

Requirement to Correct Certain Offshore Tax Non-Compliance

CIOT/ATT Member Webinar
18 July 2018

- **Gary Ashford**, member of CIOT Council and of the CIOT's Management of Taxes technical sub-committee
- **Geoff Lewis**, HMRC Offshore Co-Ordination Unit
- **Margaret Curran**, CIOT Technical Officer

Agenda

- Housekeeping
- The Requirement to Correct – an HMRC perspective
- Practical aspects of the Requirement to Correct
- Question and Answer session

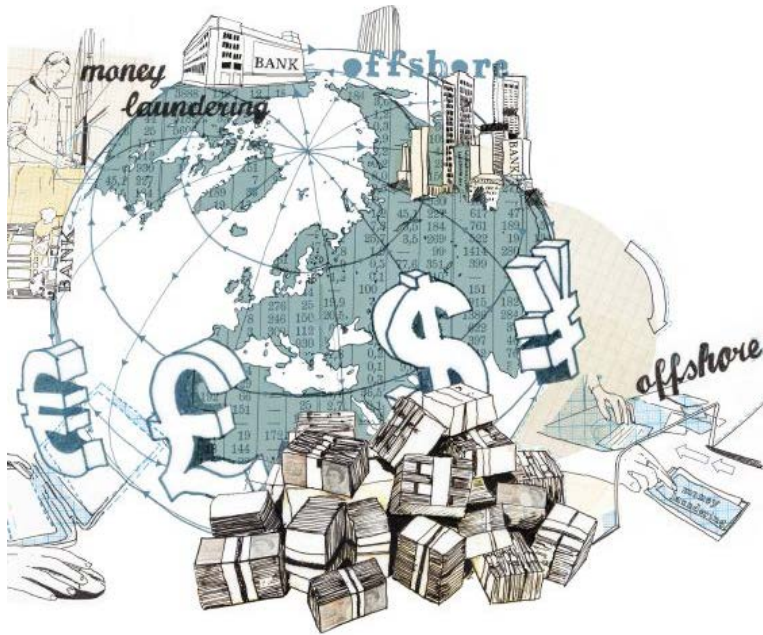
Housekeeping points

- Please email questions in as we go along
- Webinar will be available at this same link for 12 months
- Slides can be downloaded from our websites
- Follow up queries / questions to technical@ciot.org.uk or atttechnical@att.org.uk



