

# CRS Data and HMRC Activity in 2021

Friday 26 February 2021

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# CRS DATA AND HMRC ACTIVITY IN 2021

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26 February 2021

## WHAT WE WILL COVER TODAY

- ▶ HMRC data mining and using the Common Reporting Standard data in practice
- ▶ HMRC ‘nudge’ letters in 2020-21 - ignore, panic or reply?
- ▶ Common errors for trustees and how to resolve
- ▶ Closing down tax enquiries



# HMRC DATA MINING AND USING THE COMMON REPORTING STANDARD DATA IN PRACTICE



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# HMRC DATA MINING

- ▶ Many taxpayers **underestimate the amount of data** HMRC hold about them
- ▶ Taxpayers and advisers also **underestimate how sophisticated HMRC's technology is** for analysing and risk-assessing data
- ▶ HMRC use **CONNECT computer software** to analyse data:
  - In operation since **summer 2010**
  - Although HMRC does not disclose all its sources of information, it is understood there are **more than 30 different databases available in CONNECT for analysis** (including Tax Return information, DVLA data, Land Registry details)
  - HMRC's policy paper 'No Safe Havens 2019' shows it can **cross-reference more than 22 billion lines of data and identifies more than 500,000 cases** (both onshore and offshore) annually
  - Majority of enquires stated by HMRC triggered from information obtained from CONNECT
  - HMRC **have recovered more than £3bn in taxes** since CONNECT's launch.

# THE COMMON REPORTING STANDARD ('CRS')

- ▶ The CRS was set up by the Organisation for Economic Co-operation and Development ('OECD') in 2014, with data first exchanged in 2017
- ▶ It is the **global standard** for automatic exchange of financial account information between jurisdictions
- ▶ **Financial Institutions identify account holders & report information to authorities annually**, who then share that data with the person's home jurisdiction
- ▶ According to the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, **97 jurisdictions automatically exchanged information in 2019 on 84 million financial accounts, covering total assets worth €10 trillion**
- ▶ Furthermore, **105 jurisdictions were committed to exchanging data by the end of 2020 under the CRS.**

