

British Tax Review
2012
Legislative Comment
Finance Act notes: section 219: penalties: offshore income, etc
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Subject: Tax

Keywords: Foreign income; International taxation; Penalties; Tax evasion; Tax information exchange agreements

Legislation: [Finance Act 2012 \(c.14\)](#) s.219

[Finance Act 2010 \(c.13\)](#)

[Schedule 24 to the Finance Act 2007](#)—which deals with penalties for errors—was amended in 2010 to provide for an increase in the maximum level of a penalty where the error concerns an offshore matter relating to certain territories, categorised as category 2 and category 3 territories. For example, a deliberate and concealed error relating to a category 3 territory can lead to a maximum 200 per cent penalty; double the maximum if the same deliberate error arose in respect of UK-source income.

In categorising territories, the original intention of the amendments in the [Finance Act 2010 \(FA 2010\)](#) was to base this on the degree to which each territory had arrangements with the UK for automatic exchange of information. The purpose was partly to incentivise overseas territories to move towards automatic exchange, and, secondly, to penalise more severely those tax evaders who seek out "black hole" jurisdictions which do not exchange information with the UK.

However, the UK has begun to enter into arrangements with territories which, in the words of the Explanatory Notes to clause 217 (which became [section 219 of the Finance Act 2012 \(FA 2012\)](#)):

"while not offering automatic exchange of information, deliver an outcome for the UK that is much better than that which can be delivered through exchange on request."

An example would be the US-Switzerland Rubik Agreement¹ which provides for withholding of tax on income and assets, and so collects UK tax without requiring disclosure of information. (Switzerland will not agree to automatic exchange, and the Rubik Agreements make it less likely that she will change that policy). The amendment made by [section 219 FA 2012](#) allows such territories to be placed in a lower category, so that lower penalties would potentially apply. This was not the intention of the [FA 2010](#) changes at all (when they were discussed in the Consultative Committee on Revenue Powers). The purpose was to incentivise overseas territories—including places like Switzerland—to move towards automatic exchange. This amendment effectively rewards the foreign territories' intransigence. Again, like [section 218 FA 2012](#), this is an example of where the potential collection of some tax on behalf of the UK has led to the abandonment of principle.

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B.T.R. 2012, 4, 492

¹. See P. Baker "Section 218 and Schedule 36: the UK-Switzerland Rubik Agreement" [2012] BTR 489.
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