

What is the Requirement to Correct (“RTC”)?

The RTC is a statutory obligation for taxpayers to correct instances of offshore non-compliance and to notify HMRC of any outstanding tax liability.

What are the penalties if this is not addressed?

These are significant, including up to 10% of the assets giving rise to the liability.

Who does it apply to?

The RTC applies to trustees, individuals, partnerships, or non-resident landlord companies even those who consider themselves resident (or in the case of individuals, non-UK domiciled).

When is the deadline? Taxpayers must correct their UK tax position by 30 September 2018 to avoid the new punitive penalty regime.

What do I need to do now? Trustees of non-UK resident trusts or individuals with offshore financial affairs should give this matter their prompt attention and undertake a UK tax review to identify any instances of historic non-compliance before making the necessary disclosures to HMRC in advance of the deadline.

Michelmores can provide advice and assistance throughout this process including dealing with all communications with HMRC on your behalf.

1. The RTC in more detail

Schedule 18 of the Finance Act 2017 introduced a significant financial penalty regime if past instances of offshore non-compliance are not corrected. The RTC window runs to 30 September 2018. After this date the Failure to Correct (“FTC”) penalty regime will commence, including a tax geared penalty of between 100% and 200% of the lost tax should the non-compliance still be outstanding after 30 September 2018.

Anyone who fails to correct their position may also face a potential asset based penalty of up to 10% of the value of the relevant asset and potential “naming and shaming” where more than £25,000 of tax is involved.

The offshore non-compliance must have arisen in or before the 2016/17 tax year and there is no express limit in how far back the non-compliance can go although normal time limits for discovery assessments are expected to apply. As such, non-compliance in relation to inheritance tax is recoverable for up to 20 years and for income tax or capital gains tax the cut-off is 6 years (other than in cases of deliberate behaviour when the 20 year limit will apply).

In determining whether there is offshore non-compliance, conduct is irrelevant. The FTC penalty regime does not differentiate between those who deliberately failed to pay the correct tax, those who were careless about paying the correct tax and those who took reasonable care but still did not pay the correct tax.

The only defence is that someone had a “reasonable excuse”. A “reasonable excuse” in this context does not include tax advice that is out of date nor tax advice that was addressed to a settlor rather than the incumbent trustee.

2. Trust Registration

Alongside the RTC, new regulations came into force in 2017 which require trustees to maintain a register containing certain information about the trust and in relation to relevant people connected with the trust. Where the trust has a UK reporting obligation this information must be submitted to HMRC through their new Trust Registration Service.

Failure to report this information to HMRC is a criminal offence and could result in the trustees incurring significant fines.

3. Legal Privilege

Our discussions are covered by legal privilege. As such, they are not normally disclosable in the event of litigation. Given the nature of this work, legal privilege could potentially be of significant benefit. Legal privilege extends only to lawyers and trustees should be aware of the risk of engaging non lawyers.

Michelmores can provide a bespoke UK tax health check service to identify any potential instances of historic non-compliance, we can prepare all necessary disclosures in the required format, deal with registration of the trust and liaise with HMRC directly on your behalf throughout the process (and in advance of the 30 September 2018 deadline). Going forward we can work with you to ensure all UK tax reporting obligations are met.

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Get in touch



Jonathan Riley

Partner

jonathan.riley@michelmores.com

+44 (0)20 7659 4629



Jemma Lascelles

Director of Personal Tax

jemma.lascelles@michelmores.com

+44 (0)1392 687542



Raj Patel

Partner

raj.patel@michelmores.com

+44 (0)20 7659 4624