

## Requirement to Correct Tax on Offshore Assets

Taxpayers have just over a month - until 30 September 2018 - to disclose to HMRC any undeclared UK tax liabilities on overseas income or assets under the Requirement to Correct (RTC) legislation.

Tough penalties will apply if HMRC discovers tax irregularities that have not been corrected by the deadline.

This is also the deadline by which HMRC will receive information from around 100 countries, under the Common Reporting Standard, on financial accounts held overseas by UK resident taxpayers. This information will enable HMRC to more easily detect tax irregularities in respect of overseas assets.

HMRC is encouraging taxpayers to review their tax affairs and to report any undisclosed liabilities before the deadline to avoid the heavy penalties that may be imposed if a taxpayer fails to correct and HMRC discovers an error after the deadline has passed.

The scope of the RTC legislation is broad and can affect taxpayers who have made innocent errors, as well as deliberate defaulters.

### What does the RTC legislation cover?

The legislation governing the 'Requirement to Correct' (RTC) is set out in Finance (No 2) Act 2017 and applies to tax non-compliance involving offshore matters or transfers relating to a period before 6 April 2017 that is within the time limit for assessment (see below).

It covers income tax, capital gains tax, or inheritance tax on:

- income arising from a source in a territory outside the UK, or
- assets situated in a territory outside the UK, or
- activities carried on wholly or mainly in a territory outside the UK, or
- anything having effect as if it were income, assets or activities of a kind described above.

The RTC also applies to UK source income (or sale proceeds arising from a capital gain) that was transferred overseas before 6 April 2017. For inheritance tax, the tax non-compliance may involve the transfer of an asset outside the UK.

All taxpayers are within the RTC, including individuals, trustees and companies.

### Assessment time limits – how far back can HMRC go?

The normal time limits for HMRC to assess historic income tax and capital gains tax depend on the taxpayer's behaviour:

- Four years from the end of the tax year for innocent errors – from 2013/14 onwards

- Six years from the end of the tax year for careless errors – from 2011/12 onwards
- Twenty years from the end of the tax year for deliberate error – from 1997/98 onwards

Past liabilities that have arisen where the assessment window is closed fall outside the RTC. However, it should be noted that where a taxpayer believes there is an innocent error, HMRC may seek to argue that the error was careless or deliberate, so that additional tax years can be assessed. Therefore, the time limits can be ambiguous.

### **What are the penalties for failing to correct?**

The standard penalty is 200% of the tax not corrected, although this may be reduced depending on the taxpayer's level of co-operation with HMRC, but subject to a minimum of 100% (the minimum is 150% where disclosure is prompted by HMRC after 30 September 2018).

In the most serious cases, where the uncorrected tax is over £25,000 in any given tax year, there is an additional penalty of up to 10% of the value of the assets connected to the non-compliance, plus possible 'naming and shaming' of the taxpayer.

These punitive penalties will apply even if the mistake was not deliberate.

If HMRC can show that assets have been moved in an attempt to avoid the RTC, an additional penalty of 50% of the standard penalty may apply.

### **What is a reasonable excuse?**

If the taxpayer can show that he has a 'reasonable excuse' for not correcting the non-compliance, the RTC penalties may not apply.

In certain circumstances, reliance on professional advice may provide a defence. However, the defence may be disqualified if, for example, the adviser did not have appropriate expertise to give advice; the adviser was the promoter or facilitator of a tax avoidance arrangement; or the advice was provided to a different person.

### **What action should taxpayers take?**

All taxpayers with overseas interests should review their UK tax position to ensure that all tax liabilities have been correctly reported. This includes UK resident taxpayers with interests in offshore structures and remittance basis users.

Taxpayers should ensure they have correctly reported their UK residence status and domicile status, as mistakes could be costly. For example, If HMRC successfully challenges an individual's claim to be non-UK domiciled, the individual will be exposed to RTC penalties, unless they can demonstrate a reasonable excuse.

Taxpayers whose residence or domicile status is unclear are advised to seek a professional opinion from an adviser with relevant expertise in such matters, as these can be complex areas.

The logo for VerFides, featuring the word 'verFides' in a white, sans-serif font. The 'v' is lowercase, while 'erFides' is uppercase. The background is a dark, blue-tinted photograph of a modern bridge structure with a large dome in the distance, likely the St. Paul's Cathedral in London.

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## **How can Verfides Help?**

Verfides can assist taxpayers in conducting a review of their tax affairs to ensure that all tax liabilities have been correctly reported and any irregularities are corrected before the deadline.

We can also provide assessments of residence or domicile status where required.

With only just over a month to go before the deadline, taxpayers should seek advice immediately to ensure their tax affairs are in order and so that any disclosure can be made in time to meet the 30 September 2018 deadline.

*This document has been prepared as a general guide and is based on the latest legislation and case law. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.*