

UK Requirement to Correct – 30 September 2018 Deadline



HMRC's crackdown on offshore tax evasion and non-compliance intensified late last year with the publication of Finance Bill 2017 and the introduction of a new legal obligation for those impacted to correct any issue in relation to their 'offshore matters' that has given rise to a UK tax liability. This requirement is described as a '**Requirement to Correct (RTC)**'.

RTC requires taxpayers who have outstanding offshore tax non-compliance as at 5 April 2017, which relates to an offshore matter or offshore transfer and which was committed on or before 5 April 2017, to correct the position on or before **30 September 2018**.

Penalties for '**Failure to Correct**' (FTC) will apply where tax liabilities have not been corrected by this date and are subsequently established. It is the failure to correct which is penalised, not the original behaviour which led to the tax liability. Consequently FTC penalties could apply to those who are found to have tax liabilities which are due to careless or deliberate behaviour, or even for those who took reasonable care.

Penalties can be as high as **200% of the tax liability in certain cases**. For the most serious cases an additional penalty of up to **10% of the value of the relevant asset** will apply as well as the reputational damage of being '**named and shamed**' on a public website. The only defence to FTC is that someone had a reasonable excuse why they did not correct before 30 September 2018. HMRC have said that where taxpayers are entirely comfortable that their tax affairs are correct and up to date then no further action is required.



Who is impacted?

Individuals, companies and trustees with offshore interests who have a UK tax liability need to review their tax affairs to ensure they are compliant.

What taxes are included?

Income Tax, Capital Gains Tax (including Non-residents CGT) and Inheritance Tax although all tax liabilities should be brought up to date.

What is an offshore matter?

An offshore matter has a very wide definition to include any connection to income, assets, activities or transfers involving territories outside the UK.

When must a correction be made by?

By 30 September 2018 but anyone with issues to address should do so as soon as possible to ensure maximum mitigation for an unprompted disclosure is achieved.

What periods need to be corrected?

This depends on specific circumstances. The relevant years to be corrected and penalties are based on behaviour – but broadly it will be the last four years (for non-careless behaviour), six years (for careless behaviour) or 20 years (for deliberate behaviour).

How will the penalties work?

For those who fail to correct by 30 September 2018 the penalty will start at 200% of the tax liability not corrected. Although this can be mitigated it cannot be reduced below 100%. The reduction will be based on the quality of the disclosure based on timing, nature and extent factors.

Is there any defence against the penalty?

The only defence is a person had a reasonable excuse not to correct. The definition of reasonable excuse, however, is drawn extremely narrowly. Even in cases where tax liabilities are subsequently found to exist despite having originally taken advice from a competent professional adviser, that advice could be 'disqualified' from being a reasonable excuse.



Information exchange

HMRC will be in possession of extensive information in relation to offshore assets going forward. This will include:

- Crown Dependency and Offshore Territory information sharing in 2016.
- Common Reporting Standard information sharing from 2017 and more jurisdictions in 2018.
- New rules in the UK for long term 'non-doms' will make offshore assets 'visible' to HMRC from 2017/18 for the first time.
- Beneficial ownership initiatives.
- Data leaks, e.g. Panama Papers

Example of how RTC could work in practice

Mr X has undeclared income from an overseas investment portfolio with a value of £7 million that has not been reported on his UK tax return for the last six years. This has equated to tax owing of approximately £100,000 per annum over six years. Assume careless rather than deliberate behaviour.

Impact of making a full voluntary disclosure now

- Tax – £600,000, plus interest.
- Penalty - nil

Impact post 30 September 2018 if no correction

- Tax – £600,000, plus interest.
- Penalty – minimum of £600,000 up to maximum of £1.2 million.

And if it was deliberate behaviour, post 30 September 2018

- In addition to the penalties above.
- Tax geared penalty of up to £700,000 (10% of asset).
- Naming and Shaming.



RTC and Offshore Trusts

As noted above, RTC will apply to Trustees as well as individuals. From our experience the key areas of non-compliance for Trustees include:

- Missed IHT 10 year anniversary charges in respect of UK situs assets held;
- Trustee income tax liabilities in respect of UK source income; and
- Non-resident landlord liabilities in respect of rental income received from UK property held in offshore structures.

All of the above will trigger trustee liabilities.

Trustees should consider distributions made to UK resident beneficiaries and the extent to which they are comfortable they have been appropriately matched to relevant income and/or stockpiled gains within the trust.

Failure to correct non-compliance in any of the above situations by 30 September 2018 will trigger minimum 100% penalties for either the trustee or the beneficiary.



Next steps – individuals

- Those who know they have undisclosed assets/income should take advice and make a disclosure to HMRC.
- It is possible the Worldwide Disclosure Facility is the best option (see aside) but alternative disclosure methods may also be appropriate.
- For anyone who is not absolutely certain their offshore affairs are compliant they should review their position and make any disclosure/correction as appropriate.
- RTC is not a measure to tackle only offshore evasion. There are many common technical issues in relation to offshore assets where we have assisted people to make voluntary disclosures to HMRC. These issues will also be relevant to RTC. For example:
 - Remittances of overseas income and gains;
 - UK source income in offshore accounts;
 - Purchase of UK assets using foreign income;
 - Benefits from offshore trusts.



Next steps – Trustees

- Undertake a risk assessment to help form a strategy for reviewing structures you administer;
- Ensure a tax adviser is in place to assist with remediation and disclosure where non-compliance is identified.

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HMRC's Worldwide Disclosure Facility

- Opened 05 September 2016.
- Available through to 30 September 2018.
- Disclose UK tax liabilities that relate wholly or partly to an offshore issue.
- No immunity from prosecution.
- No beneficial financial terms – but do not face the significant penalties/sanctions post RTC.
- Two stage process – (1) Notification, (2) Complete disclosure and pay tax, interest and penalties within 90 days (180 days in complex cases).
- Requirement to self-assess behaviour to determine years to include in disclosure and level of penalties.
- Complex issues and pre disclosure agreement – in some circumstances clarification can be sought from HMRC pre disclosure submission using the non-statutory clearance process.
- Disclosure needs to include the maximum value of offshore assets at any point in the last five years.
- 'Onshore' liabilities should also be disclosed if WDF is being used.
- HMRC to acknowledge disclosure within 15 days and aim to tell course of action within 40 days of this. HMRC will check disclosures and investigate if necessary.
- Need to consider alternative disclosure options – e.g.
- Contractual Disclosure Facility (COP 9) – dependent on the facts of the case.
- Available to individuals, executors, companies, trustees where there is a UK tax liability.

What to do next?

- Perform health checks.
- Prepare outstanding returns.
- Advise on relevant liabilities.
- Assist with HMRC disclosures.

Given the significance of the penalties we are encouraging clients to take this opportunity to consider their affairs one final time and take any necessary actions before the 30 September 2018 deadline.

Please get in touch with your usual KPMG contact or any of the individuals below if you would like to discuss.