HM Revenue
& Customs

The Requirement to Correct: An HMRC Perspective



CIOT Webinar
18 July 2018

Geoff Lewis
HMRC Offshore Co-ordination Unit

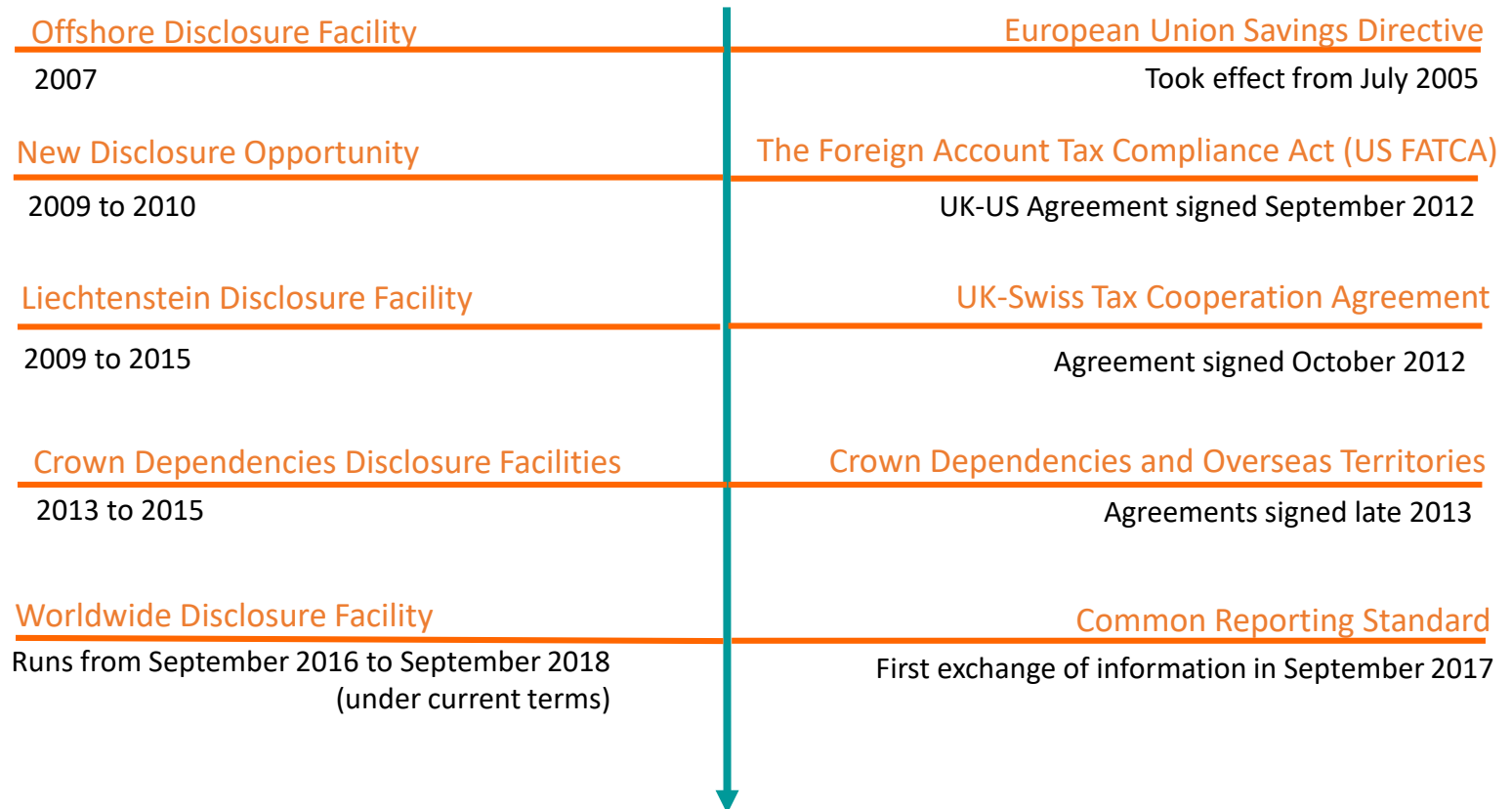
No Safe Havens: Objectives

The objectives of the No Safe Havens strategy are **to ensure:**

- there are **no jurisdictions** where UK taxpayers feel safe to hide their income and assets from HMRC;
- **would-be offshore evaders** realise that the **balance of risk** is against them;
- **offshore evaders voluntarily pay the tax due** and remain compliant;
- those who do not come forward are **detected and face vigorously-enforced sanctions**;
- there will be **no place for facilitators** of offshore evasion.



Timeline: Exchange of information and disclosure facilities



Common Reporting Standard

To date, HMRC has collected £2.9 billion in additional tax, penalties and interest from our international agreements and disclosure facilities

Over 100 jurisdictions have agreed to automatically share information on financial accounts under the Common Reporting Standard. The first exchange of information took place in **September 2017**, with all participating countries exchanging information by **September 2018**.

HMRC will receive information about:

- overseas accounts
- insurance products
- other investments, including those held through overseas structures such as companies and trusts.

This includes details of the account holder or owner, including:

- name
- address
- date of birth
- balance of the account
- payments into the account