<http://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2020.pdf>

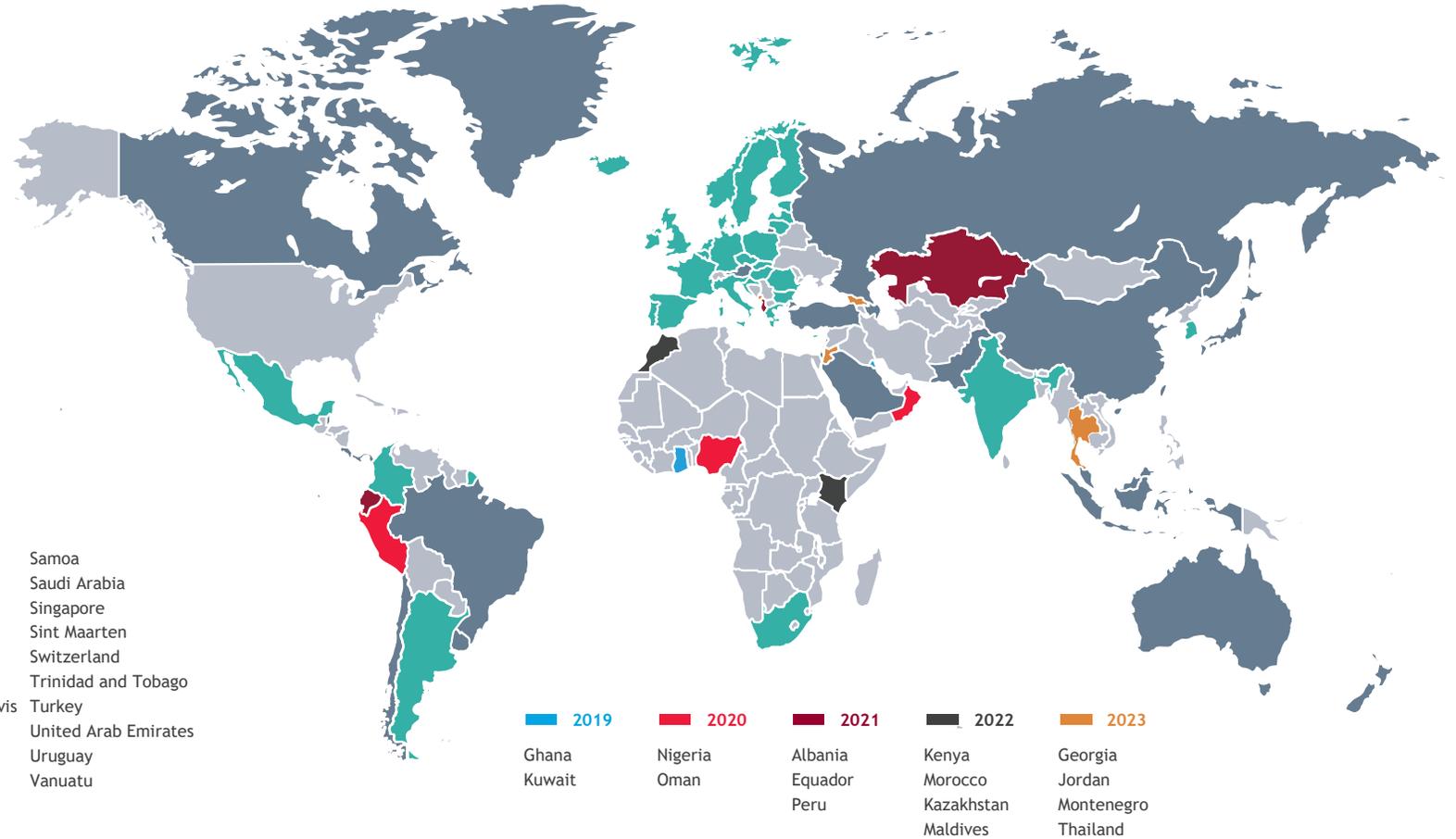
# COUNTRIES COMMITTED TO INFORMATION EXCHANGE UNDER THE CRS

## JURISDICTIONS EXCHANGING DATA SINCE 2017 - EARLY ADOPTERS

Anguilla	Gibraltar	Montserrat
Argentina	Greece	N. Cyprus
Belgium	Guernsey (Channel Islands)	Netherlands
Bermuda	Hungary	Norway
British Virgin Islands	Iceland	Poland
Bulgaria	India	Portugal
Cayman Islands	Ireland	Romania
Colombia	Isle of Man	San Marino
Croatia	Italy	Seychelles
Cyprus	Jersey (Channel Islands)	Slovakia
Czech Rep.	Korea	Slovenia
Denmark	Latvia	South Africa
Estonia	Liechtenstein	Spain
Faroe Islands	Lithuania	Sweden
Finland	Luxembourg	Turks and Caicos Islands
France	Malta	United Kingdom
Germany	Mexico	

## JURISDICTIONS EXCHANGING DATA IN 2018 - SECOND WAVE ADOPTERS

Andorra	Brunei Darussalam	Indonesia	New Zealand	Samoa
Antigua and Barbuda	Canada	Israel	Niue	Saudi Arabia
Aruba	Chile	Japan	Pakistan	Singapore
Australia	China	Lebanon	Panama	Sint Maarten
Austria	Cook Islands	Macao	Qatar	Switzerland
Azerbaijan	Costa Rica	Malaysia	Russia	Trinidad and Tobago
Bahamas	Curaçao	Marshall Islands	Saint Kitts and Nevis	Turkey
Bahrain	Dominica	Mauritius	Saint Lucia	United Arab Emirates
Barbados	Greenland	Monaco	Saint Vincent and the Grenadines	Uruguay
Belize	Grenada	Nauru.		Vanuatu
Brazil	Hong Kong			



## DATA REPORTED UNDER CRS

ABOUT THE OWNER/S	ABOUT THE ASSET	INCOME / GAINS / MOVEMENTS
Full name	Name of the financial institution and its identifying number	Gross interest received
Address	Type of asset (financial accounts / products as well as interests in trusts / holding entities)	Dividends received
Date of birth	Local account number / identifier	Gross capital sale proceeds received into account
Place of birth	End of the year balance for cash deposits	Any other income derived from financial assets
Tax identification number	Cash value for other assets	Amounts credited to the beneficial owners

## CRS DATA MINING IN PRACTICE

- ▶ HMRC first received data under the CRS in 2017
- ▶ HMRC integrate the CRS data they receive each year into **CONNECT** to help verify taxpayer's compliance and detect possible non-compliance activities
- ▶ In 2018 HMRC received information that indicated one in 10 UK taxpayers have an offshore financial interest
- ▶ Following analysis of the data, HMRC contact customers where they believe there is a risk of tax having been underpaid. This can include 'Nudge Letters'.



# HMRC 'NUDGE' LETTERS IN 2020-21 - IGNORE, PANIC OR REPLY?



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# NUDGE LETTERS

- ▶ What are nudge letters?
- ▶ Why does HMRC use them?
- ▶ When does HMRC send them?
- ▶ Can HMRC still open enquiries?
- ▶ What about penalties?

Nudge letters can and do catch those who are non-compliant.

