



### What is ‘requirement to correct’?

Requirement to correct (RTC) imposes a statutory requirement on taxpayers with outstanding offshore non-compliance as at 5 April 2017 to correct the position by providing the relevant information to HMRC on or before 30 September 2018. Generally (but not always) a disclosure will be made by using the Worldwide Disclosure Facility (WDF).

Provided the necessary disclosure is made by the deadline, the current rules on penalties will apply to the tax due. If no disclosure is made and the taxpayer is unable to satisfy any of the tests for having a ‘reasonable excuse’, severe ‘failure to correct’ (FTC) penalties will be imposed.

The reason for the non-compliance is not relevant, so non-compliance which is not deliberate will be severely penalised if there is a FTC by the deadline.

It should be noted that HMRC is bulk mailing all taxpayers within the Wealthy Units to alert them to the RTC legislation. Significantly more detailed letters are going out where there is an ongoing enquiry. These letters can be disconcerting and where there is an ongoing enquiry can seem quite aggressive in tone. If you have any concerns please get in touch with your usual Rawlinson & Hunter contact.

### Who comes within the provisions?

Individuals, personal representatives and trustees can be within the RTC provisions. Companies are not within the provisions unless one of the taxes covered accrues in a fiduciary or representative capacity (for example the company is a trustee company).

### Assessment time limits extended

Generally, HMRC has until the later of 5 April 2021 and the deadline under the standard rules to raise FTC assessments. Effectively, the following table shows how far back HMRC can go, depending on which category of taxpayer behaviour the non-compliance falls into:

Taxpayer Behaviour	Assessment Form
Reasonable care	Tax years 2013/14
Careless	Tax years 2011/12
Deliberate	Tax years 1997/98

In spite of the vast amount of additional information which HMRC is now receiving under mandatory automatic exchange of information arrangements with other countries, the Government is shortly to introduce provisions which will extend HMRC’s time limit to raise assessments to 12 years, where the liability arises in respect of offshore income and gains.

## What is 'offshore non-compliance'?

RTC applies to Income Tax, Capital Gains Tax (CGT) and Inheritance Tax (IHT).

Non-compliance is one of the following: (i) a failure to notify HMRC of a tax liability; (ii) a failure to deliver a return or other document; or (iii) delivering a return or other document which is inaccurate, where that inaccuracy leads to:

- an understatement of a liability to tax;
- a false or inflated statement of a loss; or
- a false or inflated claim to repayment of tax.

Broadly, offshore non-compliance means an outstanding UK tax liability with respect to Income Tax, CGT or IHT where that liability is due as a result of either: (i) offshore matters (foreign source income or foreign situs assets); or (ii) it does not involve an offshore matter but there has been a transfer offshore.

## What happens if there is a FTC?

Clearly, there is only a problem where there was something to correct for 2016/17 or earlier and a correction has not been made. Where there is a FTC and no 'reasonable excuse' (discussed below) is available, a far higher penalty regime than we have currently will apply (the standard current penalty regime generally ranging between 0% to 30%).

The standard FTC penalty has been set at 200% of the tax due. Unless there are special circumstances, the FTC penalty cannot be reduced to any lower than 100%, so at a minimum where there is a FTC, no 'reasonable excuse' and no special circumstances, the taxpayer has to pay:

- the tax due;
- interest;
- a penalty of 100%.

The reduction (if any) in the standard 200% FTC penalty will depend on the quality of any subsequent disclosure, the level of co-operation and the seriousness of the matter.

Depending on the circumstances, in addition to the FTC penalty the following might also apply:

- a penalty of 50% of the amount of the standard penalty if the taxpayer can be shown to have moved assets to a different location in order to avoid automatic exchange of information;
- an asset-based penalty of up to 10% of the value of the offshore assets where the taxpayer was aware that there was offshore non-compliance but chose deliberately not to report it;
- the taxpayer's personal details may be published on a public register.

## What is 'reasonable excuse'?

'Reasonable excuse' is very important as there can be no FTC penalty if the person satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the FTC.

If a taxpayer has taken professional advice, and has made no RTC disclosure in reliance on that advice, this may be accepted as a reasonable excuse. The advice would need to have been given by someone competent to give it (anyone who is a member of a recognised UK legal, accountancy or tax advisory body would be accepted as such), and it would need to take account of all of the taxpayer's relevant circumstances. Furthermore, the advice would be disqualified if it relates to 'avoidance arrangements', one of the main purposes of which is to obtain a tax advantage. Arrangements are not tax avoidance arrangements if they accord with established practice and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.

## What should I do?

The FTC penalties are draconian and time is running out. If you have any concerns about offshore non-compliance you should get in touch with your usual Rawlinson & Hunter contact urgently so as to discuss the issues that are worrying you.

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