

The New Disclosure Opportunity (NDO)

Frequently Asked Questions (FAQs)

HM Revenue & Customs is providing some answers to address 'Frequently Asked Questions' (FAQs) we expect to arise on the operation of the NDO. Many of the FAQs will have links to take you to relevant information.

HMRC will update and /or add to these FAQs if it becomes apparent that further explanation or information would be helpful so please revisit with any queries you have when preparing your disclosure.

Please select from the FAQs set out below

General	5
Question 1: How does NDO work?	5
Question 2: Who can use NDO?	5
Question 3: What are the key dates?	5
Question 5: What information do I need to include if I choose to notify using the email channel available during September 2009?	6
Question 6: Are migrants and foreign students affected by NDO?	6
Question 7: What disclosures are unlikely to be settled through NDO?	6
Question 8: Can I get confirmation under NDO that HMRC will not conduct a criminal investigation into my disclosure?	6
Question 9: Can I request to go through the Civil Investigation of Fraud (CIF) procedure?	6
Question 10: I have heard that HMRC is also offering a disclosure facility to people with interests in Liechtenstein. How do I know if that applies to me?	7
Question 11: Can I make a disclosure if my outstanding liabilities are not connected to an offshore account or asset?	7
Question 12: What do I do if the tax I owe is as a result of innocent error?	7
Question 13: What happens if I have undeclared liabilities and choose not to disclose?	7
Making a disclosure.....	8
Question 14: Will I ever need to make more than one disclosure?	8
Question 15: What should I do now to prepare my disclosure?	8
Question 16: What should the disclosure contain?	8
Question 17: When is an offshore account relevant to the disclosure?	8
Question 18: Will HMRC calculate the taxable figures and the liability for me?	9
Question 19: How do I calculate what I owe?	9
Question 20: I don't have complete records, what do I do?	9
Question 21: I have relied on the use of estimates. What if my disclosure is found to be materially incorrect or incomplete?	9
Question 22: Am I entitled to any deduction in calculating undeclared income, profits or gains?	9
Question 23: Are any current HMRC accepted practices or concessions withdrawn or affected for disclosures using the NDO?	9
Interest and Penalties	10
Question 24: What interest do I have to pay?	10
Question 25: What penalty do I have to pay?	10
The Offer	10
Question 26: Why do I need to make an offer?	10
Payment.....	11
Question 27: How do I pay?	11
Question 28: What if, exceptionally, I cannot pay the full amount?	11
If you cannot pay the full amount do not submit your disclosure until you have spoken to HMRC.....	11
Submitting the disclosure.....	12
Question 29: Will I receive an acknowledgement of my disclosure?	12
Question 30: What happens once I submit my disclosure?	12
Accepting your disclosure.....	12
Question 31: Will my disclosure be accepted?	12

Meeting future obligations	12
Question 32: What do I do about liabilities I have for 2008/9 or later periods?	12
Question 33: Why is the NDO limited to periods up to 5 April 2008?	12
Residence	13
Question 34: How do I decide if I was resident in the UK at any time during the period of disclosure?	13
Ordinary Residence	13
Question 35: I am considering whether to make a disclosure. Is my ordinary residence status relevant?	13
Question 36: How do I decide if I was ordinarily resident in the UK at any time during the period of disclosure?	13
Domicile	14
Question 37: I am considering whether to make a disclosure. Is my domicile status relevant?	14
Question 38: How do I decide if I was domiciled in the UK at any time during the period of disclosure?	14
Remittance Basis	14
Question 39: What is the remittance basis?	14
Question 40: I have heard about a £30,000 Remittance Basis Charge. Will this affect my disclosure?	15
Question 41: I am the settlor and/or beneficiary of a non resident trust and there may be income tax and capital gains tax liabilities connected to the trust that I have not reported. What should I do?	15
Deceased Persons	15
Question 42: The person who held the offshore account is deceased. Who should make a disclosure?	15
Question 43: What time limits apply if I make a disclosure on behalf of a deceased person?	15
Question 44: What is the period of administration and when does it end?	16
Question 45: What rate of income and capital gains tax will I pay as personal representative?	16
Question 46: Is anyone else liable to pay tax on income or gains received during the administration period?	16
Question 47: Where can I get further guidance about the liability of a deceased person's estate?	16
Employer issues	16
Question 48: I am also an employer and I have found that I should have operated PAYE on certain payments to employees, etc but did not. What should I do?	16
Question 49: I have found additional expenses or benefits in kind that I have not declared on my employer returns. What should I do?	16
Question 50: How do I calculate the tax due on a grossed up basis?	17
Question 51: How do I calculate NICs on the grossed up tax?	17
Question 52: I have found additional expenses or benefits in kind paid to directors which have not been declared/included on my employer returns. Can I include these in my voluntary settlement of employee's liabilities?	17
Question 53: I do not wish to pay my employees tax liabilities arising on the benefits/expense payments. What should I do?	18
Question 54: What if I have failed to operate PAYE for a company director?	18
Question 55: I either do not have complete records or it would be very time consuming to extract full details from the records to work out how much I owe? What should I do?	18