Can be an 'innocent explanation' data mismatch or no tax problem.

Do not ignore a nudge letter!



# NUDGE LETTERS

- ▶ The letters are designed to prompt the taxpayer into reviewing their tax returns and finances to check whether further income, gains or profits need to be disclosed to HMRC
- ▶ It is essential that these letters are not ignored, and that a reply is sent to HMRC, as otherwise HMRC will follow up the matter in another way, for example by launching an enquiry or tax investigation
- ▶ Historically, a certificate of tax position accompanies the letter
- ▶ Letters are linked to HMRC's Requirement to Correct ('RTC') campaign, which was introduced as a statutory obligation for taxpayers with overseas assets to correct any issues with their historic UK tax position
- ▶ CIOT guidance on handling letters where a certificate of tax position is issued as follows:

<https://www.tax.org.uk/sites/default/files/CIOT%20member%20guidance%20re%20offshore%20nudge%20letters%20UPDATED%20July%202020.pdf>

# EXAMPLE NUDGE LETTER

**HM Revenue & Customs**

ISBC  
HM Revenue and Customs  
BX9 1LE

Phone  
Mon - Thurs 9am - 5pm  
Friday - 9am - 4:30pm

Web [www.gov.uk](http://www.gov.uk)

Date 15 October 2020  
Our Ref [REDACTED]

Dear [REDACTED]

**Your overseas assets, income or gains**

We have information that shows you may have received overseas income or gains that you may have to pay UK tax on. We have received this information through the UK's tax information exchange agreements with other countries. We want to help make sure you are paying the right UK tax on your overseas income and gains.

We have compared the information we have received with your tax record and tax return(s). We believe that you may not have paid the right amount of UK tax. There may be a reasonable explanation for this.

We are giving you the opportunity to review your tax affairs and to tell us about anything that you may need to put right. Some people with assets overseas have found that earlier tax advice is out of date after changes to their personal circumstances or to tax laws.

Please help us to make sure the information we hold about your tax affairs is accurate. You can do this by checking that you have told us about all of your UK tax liabilities from all overseas income or gains. Please complete the enclosed certificate and send it to us by 14 November 2020.

**What you need to do**

If you:

- find that you need to bring your tax affairs up to date, you can do this now by using our Worldwide Disclosure Facility, go to [www.gov.uk](http://www.gov.uk) and search for 'Worldwide Disclosure Facility' - please tick box 1 on the certificate
- have declared your overseas income on your tax return - please complete box 2 on the certificate and confirm the box(es) on your tax return where it was included
- have overseas income as part of a UK investment portfolio and you have declared this on your tax return - please complete box 2 on the certificate to confirm the box(es) on your tax return where it was included
- have not declared your overseas income and gains as you do not complete a tax return and believe that the income or gains are covered by personal allowances or reliefs - please tick box 3
- have not declared your overseas income or gains as you believe they are not taxable in the UK, and you are satisfied that this is correct - please tick box 4

If you are not sure you have told us about all your overseas income or gains that you must pay UK tax on, we recommend getting professional tax advice.

Please take this opportunity to check your tax affairs and act now to bring them up to date.

We regularly carry out checks. We are giving you this opportunity to tell us about all your taxable income or gains. If we later find that you have not told us everything, we will view this very seriously. We could then carry out an investigation and this could result in significant penalties or lead to you being prosecuted.

MMS 1 HMRC 07 20

If there is anything about your health or personal circumstances that may make it difficult for you to deal with this matter, please let me know. This is so that I can help you in the most appropriate way.

For more information about this, go to [www.gov.uk/dealing-hmrc-additional-needs](http://www.gov.uk/dealing-hmrc-additional-needs)

If you have a tax adviser, you should show them this letter.

Yours sincerely

[REDACTED]

**More guidance and advice**

To learn more about overseas income and assets, go to [www.gov.uk/government/publications/ten-things-about-offshore-assets-and-income/ten-things-about-offshore-assets-and-income](http://www.gov.uk/government/publications/ten-things-about-offshore-assets-and-income/ten-things-about-offshore-assets-and-income) For more guidance, go to [www.gov.uk/tax-foreign-income](http://www.gov.uk/tax-foreign-income)

You may not have declared overseas income or gains because you have relied on claiming the remittance basis. If so, it is important that you are aware of the current rules. For more guidance, go to [www.gov.uk/government/collections/self-assessment-helpsheets-residence-and-remittance-basis](http://www.gov.uk/government/collections/self-assessment-helpsheets-residence-and-remittance-basis)

You may still have to pay UK tax even if tax has been deducted by an overseas tax jurisdiction. For more guidance, go to [www.gov.uk/tax-foreign-income/tax-reliefs](http://www.gov.uk/tax-foreign-income/tax-reliefs)

