



Requirement to Correct (RTC) tax due on offshore assets

Taxpayers with any offshore component to their financial affairs should review their position now to determine whether they need to make a disclosure under the RTC before 30 September 2018. Taxpayers with complex financial arrangements may wish to seek professional advice on the new rule.

Taxpayers are being encouraged through legislation to settle undeclared UK income tax, capital gains tax and inheritance tax liabilities for the relevant periods before HMRC use the information they will receive from overseas territories under the Common Reporting Standard (CRS). 30 September 2018 was chosen as the final date for corrections as this is the date by which more than 100 countries will exchange data on financial accounts under the CRS. This data will significantly enhance HMRC's ability to detect offshore non-compliance. To ensure there is an incentive for taxpayers to correct any offshore tax non-compliance by 30 September 2018, RTC imposes increased penalties for any failures to correct by that date.

Who is impacted?

RTC applies to any person with undeclared UK income tax, capital gains tax and inheritance tax liabilities. Person includes individuals, partnerships, trustees or non-resident landlord companies.

Anyone who owns or has an interest in income, gains or assets held outside the UK or has had a source of income that is offshore (or has moved income or the proceeds of capital gains offshore), is potentially impacted.

What is the scope of overseas assets that could be caught?

HMRC provides some examples of offshore assets that may result in UK tax liabilities though have pointed out that this list is not exhaustive and any assets held offshore, however they are held, may lead to a requirement to correct.

They could include:

- Overseas bank or other savings and investment accounts
- Overseas holiday homes (including holiday timeshare) that are let out or sold
- Offshore investment bonds
- Offshore stocks and shares

- Offshore trusts
- Executory assets held overseas but not disclosed as part of a UK domiciliary's estate

What does non-compliance look like?

Non-compliance captures deliberate, careless, or even innocent mistakes including:

- submission of incorrect tax returns
- failure to submit a tax return to HMRC
- failure to notify HMRC that a tax return should be issued
- failure to give notice of chargeability to income or capital gains tax

How far back should a taxpayer go when reviewing their tax affairs?

RTC only applies if the non-compliance was committed before 6 April 2017. You only need to make a correction if HMRC was able to raise an assessment to recover the income tax or capital gains tax on 6 April 2017 or make a determination to recover the inheritance tax on 17 November 2017, the day after Royal Assent was received for the new provisions.

Anyone who has failed to notify chargeability involving offshore matters or transfers for any year up to and including 2015 to 2016 will have failed to do so on or before 5 April 2017. They're required to correct the position on or before 30 September 2018.

Normal assessing rules apply to decide whether HMRC was able to raise an assessment on 6 April 2017. The most relevant time limits are:

Type of assessment	Last date for making the assessment
Assessment where the loss of tax is not due to careless or deliberate behaviour	Four years from the end of the tax year of assessment in which the tax loss arises
Assessment where the loss of tax is due to careless behaviour	Six years from the end of the tax year of assessment in which the tax loss arises
Assessment where the loss of tax is due to deliberate behaviour	20 years from the end of the tax year of assessment in which the tax loss arises

The time limits are different if there is a failure to notify chargeability.



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Extension of period for assessment of offshore tax

The RTC legislation allows for a longer period for HMRC to take action to recover any tax that is subject to the RTC rule.

This means that for any offshore tax that is subject to the RTC, HMRC will continue to be able to assess that tax until the later of 5 April 2021 or the date on which an assessment can be raised using the normal rules.

How do you make a correction under the RTC rule?

You can correct any offshore tax non-compliance by 30 September 2018 in a number of ways including:

- using HMRC's Digital Disclosure Service (DDS) as part of the Worldwide Disclosure Facility (WDF) or any other service provided by HMRC as a means of correcting tax non-compliance
- telling an officer of HMRC in the course of an enquiry into your affairs or
- any other method agreed with HMRC

Where a disclosure is made under the RTC the taxpayer should make a full disclosure of all irregularities whether they relate to offshore matters or to UK income and gains. Outstanding tax plus any interest and penalty that is due will have to be paid.

The taxpayer is required to supply HMRC with the information it needs to be able to calculate the tax due as a result of your non-compliance. You are required to supply this information on or before 30 September 2018. It is your responsibility to ensure that you do everything required by 30 September 2018.