Companies	18
Question 56: How are liabilities to be calculated on sums borrowed from a company by director/shareholder? (S419 ICTA 1988).....	18
Question 57: How do I disclose the company's liability under S419 ICTA 1988?	18
Question 58: What if all or part of the loan is repaid to the company?	19
Question 59: What letter of offer do I need?.....	19
Question 60: How do I account for the loans in the next company accounts?	19
Question 61: How does the company get S419(4) relief for repayment of loans after the period of the NDO?.....	19
Inheritance Tax issues	19
Question 62: What should I disclose for IHT?	19
Question 63: What impact does a person's domicile have on IHT?	19
Question 64: What are the special 'deemed domicile' rules that apply for IHT?	20
Question 65: I have settled all or part of an offshore account into a trust. Am I liable for IHT?.....	20
Question 66: What should I do if I've received gifts from an offshore account or I have inherited an offshore account from a deceased person?	20
Question 67: Why don't the normal fixed penalties that are available under NDO apply for all IHT disclosures?	20
Question 68: Why can IHT disclosures go back more than 20 years?	21
Question 69: What interest is payable on unpaid IHT?	21
Tax Credits	21
Question 70: What if I or my partner are receiving Tax Credits or have recently made a claim for Tax Credits?.....	21

General

Question 1: How does NDO work?

- You must notify HM Revenue & Customs (HMRC) of your intention to make a disclosure by **30 November 2009**.
- You must:
 - i. make a full disclosure of all undeclared liabilities, not just those connected to an offshore account or asset.
 - ii. disclose and make full payment of all outstanding taxes and duties, interest and penalties by **12 March 2010**, if disclosing onlineor
disclose and make full payment of all outstanding taxes and duties, interest and penalties by **31 January 2010**, if disclosing by paper, using the forms in the downloaded PDF or printed booklet NDO1(F).
- The penalty you should include in your disclosure is fixed at 10 per cent of the taxes/duties you have underpaid unless:
 - i. the total amount of unpaid liability being disclosed is less than £1,000 in which case you need not pay a penalty
 - ii. HMRC wrote to you in 2007 pointing out the availability of the Offshore Disclosure Facility in which case a penalty of 20 per cent of the undeclared taxes/duties and National Insurance contributions must be included
- You can make a personal disclosure or disclose on behalf of another taxpayer, for example a company, trust or deceased person.
- Agents can notify and disclose on behalf of clients.

Question 2: Who can use NDO?

NDO is open to those who hold or have held, either directly or indirectly, an offshore account or asset that is in any way connected to a loss of United Kingdom taxes and/or duties. Offshore means anywhere outside the United Kingdom of Great Britain and Northern Ireland. Therefore offshore accounts or assets include any held in the Channel Islands, the Isle of Man and the Republic of Ireland.

Question 3 What are the key dates?

Notification	Disclosure
<p>You must have notified HMRC of your intention to make a disclosure by 30 November 2009.</p> <p><u>If you do not notify by 30 November 2009 you will not be able to disclose using NDO</u></p>	<p>You have until 12 March 2010 to make your disclosure online. You must make payment of all taxes, duties, interest and penalties disclosed by this date</p> <p>If you choose to submit your disclosure using the forms in the booklet NDO1(F), your disclosure together with full payment must reach HMRC by 31 January 2010</p>

Question 4: How and when can I notify and disclose during the NDO?

	Notify			Disclose	
	Paper forms and Telephone	Email	Online	Paper forms	Online
September 2009	Yes	Yes	No	Yes	No
October 2009	Yes	No	Yes	Yes	Yes
November 2009	Yes	No	Yes	Yes	Yes
December 2009	No	No	No	Yes	Yes
January 2010	No	No	No	Yes	Yes
February 2010	No	No	No	No	Yes
By 12 March 2010	No	No	No	No	Yes
From 13 March 2010	No	No	No	No	No

Question 5: What information do I need to include if I choose to notify using the email channel available during September 2009?