Settlers, beneficiaries or trustees of offshore trusts may have to pay UK income tax, capital gains tax or inheritance tax on assets held offshore. For more guidance, go to [www.gov.uk/government/publications/income-and-benefits-from-transfers-of-assets-abroad-and-income-from-non-resident-trusts-hs262-self-assessment-helpsheet](http://www.gov.uk/government/publications/income-and-benefits-from-transfers-of-assets-abroad-and-income-from-non-resident-trusts-hs262-self-assessment-helpsheet)

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**HM Revenue & Customs**

**Certificate of tax position to be completed and returned to HMRC**

Our ref: [REDACTED]  
UTR: [REDACTED]

**Your tax position**

Choose which statement is accurate for your circumstances and tick the relevant box.

1 I need to bring my tax affairs up to date. I will declare all my outstanding UK tax using HMRC's Worldwide Disclosure Facility.

Please be aware that:

- you can make a disclosure now by using our Worldwide Disclosure Facility, go to [www.gov.uk](http://www.gov.uk) and search for 'Worldwide Disclosure Facility'
- you must register with the Worldwide Disclosure Facility to be able to use it, go to [www.gov.uk](http://www.gov.uk)
- returning this certificate does not mean you have registered to use the Worldwide Disclosure Facility

2 I believe I have declared all my overseas income and/or gains correctly on my tax return(s) as shown below.

Tax year(s) [REDACTED]

Boxes on tax return where income and/or gains were entered [REDACTED]

3 I have not declared my overseas income and/or gains as they are covered by personal allowances or reliefs.

4 I have not declared my overseas income and/or gains as they are not liable to UK tax.

**Declaration**

I confirm that the information I have given on this form is correct and complete to the best of my knowledge and belief. I understand that dishonestly making a false statement to evade paying tax is a criminal offence and I may be subject to investigation and prosecution.

Your name [REDACTED] Signature [REDACTED]

Your address [REDACTED] Date [REDACTED]

Please be aware that we will use the information we have to check if the statement you have made is correct. Please return your completed certificate to ISBC, HM Revenue and Customs, BX9 1LE by 14 November 2020.

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# NEW HMRC 'NUDGE' LETTERS

In the autumn / winter of 2020 HMRC issued a new set of nudge letters, in respect of information received in the following 15 areas:

- ▶ Individuals' investment income
- ▶ Individuals' benefits in kind
- ▶ Individuals' disposal of a residential property which is not a PPR
- ▶ Annual Tax on Enveloped Dwellings (ATED)
- ▶ CGT on share sales (including earn-outs and deferred consideration)
- ▶ Individuals' pay and tax
- ▶ Gains on residential property disposals
- ▶ Persons of significant control
- ▶ 2017/18 self-assessment returns which are yet to be filed
- ▶ Profit shifting
- ▶ Overseas Workdays Relief (OWR)
- ▶ Foreign Tax Credit Relief
- ▶ Relief under a Double Tax Agreement
- ▶ Statutory residence test (SRT)
- ▶ Deemed UK domicile - two versions.

We can expect another round of nudge letters to be sent by HMRC later this year.

# DOMICILE & RESIDENCE ‘NUDGE’ LETTERS

Specifically linked to data obtained under the CRS were nudge letters, that asked taxpayers to consider their residence and domicile positions ahead of filing their 2019/20 Tax Returns.

## ▶ Statutory Residence Test (‘SRT’)

- Was designed to prompt people to consider the SRT rules carefully before filing
- HMRC’s intention was to nudge people to take more care in this area so as to reduce errors. If mistakes are found later then HMRC may be more likely to impose tax-gearred penalties.

## ▶ Deemed domicile - two versions

- One prompted people to consider the deemed domicile rules carefully before filing their 2019/20 return
- Other also asks them to consider if they needed to amend their 2018/19 return before the s9ZA TMA 1970 deadline expired. Significant penalties can be charged for errors relating to offshore income, assets, activities & transfers and also other rules e.g. strict liability offence.

These topics will continue to be important considerations when looking at submitting future tax filings.

# EXAMPLE NEW 'NUDGE' LETTER

 HM Revenue & Customs

**Wealthy and Mid-sized Business Compliance**  
HM Revenue and Customs  
BX9 1LH

Phone: [REDACTED]  
9.00am to 5.00pm, Monday to Friday

Email: [REDACTED]

Web: [www.gov.uk](http://www.gov.uk)

Date: 7 December 2020  
Our Ref: [REDACTED]

Dear Sir or Madam,

**UK domicile status for tax purposes – Making sure your client's tax return is correct**

Client name: [REDACTED]  
UTR: [REDACTED]

**Why you have received this letter**

We believe your client, named above, may be affected by new rules that apply if you are not domiciled in the UK under common law.

