AAT RESPONSE TO HMRC CONSULTATION DOCUMENT ON "TACKLING OFFSHORE TAX EVASION: STRENGTHENING CIVIL DETERRENTS" (RELEASED 19 AUGUST 2014)

1 EXECUTIVE SUMMARY

1.1 The Association of Accounting Technicians (AAT) is pleased to reply to the HMRC consultation document on "Tackling offshore tax evasion: Strengthening civil deterrents" (condoc), which was released on 19 August 2014.

1.2 This condoc seeks views on six options to strengthen civil sanctions for those evading tax by using non-UK territories to hide taxable income, gains and assets offshore (1.14 condoc) which are:

(i) Option 1 - Extending the scope of the offshore penalties regime to Inheritance Tax.

(ii) Option 2 - Extending the offshore penalties regime to cover inaccuracies in category 1 or category 2 territories where the proceeds are hidden in higher category territories.

(iii) Option 3 - Introducing a new offshore surcharge to complement the offshore penalties regime where offshore assets have been deliberately moved to continue evading tax.

(iv) Option 4 - Extending the 20 years assessing time limits where offshore assets have been deliberately moved to continue evading tax.

(v) Option 5 - Increasing the quantum of offshore penalties to reflect the number of times offshore assets have been deliberately moved to continue evading tax.

(vi) Option 6 - Introducing a new category into the table of Designated Territories.

1.3 While AAT is supportive of HMRC's objective of strengthening the civil deterrents available in tackling offshore tax evasion, it should be noted that there will be those who wish for a variety of reasons to put their taxation affairs in order. The balancing act that we believe HMRC has to achieve is to encourage voluntary disclosure without making the consequential penalties too much of a disincentive (4.18 & 5.1, below).

2 VESTED INTERESTS

2.1 AAT supports the objectives of HMRC's offshore evasion strategy outlined in 1.2 (condoc).

2.2 AAT is responding to this consultation document from the wider public benefit perspective of achieving sound and effective administration of taxes.

3 G8 PRESIDENCY

AAT notes in 3.1 (condoc) arising out of the UK's leadership of the G8, there has been an advancement in international tax transparency, leading to many countries agreeing to share information to tackle cross-border tax evasion.

4 TACKLING OFFSHORE TAX EVASION: STRENGTHENING CIVIL DETERRENTS: AAT'S RESPONSE TO THE CONSULTATION QUESTIONS

Question 1 Do you consider it appropriate to extend the offshore penalties regime in the case of offshore assets which are part of the death estate and liable to IHT? If you do not, please say why.

4.1 AAT supports HMRC's proposal to align sanctions for personal taxes – IT, CGT and IHT. We therefore consider it appropriate to extend the offshore penalties regime in the case of offshore assets which are part of the death estate and liable to IHT. This proposal is consistent with HMRC's general policy since Finance Act 2007, Schedule 24 of generally aligning penalties across the taxes and levies.

Question 2 Do you consider it appropriate to extend the offshore penalties regime in the case of transfers of assets into offshore structures which give rise to IHT? If you do not, please say why.

4.2 AAT accepts in 4.1 (above) HMRC proposals of alignment and therefore considers it appropriate to extend the offshore penalties regime in the case of transfers of assets into offshore structures which give rise to IHT.

4.3 AAT considers it to be inconsistent for failure to deliver IHT accounts in respect of an offshore settlement to warrant a lesser penalty range than failure to declare income arising from the same offshore trust.

Question 3 Do you agree that offshore penalties for IHT should be calculated using the same classification for territories as applies for IT and CGT? If you do not, what factors should a new classification take into account and why?

4.4 AAT concurs with HMRC's policy of alignment for penalties on IHT as they apply to other personal taxes for IT and CGT. Therefore, it is reasonable and consistent that offshore penalties for IHT should be calculated using the same classification for territories as applies for IT and CGT.

Question 4 Do you agree with our view about the location of assets in relation to a death event? If you do not, what could constitute a better approach?