The required information is set out in the eform. Press 'Send form' when completed to notify your intention to disclose. Access the eform by following the link below [NDO notification](#)

Question 6: Are migrants and foreign students affected by NDO?

NDO is unlikely to be relevant to short term migrants to the UK and foreign students who have bank interest arising on accounts held in their home country. This is because they are likely to have a 'foreign domicile', which means they are not liable to UK tax on interest arising on those accounts unless the money is brought or transferred to the UK. More information is given in the [Domicile questions](#).

Question 7: What disclosures are unlikely to be settled through NDO?

HMRC anticipate that the vast majority of disclosures will be accepted.

However, certain disclosures are unlikely to be settled under NDO:

- Disclosures that are found to be materially incorrect or incomplete when checked by HMRC for accuracy and completeness.
- Disclosures from customers where HMRC have begun an investigation or enquiry into their affairs. Those who want to disclose liabilities should tell the person conducting the enquiry. A full and early disclosure will influence the amount of penalty HMRC seek in the ongoing investigation or enquiry.
- Disclosures where HMRC believe the money that is the subject of the disclosure is the proceeds of Serious Organised Crime. This includes VAT Missing Trader Intra Community (MTIC) fraud, VAT Bogus Registration fraud or Organised Tax Credit fraud and those involved in any wider criminality (such as an ongoing police investigation).

Question 8: Can I get confirmation under NDO that HMRC will not conduct a criminal investigation into my disclosure

No. HMRC cannot guarantee that a disclosure will not be subject to a criminal investigation. An important factor in deciding whether to undertake civil or criminal investigations into cases of fiscal fraud is whether there is a complete and unprompted disclosure of any amounts evaded or improperly reclaimed. Whilst we will consider each case on its merits, with the exception of cases where we believe the subject of the disclosure is the proceeds of serious organised crime a complete and unprompted disclosure will generally suggest that a civil course of action is appropriate.

Question 9: Can I request to go through the Civil Investigation of Fraud (CIF) procedure?

The CIF procedure is outlined in HMRC Code of Practice 9 and provides customers to whom it is applied with certainty that they will not be prosecuted for the tax offences in their disclosure. HMRC only offers CIF in cases of suspected serious fraud and after it has carried out robust checks to rule

out the possibility of links with serious organised crime, money laundering and other factors which might make criminal proceedings appropriate. NDO disclosures are made without any such checks being carried out in advance so CIF cannot be offered. If you have a disclosure to make, and you want your disclosure to be made under CIF, you should contact us at the address in [question 11](#) or telephone 0115 974 2275.. Customers who would rather be dealt with under the CIF procedure will not be able to have their disclosures handled through NDO and the fixed penalty offered by NDO will not be available to them.

Question 10: I have heard that HMRC is also offering a disclosure facility to people with interests in Liechtenstein. How do I know if that applies to me?

If you have a disclosure to make connected with an offshore account, and you do not already have an account or interest in Liechtenstein, you should consider whether you are eligible to disclose through NDO. You will need to notify your intention to disclose through NDO by 30 November 2009 in order to benefit from a reduced penalty.

If you have a disclosure to make which is at least partly connected with an asset or interest in Liechtenstein you should consider whether you are eligible for the LDF. To find out more follow the link below or telephone the LDF help desk on 0845 600 4680:

[Liechtenstein Disclosure Facility](#)

Question 11: Can I make a disclosure if my outstanding liabilities are not connected to an offshore account or asset?

You cannot make a disclosure under NDO if you have not held either an offshore account or asset that has been connected in some way with a loss of UK tax. However anyone can make a disclosure to HMRC of unpaid liabilities at any time. Such disclosures are treated in line with normal HMRC policy.

The fixed penalty under NDO will not be available but customers who make a full and voluntary disclosure can expect a lower penalty than HMRC would seek if HMRC raised an enquiry or compliance check without the disclosure. In these circumstances you should send details of your disclosure to:

HMRC,
Local Compliance,
Parkway House,
49 Baddow Road,
Chelmsford,
Essex,
CM2 0XA

Question 12: What do I do if the tax I owe is as a result of innocent error?

You may use NDO even if you have evidence that the loss of tax and duties has arisen solely as a result of innocent error, for example, your bank advised you of the wrong interest received and you have recently found out that it was a higher figure. In such circumstances it may not be appropriate for you to include a penalty in your disclosure.