From 6 April 2017 these new rules changed the UK domicile status for tax purposes. These rules were made under the Finance Act (No 2) 2017.

**About the rules**

If your client is not domiciled in the UK under common law and they meet either condition A or B below, we'll apply these new rules to them. This means that we'll treat them as domiciled in the UK for tax purposes (known as 'deemed UK domiciled').

**Condition A**

You're 'deemed UK domiciled' if you:

- were born in the UK
- have the UK as your domicile of origin
- are resident in the UK after 5 April 2017

If your client was born in the UK and had a UK domicile of origin at birth, they can get a domicile of choice outside the UK under common law, if they've resided in another country or law territory with the intention of staying there permanently.

If they then return to the UK on or after 6 April 2017 and become UK resident for that year, they will automatically be deemed domiciled in the UK for tax purposes, under Condition A.

**Condition B**

This condition applies when you're non-UK domiciled under common law and have been UK resident for at least 15 of the 20 tax years immediately before 2017 to 2018 tax year, or later tax years.

You must count all UK tax years of residence including:

- tax years where you were under the age of 18
- any tax year you were resident for part of the tax year (for example if you leave from or arrive in the UK during a tax year)

**What this means for your client**

Your client may have become deemed UK domiciled under one of the above conditions. This means they have to pay UK tax using the 'arising basis'. This means they:

- cannot claim to be taxed on the remittance basis
- must report all their worldwide income and gains in their UK tax return using the arising basis

**How to report foreign income and gains on the arising basis**

Using the arising basis, they pay UK tax on:

- Income and gains from the UK
- Income from outside the UK
- gains from the disposal of their assets, wherever they are in the world

However, they must declare all of their foreign income and gains on their tax return. Even if:

- they have already been taxed in another country
- they do not bring them to the UK

If the foreign income or gains have already been taxed in another country, they may be able to claim a credit in the UK for the tax paid in another country. For more information about this, go to [www.gov.co.uk](http://www.gov.co.uk) and search for 'HS263'. Appendix A and B enclosed give more detail which any affected customer needs to consider.

**What you need to do now**

Please check if your client meets any of the conditions to be deemed UK domiciled for the 2017 to 2018, or 2018 to 2019 tax year.

If they are deemed UK domiciled and have not already done so, please amend their 2018 to 2019 tax return, completing boxes 23, 23.1, 23.2 and 23.3 of the SA109 'Residence, remittance basis etc' supplementary pages.

If your client is unable to make an amendment to their return, they may want to make a disclosure to HMRC. They should do this if they believe they have omitted any additional tax liability on their UK tax return.

You should also carefully read the enclosed Appendix A and B, to make sure that they have reported all their worldwide income and gains correctly to HMRC. And that they have included any foreign income or gains they've remitted in the tax years 2017 to 2018, or 2018 to 2019 that are from a previous year where they claimed the remittance basis.

For more information about the changes, you can:

- go to [www.gov.uk/government/collections/deemed-domicile-changes-from-6-april-2017](http://www.gov.uk/government/collections/deemed-domicile-changes-from-6-april-2017)
- contact us on 03000 511811 between the hours of 9am and 5pm – please note that this number is only available for three months from the date at the top of this letter
- email us at [wmbc.mailbox@hmrc.gov.uk](mailto:wmbc.mailbox@hmrc.gov.uk)

We may in the meantime check your clients tax affairs to make sure that they are dealing with everything correctly. This is to help avoid mistakes, as the new rules make significant changes to the way we tax these customers.

If you think you need to make any amendments to your clients return, or any disclosure to tell us about any additional UK tax, please do so now.

We recognise the value of professional agents helping customers with their tax. For information about the required standards for agents, go to [www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents](http://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents)

Yours faithfully

# EXAMPLE NEW 'NUDGE' LETTER

  
HM Revenue  
& Customs

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## Appendix A

### Changes to consider under both Condition A and Condition B as a deemed UK domicile

#### Using the remittance basis offshore income and gains from earlier years

If you've used the remittance basis in earlier years and bring any of those earlier years' foreign income or gains to the UK at a later date, you'll need to pay any UK tax that is due. This applies even if you're using the arising basis to pay UK tax for that year.