4.5 AAT believes that it is reasonable to consider the location of assets outside of the UK at the date of death and endorses HMRC's view in respect of the location of assets in relation to a death event. Such an approach would be consistent with the current penalty regime relating to undeclared income and gains arising from the same assets.

Question 5 Do you agree with our view about the location of assets in relation to transfers of value? If you do not, what could constitute a better approach?

4.6 AAT agrees with HMRC's view in the case of a transfer of assets in respect of IHT liability that the penalty should be based on the final destination of the assets.

Question 6 Do you accept the principle that penalties should be strengthened to take account of where the proceeds of evasion are hidden? If you do not, please say why

4.7 AAT considers that a failure to declare profits arising from a UK business activity should attract domestic non-compliance penalties, irrespective of what the taxpayer wished to do with his/her money later. Such treatment would be consistent with general domestic compliance settlements.

4.8 We further agree that in instances of funds arising from a UK business activity and which are banked overseas, such as customers paying directly into an offshore account, offshore penalties should be charged based on non-domestic penalty tariffs.

4.9 AAT considers that such an approach would be consistent with the Finance Act 2007, Schedule 24 behaviour "deliberate and concealed", but with the added step of banking the proceeds overseas as an integral part of the business transaction to further conceal income and the capital and so attracting an additional penalty rating.

Question 7

Do you agree that the extension of offshore penalties should apply to cover all inaccuracies arising and failures relating to category 1 or category 2 territories where the proceeds of that non-compliance are hidden in higher category territories? If you do not, please say why.

4.10 AAT understands that the categorisation of penalties for offshore non-compliance reflects their transparency and the quality of the information exchange arrangements UK has with the particular country's tax authority. AAT considers that the level of penalty applicable should be that of the territory in which the offence occurs.

4.11 Paragraph 2.35 (condoc) set out an example of a UK resident who sells a property they own in France and subsequently fails to declare their capital gain. Given that there is an automatic exchange of information, HMRC should receive information on the disposal. Therefore the errant taxpayer's penalty should fall within category 1. Taking this fact into account, if the disposal proceeds are subsequently transferred, the proceeds from a French bank to another territory or the proceeds are spent, this should not affect the penalty category.

4.12 However, if the taxpayer in the above example had the proceeds paid directly into a bank account situated, in, say, Monaco we would consider that the fact that the funds were paid to the category 3 territory as an integral part of the transaction and therefore the category 3 penalties should apply.

Question 8

Do you favour the introduction of such a statutory rule? How else might the link between non-compliance and offshore funds be demonstrated?

4.13 AAT does not consider a further statutory rule as detailed in Q8 (condoc) is necessary in respect of the proposals outlined in paragraph 2.35 (condoc) where proceeds of undeclared income or gains, which have arisen in the UK, are moved offshore penalties chargeable should be similar to investment income arising abroad on that capital. Any apportionment of merged funds arising from different sources should be made on a fair and reasonable manner, and, where agreement cannot be found the Tribunal could rule on their finding of the facts.

Question 9

Which of the above two methods for ascertaining the category / level of penalty do you consider to be the best way of applying the extension to offshore penalties? Please say why.

4.14 For the reason explained in paragraph 4.10 (above) AAT considers that the committing of an offence should be penalised in accordance with the category of the territory in which the offence occurred. However, of the above two methods, AAT considers that option 2, relating to the categories of each jurisdiction in which the proceeds were transferred or received, is the best way of applying the extension to offshore penalties because method 1 can be disproportionate when a comparatively small fraction of the undeclared income is banked overseas, as compared with category 2 which would use a just and reasonable apportionment.

Question 10 Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?

4.15 AAT agrees that current safeguards should continue to apply, that no penalty should arise where the taxpayer has taken reasonable care with their affairs and that the reasonable excuse provisions should continue to apply. The current right of the taxpayer to be able to appeal to the Tribunal preceded by the optional review system should also continue.

