

Requirement to Correct and the Worldwide Disclosure Facility

7 November 2017

‘REQUIREMENT TO CORRECT’ (RTC)

Within the original draft Finance Bill 2017 were provisions related to the ‘Requirement to correct certain offshore non-tax compliance’. Subsequently, these provisions were deleted from that draft Bill due to the snap General Election on 8th June 2017, but they have been reinstated as Schedule 18 in the draft Finance Bill 2017-19, currently at Committee stage in Parliament.

WHO THIS AFFECTS

The RTC rules will apply to any taxpayer who has not correctly disclosed their offshore income or gains. RTC will apply to 2016/17 and earlier tax years. Taxpayers will have to go back four years for non-‘careless’ mistakes, six years for ‘careless’ mistakes, and 20 years for deliberate under-reporting. In certain cases, the time limit for inheritance tax under-declarations can extend to 20 years even if the mistake was not careless or deliberate.

The proposed legislation will require taxpayers to disclose underpaid UK tax by 30 September 2018. The most common types of correction are likely to be related to inadvertent remittances, income from overseas property not previously reported (and which may have already been taxed in the other country, but still needs to be reported) and IHT ten-year charges in relation to non-UK trusts with UK residential property or loans to UK resident beneficiaries.

RTC will extend to reviewing tax avoidance arrangements that relate to offshore income or assets and ensuring that historic tax advice was updated following changes to the law (especially in relation to recent changes to the taxation of non-domiciled individuals) and to taxpayers’ circumstances. Offshore structures should be comprehensively reviewed to ensure that they do not fall foul of current legislation and that the implementation was correctly carried out.

Anti-money laundering legislation criminalises the non-reporting of money laundering, which includes the deliberate non-payment of tax. This may lead to the reporting of offshore structures identified by those professionals who are bound by the legislation, such as lawyers and accountants, and this legislation was significantly strengthened in June 2017.

CONSEQUENCES OF NOT DISCLOSING

If an individual is found to have not complied with RTC, the maximum penalty will be 200% of the potential lost tax from the uncorrected offshore non-compliance. There is some scope to reduce this through partial disclosure, but the penalty cannot be reduced below 100%.

The penalty may be waived if there is a reasonable excuse, although the rules are purposefully tightly drawn and so a penalty is likely to apply in many cases. Note however that carrying out a full review of offshore income and assets may arm a taxpayer with a permissible reasonable excuse, even if that review later turns out to have been incorrect.

There may be an additional asset-based penalty if the potential lost tax exceeds £25,000, and persistent offenders may be ‘named and shamed’.

Taxpayers with uncorrected offshore non-compliance should be aware that criminal charges may be brought against them under legislation relating to offshore matters.

The time limit before which HMRC would otherwise be required to make an assessment is being extended by up to four years, to 4 April 2021. This will give HMRC more time to review data received through the first (and subsequent) automatic exchanges of information under CRS from 30 September 2017.

ACTION TO TAKE

All taxpayers with offshore income or assets should review their past tax compliance, even if they believe that they have been fully compliant. This is because the severe penalties for failure to correct will apply even to innocent mistakes.

If you believe that this legislation may affect you then it is essential that you seek professional advice. Where non-compliance is identified, a disclosure should be made under the Worldwide Disclosure Facility. Taxpayers must correct their UK tax position by 30 September 2018.

WORLDWIDE DISCLOSURE FACILITY (WDF)

On 5 September 2016, HMRC’s WDF opened. The facility will be available until 30 September 2018, and allow taxpayers

to disclose UK tax liabilities relating (either wholly or partly) to offshore income or assets.

To use the facility a taxpayer would need to have:

- Income arising from a source outside the UK;
- Assets situated or held outside the UK; or
- Activities carried on outside the UK.

The WDF applies to all tax years up to 2016/17. Joint disclosures are not permitted so that two separate disclosures would need to be made in the case of jointly owned assets (e.g. husband and wife).

In order to make a disclosure under the WDF, a taxpayer must first notify HMRC that they wish to make a disclosure, then submit the full disclosure and pay any tax, interest and penalties within 90 days. Extensions to the deadline can be agreed in complex circumstances.

Disclosures must be made using HMRC's Digital Disclosure Service, and the facility is available to all taxpayers including individuals, trustees, executors and companies.

Taxpayers who have acted deliberately to evade tax should instead consider making a voluntary disclosure under Code of Practice 9 as this can guarantee immunity from criminal prosecution. There is no immunity from prosecution under the WDF.

CONCLUSION

Against the backdrop of ever increasing worldwide tax transparency and disclosure, all taxpayers with a connection to a non-UK jurisdiction must take urgent action in order to avoid potentially severe penalties. At a minimum, a review of offshore income, assets, planning and structures, covering at least the last six tax years, should be carried out without delay.

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