You should contact the office in the [preceding question](#) with your evidence before making your disclosure. Where HMRC accept that the loss of tax is wholly attributable to innocent error, HMRC will confirm that you need not seek a penalty and that you can restrict the amount you pay to tax and interest to a maximum of the last six years.

If you do not contact HMRC but fail to include a penalty in your disclosure, HMRC may be unable to accept it. If you need help, ask your tax advisor or phone HMRC on 0845 302 1401

Question 13: What happens if I have undeclared liabilities and choose not to disclose?

After **30 November 2009**, when the notification period ends, HMRC will begin to use the information on offshore accounts and assets from banks and financial institutions. HMRC will review the affairs

of customers whose account details HMRC hold and who have not notified HMRC that they intend to make a disclosure. HMRC will identify those who HMRC believe should have come forward by;

- comparing the information already in HMRC's possession with customers' UK tax histories
- continuing to use HMRC's powers to obtain detailed information about other offshore accounts and assets

Where there is a mismatch, HMRC may contact customers and undertake compliance checks or enquiries to resolve matters. Where additional taxes are due HMRC will seek higher penalties than the 10 per cent available under NDO. The penalties HMRC seek could be up to 100 per cent of the unpaid liabilities and are unlikely to be less than 30 per cent.

If a disclosure made within the terms of this disclosure opportunity is incomplete, or there is a failure to disclose amounts liable to tax or duty, HMRC will consider the instigation of a criminal investigation, in line with HMRC's criminal investigation policy. For details of HMRC's policy, please follow the link below:

[Criminal Investigation Policy](#).

Making a disclosure

Question 14: Will I ever need to make more than one disclosure?

Possibly. You can make a personal disclosure of your own liabilities and one on behalf of another taxpayer (for example on behalf of a company of which you are a director, or for a trust or settlement of which you are the trustee or as executor for a deceased person). You will need to make a notification in respect of each disclosure you have to make. You should use the Disclosure Reference Number (DRN) sent to you with the relevant notification acknowledgement letter (and also shown on the payslip HMRC will send you) to make your disclosure.

Agents will be required to make separate notifications for each client they represent who intends making a disclosure under NDO.

Question 15: What should I do now to prepare my disclosure?

- Read the information in the guidance booklet, NDO1 "[Making a disclosure](#)"
- Gather together all relevant information and records for each year for which you have undeclared income, profits or gains from any source.
- Calculate the amount of each undeclared tax or duty for each year that liabilities are unpaid

Question 16: What should the disclosure contain?

Your disclosure must contain:

- disclosure of at least one unpaid tax or duty (for example Income Tax)
- a summary of all taxes and/or duties, interest and penalties due for up to 20 years
- details of all offshore bank accounts open at 5 April 2008 plus any closed accounts that are relevant to the disclosure you are making
- details of offshore assets held at 5 April 2008
- an offer to pay
- a declaration that the disclosure is correct and complete to the best of your knowledge, information and belief
- payment of the full amount disclosed, including interest and penalty due.

Question 17: When is an offshore account relevant to the disclosure?

When it is connected in some way to a loss of UK tax.

Calculating what you owe

Question 18: Will HMRC calculate the taxable figures and the liability for me?

No. HMRC cannot provide individual advice on calculating how much you should pay.

Question 19: How do I calculate what I owe?

This could be complicated and you may want to seek independent professional advice. HMRC recommend that you start gathering together your information and records immediately.

HMRC cannot provide individual advice on calculating how much you should pay, but you can find out about tax rates, rate bands and thresholds by following the link below:

[Rates, Codes and Allowances](#)

from where you can navigate to access the Rates and Allowances Archive for information on earlier years.

Details of interest rates, which vary over time to reflect commercial rates, can be found by following the link below:

[Rates and Allowances](#)

Further information including a range of interest factors for use in NDO disclosures can be found by following the link below;

[Self Calculation Interest Factors](#)

All calculations must be in pounds sterling and exclude pence. Exchange rates can be found by following the link below:

[Exchange rates](#)

Further step-by-step guidance can be found in the guidance booklet NDO1 "[Making a disclosure](#)"

Question 20: I don't have complete records, what do I do?

If your records are incomplete you should make your best estimate of the undeclared income and gains and use this to make your disclosure. HMRC may ask you to justify any estimates you have used. HMRC appreciate the particular difficulty in obtaining missing bank statements and expect that in the vast majority of cases it will be possible to make reasonable estimates on the basis of recent statements. HMRC would only expect you to obtain further statements where you are unable to make reasonable estimates from the records available to you.