Question 11 Do you agree that there should be strengthened sanctions for those who deliberately move assets with the intention of continuing to evade tax? If you do not, please say why.

4.16 AAT agrees that there should be a higher penalty for those who deliberately move assets with the intention of continuing to evade tax. Undeclared interest from capital moved to a less transparent territory should be penalised at the rate of the last destination.

4.17 However, AAT considers that a maximum penalty of 200% is sufficient. Penalties are usually settled below the maximum level, depending on cooperation in the enquiry. Transferring capital to a less transparent territory should be taken into account in considering deliberate concealment within Schedule 24 FA 2007, as a factor when considering the highest end of the penalty scale.

4.18 AAT considers that if 200% penalties fail to deter tax evaders it is questionable whether a higher maximum level would be a deterrent. It might, instead, result in entrenching the evaders into more opaque territories. Also, paragraph 1.5 (condoc) acknowledges that cases investigated and settled through civil means will include cases where “the revenue lost is below the qualifying threshold” for criminal proceedings. So, revenue lost in such cases are not of the highest level.

4.19 Taking into account the above comment (4.18) AAT is concerned that penalties higher than 200% dissuade taxpayers making disclosure and voluntary settlement.

Question 12

Do you consider that option 3 meets the policy objectives set out above? If you do not, please say why.

4.20 AAT considers that a surcharge, as proposed in option 3, would meet HMRC's intention to further penalise the movement of assets between jurisdictions.

4.21 However, taxpayers are often reminded that the purpose of interest as in Section 86 Taxes Management Act is commercial restitution and not a penalty. Penalties for offshore tax evasion carry a maximum of 200% which one would have thought is a sufficiently severe deterrent (4.16, above).

4.22 There are, of course, precedents for a surcharge in several UK failures. However, an additional penal charge might make voluntary disclosure less attractive.

Question 13

Do you consider that option 4 meets the policy objectives set out above? If you do not, please say why.

4.23 AAT does not support the proposal to extent the 20 years assessing time limit as set out in option (condoc). The current time limit was considered reasonable in the 1970s, when the extended assessing period was restricted to 20 years. The matter was reconsidered by Parliament as recently as Finance Act 2008, Schedule 39 for understatements due to deliberate action.

4.24 We consider the existing limit acts as an inducement for voluntary disclosure which a longer period would not.

Question 14

Do you consider that option 5 meets the policy objectives set out above? If you do not, please say why.

4.25 AAT does not consider that option 5 would encourage disclosure. In fact, it is AAT's concern that the introduction of multiple layers of penalties for every movement of assets would unnecessarily complicate the penalty legislation.

Question 15

Do you have a preferred calculation method for option 5? If you do, please say which one and why.

4.26 AAT is in agreement with HMRC's preference for option 3, in which HMRC consider it would be simpler to operate in practice.

Question 16

Do you have a preference between options 3, 4 and 5? If you do, please say why.

4.27 As set out in our response to Q.12 (4.20 to 4.22, above) AAT considers that current penalties are sufficiently severe.

4.28 AAT notes the Financial Secretary to the Treasury states in his Foreword to HMRC's parallel consultation "Tackling offshore tax evasion:

"If taxpayers do not come forward to clear up their past non-compliance, or if they continue to fail to comply with their obligations in this new era of transparency, then they must face tough consequences. One of these consequences should be the realistic threat of a criminal conviction. That is why we are bringing forward a new strict liability criminal offence for those who do not declare offshore income."

4.29 AAT considers that criminal prosecution represents a better deterrent for serious tax evasion than any of the options listed in Part 3 (condoc).

Question 17

Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?

4.30 AAT agrees that current safeguards as outlined in 3.22 (condoc) would be sufficient.

Question 18

Do you consider it appropriate to update the offshore penalties regime to reflect the new global standard? If you do not, please say why.

