Requirement to Correct Voluntary disclosures to HMRC

The time for action is now: unprecedented sanctions apply to those who don't correct

January 2017

HMRC's crackdown on offshore tax evasion and non-compliance continues to intensify. Legislation will be enacted this year introducing 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 2017 to be corrected by **30 September 2018**. This date is consistent with the date information will be exchanged with HMRC from circa 100 countries under the Common Reporting Standard (CRS).

The level of sanctions **for those who fail to correct when required to do so** are unprecedented. **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.**

Who is impacted?

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

What taxes are included?

Income Tax, Capital Gains Tax 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 RTC take place?

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%. 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. We would anticipate that HMRC will not consider someone assuming their affairs were in order as having 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

HMRC has made it clear it will use such information to risk assess and as necessary undertake investigations. Steps should be taken to ensure compliance before HMRC check the position.

What about Swiss assets?

The one off charge under Rubik was applied for the past, are account holders clear of UK tax liabilities?

It depends. The amount subject to the one off charge will be cleared but we have seen many cases where due to the account transactions (e.g. withdrawals from the account) amounts are still exposed to UK tax.

Also, under the Rubik Agreement non-doms could opt out of the one off charge for the past and most discretionary structures were excluded so it is important anyone in these categories is confident they are tax compliant.

We have already seen HMRC information and document (e.g. copy bank statements) notices including notices for those who suffered the one off charge for the past and notices for those who were excluded from the Agreement as non-doms. We expect such requests to intensify from HMRC post CRS data exchanges.

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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 (as voluntary and unprompted)

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?

— Tax – £600,000, plus interest
— Penalty – minimum of £600,000 up to maximum of £1.2 million
— Tax geared penalty of up to £700,000 (10% of asset)
— Naming and Shaming

What should I do next?

— 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.
— Those who were the subject of the one off charge under the UK Swiss Agreement need to be sure their assets/income are 'cleared' and no tax liabilities remain.
— 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 & gains,
  - UK source income in offshore accounts
  - Purchase of UK assets using foreign income
  - Benefits from offshore trusts
  - 10 year IHT anniversary charges.

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
— 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.

Why KPMG?

Our tax technical and tax investigation specialists within our Private Client Advisory team (won the Accountancy firm of the year at the 2016 STEP awards) have extensive experience advising clients on offshore related matters as well as making voluntary disclosures to HMRC if required. Our team have assisted hundreds of people 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 arrange a free and confidential consultation.

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