

Requirement to Correct

Is time running out?

With effect from 30 September 2018 any UK taxpayer with "offshore irregularities" that have not been disclosed before the 30 September deadline will be liable to penalties of between 100% and 200% of the tax due.

There are no de minimis provisions and it applies to all entities that are liable to pay *any UK tax* in relation to *any offshore interests*.

In addition to the Requirement to Correct rules, new legislation is being brought in to increase the time limit for discovery of offshore irregularities to 12 years. This could lead to significant penalties being imposed in the future.

These rules affect Income Tax, CGT and IHT.

Offshore irregularities

An offshore irregularity is any tax liability that should have previously been disclosed to HMRC but has not. For example, if a non-resident trust sold a UK residential property making a gain in the year to 5 April 2017, this should have been disclosed by 31 January 2018 (at the latest). If the trust has not yet disclosed this, the lack of disclosure would be an offshore irregularity.

Pitfalls

While most tax liabilities are quite obvious (capital gain on the sale of UK residential property, income tax on the rental income etc.), there are occasions when a tax charge may have arisen without the taxpayer being aware.

An example: CIS liability

An example of this could be where a UK property has been acquired for the use of a family. SDLT has been paid on its acquisition and there are no other associated liabilities. However, the family carry out extensive alterations on the property as a cost of £1.5m. They believe that they have complied with all necessary obligations under UK tax.

However, the builders they used were from overseas. These builders were not registered with the Construction Industry Scheme (CIS) in the UK. Due to the amount of money spent on the alterations, the family must either ensure that the builders were registered, or withhold 30% from the payments and pay this to HMRC under the CIS rules.

When the property is sold 5 years later, HMRC query why no CIS deductions were made on the expenses (as they are included in the computation of the gain). As a result, a tax liability of £450,000 is assessed and a *penalty of at least £450,000* is levied under the requirement to correct rules.

Further example: IHT

An offshore trust owns UK property. Although the only trust connection to the UK is the ownership of the property, the trust is potentially liable for UK IHT on the value of the property every 10 years at a rate of 6%.

E.g. assume the UK property is held by the trust directly for the use of its beneficiaries. No income arises on this asset. However, the value is £5m and the trust was created in January 2007. As a result, a liability to IHT arose on the 10 year anniversary of the settlement in 2017 of £90,000. As this was not declared before the 30 September deadline, an additional penalty of at least £90,000 will be applied.

Who does this affect and what to do

This measure affects every individual, trust, company or other entity with offshore interests and undisclosed liabilities for income tax, IHT or CGT.

Financial affairs should be reviewed for the last 12 years to ensure that all UK tax has been disclosed and paid.

If you are unsure of whether a charge has arisen, we can review your situation and help with any disclosure, but time is running out, so act fast.

Further information

For further information about the requirement to correct, please contact Roger Holman or Amanda Chapman (or your usual DWF contact):



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