4.31 Paragraph 4.1 (condoc) illustrates examples of the effects of the new global standard in tax information sharing arrangements:

"Since the legislation was introduced, twelve territories have moved from category 3 to category 2, and two from category 2 to 1, to reflect the fact that new information sharing arrangements have been entered into between the UK and those territories. In each case, the effect of the change was that the level of offshore penalty was reduced."

AAT considers that HMRC needs to react to the new global standard in tax information and paragraph 4.34 below outlines our suggestion.

4.32 Given the apparent flexibility already employed by HMRC, AAT is not convinced that it is necessary to update the offshore penalties regime legislation further to reflect the new global standards. In particular, AAT notes the comment in paragraph 4.6 (condoc):

> *"One possible consequence of a change is that offshore evaders hiding money in territories which are not in the new category but which meet the current category 1 standards could face a penalty percentage which is higher than the current maximum of 100%."*

AAT would consider it to be a backward step for offenders who meet the current category 1 standards to face a higher rate of penalties without movement of their assets.

Question 19 Recognising the step change in automatic exchange of information standards, which method do you consider better achieves the policy objectives set out above and please say why?

4.33 The policy objectives include the continued maximum penalty as a deterrent for those who lodge funds in the least transparent territories and also "to recognise that the expectations of both the public and governments in respect of tax transparency have significantly increased since 2013" (4.10 condoc). There is also the consequential result mentioned in Q18 (4.31 & 4.32, above).

4.34 Taking into account the comment above (4.33), AAT considers that the existing category 1 could be enlarged to embrace jurisdictions which share information to the Common Reporting Standard. Penalty levels quoted are maxima and sufficiently flexible to reflect variations in levels of disclosure and cooperation by the taxpayer.

Question 20

Do you agree that current safeguards would be sufficient? If you do not, in what way would they be inadequate and how could they be amended?

4.35 AAT considers that the safeguards outlined in paragraph 4.12 (condoc) would be sufficient as outlined in paragraph 4.15 (above).

Question 21

Do you have any views, comments or evidence which may help inform our understanding of likely impacts?

4.36 AAT does not have anything to add to HMRC's Assessment of Impacts outlined in Part 5 (condoc).

Question 22

Do you have any views, comments or evidence which may help inform our understanding of likely equalities impacts?

4.37 AAT does not have anything to add to HMRC's comments on equalities impacts (condoc).

5 CONCLUSION

5.1 AAT supports HMRC's objective of strengthening the civil deterrents available in tackling offshore tax evasion. Nevertheless, as outlined at 1.3 above, there will be those who wish for various reasons to put their taxation affairs in order and the balancing act is to encourage voluntary disclosure without making it more difficult to settle, due to penalties of many times the evaded tax.

5.2 AAT welcomes the new global standard published by the Organisation for Economic Co-operation and Development (OECD) for the automatic exchange of information, the Common Reporting Standard (CRS). The fact that 45 jurisdictions have committed to CRS should considerably reduce overseas hiding places for offshore evasion. Information obtained should be vigorously followed up by HMRC investigations.

5.3 AAT considers that criminal proceedings should be applied to the worst cases of tax evasion whilst more should be done to encourage voluntary disclosure and AAT participated in the design of past disclosure campaigns. Campaigns such as the Offshore Disclosure Facility (ODF), the New Disclosure Opportunity and the Liechtenstein Disclosure Facility (LDF) both brought more than a £billion to the Exchequer and simplified disclosure. AAT recommends that more publicity be given to the time-limited disclosure facilities mention in the Foreword to "Tackling offshore evasion: A new criminal offence".

6 ABOUT AAT

6.1 AAT has over 49,800 full and fellow members and 80,000 student and affiliate members worldwide. Of the full and fellow members, there are 4,100 Members in Practice (MIPs) who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types (figures correct as at 30 Sept 2014).

6.2 AAT is a registered charity whose objects are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6.3 In pursuance of those objects AAT provides a membership body. We have drafted our response on behalf of our membership.

7 FURTHER ENGAGEMENT

7.1 If you have any questions or would like to consult further on this issue then please contact AAT at:

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