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Further obligations on taxpayers with offshore affairs: The 'requirement to correct'

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HMRC have published proposals under which taxpayers who fail to correct any non-compliance which may have occurred in relation to offshore matters or transfers by a specified date will be subject to additional and very severe penalties. These proposals were contained in the Finance Bill published in March 2017, and although they have been dropped (together with many other provisions) from the Finance Act 2017 enacted prior to the General Election, HMRC has announced that they will be introduced in the Finance Bill to be published in the Autumn of 2017. The proposed timescale for ensuring compliance may change, it would be sensible for taxpayers with offshore assets or interests to review their tax affairs as soon as possible in any event.

The draft legislation related to certain breaches of UK tax legislation which occurred before 6 April 2017 and which have not been fully corrected by that date. The provisions would catch non-compliance (whether or not intentional) in respect of income tax, capital gains tax (CGT) and inheritance tax (IHT), and apply to individuals, trustees and partnerships.

The non-compliance would need to be in relation to 'offshore' matters or transfers, for example in relation to a UK tax liability for foreign income (including investment, business or employment income); or gains or an IHT liability arising from foreign assets; or a liability arising from income or gains received in the UK but transferred outside the UK. 'Offshore' would extend to anywhere outside the UK, not only to assets in, or transactions with, low tax jurisdictions.

For this purpose non-compliance would be a failure to report to HMRC a liability to income tax or CGT as above, or failure to make an income tax, CGT or IHT return, or making an incorrect return where the inaccuracy relates to the calculation of the person's tax liability.

It would seem that non-compliance would have to be corrected by 30 September 2018, ie, 18 months from 6 April 2017. After that date, a much higher level of penalties would apply. The draft indicated that penalties would start at 200% of the potential lost tax, with reduction for cooperation but not to below 100% of the potential lost tax. The penalty may be increased to 300% of the potential lost tax where assets are moved to avoid detection. The penalty will be reduced if the taxpayer can show that these was a reasonable excuse for non-compliance but this is likely to be very narrowly defined. A 10% assets based penalty may also be imposed in certain circumstances where the tax due in relation to a year exceeds £25,000.

Correcting the non-compliance could be dealt with in a number of ways including, but not limited to, via the Worldwide Disclosure Facility but it will be important to select the most appropriate method in light of all the circumstances.

If you are confident that your tax affairs are completely in order and up to date then these provisions, assuming they come into force, will not apply to you. However, if you have any concerns that these provisions may affect you, we suggest you contact your usual adviser at Withers who can either assist you or, if appropriate, refer matters to our specialist team.