



HM Revenue
& Customs

Tackling offshore tax evasion: Requirement to Correct

Summary of Responses

5 December 2016

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1. Introduction

- 1.1 This document summarises responses to the [consultation document *Tackling offshore tax evasion: A Requirement to Correct*](#), which discussed the proposals to require any person who has undeclared UK tax liabilities in respect of an offshore interest to correct that situation by 30 September 2018, or face tougher new penalties for their “Failure to Correct (FTC)”. This consultation document was published on 24 August 2016 and consultation closed on 19 October 2016.
- 1.2 The government is grateful to all those who responded or participated in meetings for taking the time to consider the issues raised by this consultation document.

Context for the consultation

- 1.3 In the past it could be very difficult for HMRC to detect offshore evasion or other forms of offshore non-compliance. It was therefore appropriate that some disclosure facilities (routes provided for taxpayers to correct non-compliance) offered incentives to taxpayers to disclose tax irregularities. However, following the government’s work with international partners, the Common Reporting Standard (CRS) is already providing greater levels of information about offshore accounts, trusts and shell companies that will be available for use in detecting irregularities with offshore income or gains. Over 100 countries are currently committed to automatically exchange financial account information. For the 54 early adopters (including the UK), these exchanges will take place by 2017 with all others exchanging by 2018.
- 1.4 HMRC’s strategy for tackling offshore evasion [No Safe Havens](#), sets out five key objectives:
 - 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; and
 - There will be no place for the facilitators, or enablers, of offshore evasion.
- 1.5 In order to achieve these objectives there needs to be a strong deterrent against evasion and non-compliance, with the possibility for both civil and criminal sanctions. The Requirement to Correct demonstrates that the government’s approach to offshore non-compliance and significantly increases the civil penalties for those who fail to take the opportunity to correct, compared to existing sanctions.

Background on the consultation

- 1.6 The Requirement to Correct (RTC) consultation sought views on the approach to designing the RTC and accompanying sanctions for those who fail to put their affairs in order. It considered a number of areas including:
- What should be within scope of the requirement
 - How taxpayers would comply with the new legal requirement
 - The consequences of failing to comply with the requirement
 - Approaches to difficult or non-standard cases
- 1.7 The document outlined a number of questions around the scope and principles of what defines the RTC policy, alongside options for a 'Failure to Correct' (FTC) penalty model that will apply to those who have not taken the opportunity to correct during the Requirement to Correct period (by 30 September 2018).
- 1.8 The introduction of a new RTC and tougher penalties for the FTC will introduce an obligation for taxpayers who need to put their past affairs in order to do so and will strongly penalise those who do not meet this obligation. In doing so, the measure will drive taxpayers with offshore interests to review their affairs to either:
- assure themselves that their offshore interests have been treated correctly for tax purposes, or
 - identify the incorrect tax treatment and put it right by notifying HMRC to ensure the appropriate tax, interest and penalties can be charged.
- 1.9 Through the RTC, the government is therefore aiming to design a requirement and set of associated sanctions that:
- Give a final chance to clear up issues from the past before the imposition of much more severe sanctions.
 - Remain fair and encourage taxpayers to act early and put their affairs in order.
 - Deliver a strong message that the government is getting tougher on offshore non-compliance and is significantly increasing the sanction for those who fail to correct compared to existing sanctions.
 - Are simple and easy to understand which will increase the deterrent effect and incentive to disclose.
 - Do not penalise those who genuinely have a reasonable excuse.

Structure of the consultation responses

1.10 The remainder of the consultation response is divided into 3 sections:

- Chapter 2 sets out a summary of responses to the consultation and the government's overarching response.
- Chapter 3 discusses the views received from respondents and stakeholders on the specific questions posed within the consultation document. The government's view in light of the responses received is summarised in relation to each question.
- Chapter 4 sets out the next steps for the Requirement to Correct policy.
- Annex A sets out the list of those met during the consultation and those who submitted responses to the consultation.

2. Summary of responses

Overview of responses

- 2.1 HMRC received 18 written responses to the consultation, alongside comments made in meetings.
- 2.2 A list of the respondents and those who attended meetings during the consultation, excluding individuals, is at Annex A.

Summary of responses

- 2.3 The consultation document sought views on a number of issues relating to the scope and design of a new Requirement to Correct. Stakeholders and respondents broadly supported the initiative, its scope and definition and many said they would like to see a single and simplified set of sanctions for tackling offshore tax evasion. Many stakeholders commented on the need for a significant communications campaign to ensure all taxpayers are aware of the requirement, particularly those where any non-compliance has not been deliberate. This is seen as an important part of encouraging taxpayers to come forward where they may not associate their activities with evasion.
- 2.4 Many respondents commented on the practicalities of how the requirement, disclosures and subsequent failure to correct penalty model will work. The concerns of respondents focused broadly on the following issues:
 - the severity of the proposed penalties for failing to correct
 - caution in determining what is a reasonable excuse and considering the facts of each individual case
 - ensuring the contents of any correction are both reasonable, within a tight time period, and supported by appropriate evidence
 - avoiding complication in amending assessment time limits and further extensions for HMRC to assess tax and penalties once the correction period has closed
 - ensuring appropriate application of the 'failure to notify chargeability' provision with regard to offshore evasion
 - how HMRC will interact with non-UK trustees.
- 2.5 Many respondents welcomed a failure to correct penalty model that simplifies the currently complex application of offshore penalties. However many respondents wanted to ensure sanctions retain some flexibility with recognition of taxpayer behaviour and co-operation. Some respondents commented on the need for any toughened sanctions to retain sufficient incentive for taxpayers to come forward and disclose.

