

UK Tax reporting

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UK Tax Reporting Agenda

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- **Creating a Digital World**
- **Towards 1 October 2018**
- **What is HMRC looking for?**
- **What do UK trustees need to declare?**
- **How should declarations be made?**
- **What happens if declarations are not made by 1 October 2018?**

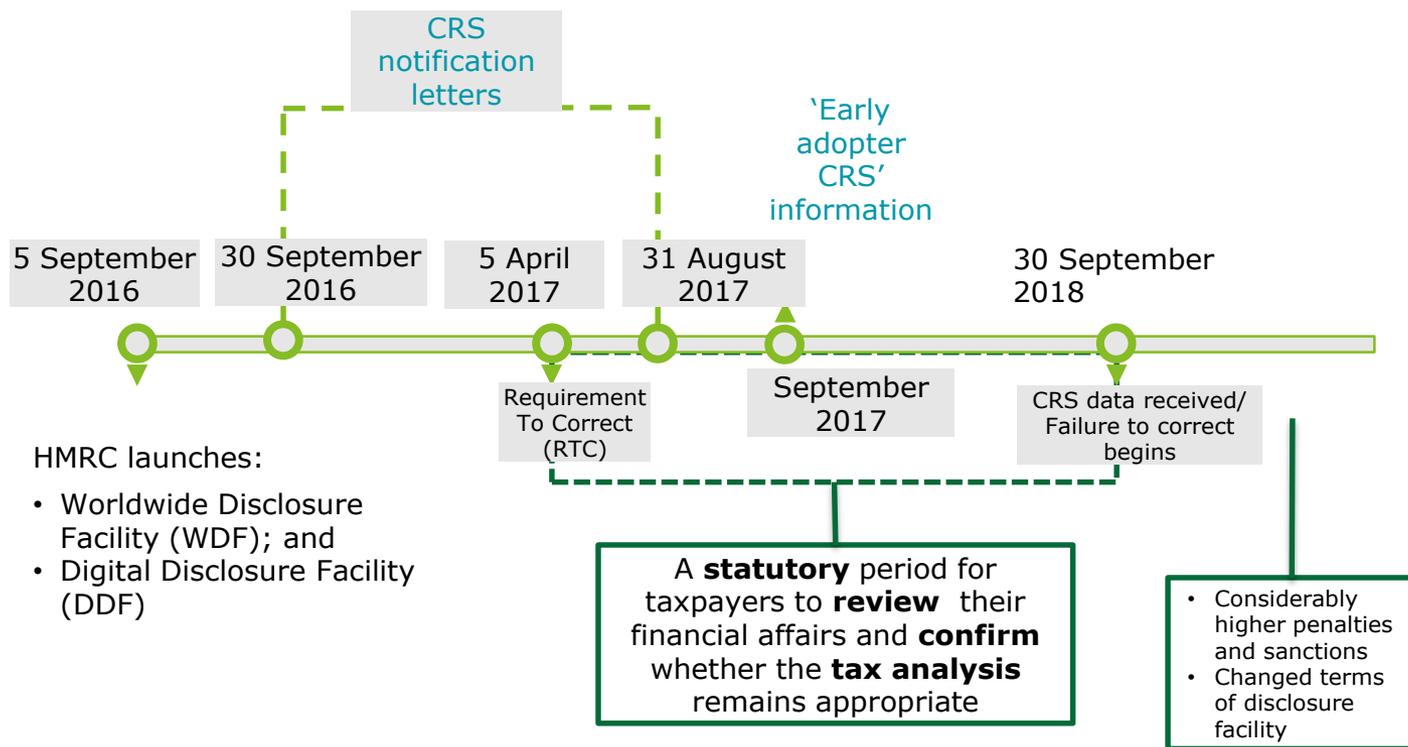
Creating a transparent world

- US FATCA/"UK FATCA"/Common Reporting Standard
- Liechtenstein/Switzerland
- EU Automatic exchange of information (complies with CRS)
- UK PSC register (Persons with Significant Control)
- Discussion paper on making property ownership by foreign companies more transparent
- UK ban on corporate directors (other countries have similar rules in place)
- Fourth Money Laundering Directive/ Trust Register
- ECOFIN directive for exchange on cross-border tax rulings w.e.f. 1 Jan 2017. Existing rulings of past 5 years

Creating of a digital world

- HMRC digital strategy: to 2018 and beyond!
- Using better data to make management, operational and intervention decisions.
- Direct interventions occur where they can be most effective.
- Data is collected and analysed over short periods (e.g. daily or hourly), enabling near real time responses to change.
- Use of digital tools throughout the organisation gives greater flexibility and speed in responding to changing circumstances (including new tax risks).
- Using data intelligently: Have third party data integrated with their tax account (e.g. asset disposals)
- Compliance: Greater innovation and collaboration to translate compliance insight into digital ways to address risk/ Compliance experts trained to carry out intelligence-led complex interventions.

Towards 1 October 2018



What is HMRC looking for?

- The 'Requirement to Correct' (RTC) regime relates to anyone with undeclared past UK tax liabilities relating to offshore interests.
- It will be introduced by the second Finance Act 2017. The Bill finished the final House of Commons review stages on 1 November.
- Royal Assent will be at some point after Parliament returns on 13 November.
- Despite the delay in introducing the legislation, the RTC window has not been extended.
- It applies for tax liabilities still outstanding at 6 April 2017.
- It relates to income tax, capital gains tax and inheritance tax.
- It applies to both UK resident and non-resident persons
- The Worldwide Disclosure Facility is the main mechanism for reporting any corrections.
- Any declarations of past tax liabilities made after 30 September 2018 will fall within the 'Failure to Correct' (FTC) regime.

