

**Offences relating to offshore income, assets and liabilities
Consultation on draft clause 70 Finance Bill 2016
Response by the Chartered Institute of Taxation**

1 Introduction

- 1.1 Clause 70 introduces a new criminal offence which does not require the need to prove intent for failing to declare offshore income and gains.
- 1.2 The offence will apply for the purposes of income tax and capital gains tax, where a person has failed properly to declare offshore income or gains in accordance with Taxes Management Act 1970 sections 7 and 8 leading to a loss of tax over a threshold amount which will be defined in regulations and will be on a per tax year basis. The provisions will come into force following a commencement order.

2 Comments on the draft legislation

- 2.1 The Chartered Institute of Taxation (CIOT) strongly supports HMRC's efforts to tackle tax evasion. However, we take this opportunity to reiterate our overall objection to the introduction of a strict liability offence for offshore tax evasion. We continue to believe, as a matter of principle, that it should be necessary to show 'mens rea' – that a taxpayer had criminal intent – before they can be convicted of a serious criminal offence such as tax evasion.
- 2.2 However the changes that have been made to the legislation following consultation¹ with stakeholders, including ourselves, help to reassure us that the Government are serious about fulfilling their promise that the new offence will only be used in the most serious of cases.

¹ Tackling offshore tax evasion: A new criminal offence for offshore evaders – Summary of Response
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483366/A_new_criminal_offence_for_offshore_evaders_-_summary_of_responses_M7010_.pdf

2.3 These changes include:

- that there will be a threshold of not less than £25,000 of tax lost per tax year (increased from £5,000): and
- that the offence will only related to income and gains that are not reported under the Common Reporting Standard (CRS).

This increase in the proposed threshold and the limit in the scope of the new offence to jurisdictions which do not exchange information with HMRC are both in line with what the CIOT called for in our representations to the Government.

- 2.4 One particular aspect that we continue to be concerned about is how the offence will interact with the Contract Disclosure Facility (CDF) which requires the taxpayer to admit fraud. We therefore continue to seek clarification from HMRC about how they intend to operate and target the new offence.

3 Acknowledgement of submission

- 3.1 We should be grateful if you would acknowledge safe receipt of this submission.

4 The Chartered Institute of Taxation

- 4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
2 February 2016