- 2.6 A number of respondents noted areas where they believe the existing legislation is sufficient for the purposes of the RTC and does not need amendment. This includes consideration of further information powers to support the RTC, extending the civil enablers penalties to cover the RTC and amending the standard assessment period for tax and penalties.
- 2.7 With regard to non-standard situations that may affect taxpayers meeting their obligations under RTC, some handling options were presented in the consultation document. A number of respondents felt ongoing enquiries should be handled by allowing the enquiry to run over the end of the requirement window, and requiring the taxpayer to provide HMRC with all the relevant information in relation to the RTC before the window closes.

Government response

- 2.8 The government has considered the responses to this consultation carefully with a summary of our key messages below. The full government response is covered in Chapter 3 and a summary of the government's responses is set out below.
- 2.9 It is within the context of unprecedented international commitment to tackling offshore tax evasion, the step-change in information exchange and our desire to ensure all taxpayers are on a compliant footing that the government intends to proceed with the new requirement.
- 2.10 The government is determined to ensure the toughest sanctions are there for those that evade taxes, whilst providing a period for taxpayers to review their offshore interests and come forward to clear up any past issues and therefore avoid the possibility of the heavier penalties. The requirement will also include reasonable excuse provisions that ensure that, where the taxpayer has good reason for not having corrected, they will not face the new higher penalty. We are aiming to provide a clear and unambiguous message that acting early is vital and believe the proposed structure of the RTC and associated sanctions do that. The incentives to come forward and correct are clear.
- 2.11 A number of respondents also raised the issue of the incentive for taxpayers to come forward following the requirement to correct period, stating that the failure to correct penalty would not provide any incentive to disclosure if a taxpayer had not corrected during the window. However the penalty range proposed provides this incentive. If taxpayers come forward after the correction period, the starting point for the penalty would be 200%, but disclosure and cooperation mean it could be halved to a minimum penalty of 100% of the tax that has not been corrected. The government will also ensure that the criteria for reducing the penalty from 200% will take account of whether the person comes forward voluntarily and the seriousness of the offence. A potential reduction in penalties from a maximum of 200% to 100% is a significant incentive.

2.12 Alongside this response document, the government is today publishing the draft legislation for the requirement to correct and we welcome comments on the draft.

3. Responses to questions posed in the consultation document

Definition of offshore

- 3.1. The consultation document set out how it expects “offshore” to be defined when setting the scope of the RTC. The existing definitions within the [No Safe Havens](#) strategy and legislation in FA 2007 which set out the definition of an “*Offshore Matter*” and an “*Offshore transfer*” were described and considered as definitions.
- 3.2 The government proposed that the scope of the RTC should be based around the legislative definitions of an “*offshore matter*” and “*transfer*” but we also proposed to expand the definition of transfers so that there is no restriction as to the timeframe in which the money was moved offshore.
- Q1: Are there any key circumstances missing from the proposed scope and definition or do you foresee any difficulties with applying this definition?**
- 3.3 Respondents were generally content with the proposed definition for the scope of the RTC, commenting this was comprehensive and that they did not foresee any obvious problems. However, there were some concerns with regard to the proposal to extend the period in which an offshore transfer can take place, with a view that this might lead to additional complexity if there is no cut-off date by which the legislation will apply.
- 3.4 It was also noted that the legislation must be clear that the scope of the RTC is not limited to UK residents. Non-UK residents such as trustees may be liable to UK tax but may not be aware they have a UK tax liability or aware of their obligations concerning UK taxes. It was also noted that the definitions might be extended to situations where structures have been established offshore to mitigate and avoid UK tax, so as to ensure the scope looks beyond deliberate evasion activity.

Government response

- 3.5 The government agrees with the majority of respondents that it is appropriate to make use of the existing legislative definitions in FA 2007 of an “*Offshore Matter*” and an “*Offshore transfer*” for the purposes of defining the scope of the RTC. The government has noted the concerns regarding extending the period in which an offshore transfer can take place. After considering those concerns it has been decided that for the purposes of the RTC “*offshore transfers*” should only include transfers that took place on or before 5 April 17. This will ensure transfers included within the scope of the Requirement to Correct only relate to transfers of non-compliant funds which took place prior to the introduction of the requirement.

Scope of the taxes included in the RTC

3.6 The consultation document proposed that the RTC would cover the correction of any offshore issues relating to, at the very least, all the taxes that are currently in scope for offshore penalties. This would put the following taxes within the scope of the RTC:

- Income Tax (IT)
- Capital Gains Tax (CGT)
- Inheritance Tax (IHT; in scope of offshore penalties from April 2016)

Q2: What are your views on limiting the scope of the RTC to those taxes currently covered by offshore penalties?