No liability to penalties for failing to correct by 30 September 2018 will arise if:

- By midnight on 30 September 2018, a taxpayer notifies intention to make a disclosure using the WDF by registering via the DDS and the disclosure process is then completed fully and accurately within a 90 day time limit. Anyone wishing to register for the WDF by telephone must do so by 4pm on 28 September 2018.
- On or before 30 September 2018, a request to make a voluntary disclosure of deliberate behaviour involving offshore tax non-compliance under HMRC's Contractual Disclosure Facility (CDF) is made by emailing a completed form CDF1 to HMRC and an outline disclosure is then submitted within a 60 day time limit.
- If HMRC is already undertaking any enquiry or intervention into the taxpayer's affairs, the person conducting the enquiry is informed on or before 30 September 2018 that the taxpayer wishes to make a disclosure of offshore tax non-compliance and an outline disclosure is then submitted to that person by 29 November 2018.

What happens if a taxpayer fails to comply with the deadline?

Failure to disclose relevant information to HMRC by 30 September 2018 will result in the individual becoming liable to punitive penalties from their failure to correct (FTC). There are a number of elements to these penalties.

Standard penalty

In all cases where a penalty applies, there will be a standard penalty equivalent to 200% of the tax liability which should have been disclosed to HMRC under the RTC but was not. This penalty can be reduced to reflect your level of co-operation with HMRC and the quality of your disclosure to HMRC. The reduction cannot reduce the penalty to less than 100% of the tax involved.

Asset based penalty

In the most serious cases, where the tax involved exceeds £25,000 in any tax year, and you knew you had relevant offshore non-compliance and did not correct it an asset based penalty will apply.

This means a penalty of up to 10% of the value of assets connected to the failure will be charged. This is in addition to the standard penalty detailed above.

HMRC will consider that you will have known you had relevant offshore tax non-compliance to correct if either:

- your original non-compliance was deliberate
- you became aware at a later point that non-deliberate non-compliance had occurred

No penalty will be chargeable where the taxpayer has a reasonable excuse for failing to correct the position.

Offshore asset moves penalty

There is an enhanced penalty for cases where it can be shown that you moved assets to avoid having details reported to HMRC under international agreements on exchange of information.

The penalty is equivalent to 50% of the amount of the standard penalty and is charged in addition to the standard penalty. This enhanced penalty provision applies to the RTC rule and will be equivalent to 50% of the FTC penalty.

In more serious cases and in addition to the penalties detailed above, if more than £25,000 tax per investigation is involved and the taxpayer knew you had relevant offshore non-compliance and did not correct it, HMRC may publish your details.



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What if any omissions or errors were accidental?

The penalties will be chargeable if you fail to correct, unless you can demonstrate you had a 'reasonable excuse' for not meeting your obligation.

If you fail to make a correction but have a reasonable excuse for not doing so, you will not face an FTC penalty but will still have to pay any tax that is owed along with interest.

What is a reasonable excuse?

HMRC recognises that there are situations in which a person takes advice in good faith but then has tax non-compliance that should be corrected because the advice was wrong. RTC rules specify you cannot rely on advice as providing a reasonable excuse in certain cases, particularly if the advice was given by a person with an interest in the arrangements giving rise to the non-compliance, the advice was given by a person without the appropriate expertise or the advice did not take into account all of the relevant circumstances.

Whether a person has the appropriate expertise to give advice will vary depending on the precise circumstances involved. HMRC will accept that anyone who is a member of a UK-recognised legal, accountancy or tax advisory body will have the appropriate expertise to give advice on UK tax matters. There will only be grounds for reasonable excuse if the adviser was given full and accurate details of all matters that are relevant to the issue.

What will happen once a taxpayer discloses?

If you make your correction during the course of an enquiry, the caseworker will discuss any concerns they have as part of that enquiry.

If you make your correction in any other way (for example by amending a tax return that you have submitted or by using the digital disclosure service) HMRC will review the information you have supplied in line with its normal processes and may decide to ask you for further information to clarify the position. When a correction is made it will be necessary to consider whether a penalty is also due.

Where can I find further information?

HMRC's guidance can be found at:

<https://www.gov.uk/guidance/requirement-to-correct-tax-due-on-offshore-assets>.

If you only read one thing read this:

- This is an opportune time to ensure your clients are aware of the RTC rules given the deadline of 30 September.
- Clients should be aware that the RTC rules are aimed at innocent cases of non-compliance as well as tax evaders.
- Reasonable excuse for failing to correct is fairly well defined by HMRC so that reliance on an adviser is not an automatic right to claim reasonable excuse.
- Failure to correct could result in punitive penalties. These penalties would be payable in addition to the tax and interest.

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