Timeline: Policy measures

Strengthening civil deterrents for offshore tax evasion

Announced 2014; implemented April 2016

A new simple criminal offence for tax evasion

Announced 2015; implemented November 2017

New civil penalties for offshore tax evaders

Announced 2015; implemented April 2017

Requirement to correct past noncompliance

Announced 2015; Royal Assent November 2017

Extending offshore time limits

Announced AB 2017; consultation in 2018

Civil penalties for the enablers of offshore tax evasion

Announced 2015; implemented January 2017

New corporate criminal offences

Announced 2015; implemented September 2017

Financial Institutions client notification regulations

Implemented 2016

Requirement to notify HMRC of offshore structures

Announced 2016; Consultation response at AB 2017



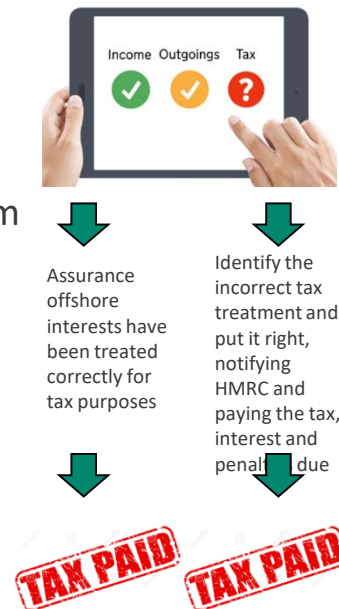
Requirement to Correct – Development

- Announced 2015
- Developed by HMRC's Centre for Offshore Evasion Strategy
- Public consultation – 24 August to 19 October 2016
- Response document published 5 December 2016 with draft legislation
- Legislation in Finance (No 2) Act 2017
- Royal Assent and entered into force – 16 November 2017



Requirement to Correct – Objectives

- To **encourage and drive tax compliance** across the whole spectrum of offshore behaviours.
- Give a **final chance to clear up issues** for the past.
- Provide a **strong incentive for taxpayers to review their offshore affairs** and come forward to put them in order.
- **Mark a step change in HMRC approach** to offshore tax evasion
- Remain **fair and encourage taxpayers to act early** and put their affairs in order.
- **Simple and easy to understand penalties** to increase the deterrent and incentive to disclose.



Requirement to Correct – Overview (I)

- Requires taxpayers to disclose any outstanding UK tax related to non-compliance, involving offshore interests, as at 5 April 2017
- Applies to Income Tax, Inheritance Tax and Capital Gains Tax
- Non-compliance means:
 - Failure to notify
 - Failure to deliver return or other document
 - Inaccurate return or other document
- Reason for non-compliance is not a factor



Requirement to Correct – Overview (II)

- Taxpayers have until the end of September 2018 to do this (in limited situations some information can be provided after 30 September – details later)
- Date chosen to match receipt of full Common Reporting Standard information
- Only applies to “offshore tax non-compliance” – offshore matters and transfers before 6 April 2017



Requirement to Correct – Failure to Correct

- Taxpayers who do not correct on or before 30 September 2018 face “Failure to Correct” penalties;
 - Starts at 200% of offshore tax involved.
 - Can be reduced to reflect disclosure – but not below minimum of 100% of tax involved
 - Further penalties apply in serious cases:
- Typical case – 30 or 40% penalty now, 150% after 30 September 2018.
- So the message is: **check UK tax position if not sure** and correct any errors.
- Extension of time limits



Reasonable Excuse

- No failure to correct penalty if the taxpayer had a reasonable excuse for not correcting.
- A reasonable excuse does not include relying on advice given by a person who:
 - did not have appropriate expertise
 - failed to take account of all the taxpayer's individual circumstances (so far as relevant to the matters to which the advice relates), or
 - addressed it to, or gave it to, another person
- For “avoidance arrangements” reliance on advice from an “interested person” is not a reasonable excuse.



Interested Person

A person who

- participated in relevant avoidance arrangements
- or any transaction forming part of them
- or for any consideration facilitated the taxpayer's entering into relevant avoidance arrangements.



How to Correct?

- Worldwide Disclosure Facility

- A process for taxpayers to use to correct past offshore non-compliance
- An internet-based system – using Digital Disclosure Service

OR

- The Contractual Disclosure Facility
- Inform an officer of HMRC in the course of an enquiry
- Agree a method with an officer of HMRC
- However, if not disclosed by 30 September 2018 will face much higher Failure to Correct penalty.