AND

Q3: What, if any, other taxes should we look to include within scope?

3.7 Respondents were broadly content with the scope of the RTC covering those taxes currently in scope for offshore penalties (IT, CGT and IHT). The main additional tax some respondents suggested for inclusion was Corporation Tax (CT), this would help address instances of failure by UK companies to disclose overseas profits or gains. It was also noted, however, that extending the scope of the RTC to include CT was potentially an unnecessary complication.

3.8 A small number of respondents suggested other taxes for inclusion within the scope, these were VAT, Non-residents Capital Gains Tax (NRCGT) and the Annual Tax on Enveloped Dwellings (ATED).

Government response

3.9 The government values these suggestions on extending the scope of the Requirement to Correct. To ensure the policy remains as targeted, simple and easy to understand as possible the RTC's scope will be the same as the current offshore penalties (and so cover IT, CGT and IHT) where there is a clear definition of what constitutes an offshore issue.

3.10 We understand the points made by some respondents concerning the way the behaviour that led to offshore irregularities within scope of the RTC could also involve CT and/or VAT. For example, if an individual in business deliberately under-declared profits from his business and transfers the money involved offshore that evasion of income tax may be within scope of the RTC but could also involve evasion of VAT. Where such a taxpayer discloses the income tax irregularities to HMRC to comply with the RTC, it is in the taxpayer's best interests also to make an unprompted disclosure of irregularities relating to any other taxes not within scope of the RTC so that they can also be corrected in the normal way as part of the process.

The window to correct

- 3.11 The intention set out in the consultation was for the RTC to be introduced in Finance Bill 2017 and it will provide for a window during which taxpayers must correct their affairs before they are subject to the new FTC penalties. We propose that the window for taxpayers to correct runs until 30 September 2018. The RTC will apply to offshore tax non-compliance that took place on or before 5 April 2017, so this timetable provides a minimum of approximately 18 months for the taxpayer to act after the date the non-compliance took place.
- 3.12 The end date of 30 September 2018 corresponds with the date by which all countries committed to the CRS will be exchanging data and hence HMRC will then have the information to pursue those who have chosen not to act.

Q4: Do you foresee any issues with a window to correct covering the period April 2017 to September 2018? Should we consider any other dates for the window?

AND

Q5: What is your view on capturing all compliance issues that exist up to and including 5th April 2017? Do you foresee any circumstances that this may miss?

- 3.13 A number of respondents agreed that aligning the end of the window for correcting under the RTC with the full adoption of the Common Reporting Standard from September 2018 provides an adequate period of time. Some respondents noted that the window may be insufficient when considering the potential complexity of offshore structures.
- 3.14 However it was also suggested that the correction window could correspond with the annual tax year cycle (5 April 2018 or 5 April 2019) as this is a standard period within which taxpayers are used to working. It was also suggested that the end of the RTC window be extended to align with the filing date for self-assessment tax returns (January 2019).
- 3.15 With regard to capturing all compliance issues that exist up to and including 5 April 2017, respondents stated that the inclusion of 'failure to notify chargeability' may unfairly penalise innocent taxpayers and that failure to notify chargeability is unlikely to be an indicator of offshore evasion.

Government response

- 3.16 The government acknowledges the suggestions regarding the time period in which to correct. We recognise the need to raise awareness to ensure taxpayers have every opportunity to understand the requirement and come forward.

Taxpayers should not wait for the requirement to correct to start actively reviewing their offshore tax interests with the view to ensuring their full UK tax compliance. It will always be in their interests to act as early as possible.

- 3.17 After considering the commencement of the RTC period we have decided it will apply to all offshore tax non-compliance issues that exist up to and including 5 April 2017 and taxpayers will have until 30 September 2018 to make any correction required.

The method to correct

- 3.18 In the consultation we proposed that the legislation for the Requirement to Correct should clearly set out what a taxpayer is required to do to correct their affairs. The government was clear that it was not its intention to create new processes for the Requirement to Correct, and believes that the mechanisms to make corrections already exist. We expect the majority of taxpayers meeting their obligation under the RTC to do so via a disclosure either through the digital disclosure portal, or another route such as the Contractual Disclosure Facility. However, there will be other ways in which the taxpayer could fulfil their RTC such as:

- Direct discussion with HMRC, for example through an existing Customer Relationship Manager or similar arrangements.
- Disclosing the relevant information during an ongoing enquiry.

Q6: Do respondents have any concerns about this approach to correcting?

AND

Q7: Are there any other approaches to correction we could consider?

- 3.19 A number of respondents were content with the proposed approach to making a correction and avoiding further new processes was welcomed. However, respondents believed that HMRC should undertake a campaign supported by widespread advertising to ensure maximum awareness of the RTC, particularly for taxpayers who may be unaware that they have a UK tax liability to correct.
- 3.20 Although a prescribed method of correction may provide more certainty, there was a view that there is also a need for flexibility, including an extension of time limits to discuss complex issues with HMRC with access to suitably experienced HMRC officers. Such a bespoke service, in line with previous disclosure facilities, could be utilised for the RTC and would allow an open dialogue on cases where the facts may be open to varying interpretations.

