

## **The background to RTC and how it works (Lecture P1071 – 6.16 minutes)**

### *Introduction*

In recent years HMRC has turned its spotlight to what it believes are the billions of pounds of UK tax remaining uncollected as a result of the “Dark Arts” supposedly practiced by UK tax advisers in the area collectively called “Offshore Matters”.

The Government has now introduced the Requirement to Correct (RTC) regime in Finance (No. 2) Act 2017 that requires irregularities in relation to offshore matters to be disclosed to HMRC. From that point, back tax can be assessed and collected.

Anyone failing to comply with the RTC will fall into the “Failure to Comply” regime that brings with it some very harsh penalty sanctions. These will be covered in Part 2 of these notes.

### *The Common Reporting Standard*

The RTC has been brought-in on the back of the Common Reporting Standard (CRS). The CRS is a global standard commissioned by the OECD for the automatic exchange of financial account information between governments. The CRS is the latest weapon of the G8 and the G20 in its fight against worldwide tax evasion.

The CRS requires all financial institutions including banks, brokers, asset managers and insurance companies operating in a CRS participating jurisdiction to gather certain information about their customers and report it to their local tax authorities. This information will include bank interest, dividends and income from insurance products together with asset lists, account balances and proceeds from the sale of financial assets.

The home tax authority will then pass that information to the tax authority in which the customer is – or appears to be – resident. The tax authority receiving the data will then use the information gathered to tackle tax avoidance in its own state. One only wonders why it has taken them all so long.

Around 100 countries have so far signed up for the CRS. Many have been implementing the CRS since September 2017 (including the UK, the EU states, the Isle of Man and the Channel Islands). Others will start implementing the CRS in September 2018 (including Canada, Japan even the historic financial black-hole of Switzerland).

The United States has not signed-up for CRS preferring instead to use its “home-brand” being the Foreign Account Tax Compliance Act (FATCA). The FATCA was enacted in 2010 to target non-compliance by US taxpayers using foreign accounts and as our American cousins tell us that it does a very similar thing to the CRS, they have decided not to join-in. Many financial institutions are already FATCA compliant.

### *The Requirement to Correct (RTC)*

Following the introduction of the CRS, a vast amount of information about UK taxpayers’ overseas bank accounts, asset portfolios and trust interests has been pouring into the Government’s inbox. Armed with all this data, it is now far easier for HMRC to identify any non-compliance by taxpayers within its jurisdiction in relation to their offshore tax affairs.

The CRS therefore puts HMRC in a far better position to ask relevant questions of the taxpayer in order to uncover previously undisclosed income and gains. We should accordingly expect a significant increase in the number of HMRC enquiries in relation to overseas matters.

The RTC is a statutory obligation for taxpayers with overseas matters to correct any errors or omissions with regard to their historic UK tax position. This is irrespective of whether such errors or omissions have arisen as a result of a genuine mistake, due to careless or negligent conduct or due to deliberate omissions or under-declarations.

“Offshore matters” has a wide definition and includes any connection to:

- Income arising in a territory outside the UK; or
- Assets situated or held in a territory outside the UK; or
- Transfers of assets to a territory outside the UK; or
- Activities carried on wholly or mainly in a territory outside the UK.

Errors that should therefore be disclosed under the RTC include such things as:

- Non-disclosure by a UK resident taxpayer of non-UK income/ foreign capital gains;
- The incorrect categorisation of remittances by non-domiciled taxpayers (including the incorrect treatment of a mixed fund);
- Basic compliance issues with offshore trusts such as failing to disclose UK source income or NRCGT gains;
- Non-disclosure by a UK domiciled settlor of non-UK assets into an offshore trust;
- Forgetting about a 10-year anniversary charge for UK situs assets where the offshore trust has a UK domiciled settlor; and
- The incorrect treatment of capital distributions from an overseas trust or the use of trust assets giving rise to a CGT change in the hands of a settlor or beneficiary.

This is not an exhaustive list but it does emphasise that the RTC is not the preserve of the itinerant tax-avoider and that the RTC is just as likely to extend its reach to a practitioner whose client has made a relatively minor omission in relation to offshore matters.

Sch 18 FA (No. 2) 2017 obliges taxpayers to notify HMRC if tax which is linked to offshore matters is undeclared and/or outstanding. The RTC applies only to tax non-compliance before 6 April 2017. Taxpayers are required to correct matters on or before 30 September 2018, this being the date by which the remaining participating countries will adopt the CRS and will thereafter provide information to HMRC.

Some commentators have compared the RTC to the Liechtenstein Disclosure Facility (LDF) under which taxpayers were given an opportunity, for a limited period, to voluntarily disclose details of previously undeclared income and gains with the promise of a much lower penalty (and a much shorter “look-back” period) than would otherwise be the case.

The RTC is however different to the LDF as it is not a 'facility' available for a limited period but is instead more of a legislative “warning” about the perils of non-compliance by a certain date. Anyone failing to comply with the RTC will be subject to the Failure to Comply regime.

#### *Taxes affected*

The RTC applies to any person with potentially undeclared UK income tax, capital gains tax or inheritance tax. It does not apply to corporation tax. The RTC accordingly affects individuals, trusts, partnerships and companies acting as non-resident landlords.

The RTC does not apply to non-resident capital gains tax (NRCGT) payable by companies.

#### *Ways of making a correction under the RTC*

Taxpayers can correct any offshore tax non-compliance on or before 30 September 2018 in a number of ways:

- Using HMRC’s digital disclosure service as part of the Worldwide Disclosure Facility or any other service provided by HMRC as a means of correcting tax non-compliance (this is the option recommended by HMRC and the one it expects most taxpayers to use);
- Informing a HMRC Officer in the course of an enquiry; or
- Any other method agreed with HMRC (for example in the case of a failure to notify by delivering the appropriate return or in the case of an incorrect return by making the required amendment).

*Contributed by Steve Sanders*