

GUIDE

The UK's Requirement to Correct

As part of the UK Government's desire to address offshore evasion and non-compliance, legislation enacted in the Finance (no 2) Act 2017 introduced a statutory obligation aimed at forcing compliance by 30 September 2018.

Taxpayers with offshore matters that may not be compliant who have not already done so, are encouraged to consider contacting HMRC with a view to correcting the position. This is the new Requirement to Correct (RTC).

Taxpayers with overseas assets or interests with any potential UK tax liability as at 5 April 2017 will be required to correct any issues with their historic UK tax position. Those who fail to do so by 30 September 2018, regardless of whether any tax omissions are the result of deliberate evasion or a result of genuine mistakes, will face severe financial penalties and other sanctions.

Failure to comply will bring any person with a potential outstanding UK liability, i.e. individuals, trustees or non-resident landlord companies within the scope of the new 'Failure to Correct' penalty regime. This means that UK resident and domiciled individuals, non-UK domiciled individuals who are or are not UK resident are affected along with potentially, offshore trustees. The Requirement to Correct applies to Income Tax, Capital Gains Tax and Inheritance Tax.

Increased global tax transparency, in part created by the Common Reporting Standard and moves to create registers of beneficial ownership mean HMRC will soon have a wealth of previously unavailable offshore sourced material that it can merge with its current information databases to identify and pursue potential tax leakages. This includes details of bank accounts, investments and trusts from over 100 jurisdictions come 1st September 2018. HMRC has made it clear that it no longer sees any need for benign Disclosure

Facilities and that it will use this new information to open enquiries, pursue higher penalties and take forward criminal prosecutions.

What are the key dates?

You need to act now. The key date is today. The RTC period started on 6 April 2017. The deadline for correcting the UK tax position is **30 September 2018**.

What should taxpayers do now?

All taxpayers who have or have had any offshore financial connections should ensure that all their tax returns are correct. HMRC has been clear that its interest is not limited to just a correction of any offshore based evasion. The Requirement to Correct applies to any planning and technical opinion where offshore matters feature. These can include issues such as claimed non-domicile and residence which may not be correct following rule changes or long-standing offshore investment vehicles or structures that may not be compliant currently, even if compliant when created. So for instance, it would be wise for anyone who has or has had an interest in an offshore structure or who has claimed the remittance basis to have their tax affairs sense-checked before the deadline on 30 September 2018.

NOTE — Under the 'Requirement to Correct', the deadline for submitting a disclosure of offshore non-compliance has always been 30 September 2018. HMRC has encouraged taxpayers to inform them of any necessary corrections using existing HMRC formal disclosures routes. As these existing routes have their own timelines, HMRC





has provided some clarity as to how the 'Requirement to Correct' will work in practice. In essence, one can, prior to midnight on 30 September 2018, register an intention to make a disclosure. One must use the Worldwide Disclosure Facility (WDF), The Contractual Disclosure Facility (CDF) or inform the person conducting any current live tax enquiry. Full and accurate details, enough for HMRC to make a correction to the tax return in question, must be supplied within 60 days. HMRC states that this will be enough to remove the risk of any higher penalty chargeable under the regime. 'Normal' penalties may still apply. In general, HMRC allows 60 days (90 days for the WDF) for this skeleton or 'outline disclosure' to be made and has been clear that there are 'no circumstances' where the 60 day limit will be extended.

What happens if an error is not corrected by 30 September 2018?

After the deadline has passed, under the RTC, HMRC consider errors to be 'Failures to Correct' and there are a number of new, draconian sanctions available to it. These include:

- penalties of between a minimum of 100% and 200% of the tax not corrected
- potentially an asset based penalty of up to 10% of the value of the relevant asset on which the failure occurred (where tax at stake exceeds £25,000 in any year)
- potential that the taxpayer will be 'named and shamed' where value of correction exceeds £25,000 in total
- a potential further penalty of 50% of the standard penalty if HMRC can demonstrate that the assets or funds have or had been moved in an attempt to avoid the Requirement to Correct regime.

What next?

The deadline for correction is looming and failure to do so allows for some extremely severe financial consequences. Our Tax team includes in-house experts and former senior inspectors from HMRC's specialist Fraud Investigation Service Offshore Team. We have a wealth of experience available to review and if necessary, correct, any offshore arrangements which are or have been held. Please contact us to discuss how we can work with you to review either your own tax affairs or those of your clients.

For further information please contact us using the details in this document, or email a team member direct: firstname.surname@edwincoe.com
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Our Senior Team

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