- 3.21 It was felt there was a need for a less formal correction method (than offered through the Worldwide Disclosure Facility) for low income taxpayers who may only have a small overseas liability and have not previously engaged professional advice. Respondents called for HMRC to provide clear, neutral guidance that refers low income taxpayers to sources of professional advice.
- 3.22 Some respondents had a concern over the practical operation of the Worldwide Disclosure Facility and believed that existing digital disclosure portals might not be suitable for all corrections. Suggestions have been provided to improve the efficiency of disclosure facilities; these include publishing minimum disclosure requirements, simple and better communication, non-accusatory language, firm assurances regarding data protection and privacy.
- 3.23 It was also suggested that HMRC should clarify its prosecution policy towards disclosures made during the correction window.

Government response

- 3.24 The government welcomes respondents' suggestions around communications and is keen to undertake further discussion on how to improve awareness of the RTC, including amongst groups who are traditionally hard to reach.
- 3.25 The government continues to review the practical operation of the WDF since its launch on 5 September 2016 and are looking for areas where improved guidance and possible modifications may be useful. We hope to continue to engage with stakeholders on this over the coming months.

Assessment Periods

- 3.26 The principle the government proposed to follow in the consultation was that a correction should be required where HMRC can assess the relevant tax in line with the assessment periods currently set out in law. For income tax and capital gains tax this is typically (although it varies in certain circumstances):
- Up to 4 years after the end of the relevant year of assessment for errors made despite taking reasonable care,
 - 6 years where the tax loss is due to carelessness,
 - 20 years where the tax loss was brought about deliberately
- 3.27 While we believe we should use the standard assessment periods for the purposes of the RTC, we recognised that having a window to correct that runs from April 2017 to 30 September 2018 means that some years will go "out of date" as regards assessing time limits during the window.

For example, if a taxpayer had offshore tax non-compliance in the tax year 2011/12 that was due to a failure to take reasonable care this would be within the scope of the RTC as the tax would be assessable by HMRC on 6 April 2017. However, if that taxpayer then corrected this position in May 2018 (so correcting prior to 1 October 2018 as required by the RTC) it would be too late for HMRC to assess the tax due.

3.28 We therefore proposed that the RTC should apply to tax that is “in date” for assessing at 6 April 2017 and there should be a special rule so such tax stays in date throughout the period for correction up to 30 September 2018.

3.29 A further issue identified is that within approximately 6 months of the end of the correction window, tax years could once again drop out of date for assessment before HMRC has had a chance to review the CRS data and follow up on anyone who has failed to correct. The consultation document therefore considered a one off extension to the assessment periods for tax and penalties following the RTC to allow HMRC to review the Automatic Exchange of Information (AEOI) data and challenge those who have not corrected. The consultation proposed this extension should be 5 years.

Q8: What are your views on using the standard assessment periods to define the contents of the RTC?

AND

Q9: What are your views on handling the issue of taxpayers delaying to allow years to pass out of assessment time limits in this way? Are there any other approaches you believe we should consider?

AND

Q.10 What are your views on a proposal to extend the assessment period for tax and penalties to ensure years do not drop out of assessment as the CRS data arrives? Could we address this issue in any other way?

3.30 Many respondents felt that the standard assessment periods should be used to decide what is within scope of the RTC. Some mentioned that there is a need to recognise that a 20-year period applies to a ‘failure to notify’, even where such a failure may be due to carelessness. There is some concern that a further penalty will only add greater unfairness.

3.31 It has also been suggested that a de-minimis level could be applied, for example, £1000 per tax year. This would take account of the cost of advice a taxpayer will need to seek before any failure to correct penalty could apply.

- 3.32 Respondents pointed out that circumstances may arise where taxpayers consider a full disclosure would prevent HMRC from raising a discovery assessment. Under these circumstances exemption from the requirement to correct rules and any potential penalty should apply.
- 3.33 Many respondents suggested that changing the normal assessing time-limits is an unnecessary complication and the proposal to measure the time limits for the requirement from 6 April 2017 appears a sensible approach. However, respondents stated the government needs to ensure that proposals will not in any way disadvantage a taxpayer who may find themselves in unavoidable complex circumstances (for example, cross border living).
- 3.34 Some respondents mentioned that there are wider considerations and approaches that should be examined; these include the time required to thoroughly review and prepare a final disclosure involving complex overseas structures, and the appropriateness of the Digital Disclosure Service (DDS) for serious evasion cases. Respondents felt that the government should clarify whether the system will be adapted to provide a similar approach for failure to notify, where different time limits apply.
- 3.35 It was suggested the assessment period could be used as a 'registration period' for the intention to make a disclosure, although it is recognised that any delayed registration may impact on years slipping from the assessment timeframe.
- 3.36 With regard to the proposal to extend the assessment period for tax and penalties to ensure years do not drop out of assessment as the CRS data arrives, some respondents accepted that an amendment is necessary and agree there should be a one-off extension. Yet many felt the proposed 5 years was too long and that the extension might discourage taxpayers with offshore interests from disclosing. Respondents felt that if this was necessary, it should be a shorter period of time with HMRC having sufficient resource in place to manage the review of data.