Question 21: I have relied on the use of estimates. What if my disclosure is found to be materially incorrect or incomplete?

If, exceptionally, despite taking reasonable care, your disclosure is found to be incorrect or incomplete, HMRC will require the additional tax and interest and will review the penalty position. Depending on how material the omissions are HMRC may seek a higher penalty. Only where HMRC is satisfied that the disclosure has been made dishonestly will HMRC consider a criminal investigation.

Question 22: Am I entitled to any deduction in calculating undeclared income, profits or gains?

In some situations you may be able to claim deductions and reliefs. Ask your tax adviser if you need help or phone HMRC on 0845 302 1401.

Question 23: Are any current HMRC accepted practices or concessions withdrawn or affected for disclosures using the NDO?

No.

Interest and Penalties

Question 24: What interest do I have to pay?

Interest generally runs from the date when the tax should have been paid until the date of payment for all years involved. You can find more information including tables showing the factors relevant to different taxes by following the link below:

[Self Calculation Interest Factors](#)

These factors are for use only in connection with a disclosure under the New Disclosure Opportunity.

Question 25: What penalty do I have to pay?

Calculate and apply the penalty, which in most cases is a fixed 10 per cent of the undeclared taxes/duties and National Insurance contributions

If the total amount of the unpaid taxes and duties being disclosed is less than £1,000, you need not pay a penalty.

However, if HMRC wrote to you in 2007 pointing out the availability of the Offshore Disclosure Facility a penalty of 20 per cent of the undeclared taxes/duties and National Insurance contributions must be applied (unless they total less than £1,000).

Do not apply the penalty to the interest, just to the taxes and duties.

The Offer

Question 26: Why do I need to make an offer?

It is a condition of using NDO that you make an offer for the full amount of taxes, duties, interest and penalties. Together with HMRC's acceptance letter to you, this creates a contract between us. Ask your tax adviser if you need help.

There are four letters of offer available online and in the booklet NDO1(F) [Completing the disclosure forms](#). If, exceptionally, none of these fits your circumstances, please contact HMRC on **0191 644 2054** and quote your Disclosure Reference Number.

You will also need to contact HMRC for an appropriate letter if, exceptionally, you are unable to pay the full amount before **12 March 2010 (or 31 January 2010 if disclosing using the paper forms** – please see the 'How do I Pay?' section below.

Payment

Question 27: How do I pay?

Your payment must reach HMRC by 31 January 2010 if you are using the forms in ND01(F) to make your disclosure or by 12 March 2010 if you are making your disclosure online. HMRC accept payment by a range of methods but recommend payment is made electronically. Electronic payments are more efficient and secure than payment by post.

The different payment methods available to you are: -

<ul style="list-style-type: none">• Through your bank or building society using BACS Direct Credit Internet/telephone banking or CHAPS	Provide HMRC's bank account details, your DRN and the amount due to your bank or building society to arrange a direct transfer from your account to HMRC's
<ul style="list-style-type: none">• By Debit or Credit card over the Internet using BillPay	If you have a credit or debit card issued by a UK bank or building society you can pay over the internet at HMRC's Online Payment service
<ul style="list-style-type: none">• At your bank	Take your payment and payslip to your own bank or building society branch. Cheques should be made payable to "HM Revenue & Customs only" followed by your DRN
<ul style="list-style-type: none">• At the Post Office	Use your payslip to pay over the Post Office counter. Cheques should be made payable to "Post Office Ltd". The Post Office also accepts payments by debit card
<ul style="list-style-type: none">• Pay by cheque or bank draft	Make it payable to "HM Revenue & Customs only" followed by your DRN Post it, with your payslip, to: HM Revenue & Customs New Disclosure Opportunity, Room BP1102 Benton Park View Newcastle Upon Tyne NE98 1ZZ

You can find more information about how to pay by following the link below:

[Paying HMRC](#)

Question 28: What if, exceptionally, I cannot pay the full amount?

If, exceptionally, you cannot pay the full amount contact HMRC as soon as possible and before the relevant disclosure deadline (**31 January 2010** for a disclosure using the forms in Booklet NDO1(F) and **12 March 2010** for a disclosure online) on **0845 366 1202**.

When you ring make sure you have:

- your Disclosure Reference Number and paperwork
- full information about your assets and liabilities,
- your current monthly income and outgoings, and
- your proposals for how you will clear the debt.

This will help HMRC determine how to address the issue.

If you cannot pay the full amount do not submit your disclosure until you have spoken to HMRC.

Submitting the disclosure

Question 29: Will I receive an acknowledgement of my disclosure?