What do overseas trustees need to declare?

Income Tax

- Non resident trusts only pay income tax on UK source income.
- To calculate the tax accurately details of the foreign source income may be required.
- Care must be taken as to when income is deemed to be received for tax purposes (for example, spreading of rental income over rent free periods, crystallisation of interest on loans, etc).
- Care must be taken as to what constitutes income (scrip dividends, premiums on leases etc).
- The tax rate applicable depends on the type of trust.
- Discretionary trusts pay tax at the rate applicable to trusts (38.1% and 45%) regardless of whether the settlor can benefit.
- Income should be declared on the tax return SA900. This return also requests information about payments made to beneficiaries which helps HMRC assess their liability.

What do overseas trustees need to declare?

SA900 – introductory section

You may not have to answer all the questions in this tax return. Tick if this applies

1) If you are the trustee of a bare trust (except an unauthorised unit trust).....,

2) If you are the personal representative of a deceased person

3) If you are the trustee of an interest in possession trust (one which is exclusively an interest in possession trust), and:

- no income arose to the trust, or*
- you have **mandated** all the trust income to the beneficiary(ies), or*
- all the income arose in the UK and has had tax deducted before you received it, or*
- you have mandated part of the income to the beneficiary(ies) where the part you have not mandated comprises only income arising in the UK which has had tax deducted before you received it*

and all of the following points apply.....

*– **the trust has never been non-resident and has never received any capital from another trust which is, or at any time has been, non-resident***

4) If you are the trustee of a charitable trust you must complete the charity supplementary pages as well as this form:

*5) In any other case, including if you are the trustee of an unauthorised unit trust, you should go to Step 2. **ie complete the tax return.***

What do overseas trustees need to declare?

Capital Gains Tax

- Offshore trustees are only liable to UK CGT on:
 - UK residential property (Non resident CGT or ATED CGT), or
 - Assets used in a trade carried on in the UK through a branch or agency
- Non resident CGT and ATED CGT are declared on special tax returns.
- Be aware that there is a requirement to make a Non resident CGT return within 30 days of completion).

What do overseas trustees need to declare?

Inheritance Tax

- Where the trust was created by a UK domiciled settlor the exposure of the trustees depends on:
 - The type of trust
 - When it was created
 - Whether certain amendments were made after FA 2006
 - The amount of trust assets
- The situs of the assets will not be relevant
- The occasions of charge are on every tenth anniversary of the date of creation and when there is an exit (capital distribution, final distribution).
- Care should be taken concerning (amongst other matters):
 - The identity of the settlor
 - Whether the trust is in scope (pre 2006 A&M not amended, all trusts created after 21 March 2006)
 - The anniversary date (particularly regarding transfers between trusts, etc)
 - Exits (for example annual CGT allowance payments, forgiving of loans etc)

What do overseas trustees need to declare?

Inheritance Tax

- Where the trust was created by a non-domiciled settlor the exposure of the trustees depends on:
 - The type of trust
 - The situs of the assets
- The occasions of charge are on every tenth anniversary of the date of creation and when there is an exit (capital distribution, final distribution). The charge at this time will depend on the situs of the asset on that date or being distributed.
- Care should be taken concerning (amongst other matters):
 - The identity of the settlor(s)
 - The domicile status of the settlor
 - Where the domicile status of the settlor changes
 - The anniversary date (particularly where there is more than one settlor or the domicile status of the settlor has changed)
 - The situs of assets (loans, movable assets).

*From 6 April 2017 UK residential property held in an underlying overseas company will be subject to charge.

How should declarations be made?

Worldwide Disclosure Facility and Trust Register

- Anyone who wants to disclose a UK tax liability that relates wholly or partly to an offshore issue can use the Worldwide Disclosure Facility (WDF).
- This replaces all previous facilities (GDF, LDF etc).
- Registration is an online completion of basic data on the taxpayer.
- Following registration there are 90 days to complete submissions, although a further 90 days is available for complex cases.
- To obtain a tax reference number (and to satisfy 4th Money laundering directive) it will be necessary to complete Trust Register too.
- Trustees will have until 5 December 2017 to complete the Trust Register in respect of previously unnotified cases relating to periods up to 5 April 2017.

What happens if declarations are not made by 1 October 2018?

Failure to Correct (FTC)

- Unreported amounts at 1 October 2018 will be subject to FTC penalties
 - A standard penalty of 200% of the tax that has not been corrected (which can be mitigated to 100%),
 - An additional penalty of an 50% of the standard penalty amount if HMRC could show that assets or funds had been moved to attempt to avoid RTC; and
 - A 10% asset-based penalty (relevant to 'the most serious cases' where tax underpaid in a tax year is greater than £25,000);
 - Naming and shaming of taxpayers 'in the most serious cases' (total loss of tax greater than £25,000). Including an extension of this to the 'controlling party' behind the trust i.e. the trustees (a serious reputational risk).
- The penalties will not be applied if the taxpayer has a 'reasonable excuse'.
- The following do not constitute a reasonable excuse:
 - Relying on sub standard tax advice
 - Relying on advice provided to another person (including the settlor)

To avoid the pecuniary and reputational risks associated with FTC tax payers and trustees should ensure that their UK tax affairs are in order before 30 September 2018.



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