

FAILURE TO CORRECT: WHAT YOU NEED TO KNOW

A new statutory 'Requirement to Correct' (RtC) for any person (including trusts and companies) with undeclared taxes from overseas assets is expected to be enacted later in the year. The RtC covers Income Tax, Capital Gains Tax and Inheritance Tax.

Worldwide Disclosure Facility

An opportunity exists until 30 September 2018 to advise HMRC of any unpaid taxes arising from overseas assets under the Worldwide Disclosure Facility (WDF) or any other appropriate disclosure route. This will facilitate disclosures of undeclared tax liabilities arising from offshore assets with the addition of statutory interest and 'normal' penalties.

For careless, unprompted disclosures this is likely to result in a low penalty of around 10% in circumstances where full disclosure and cooperation are offered. In deliberate behaviour cases, a penalty of 30% of the unpaid taxes is likely to be exigible where a proper, timely and unprompted disclosure is made.

These disclosures are far from straightforward and will generally require the support of a tax disclosure specialist to assess behaviours which will impact on the number of years assessable and penalty levels. However, great care should be taken with disclosures where deliberate behaviour is involved, as the WDF offers no immunity from prosecution for tax offences. An individual should instead apply for the Contractual Disclosure Facility (otherwise known as Code of Practice 9) with qualified assistance.

Failure to Correct penalties

Where individuals fail to disclose overseas liabilities before the 30 September 2018 deadline, strict penalties for failing to correct will apply. These start at 200% of the underpaid taxes, but may be mitigated down to a minimum of 100% with full cooperation and disclosure. It will not matter whether the historic liabilities arose as a result of human error, careless behaviour or tax fraud, since the penalty imposition applies to the Failure to Correct (FtC) rather than the original offence(s).

'Reasonable excuse' may be claimed. But tax authorities are likely to resist any such claim and will only entertain such a defence in very limited circumstances (e.g. it will no longer be possible to rely on the fact that offshore planning advice was taken, as such 'paid' advice is specifically excluded from the definition of reasonable excuse).



Crowe Clark Whitehill LLC™

The basic penalty may also be supplemented by a second penalty of up to 50% of the FtC penalty, where the tax authorities demonstrate that taxes remained unpaid as a result of an individual, trust or company trying to deliberately evade taxes by moving assets between jurisdictions. There is a new 'asset based' penalty too for the most serious cases of tax fraud arising from overseas assets. The penalty may be up to 10% of the asset value. Where taxes amount to more than £25,000, an individual may also be 'named and shamed'.

The RtC also introduces extensions to assessment periods. Any tax potentially assessable at 6 April 2017 will be assessable until 5 April 2021. In effect, this could extend tax due as a result of careless behaviour from 6 to 10 years and for deliberate behaviour from 20 to 24 years.

The 'super penalties' will apply retrospectively, so you cannot assume that the imposition will only apply to recent years. Any individual who has undisclosed historic tax liabilities is strongly advised to take independent specialist advice in order that a tax disclosure may be made prior to September 2018. Accountants, trustees, private bankers, independent financial advisors or corporate service providers should now be advising their clients to take independent health checks, so that matters may be put right in advance of the new penalties which could, if levied, potentially wipe out overseas investments.

If you would like to know more then please contact

John Cowan : john.cowan@crowe.im

Pam Harvey : pam.harvey@crowe.im; Elaine Rudge: Elaine.rudge@crowe.im

Crowe Clark Whitehill LLC, 6th Floor, Victory House, Prospect Hill, Douglas IM1 1EQ

Tel: 01624 627335; Fax: 01624 677225; Web: www.crowe.im

Crowe Clark Whitehill LLC does not accept any liability for any action taken or not taken on the basis of this Note. Crowe Clark Whitehill is a registered Business Name of Crowe Clark Whitehill LLC. Crowe Clark Whitehill LLC is a Limited Liability Company registered in the Isle of Man No. 719L.