Government response

- 3.37 The government has decided to use the existing statutory assessment periods as the basic test of which periods are within scope of the RTC, but to also include a special rule to cope with years going out of date during, or shortly after, the requirement to correct period as explained below.
- 3.38 With regard to the start date for the RTC period the government confirms that offshore tax non-compliance will be within scope of the RTC if it would have been possible for HMRC to assess the tax concerned at 6 April 2017.

- 3.39 Some of the comments received mentioned the 20 year assessing time limit in respect of a failure to notify chargeability¹ and the situation where a full disclosure would prevent HMRC from raising a “discovery assessment”². It has been decided that the RTC should not make any changes to the assessing time limit rules except to prevent periods going out of date during or shortly after the correction period. So, for example, if relevant tax in respect of a failure to notify could be assessed for a 20 year period at 6 April 2017 then that tax is within scope of the RTC. On the other hand, if a full disclosure of information means that at 6 April 2017 HMRC could not assess the relevant tax then that tax is not within scope of the RTC.
- 3.40 Without any extension to the assessing period HMRC would be unable to take action in some cases. If a person fails to correct a careless error for the year 2011/12, without any extension HMRC would be unable to assess this on the day the failure to correct arises (1 October 2018). In addition, as explained above, it could be that CRS data received by HMRC in September 2018 would have enabled HMRC to detect non-compliance by this taxpayer. This might then have led to discovery of the failure to correct 2011/12 but it would be too late to take action to address this failure to correct by the time it was detected. For this reason the government maintains that some extension is necessary for income tax and capital gains tax, although it is recognised that this should be appropriate and there is scope to reduce the period previously proposed.
- 3.41 A one-off assessment extension period of 2.5 years in respect of the RTC will be provided (as opposed to the 5 years proposed in consultation). The combination of the measures required to prevent tax falling out of assessment during the correction period, and those to give HMRC a reasonable period to take action after the end of that period, will mean that tax assessable at 06 April 2017 will remain assessable until at least 5 April 2021.

Contents of a correction

- 3.42 In the consultation document we outlined our expectation of the taxpayer or their representative in order to meet the obligations of the requirement to correct. We proposed that taxpayers should correct the inaccuracy or failure by disclosing any outstanding tax, interest and relevant penalties due. In addition to a disclosure of the tax, interest and penalties due, we consulted on requiring the taxpayer to provide information about any third party that had enabled or facilitated their offshore non-compliance.

Q11: What are your views on the proposed contents of a correction? Do you foresee any issues or further information we should seek?

¹ Section 36(1A)(b) Taxes Management Act 1970

² Section 29(3) and (5) Taxes Management Act 1970

- 3.43 Whilst some respondents felt proposals for the contents of a correction outlined in the consultation were sufficient, it was felt there would be difficulty in expecting a taxpayer to calculate tax and interest, for up to 20 years, within the proposed window. This would be particularly difficult for some taxpayers who may have complex affairs. Respondents argued that HMRC should take this into account when assessing the legitimacy of disclosures.
- 3.44 Respondents also felt there might be issues with unrepresented foreign taxpayers, language concerns, and those with modest affairs. It was also felt the contents of the correction should include a requirement for a narrative that confirms the nature of the disclosure and set out the background to the arrangement.
- 3.45 Some respondents were concerned about the requirement on taxpayers to give information about third parties who had enabled/facilitated their offshore non-compliance. They felt it would help to have the necessary detail of what is required set out in guidance or legislation.

Government response

- 3.46 The government acknowledges the concerns from some respondents that the taxpayer would be expected to calculate interest, for up to 20 years, within the proposed window. Having reviewed the proposals further, the government expects the taxpayer to provide enough information for HMRC to be able to calculate and assess the tax, interest and penalties due.
- 3.47 Some respondents sought clarification in respect of the use of estimates by taxpayer's making a correction where the exact figures are not known. As with other information provided to HMRC by taxpayers, the correction should be to the best of the taxpayer's knowledge and belief and recognise that in certain circumstances estimates may be appropriate. The government will continue to consider how best to provide clarity where estimates have been made, including whether the WDF should be amended to allow taxpayers to indicate the use of estimates in disclosures to HMRC.
- 3.48 The government has taken account of respondents' comments and will not be requiring information on third parties as part of the correction process.

Follow up to any correction and using the Common Reporting Standard (CRS) data

- 3.49 It is important that the corrections made to meet the requirement are appropriately checked to ensure they are accurate and complete. Receipt of a correction will therefore require follow up work by HMRC

and the government is considering how that follow up work will be conducted.

- 3.50 To carry out the follow up work the consultation document explained that HMRC was considering whether it might need any new information powers or changes to existing powers to support discovery assessments relating to corrections made under the RTC or the use of the CRS data.

Q12: We would be interested in views on whether HMRC should consider further information powers to support the RTC or more widely the CRS?