Yes - If you make your disclosure online you will receive an immediate online acknowledgement that HMRC has received it and a written acknowledgement within a few days.

If you make your disclosure using the downloaded or printed forms you will receive an acknowledgment from HMRC as soon as possible.

Question 30: What happens once I submit my disclosure?

The disclosure will be considered within the terms of the New Disclosure Opportunity.

HMRC expect most disclosures to be self explanatory but HMRC may need to contact you or your tax adviser, if you have one, to clarify any points.

You may also be asked to provide appropriate evidence of your circumstances to satisfy HMRC that your disclosure is complete. Your full co-operation is one of the conditions of using this opportunity and failure to co-operate may jeopardise acceptance of your offer.

Accepting your disclosure

Question 31: Will my disclosure be accepted?

HMRC will review all disclosures after 12 March 2010. HMRC expect the vast majority of disclosures to be accepted and where this is the case HMRC will send you a letter accepting your offer as soon as possible.

If HMRC cannot accept the disclosure HMRC will contact you or your agent if you have one.

Meeting future obligations

Question 32: What do I do about liabilities I have for 2008/9 or later periods?

NDO is the opportunity to put your tax affairs in order up to 5 April 2008. If you have liabilities that have not been disclosed for periods after 5 April 2008 you should

- (i) Complete the income tax, company tax, employers or VAT returns that HMRC sends you or if already completed advise the HMRC office that usually deals with your affairs that you have an amendment to make; or
- (ii) If you do not currently make a return but need to phone 0845 900 0444

Remember the deadline for submitting the SA return of income and gains online for year to 5 April 2009 is 31 January 2010

Question 33: Why is the NDO limited to periods up to 5 April 2008?

At the time NDO begins in September 2009, many of the taxes, for example Income Tax, are not yet due for periods after 5 April 2008. There is therefore time to ensure that the correct liability is declared without incurring any penalty. So for example you should ensure that your full income and gains for the year ended 5 April 2009 are included in your Self Assessment return before the SA filing deadline.

Because tax due for a return period starting on or after 1 April 2008, where the return is due to be filed on or after 1 April 2009 will be subject to the new penalty regime in Schedule 24 FA 07, rather than the penalties available under NDO, liabilities for those periods are not within the scope of the NDO.

Residence

Question 34: How do I decide if I was resident in the UK at any time during the period of disclosure?

If you are or were resident in the UK then you may be liable to UK tax on your offshore income or gains.

If you are in the UK for 183 days or more in the tax year you will always be resident here for tax purposes. There are no exceptions to this. You count the total number of days you spend in the UK between the 6 April and the following 5 April. It does not matter if you come and go several times during the year.

If you are in the UK for less than 183 days in a tax year, you might still be resident for the year. You should look at the pattern of your lifestyle when deciding whether you are resident in the UK. Things you should consider would include what connections you have to the UK such as family, property, business and social connections. For example, if you are someone who comes to the UK on a regular basis and have a settled lifestyle pattern connecting you to this country, you are likely to be resident here.

More detailed guidance to help you decide your residence status, and an explanation of the effect your residency position has on your liability to tax in the UK for periods up to 5 April 2009 can be found online by following the link below:

[Residence Domicile and the Remittance Basis](#)

Ordinary Residence

Question 35: I am considering whether to make a disclosure. Is my ordinary residence status relevant?

If you are UK resident but **not** ordinarily resident in the UK during the period covered by your disclosure you may be able to use the 'remittance basis' for your offshore income from that period (See Question 39). This means that you will pay Income Tax on your offshore income only when you bring it into or 'remit' it to UK

Question 36: How do I decide if I was ordinarily resident in the UK at any time during the period of disclosure?

Ordinary residence status is usually only relevant if you usually live overseas and, at some time during the disclosure period, you came to live in the UK for a short period, perhaps for education or a work placement

Ordinary residence is different from 'residence'. The word 'ordinary' indicates that your residence in the UK is typical for you and not casual or short-term; this usually means you will be in the UK for at least two to three years. It is important not to confuse ordinary residence with domicile (see questions 37 and 38).

Detailed guidance to help you decide your ordinary residence status, and an explanation of the effect your residency position has on your liability to tax in the UK can be found online by following the link below:

[Residence Domicile and the Remittance Basis](#)

Domicile

Question 37: I am considering whether to make a disclosure. Is my domicile status relevant?

If you are UK resident but not domiciled here you may be able to use the 'remittance basis'. (See Question 39)

This means that you will pay Income Tax on your offshore income only when you bring it into or 'remit' it to UK.

