

The Requirement to Correct: what you need to know in 2018

30 September 2018 should be marked clearly in the diary of anyone whose tax affairs include non-UK ("offshore") assets. From that date, HM Revenue & Customs ("HMRC") will apply tougher sanctions to those who have failed to address deficiencies in how they have reported their offshore interests (the so-called "Requirement to Correct"). In a significant change in approach, HMRC's incentives to come forward are giving way to penalties which could triple the outstanding tax liability (regardless of the reason for the error). This impending deadline makes it more important than ever to take the opportunity to ensure that one's tax affairs are well and truly in order.

Who is affected?

Affected persons include:

- UK resident individuals and trustees with offshore interests;
- Non-UK resident landlords in receipt of UK rental income; and
- Offshore trustees in receipt of UK source income.

The Requirement to Correct extends to tax advisers, personal representatives and executors. Affected persons are expected to make disclosures about their own tax affairs, those of a company of which they are an officer, and those of a trust or estate.

What is the Requirement to Correct?

UK taxpayers have been given the deadline of 30 September 2018 before which errors or omissions in the reporting of their tax affairs for the period to 6 April 2017 must be corrected.

The Requirement to Correct, enacted in the Finance (No.2) Act 2017, has been introduced in a context of increasing demands for transparency regarding offshore interests. The information HMRC receives in this regard has been significantly bolstered by the Common Reporting Standard ("CRS"). The CRS enables information regarding UK residents' financial accounts to be shared automatically between the more than a hundred jurisdictions who have signed up to it. In light of the CRS, new beneficial ownership registers and data leaks such as the Panama Papers, HMRC believes that it will be able to identify discrepancies between individuals' actual and declared finances with far greater ease.

What am I required to correct?

UK taxpayers must inform HMRC of errors relating to offshore issues. Broadly, offshore issues include unpaid or omitted tax relating to:

- income arising from an offshore source;
- assets situated or held outside the UK (such as through an offshore company or trust); and
- activities carried on wholly or mainly outside the UK.

How do I correct?

HMRC encourages those who have doubts about whether their offshore arrangements have been reported correctly to seek professional advice, as our experienced Private Client team can offer. Until 31 December 2015, HMRC maintained offshore facilities which offered incentives for individuals to "come forward and clear up their tax affairs". These are no longer available, and in its place is the Worldwide Disclosure Facility ("WDF"), which does not operate on such favourable terms.

However, disclosure through the WDF can prevent the application of the severe penalties and/or sanctions under the Requirement to Correct legislation. Making a disclosure can be a complex process. Our team can discuss the disclosure options available to you and of course, unlike such discussions with accountants, our advice benefits from legal professional privilege.

The pace of change in tax legislation has been incredibly fast-moving, and affected individuals may find that tax advice relied on is now out-of-date, or has not been tailored to their specific circumstances. HMRC recognises that there will be circumstances when a person has taken advice in good faith, but it has turned out to be wrong. However, only a very narrow category of specific, tailored advice will satisfy this defence. It is therefore essential to get historic advice reviewed now.

What if I fail to correct?

The penalties for failure to disclose accurately and fully depend on a number of factors. These include whether any disclosure was made voluntarily, its quality and detail, and whether it included an accurate calculation of the liability to UK tax. In light of this, even those who intend to intend to comply fully and promptly with the Requirement to Correct are likely to benefit from professional advice in order to ensure that appropriate disclosure is made. We can help clients carry out a "health check" of their affairs, to ensure that all necessary action is taken promptly and that the deadline is not missed.

The harshest penalties are reserved for issues relating to territories which are not party to the CRS; non-disclosures pertaining to such territories can lead to penalties of up to 200% of the initial

tax liability. Also pertinent is whether HMRC has existing enquiries relating to the taxpayer, whether disclosure was prompted and how long it took.

There are also potential significant reputational consequences of failing to act now. Those who do not comply with the Requirement to Correct may be the subject of civil or criminal investigations, or see their details published on the Gov.uk website under "naming and shaming" provisions. HMRC is focusing its efforts on offshore compliance and has successfully increased its tax take in this regard, with the result that high net worth individuals are subject to even greater scrutiny than before.

Looking forward

Given the severity of the consequences, anyone with offshore assets should obtain advice to confirm if any further disclosure is required before **30 September 2018**. For those who have queries or concerns, the time to act is now.

For further information, please contact:



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