- 3.51 Respondents were in general agreement that HMRC's existing powers under Schedule 36, Finance Act 2008 are widely drawn with any extension to these powers unnecessary. Current legislation is therefore adequate to support discovery assessments relating to corrections made under the RTC or following receipt of CRS data. It was highlighted however that current legislation does not enable HMRC to require a taxpayer to provide information in respect of a third party that has enabled or facilitated the taxpayer's non-compliance.

Government response

- 3.52 The government has considered the scope of existing information powers and agree with the vast majority of respondents who feel that the existing powers are sufficient for the purposes of the RTC and following the receipt of CRS data. The government does not propose any changes and extensions to those powers.

Non Standard Situations (Enquiry Cases)

- 3.53 The government recognises that situations will occur where there are complexities in relation to particular taxpayers meeting their RTC. An issue identified in the consultation related to taxpayers who are under enquiry during the requirement window (April 2017- September 2018). The consultation considered a number of ways to address this issue. These included:
- A strict approach requiring the settlement of their outstanding liabilities before the requirement window closes.
 - Allow the requirement window to extend for anyone who is still under enquiry, without the imposition of the FTC penalties.
 - Allow the enquiry to run over the end of the requirement window, but requiring the taxpayer to provide HMRC with all the relevant information in relation to the RTC before the window closes. Any offshore non-compliance disclosed or identified by HMRC after

the end of the requirement window could then be subject to the relevant FTC penalties. This is our preferred option.

Q13: Do respondents have any alternative ways of handling the issue of ongoing enquiries? Are there alternatives to extending the window in these circumstances?

AND

Q14: Are there other complex situations we need to give special consideration to?

- 3.54 A number of respondents have shown a preference for the third option in the consultation document: this allows the enquiry to run over the end of the requirement window, but requires the taxpayer to provide HMRC with all the relevant information in relation to the RTC before the window closes. However it was noted this would impact on what is required where a taxpayer is subject to open enquiries.
- 3.55 Some respondents have suggested that if the correction required must include a calculation of the omitted income, this will lead to problems with enquiry cases and that the process is likely to generate an increase in enquiry cases.
- 3.56 A small number of respondents highlighted a potential issue where a taxpayer has entered into a transaction whose tax treatment is uncertain and subject to a dispute with HMRC. In such a situation it may not be possible to decide whether there is a correction to be made, or to calculate any tax liability, until the dispute has been resolved by the Tribunals and Courts.
- 3.57 Access to a bespoke service where each situation is considered on a case-by-case basis was noted as desirable, alongside ensuring special assistance is available for taxpayers where appropriate, such as those who have a disability.

Government response

- 3.58 The government agrees with the respondents who have a preference for the option which will allow the enquiry to run over the end of the correction window, but will require the taxpayer to provide HMRC with all the relevant information in relation to the RTC before the window closes.
- 3.59 As explained above, the government will not be including a requirement for the taxpayer to provide a calculation of the interest and penalties due as part of the RTC, instead requiring enough information for HMRC to make the assessment.

- 3.60 Where a taxpayer has entered into a transaction whose tax treatment is genuinely uncertain and is subject to a dispute with HMRC and/or litigation, we recognise that the taxpayer may not know whether a correction is needed until after the end of the correction period on 30 September 2018. In that situation, if the taxpayer makes HMRC aware of all the relevant facts before 30 September 2018, he or she will have met their obligation, notwithstanding that they do not accept that there is a correction to be made.
- 3.61 The government is considering appropriate services to offer alongside the RTC and correction process to ensure taxpayers receive the help and support they may require.

Reasonable excuse

- 3.62 In any penalties model for the FTC, following the RTC, the government believes that there should be no penalty if the taxpayer has a reasonable excuse for not having met the obligation to correct in the defined time period. The consultation considered the definition of a reasonable excuse.

Q15: What do you think should be included within the scope of reasonable excuse for not having met the obligations of the RTC? What do you think should not be included as a reasonable excuse?

- 3.63 Some respondents welcomed recognition that there should be no penalty if the taxpayer has a good reason for not having met the obligation to correct in the defined period. A number of respondents were concerned that HMRC should not seek to limit the concept of reasonable excuse and to define it in relation to the RTC. Some respondents felt the application of a reasonable excuse should depend on the facts of each individual case with a final decision where appropriate determined by tribunal.
- 3.64 Other respondents supported a statutory definition of reasonable excuse and offered a number of helpful examples of what should, and should not, come within the scope of a reasonable excuse. These included obtaining and following advice from a professional adviser and mistakes made by third parties (eg Financial Institutions) which led to the failure to correct. Furthermore, some respondents detailed that a reasonable excuse should not extend to circumstances where a taxpayer does not understand the law, assumes their affairs are in order and does not take professional advice where it would have been reasonable to do so.
- 3.65 Respondents also felt HMRC should not underestimate the potential level of disengagement from those who may be technically within the scope of the failure to correct penalty.

Effective communication with these groups to emphasise the importance and extent of their obligations under UK tax law is very important.

