previous consultation. The Government has accepted that, in order to target the offence at only the most significant cases of tax non-compliance, the threshold should be set at a minimum level of £25,000 (the August 2014 consultation proposed a number of ways of setting the threshold including a simple threshold of £5,000 of tax due). The Government confirmed that the offence would not come into effect until April 2017 at the earliest. This gave people 3 years' notice between the initial announcement and its introduction. The offence does not apply retrospectively but does apply in respect of the tax year commencing on and after 6th April 2017.

8.3 The full consultation summary of responses was published in December 2015 as "Tackling offshore tax evasion: A new criminal offence for offshore evaders" and can be accessed on Gov.UK: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483366/A_new_criminal_offence_for_offshore_evaders_-_summary_of_responses__M7010_.pdf

## 9. Guidance

9.1 HMRC's Compliance Handbook, which is available to the public on WWW.GOV.UK, is being updated so that the £25,000 threshold and how it is

calculated will be clear to HMRC operational staff, taxpayers, advisors and other stakeholders.

## 10. Impact

10.1 There is no impact on compliant business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 9th December 2015 and is available on the gov.uk website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

## 11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

## 12. Monitoring & review

12.1 This measure will be monitored through information collected during compliance work to ensure the legislation operates as intended.

## 13. Contact

13.1 Bruce Marsh at the Centre for Offshore Evasion Strategy Telephone: 03000 542484 or email: bruce.marsh@hmrc.gsi,gov.uk can answer any queries regarding the instrument.