If you are resident but not domiciled in the UK you are liable to pay Capital Gains Tax on all your chargeable gains on assets situated outside the UK when gains are remitted to the UK. More details on the meaning of 'remitted' can be found online by following the link below:

Capital Gains Manual reference [CG25340](#)

You will need to consider making a disclosure if:

- you have brought or transferred (remitted) your offshore income or gains from overseas into the UK without declaring it and paying the appropriate tax, or
- the offshore account includes deposits of income or gains that arose in the UK that you have not previously declared to HMRC.

For Inheritance Tax (IHT) purposes it is a person's domicile not residence that determines whether or not tax is due in respect of overseas assets (see questions 63 and 64)

Question 38: How do I decide if I was domiciled in the UK at any time during the period of disclosure?

Domicile status is a matter of general law, not tax law. Your domicile is not the same as nationality or residence. Broadly speaking, you have your domicile in the country that is your 'real' or permanent home. Your domicile is most often in the country that your father (or mother) was from or where you were born. So if you were born overseas you were probably born domiciled outside of the UK and this domicile may still apply. However if you have since settled in a different country to the one you were born in then you will need to consult the detailed guidance below. Also, regardless of where you were born, if you are an adult who has chosen to remain in the UK permanently or indefinitely you may have now acquired a domicile in the UK.

If you are not sure of your domicile you may want to seek professional advice, especially if you think that your or your parents' circumstances are complex.

Further information, including flow charts to help you consider your domicile status can be found by following the link below:

[Residence Domicile and the Remittance Basis](#)

There are additional 'deemed' domicile rules that apply for Inheritance Tax. See Question 64.

Remittance Basis

Question 39: What is the remittance basis?

Broadly if you are UK resident but Not Ordinarily Resident (See Question 36) you may use the remittance basis for your offshore income only. If you are not domiciled within the UK (see Question 38) you may use the remittance basis for both your offshore income and gains.

If you use the remittance basis this means that you pay UK tax only on the amounts of offshore income or gains that you bring to or transfer to the UK. So, if you have not brought or transferred any income or gains into the UK from these years, you may not have any additional UK tax liabilities to disclose.

More detailed guidance about the remittance basis can be found online by following the link below:

[Residence Domicile and the Remittance Basis](#)

For periods from 6 April 2008 you may still use the remittance basis for your overseas income if you are UK resident but Not Ordinarily Resident or if you are not domiciled within the UK. However there were substantial changes to the remittance rules from that date and you should refer to the guidance in [Residence Domicile and the Remittance Basis](#) to help you decide if you have made any taxable remittances after 6 April 2008, or if you want to use the remittance basis in that year.

Question 40: I have heard about a £30,000 Remittance Basis Charge. Will this affect my disclosure?

The £30,000 Remittance Basis Charge was one of the major changes to the remittance basis regime (see Question 39 which was introduced in 2008. It applies to a certain number of people who choose to use the remittance basis for the period 6 April 2008 onwards; this period is not covered by the NDO

Any liabilities for periods before 6 April 2008 are not affected by this new charge.

Detailed guidance on the new rules and the Remittance Basis Charge can be found online by following the link below:

[Residence Domicile and the Remittance Basis](#)

Question 41: I am the settlor and/or beneficiary of a non resident trust and there may be income tax and capital gains tax liabilities connected to the trust that I have not reported. What should I do?

The tax rules for non resident trusts are very complicated. You can find general Information about the tax rules by following the link below:

[Non Resident trusts](#)

more detailed guidance can be found if you follow the link below:

[HMRC Residency: Non-resident trusts](#)

You may also wish to seek professional advice.

If you find that there are liabilities that have not been reported then you should make a full disclosure.

Deceased Persons

Question 42: The person who held the offshore account is deceased. Who should make a disclosure?

The personal representative of the deceased (who can be either an executor or administrator) is responsible for the estate of a deceased person. You should make a disclosure if:

- tax was not paid on the income arising or gains made during the deceased person's lifetime
- the account was either left out of the estate for IHT purposes or the deceased person made gifts out of the account while they were alive
- tax has not been paid on income arising to or gains made by the personal representative of the deceased person during the administration period.

Different time limits may apply and no penalty will normally be payable on liabilities up to the date of death.

Question 43: What time limits apply if I make a disclosure on behalf of a deceased person?

The time limit for assessing the income or gains of a deceased' person is four years from the end of the year of assessment in which the person died". No penalty will be payable on liabilities up to the date of death.

