

Briefing document

Offshore time limits

Introduction

Legislation in the Finance Act 2019 introduced an increased tax assessment window of 12 years for non-deliberate, offshore matters within the scope of income tax, capital gains tax or inheritance tax. The increased time limits can apply to the tax year 2013/14 onwards, or 1 April 2013 for inheritance tax.

This policy is the latest in a line of measures which are intended to address offshore non-compliance. Previously adopted measures included automatic information exchange with other jurisdictions under the Common Reporting Standard, and the 'Requirement to Correct' past errors relating to offshore matters that were outstanding at 5 April 2017, with tougher sanctions applying to those who failed to correct offshore non-compliance by the 30 September 2018 deadline.

'Non-deliberate' matters

Non-deliberate matters covers both situations where taxpayers take reasonable care and situations where taxpayers have been careless in their tax filings. As a result of these changes, HMRC's assessment windows for offshore matters will increase from 4 to 12 years for reasonable care scenarios, and from 6 years to 12 years for careless errors.

A longer time limit of 20 years has historically applied to deliberate or deliberate and concealed errors, and this time limit remains in force.

Scope of the extended time limits

- Many of the definitions around offshore matters and transfers mirror the wording used in the Requirement to Correct (RTC) legislation. These definitions are relatively broad, and essentially include any matter which involved non-UK situated income, assets, activities and/or offshore transfers.
- The extended time limits do not apply to corporation tax, nor to transfer pricing adjustments.
- The extended time limits will not apply if HMRC should have been able to raise an assessment within normal time limits due to information being received automatically. This is relevant to information exchanged due to the Common Reporting Standard.

Commencement date

The extended offshore time limits apply to both future tax years and to some tax years which have already passed. For income tax and capital gains tax the extended time limit applies from 2013/14 for careless errors and otherwise applies from 2015/16. For inheritance tax the extended offshore time limits apply to tax lost in relation to chargeable transfers from 1 April 2013 onwards if reasonable care was not taken and 1 April 2015 onwards in other cases.

The time limits for enquiring into some matters were already extended by the RTC legislation. This extended the time limits for years which HMRC would have been able to assess at 6 April 2017 to 5 April 2021. Effectively therefore the two provisions combine to give time limits for offshore matters relating to income tax and capital gains tax as set out below.

Reasonable care taken

2012/13 and previous tax year	4 years from the end of the tax year
2013/14	5 April 2021
2014/15	5 April 2021
2015/16 and later tax years	12 years from the end of the tax year

Careless errors

2010/11 and previous tax years	6 years from the end of the tax year
2011/12	5 April 2021
2012/13	5 April 2021
2013/14 and later tax years	12 years from the end of the tax year

Penalties for offshore matters

If there are errors in documents submitted to HMRC, penalties based on the tax lost will be charged. These were increased in respect of income and capital gains tax from 2016/17 and inheritance transfers of value from 1 April 2017 onwards. The rates depend on the category of the relevant offshore territory, with the category reflecting the level of the UK's information exchange agreements with the offshore jurisdiction. The rates vary depending on whether the disclosure was prompted or unprompted and the quality of the taxpayer's disclosure to HMRC.

Behaviour	Standard penalty	Minimum penalty: Prompted disclosure	Minimum penalty: Unprompted disclosure
Careless	30% (cat 1) 45% (cat 2) 60% (cat 3)	15% 22.5% 30%	0% 0% 0%
Deliberate	70% (cat 1) 105% (cat 2) 140% (cat 3)	45% (35%) 62.5% (52.5%) 80% (70%)	30% (20%) 40% (30%) 50% (40%)
Deliberate and concealed	100% (cat 1) 150% (cat 2) 200% (cat 3)	60% (50%) 85% (75%) 110% (100%)	40% (30%) 55% (45%) 70% (60%)

(The rates for disclosures relating to years prior to 2016/17 are shown in brackets)

'Naming and shaming' and asset-based penalties may also apply in serious cases.

If offshore matters have not been disclosed as required under the RTC rules then FTC sanctions will apply. The FTC penalty is initially 200% of the tax due. Depending on the circumstances, the penalty may be mitigated, though the FTC penalty will always be at least equal to 100% of the tax due. In addition, details of the taxpayer involved may be published ('naming and shaming', as above). Additional penalties may apply in connection with offshore asset moves. Where assets are moved in order to try and avoid a RTC penalty, an additional 50% of the RTC penalty can be charged.

Find out more...

This briefing note reflects Deloitte's understanding of the law in force, as at 12 May 2020. The matters discussed in this note are complex and there are many factors which should be taken into account in this context.

To learn more about maintaining compliance in a transparent world, you can also visit our website www.deloitte.co.uk/tax-transparency or contact any of the team

Mike Pape

Email: michaelpape@deloitte.co.uk
Phone: 020 7007 8752

Annis Lampard

Email: alampard@deloitte.co.uk
Phone: 020 7007 3159

Adam Cox

Email: adamxcox@deloitte.co.uk
Phone: 020 7007 8172

This publication has been written in general terms and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Deloitte LLP accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Deloitte Private is the brand under which professionals in Deloitte LLP provide services to certain privately owned entities and high net worth individuals. Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London, EC4A 3HQ, United Kingdom.

Deloitte LLP is the United Kingdom affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.