How to Correct

- Additional guidance published last week on how to correct
- Taxpayers will not be liable to penalties for failing to correct by 30 September 2018 in certain limited circumstances where information is provided later:
 - Register for WDF by midnight 30 September 2018 and process completed within 90 day limit.
 - On/before 30 September enter contractual disclosure facility and submit outline disclosure within 60 days
 - Enquiry already open – inform officer by 30 September, outline disclosure by 29 November 2018



Why correct?

- It is in a taxpayer's interest to correct.
- Increased data and greatly increased chance of errors or fraud being detected by HMRC.
- Much lower penalties – typically 40% instead of 150% plus
- HMRC's criminal investigation policy "... one factor will be whether the taxpayer(s) has made a complete and unprompted disclosure of the offences committed."



More details

- The legislation, Finance (No. 2) Act 2017, can be found at:
<http://www.legislation.gov.uk/ukpga/2017/32/contents/enacted>
- The HMRC guidance can be found at:
<https://www.gov.uk/guidance/requirement-to-correct-tax-due-on-offshore-assets>



Annex – example 1 - offshore non-compliance: Income Tax

Alan has received cash payments whilst running his business in the UK. He has failed to declare these cash receipts and instead has opened a bank account overseas and paid the money into that account as it arose.

He has also received interest on his overseas bank account but he has not declared this income to HMRC. He has submitted inaccurate tax returns for each tax year from 2011 to 2012 through to 2015 to 2016.

The failure to declare the interest on the overseas bank account is non-compliance involving an offshore matter as it is income arising from a source in a territory outside the UK.

The failure to declare the cash receipts is not an offshore matter, but it is an offshore transfer because the money was transferred abroad before 6 April 2017.

Both the failure to declare his cash receipts and the bank interest must be corrected under the RTC rule.



Annex – example 2 - offshore non-compliance: Income Tax and Capital Gains Tax

Emma has a holiday home in Spain. In 2008 to 2009, Emma started to rent out the holiday home during periods when she was not using it. The income she received from the rental of this property was never declared to HMRC.

In tax year 2012 to 2013, Emma sold her property, making a £200,000 gain on the sale. This was not declared to HMRC either.

The failure to declare the rental income on the overseas property is non-compliance involving an offshore matter as it is income arising from a source in a territory outside the UK.

The failure to declare the gain from the sale of the property is also an offshore matter as it is a gain arising on an asset held in a territory outside the UK.

Both the failure to declare her rental income and the gain from the sale of the property are offshore matters and must be corrected under the RTC rule.



Annex – example 3 - offshore non-compliance: Inheritance Tax

Peter was domiciled in the UK at the time of his death on 1 June 2012. Peter's son Henry was his sole heir and executor of Peter's estate. Peter's estate which was inherited by Henry included £200,000 in a bank account in the Cayman Islands.

As part of his inheritance, Henry took control of the account following Peter's death. Henry did not disclose the money in the Cayman Islands as part of Peter's estate when it was declared to HMRC.

Henry's failure, as executor, to disclose the cash as part of Peter's estate is an offshore matter as the property was held in a territory outside the UK.

The failure to declare the property as part of Peter's estate must be corrected under the RTC.



Annex – example 4 - offshore non-compliance: non-resident landlord

David moved to Switzerland in 2011 and is the 100% owner of a Swiss company that owns a number of UK properties that it rents out through a letting agent. The letting agent deducts basic rate tax and passes the balance of the rents to the company.

HMRC have served the company a notice to complete a return every year from 2011 to 2012 through to 2015 to 2016, but the company has not completed the returns and has not therefore accounted for the further Income Tax that is due.

The company's failure to submit the returns is non-compliance involving an offshore transfer as the income from a UK source has been transferred to Switzerland before 6 April 2017.

The company's failure to submit the returns must be corrected under the RTC.