Typical examples of foreign income and gains which you need to report include:

- interest from overseas savings
- dividends from foreign companies
- income from overseas pensions and property
- foreign employment and self-employment income
- capital gains from the disposal of overseas assets and property
- certain income or gains paid out of a trust
- income or gains retained or accumulated in certain types of trust (for example, settlor interested trusts)
- income or payments that are an individual's based on anti-avoidance legislation, including the Transfer of Assets Abroad provisions
- services and benefits provided in the UK that are paid for with offshore income or gains

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## Appendix B

### Transitional provisions to consider as a deemed UK domicile taxed on the arising basis under Condition B

#### Cleansing of Mixed Fund Accounts

If you are deemed UK domiciled in the tax year 2017 to 2018 or 2018 to 2019 under Condition B, you may have cleansed mixed fund offshore account. This must have been done within a two-year period ending 5 April 2019, and would only apply if you met the conditions for cleansing as detailed in the guidance. Go to [www.gov.uk/guidance/cleansing-mixed-funds](http://www.gov.uk/guidance/cleansing-mixed-funds) for a copy of this guidance.

You must be able to show evidence of the sources of different funds nominated before any transfers were made and you should keep a record of any mixed fund cleansing 'nomination'. If you do not, the normal mixed fund ordering rules as detailed in s809Q and s809R ITA07 will still apply. Also, any remittances made to the UK from that account may be taxable.

#### Rebasing of foreign assets for Capital Gains Tax purposes

If you were deemed domiciled under condition B on 6 April 2017, you'll be entitled to rebase certain foreign assets if you disposed of them. You can use their market value at 5 April 2017 to calculate the gain or loss on the disposal of that asset. But a number of conditions apply.

For you to rebase certain foreign assets that you disposed of, then:

- Section s809H ITA 2007 (claim for remittance basis and a charge applies) must apply to you in relation to the tax year 2016 to 2017 or an earlier year
- you must have been resident in the UK for 2017 to 2018
- for tax year 2017 to 2018 and each year up to and including the year that you made the disposal, you must have met condition B of s835BA (that is, you are deemed UK domiciled under the 15 out of 20 rule and you have not become domiciled in the UK under common law)
- Condition A of s835BA ITA2007 must not apply to you – for example, rebasing is not available if you were born in the UK with a domicile of origin in the UK
- for the year of disposal, you're not domiciled in the UK at any time in the year under common law

For the asset that you disposed of, it must:

- have been held on 5 April 2017
- have been disposed of on or after 6 April 2017
- not have been situated in the UK at any time in the period from 16 March 2016 (or date it was acquired if this is later) to 5 April 2017

#### Special rules affecting overseas trusts

You may have settled an offshore trust before you became deemed UK domiciled. If so, you may be able to take advantage of special rules about those trusts. These new rules mean that you'll not have to pay UK tax on any overseas income and gains from the trust as they arise. But you'll still have to pay UK tax on any UK income from the trust and any amounts from 'Offshore income gains'.

This is a special 'protected' status for trusts.

Offshore income gains (OIGs) from a tax year that the settlor of an offshore trust is deemed UK domiciled are not automatically protected under the trust protection rules. This is because OIGs are not included in the definition of 'relevant foreign income' under section 830 ITTOIA 2005. Regulation 10 of the Offshore Funds (Tax) Regulations 2009 states that OIGs will be treated as an individual's 'relevant foreign income' only if the remittance basis applies to the individual for the tax year in question. Individuals who are deemed domiciled under 'the 15 of the last 20 years' rule cannot qualify for the remittance basis. This means OIGs in a trust settled by them cannot be treated as Protected Foreign Source Income.

If you become deemed UK domiciled we will also tax the value of any benefits that you, or in certain circumstances a close family member, receive from the offshore trust. We will do this from the point you become deemed UK domiciled. This is instead of taxing any income or gains. We will apply this change if we can match the value of the benefit with protected foreign source income or gains from the trust structure. As you can no longer use the remittance basis this change will apply to benefits that you have received anywhere in the world.

It's possible for a trust to lose this special protected status if the trust becomes 'tainted'. This can happen for example, where loans are made between the deemed domiciled settlor and a trust where:

- the settlor makes a loan to the Trust on non-commercial terms
- the settlor takes a loan from the Trust and pays excessive interest on that loan to the Trustees
- a fixed term loan agreed before you become deemed domicile on non-commercial terms is not put on to commercial terms at the end of the fixed term
- interest on a loan is capitalised
- interest due on a loan is not paid

If a trust is 'tainted' then the deemed domicile settlor will have to pay UK tax on an arising basis on all income and gains from the trust structure.

For more detailed guidance on trust protections and capital gains tax changes, go to:

[www.gov.uk/government/publications/trust-protections-and-capital-gains-tax-changes](http://www.gov.uk/government/publications/trust-protections-and-capital-gains-tax-changes)

#### Important note

The majority of transitional provisions only apply if you are not deemed UK domiciled under Condition B and not UK domiciled under common law.

