# Civil penalties for enablers of offshore evasion – and other deterrents

**Management of taxes**

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A summary of the new sanctions directed at enablers of offshore tax evasion and non-compliance

Increasingly law enforcement and other government agencies are turning their attention to those who enable criminals to carry out their crimes. Section 162 and Sch 20 of Finance Act 2016 (tinyurl.com/hmpfgk8) contains new sanctions directed at enablers of offshore tax evasion and non-compliance. These will apply to offences involving income tax, capital gains tax and inheritance tax. An implementation date has yet to be agreed; s 162 (2) states the sanctions will 'come into force on such day as the Treasury may appoint by regulations made by statutory instrument'.

## Civil penalties

Very broadly a sanction will apply where a person has enabled another person to carry out offshore tax evasion or other non- compliance; and the following two conditions are met:

1. The enabler knew that, at the time he carried out his actions, they were likely to enable offshore tax evasion or non-compliance; and
2. Where the person who carried out the evasion or non-compliance

    - has been convicted of a relevant offence and that conviction is final; or
    - is liable to a relevant penalty, the penalty has been assessed and notified and is final; or

- is liable to a relevant penalty and that person has entered into a contract with HMRC under which HMRC undertake not to assess the penalty (or if it has already been assessed not to recover the penalty).

The penalty for the enabler will be the greater of:

- 100% of the potential lost revenue; and
- £3000, or:

if the evasion has given rise to a penalty under Sch 21 of Finance Act 2015 (offshore asset moves), the greater of:

- 50% of the potential lost revenue; and
- £3000

Penalty reductions may be available where the enabler makes a prompted or unprompted disclosure and assists HMRC.

There are also provisions for HMRC to publish details of enablers found liable to civil penalties for offshore tax evasion where:

- the potential lost revenue exceeds £25,000; or
- the enabler has incurred five or more penalties relating to enabling offshore tax evasion in the previous five years.

Potentially these penalties are not the only problem facing the enabler.

## Criminal sanctions

Under s 328 of the Proceeds of Crime Act 2002

> 'A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.’

Knowingly enabling offshore tax evasion could come within the scope of s 328, with the tax evaded constituting proceeds of crime. An offence under s 328 carries a sentence of up to 14 years or a fine or both.

# Professional body disciplinary action

Finally, if the enabler were a member of the CIOT or ATT it is likely that their case would be referred to the Taxation Disciplinary Board for consideration, with expulsion a probable outcome. Other professional bodies may adopt a similar approach.