

KPMG in the Channel Islands

Requirement to correct - One year to disclose

HMRC's crackdown on offshore tax evasion and non-compliance continues to intensify with the September 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 any tax issue mainly or wholly relating to offshore matters for all periods up to 5 April 2016 to be corrected by **30 September 2018**. Where tax liabilities that have not been corrected by this date, and are subsequently established, penalties for **'Failure to Correct' (FTC)** will bite. 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 will start at **200% of the tax liability** (can be reduced but no lower than 100%). 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. The provisions in the legislation specifically disqualifies tax advice received in certain situations.



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 NRCGT) 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 the 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 4 years (for non-careless behaviour), 6 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%.

Is there any defence against the penalty?

The only defence is a person had a reasonable excuse not to correct. However, the definition of reasonable excuse 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-dom's' will make certain offshore assets 'visible' to HMRC from 2017/18 for the first time;
- Beneficial ownership initiatives such as the UK trust register; and
- Data leaks, e.g. "The Panama Papers".

Example of how RTC could work in practice - Trustee

A Guernsey domiciled individual set up a relevant property trust in Guernsey in 2005. The market value of the trusts UK situs assets in 2015 was £10m (held at trust level) and the trustees would be liable to a IHT ten year charge on this value. If the relevant return and associated liability has not been paid the implications are as follows (simplistic calculations used for ease):

Impact of making a full voluntary disclosure now

- Tax at circa £580,500, plus interest
- Likely penalty of £3,200

Impact post 30 September 2018 if no correction

- Tax – £580,500, plus interest
- Penalty – minimum of £580,500 up to maximum of £1.16 million

And if it was deliberate behaviour, post 30 September 2018

- Tax – £580,500, plus interest
- Penalty – minimum of £580,500 up to maximum of £1.16 million + additional 50% if attempt to avoid CRS or RTC
- Asset based penalty of up to £1,000,000
- "Naming and Shaming"

The RTC and Offshore Trusts

From our experience the key areas of non compliance 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 or company 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, although these are matters for the individual recipient to cover.

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

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.

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.

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 & 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

How KPMG can help

- Facilitate workshops to help develop approach;
- Undertake client reviews;
- Perform health checks;
- Preparing outstanding returns;
- Advising on relevant liabilities;
- Assist with HMRC disclosure.
- Our tax team in the Channel Islands has extensive experience advising clients on UK and offshore matters as well as making voluntary disclosures to HMRC, as required.
- Our teams cross island have assisted a variety of individuals, companies and trusts over the last 10 years to make voluntary disclosures and agree past tax liabilities.
- Please get in touch with any of the contacts below to discuss how these measures impact you, your clients or your business.



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