Please check your position carefully.

## POINTS TO CONSIDER

- ▶ HMRC does not issue nudge letters to all taxpayers whose returns may be wrong or have not been submitted - it may just open an enquiry or a more serious tax investigation
- ▶ Just because HMRC sent a letter **does not mean that the person's tax returns are wrong** - there may be an innocent explanation
- ▶ The letters are **based on specific data**, so telling HMRC about extra Income Tax or Capital Gains Tax due now will be a prompted disclosure, and any penalties will be higher than if the disclosure was made before the nudge letter was sent
- ▶ The **strict liability offences** in Sections 106B-D TMA 1970 are now in force. Consequently, HMRC could **open a criminal investigation** with a view to prosecution for mistakes involving offshore matters that arise as a result of careless (as well as deliberate) behaviour. Alternatively, the **taxpayer may face tax-gear penalties of up to 300%** (plus asset-based penalties) due to a combination of Failure to Correct penalties and other penalties for offshore matters / transfers
- ▶ The letters advise using the Worldwide Disclosure Facility to rectify individuals' tax mistakes for earlier years, **but this may not be appropriate for some taxpayers**. Alternatives are available, including making a voluntary disclosure, which is generally the best option, and obtaining bespoke specialist advice is essential.

# COMMON ERRORS FOR TRUSTEES AND HOW TO RESOLVE



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# REGISTER OF TRUSTS

In June 2017, the HMRC Trust Register came into effect following the adoption of the 4th Anti-Money Laundering Directive. Trusts must be registered with HMRC if:

- ▶ The trust is or becomes liable to UK tax (unless this is Income Tax of less than £100 and this only came from interest income)
- ▶ Trustees need to obtain a trust Unique Taxpayer Reference ('UTR')
- ▶ There is a need to ensure the trust complies with anti-money laundering regulations.

In addition:

- ▶ If the trust is a non-UK resident trust, it must be registered if it becomes liable for tax on income coming from the UK or on UK assets
- ▶ If the trust has a tax liability but this is covered by a relief, the trust must be registered if it needs to claim the relief through Self Assessment.

Under the registration, trustees must provide basic details of trust itself (including its tax residence status and the assets it holds), its beneficial owners and any potential beneficiaries.

# REGISTER OF TRUSTS: FURTHER CONSIDERATIONS

As part of the UK's implementation of the 5th Anti-Money Laundering Directive new rules were introduced on 6 October 2020. This extend the scope of the trust register to include the following trusts:

- ▶ All UK express trusts (which are not specifically excluded). UK trusts are ones where the all individual trustees are UK tax resident or there is a corporate trustee that is incorporated in the UK
- ▶ Non-UK express trusts where the trust acquires land or property in the UK
- ▶ Non-UK express trusts which have at least one trustee resident in the UK when the trustees enter into a business relationship with an 'obliged entity' or acquire land or property in the UK
- ▶ Non-express trusts and specifically excluded express trusts which have a UK tax liability.

**Trusts that have already registered will have to provide additional information about the trust and their beneficial owners.**

However, trustees cannot register trusts under the new rules until later in 2021 when the new service is available. The deadline for new registrations is 10 March 2022.



# LAND & PROPERTY BENEFICIAL OWNERSHIP REGISTER

- ▶ The Land Registry holds data on UK property ownership. HMRC uses that data to identify overseas owners of UK property
- ▶ It is proposed that a register will be established in 2021 to record the identity of offshore beneficial owners of UK property and those who control them
  - E.g. the ultimate beneficial owners of non-UK resident companies & trusts
- ▶ Registration is expected to be enforced through the land registration process for transfers of UK property after the register comes into operation
- ▶ Existing owners of property will be given a period of time within which they will be required to comply, currently expected to be at least a year from the date the register comes into operation
- ▶ Further obligations will apply to update the register on changes in beneficial ownership e.g. when the shares in an offshore company change hands under a sale or inheritance
  - E.g. when the shares in an offshore company change hands under a sale or inheritance.

# COMMON ERRORS NOT REPORTED TO HMRC

In addition to not correctly registering via the trust register, these are some common areas that we have seen not be reviewed and declared to HMRC:

- ▶ Receipt of UK source income
- ▶ Inheritance tax charges - including 'exit' and 10 year charges
- ▶ Domicile status of settlors & remittance issues - including deemed remittances via credit cards, & accidental remittances via mixed funds
- ▶ UK tax residence status of individuals
- ▶ Non-resident landlord returns
- ▶ Annual Tax on Enveloped Dwellings
- ▶ Application of the 'transfer of assets abroad' legislation
- ▶ Capital Gains Tax liability in relation to companies under the anti-avoidance attribution of gains rule
- ▶ In general terms, whether the tax treatment of individuals & trusts has been regularly reviewed to take account of all changes in circumstances and tax legislation.