Government response

- 3.66 The government acknowledges the concerns some respondents have with regard to the definition and scope of reasonable excuse for the purposes of the RTC. We accept there are existing provisions in law (for example, paragraph 23 of Schedule 55 FA 2009) and definitions on the scope of reasonable excuse that should form the basis of its application with respect to the RTC.
- 3.67 The government will use these existing models and established principles as the basis for the RTC. However, the government recognises the need for clarity for taxpayers who have received advice, for example, when can they be confident that they can rely on this, and when not. The government will therefore include in the draft legislation a provision that clarifies when a taxpayer can rely on advice received, although we are clear that relying on sub-standard advice should not constitute a reasonable excuse.
- 3.68 This clause will specify that for advice to be relied on, it must meet specific requirements. These include that it must be given by an independent person with appropriate expertise and be based on the specific circumstances of the taxpayer. If all the facts are provided to a professional adviser who is competent to give the advice, and the advice given is fully implemented by the taxpayer, the taxpayer should be able to rely on this to show that they have taken reasonable care to ensure that their UK tax position is correct. .
- 3.69 It is important to note that there will be no FTC penalty if the taxpayer has a reasonable excuse for not having met the obligation to make any necessary correction within the defined time period of the RTC. However any outstanding tax would remain due and the taxpayer may still face a penalty for the initial non-compliance if appropriate.

Proposed 'failure to correct' penalties models

- 3.70 The two models proposed in the consultation set penalties at a high level compared to the current penalties. In both models an asset based penalty (up to 10% of the asset's value), an enhanced penalty for asset movement and naming could also apply, where appropriate, for failing to correct.
- 3.71 Model 1 proposed a much simpler penalties framework for the FTC. The legislation for the RTC would set out a maximum and minimum penalty applicable in circumstances where the taxpayer has failed to correct.

In this model we proposed a minimum penalty of 100% and a maximum penalty of 200% of the tax that had not been corrected.

- 3.72 Model 2 considered a different approach. It would still give a clear message that correcting under the requirement is the best option, but there would be additional elements added to the penalty framework to be more prescriptive about the level of penalty that would apply in certain circumstances. Penalties would vary depending on whether the disclosure was prompted or unprompted with clear definitions of what constitutes each of these behaviours. This model proposed a fixed penalty for unprompted disclosure and for a disclosure to be treated as unprompted, we would require full cooperation as well. We also proposed that any disclosure made while under enquiry should be considered prompted.

Q16: What are your views on the two penalty models proposed? We would welcome other ideas on a penalties model for FTC.

- 3.73 Respondents were broadly divided between the two penalties models proposed in consultation. A number of respondents noted that 'model 1' simplified the message and it's more apparent toughness would help the government achieve its objective, where 'Model 2' is complex and therefore loses the benefit of simplicity.
- 3.74 Yet a number of respondents also noted that whilst 'Model 2' may lack the simplicity of Model 1, it appears a more reasonable approach that encourages unprompted disclosure, with flexibility in providing for some additional categorisation of penalties that will differentiate cases more clearly. Some respondents were concerned that 'Model 1' is simply too severe, particularly for those who do not have a reasonable excuse but have not acted deliberately. They suggested that it provides insufficient incentive for taxpayers to disclose errors if they discover them after the RTC window closes and would place too great a burden on the taxpayer in situations where their conduct was not deliberate.
- 3.75 A possible alternative model was explored in the responses, this was based on the current offshore penalty regime, with different penalty rates depending on the territory. The penalty could be set at the multiple of the current rate for that territory. It has been commented in responses that any system introduced needs to take into account the position of a taxpayer who did not make a RTC disclosure on the basis they believed their offshore structure did not give rise to tax liabilities.

Government response

- 3.76 The government understands the concerns a number of respondents have raised in respect to the higher penalties that may be applied for those who fail to act and could be subject to a 'failure to correct' penalty.

It is important to note that while both penalty models proposed in the consultation document are tough in comparison to the current standard penalties, these penalties are being charged only after a taxpayer has ignored many years of HMRC publicising its tougher approach and providing channels to correct offshore compliance issues. In addition, to incentivise taxpayers to correct any offshore tax non-compliance before 1 October 2018, there needs to be a significant increase in the penalties that will be due on or after that date.