Requirement to Correct Practical Aspects

Gary Ashford
Partner (Non Lawyer)
Harbottle and Lewis LLP

How to Correct

- Submit relevant correction (Notify/File/Correct)
- Approach Inspector on ongoing enquiry
- Contractual Disclosure Facility (CDF) (COP9)
- Worldwide Disclosure Facility (WDF)

HMRC Updated Guidance

You will not be liable to penalties for failing to correct by 30 September 2018 in the following limited circumstances where information is provided later:

- if by midnight on 30 September 2018 you notify your intention to make a disclosure via HMRC's Worldwide Disclosure Facility (WDF) AND provide the disclosure fully and accurately within the 90 day time limit (29 December 2018).
- On or before 30 September 2018 you email a completed form CDF1 to HMRC and inform HMRC that you wish to make a disclosure of deliberate behaviour involving offshore tax non-compliance under the Contractual Disclosure Facility (CDF) AND submit your outline disclosure within the 60 day time limit.
- If HMRC is already undertaking an enquiry and on or before 30 September 2018 you inform that you wish to make a disclosure of offshore tax non-compliance and you then submit an outline disclosure to that person by 29 November 2018.

Worldwide Disclosure Facility (1)

- For anyone who wants to disclose a UK tax liability that relates wholly or partly to an offshore issue
- Register using HMRC's Digital Disclosure Service (DDS) and disclose

Worldwide Disclosure Facility (2)

- Once notified intention to make a disclosure, 90 days to:
 - gather the information to fill in disclosure
 - calculate the final liabilities including tax, duty, interest and penalties
 - complete disclosure, using the unique disclosure reference number (DRN)
- No assurance on Criminal Investigation

Worldwide Disclosure Facility (3)

Complex issues and pre-disclosure agreement

- Can seek clarification of complex issues before submitting disclosure, updated non statutory clearance process. Clearance route that can only use if already registered to make a disclosure of offshore liabilities
- Allowed 90 days from the time that application for clarification is finalised to submit final disclosure

Worldwide Disclosure Facility (4)

What else to include in the disclosure

- There is a requirement to set out the MAXIMUM value of assets held outside the UK in the last 5 years
- You need to set out the main jurisdiction in which the offshore assets are located or the income arose
- Must include an offer for the total Tax, Interest and Penalties

HMRC will acknowledge within 15 days, and advise on intended course of action within 90 days of acknowledgement

Worldwide Disclosure Facility (5)

Circumstances where a higher penalty may apply

- If fail to make a complete or accurate disclosure or refuse to send in additional information
- Already under enquiry by HMRC
- Disclosure is connected to a previous inaccurate disclosure or settlement following an investigation

Contractual Disclosure Facility (CDF) Code of Practice 9

- Only appropriate for deliberate cases
- Provides assurance against criminal investigations, in return for a full and complete disclosure
- Specialist work!

Penalties (1)

- Penalty rules 6 April 1999 to 5 April 2008
 - Max 100% reduced for
 - Disclosure (20%)
 - Cooperation (40%)
 - Seriousness (40%)
- Penalty rules 6 April 2008 to 5 April 2011
 - Careless Max 30%
 - Deliberate Max 70%
 - Deliberate and Concealed Max 100%
- Offshore Penalty rules 6 April 2011 onwards
 - 100%, 125%, 150%, 200%

Penalties (2)

- Recent HMRC Guidance on Timing of Disclosures
- HMRC will limit any penalty reductions by 10% where the disclosure is made after 5 September 2016, and it has taken more than 3 years to make the disclosure
- HMRC guidance allows Inspectors to forgo the 10% restriction in certain circumstances

Current Issues

- Don't just focus on 30 September 2018
- We are seeing new enquiries and investigations ahead of 30 September 2018

Gary Ashford
Partner (Non Lawyer), CTA Fellow, TEP, ATT
gary.ashford@harbottle.com
+44 (0)7557 045075

Harbottle & Lewis LLP

Hanover House
14 Hanover Square
London W1S 1HP

T: +44 (0)207667 5000

F: +44 (0)207667 5100

www.harbottle.com

Questions?



Disclaimer

These notes have been produced for the guidance of delegates at the event for which they were prepared and are not a substitute for detailed professional advice.

No responsibility can be accepted for the consequences of any action taken or refrained from as a result of these notes or the talk for which they were prepared.