# HOW TO RECTIFY ERRORS

- 1 Voluntary disclosures!!
- 2 Ensuring the trust registration process is completed!!!
- 3 Make sure all current and future obligations are correctly complied with!!!

# CLOSING DOWN TAX ENQUIRIES



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# ARE VOLUNTARY DISCLOSURES WORTH DOING?

- ▶ **Yes!**
- ▶ **HMRC has data obtained via CONNECT**
- ▶ **Prevent a more serious, invasive investigation**
- ▶ **Lower penalties**
- ▶ **Bigger mitigation for asset based penalties**
- ▶ **More likely to escape ‘naming and shaming’ and deliberate defaulter penalties**
- ▶ **Highly unlikely to be prosecuted, especially if a full disclosure is made**
- ▶ **Smoother process compared to an investigation started by HMRC**
- ▶ **Can agree tax treatment of offshore structures or allow old structures to unwind**
- ▶ **Peace of mind.**



# METHODS FOR PROGRESSING AN ENQUIRY

- ▶ Be upfront and honest when making a disclosing to HMRC
- ▶ Consider disclosing additional information to HMRC that can help them fully understand the tax position
- ▶ Engage with HMRC to understand the root cause of their enquiries
- ▶ Have proactive discussions with HMRC about deadlines
- ▶ Ensure e-mail communication in place with HMRC on client cases
- ▶ Don't ignore HMRC 'nudge' letters
- ▶ Keep digital records of key correspondence
- ▶ Seek specialist advice.



# HMRC'S INFORMATION POWERS

As part of an enquiry, HMRC can request the provision of certain documents and information. Their information powers are set out at Schedule 36 of the Finance Act 2008. The key principles are:

- ▶ Information must be 'reasonably required' to check the 'tax position' (past, present or future) - this is based on the Inspector's opinion
- ▶ If no open enquiry (and HMRC are prima facie out of time), HMRC are only able to use their powers where they have 'reason to suspect' an underassessment has arisen
- ▶ Difference between documents and information
- ▶ Needs to be in the power (right to obtain from holder without consent) or possession (legal right) of the taxpayer
- ▶ HMRC can't ask for personal records or journalistic material
- ▶ Professional legal advisors are not required to provide privileged information or part of a document that is privileged.

## LONG RUNNING ENQUIRES

Consider Alternative Dispute Resolution ('ADR') for long running enquiries. ADR is a form of mediation which is especially useful where:

- ▶ Communications have broken down between HMRC & the taxpayer
- ▶ There is a dispute about the facts
- ▶ A dispute has arisen as a result of a misunderstanding.

Mediation is still accessible during the current pandemic:

- ▶ Traditional mediation in the year prior to COVID-19 showed a success rate of 89% (a combination of 59% Fully resolved, 15% Clarity, and 15% Partially resolved)
- ▶ Virtual mediations in the first 6 months from March 2020 had a similar success rate of 87%.

# CLOSURE NOTICES

- ▶ When HMRC come to the end of an enquiry, they issue a formal document called a closure notice. This either states that no amendments are required, or it sets out the amendments that HMRC believe are required. The taxpayer has 30 days to appeal against the closure notice, and if they do not, it becomes final and any additional tax stated as due must be paid
- ▶ Closure notices are usually issued after the taxpayer and HMRC inspector reach an agreement on the correct figures. However, if an agreement is not reached, HMRC can still issue a closure notice. An appeal by the taxpayer against a closure notice provides the opportunity for the disagreement to be resolved by the First Tier Tribunal ('FTT')
- ▶ The taxpayer can also make an application to the FTT asking them to instruct HMRC to issue a closure notice within a specified period of time.



## PARTIAL CLOSURE NOTICES ('PCNs')

- ▶ From 2017, HMRC have been able to issue PCNs in relation to any matter to which the enquiry relates that is now concluded
- ▶ HMRC usually issue PCNs in enquiries where a taxpayers affairs are complex or where there is avoidance or large amounts of tax at risk
- ▶ Taxpayers are also able to ask HMRC to issue a PCN or ask the Tax Tribunal to direct HMRC to issue a PCN to shut down certain aspects of an enquiry
- ▶ PCN's give HMRC and taxpayers greater certainty about tax owed on discrete matters without having to wait for all matters in a tax enquiry to be resolved.



# Q&A



ANY QUESTIONS?



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# THANK YOU

**THANK YOU FOR YOUR ATTENDANCE**

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