- 3.77 Taxpayers in this situation will have committed an original offence, they will have failed to come forward under any previous disclosure facilities, despite publicity and worldwide media coverage on the illegality of hiding income and assets offshore, and will now also have failed to correct under the new legal RTC obligation. The government feels it should therefore attract increased rates of penalty compared with the current standard penalties for offshore evasion.
- 3.78 The government recognises there will be a number of instances where the non-compliant activity is not deliberate and the taxpayer will reasonably be unaware they may have not declared the correct amount of tax. This is the reason for providing a window to make corrections as part of the RTC. In these situations the taxpayer will be given adequate time to review their affairs and seek professional advice if needed before the higher penalty is applicable.
- 3.79 The government is keen to ensure the penalties imposed on those who fail to correct their affairs are appropriately tough, whilst ensuring a much simplified penalties framework. As a result the 'failure to correct' penalty will be based around 'Model 1' in the consultation document.
- 3.80 Penalties will start at the maximum of the range (200%) and will be reduced within the range to reflect the taxpayer's cooperation with, and disclosure to, HMRC (and the seriousness of their failure to correct). This will include whether they came forward unprompted to tell HMRC of their failure.
- 3.81 A penalty will be chargeable within the range in respect of any taxpayer who has failed to correct, irrespective of behaviour, unless they can show they had a reasonable excuse for not meeting the obligation (see Question 15).
- 3.82 There would be no categorisation of penalty by territory. All taxpayers who had failed to correct would therefore face the same penalty range irrespective of where they had held their money.
- 3.83 In addition to tax geared penalties, an asset based penalty of up to 10% of the value of the relevant asset would apply in the most serious cases, where the tax involved was over £25,000 in any tax year.
- 3.84 HMRC will also have the ability to publish details of those who have failed to correct in the most serious cases and where over £25,000 tax per investigation is involved. The detailed rules will be similar to those at section 94 FA 2009 (publishing details of deliberate tax defaulters). These conditions will ensure that the asset-based penalty, and publication of details of those who have failed to correct, will be reserved for the most serious cases.

- 3.85 The model will also adopt the enhanced penalty for asset moves of 50% of the amount of the standard penalty, which would apply if HMRC could show that assets or funds had been moved to attempt to avoid the requirement to correct.
- 3.86 The government fully acknowledges that the FTC penalty is a lot tougher compared to current penalties. However, the government believes this model provides an incentive to correct and a clear and simple message for the taxpayer. The policy design will ensure that applying these additional sanctions will be reserved for the most egregious cases and make it very clear that correcting before the end of the requirement period and before HMRC gets CRS data is the best option.
- 3.87 We believe the concerns described above at paragraph 3.76 regarding the position of a taxpayer who did not make a RTC disclosure on the basis they believed their offshore structure did not give rise to tax liabilities are addressed by our inclusion of a rule about when a person can rely on advice as a reasonable excuse (see paragraph 3.69).

Further design considerations

- 3.88 The Consultation also considered whether we should extend the civil enabler penalties (see clause 150 and Schedule 20 of Finance (No.2) Bill 2016) to cover situations in which an enabler has helped the taxpayer circumvent the RTC.

Q17: What are your views on extending the civil enablers penalties to cover the RTC?

AND

Q18: Are there any other design considerations you feel we should consider?

- 3.89 A number of respondents felt that extending the civil enablers penalties to include enablers who help taxpayers avoid the requirement to correct was unnecessary, particularly before the new enablers' sanction (that will come into force following Finance Act 2016) has bedded in. However, some respondents did feel it would be consistent for civil enablers' penalties to cover RTC. A small number of respondents questioned an enabler's involvement in a failure to correct, as the penalty under the existing enabler rules will already punish the behaviour for which they are responsible.
- 3.90 A very small number of respondents commented on further design considerations, notably requesting guidance for agents and taxpayers to be issued early after publication of the draft legislation for the RTC to ensure clarity on the final process and scope as soon as possible.

Government response

- 3.91 Following a number of respondents' concerns about extending the new civil enablers penalties (Finance Act 2016) to cover the RTC the government agrees this would be an unnecessary complication especially given the recent introduction of the new civil enablers' penalty.
- 3.92 The government is working to develop guidance over the coming months in line with the timing of the Finance Bill.

4. Next steps

- 4.1 Based on the responses received to the consultation document, and feedback from stakeholders received during the consultation period, draft legislation for inclusion in Finance Bill 2017 has been published today to allow the government to require any person who has undeclared UK tax liabilities in respect of an offshore matter to come forward and correct that situation.
- 4.2 The draft legislation should not be viewed as final and we welcome comments on the legislation, in writing, to consult.nosafehavens@hmrc.gsi.gov.uk by Wednesday 01 February 2017.
- 4.3 The government will continue to work closely with professional and representative bodies and other stakeholders who are interested in this measure over the coming months.
- 4.4 There are a number of points raised in consultation which will be covered in the technical and operational guidance that will be produced by HMRC in due course.
- 4.5 Subject to final approval and the Parliamentary process, the draft legislation HMRC publishes today will be part of Finance Bill 2017 and the Requirement to Correct will come into force following Royal Assent to the Finance Act 2017.

Annex A: List of consultation respondents

The following representative bodies and firms responded to the consultation either in writing or through meetings.

- Association of Accounting Technicians (AAT)
- Association of Chartered Certified Accounts (ACCA)
- BDO UK LLP
- Buzzacott Chartered Accountants
- Chartered Institute of Taxation (CIOT)
- Deloitte
- Edge Tax LLP
- Ernst & Young (EY)
- Frank Hirth (Tax & Accounting)
- Gabelle LLP
- Grant Thornton
- HSBC
- Information Commissioner's Office
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Institute of Chartered Accountants of Scotland (ICAS)
- KMPG
- Mazars LLP
- PwC
- RSM UK Tax and Accounting Limited
- Society of Trustee & Estate Practitioners (STEP)
- Tax Investigation Practitioners Group (TIPG)