The time limits in respect of the period of administration follow those that apply to other taxpayers.

There are no time limits for disclosing IHT liabilities.

Question 44: What is the period of administration and when does it end?

The administration period starts the day after the date of death of the deceased person and ends when the personal representatives have taken all necessary steps to finalise the estate's affairs. Generally this will not be until the personal representatives have paid all the estate debts, including tax and any legacies, and are able to transfer the assets in the estate to the beneficiaries.

Question 45: What rate of income and capital gains tax will I pay as personal representative?

Personal representatives are chargeable to income tax at the basic rate only. They are not chargeable at the higher rate of tax. They might also have to pay tax at the dividend rate on dividend income from foreign company shares.

Personal Representatives are chargeable to capital gains tax at 40 per cent (for years to 2007/8) and 18 per cent thereafter.

Question 46: Is anyone else liable to pay tax on income or gains received during the administration period?

If you are a beneficiary and have received income from an estate you may be liable to income tax. If you have received income from the residue or part of the residue of the deceased person's estate from the personal representatives, this income is treated as having borne income tax already. But you may have to pay more tax if the income, when added to your other sources of income, makes you liable to income tax at the higher rate, or you receive an age-related allowance which is affected by the level of income you receive.

Question 47: Where can I get further guidance about the liability of a deceased person's estate?

Further guidance on the period of Administration can be found by following the link below:

[What to do about tax when someone dies](#)

Employer issues

Question 48: I am also an employer and I have found that I should have operated PAYE on certain payments to employees, etc but did not. What should I do?

You should include the extra tax and National Insurance Contributions (NICs) due in your offer. Calculate the tax and NICs payable on payments to employees (either in cash or non-cash form) for each year and include these on paper form NDO11 or the Employer Liabilities page online together with:

- interest on the tax and NICs for each year, and
- a penalty for each year, calculated at 10 per cent of the unpaid tax and NICs

Where directors are involved, see also "**What if I have failed to operate PAYE for a company director?**" at **Question 54**

Please note: there is no statutory obligation to pay Class I or Class IA NICs for years prior to 2004-05 but they can be paid on a voluntary basis.

Question 49: I have found additional expenses or benefits in kind that I have not declared on my employer returns. What should I do?

Your employees (including ex-employees) are strictly liable to pay the tax arising but you will be liable for any Class 1 or Class 1A NICs arising. Calculate and account for any Class 1 or Class 1A NICs in accordance with the guidance under the questions below. Provided you exclude any directors, you can volunteer to pay your employees' tax liabilities on a 'grossed up' basis.

By volunteering to pay your employees' tax liability a further charge to NICs needs to be calculated on the grossed up liability for the year of settlement. For further guidance, please follow the link below:

Voluntary payments of tax following employer compliance reviews: The NICs position in [Tax Bulletin 77/05](#)

For more help about expenses and benefits please follow the link below:

[booklet 480 Expenses and benefits – a tax guide](#)

Question 50: How do I calculate the tax due on a grossed up basis?

'Grossing up' is the method used to calculate the additional tax that is due from employee(s) on benefits/expenses that are outside the scope of PAYE, which the employer has agreed to pay. To work out the full amount of tax that is due, gross up the total benefit charge on employee(s) at their marginal rate for the year of settlement.

First, work out the tax due on undeclared benefits/expenses (outside the scope of PAYE) paid to employees for all years; together with any Section 223 tax you are paying (see "[What if I have failed to operate PAYE for a company director?](#)"). Then gross this up at the employees/directors' marginal rate for the year of settlement (2007-08) using the formula.

$$\frac{100}{100 \text{ less marginal rate tax}}$$

Example If you paid benefits/expenses of £5,000 to employees who are liable at the higher rate in the year of settlement (currently 40 per cent), gross up the tax due from the employees. The formula would be:

$$5,000 \times 40\% \times \frac{100}{100 \text{ less } 40} = 2,000 \times \frac{100}{60} = \text{£}3,333$$

If the employees who received the benefits/expenses are a mixture of basic and higher rate taxpayers, you will need to make a realistic assessment of the split and apply the appropriate grossing up formulas to each group.

The total grossed up tax for all years and the National Insurance contributions on it (see "[How do I calculate NICs on the grossed up tax?](#)") should be entered on paper form NDO11 or the Employer Liabilities - Details page online.

Question 51: How do I calculate NICs on the grossed up tax?

NICs should be calculated on the grossed up figure of tax using the appropriate rates for 2009-10. NICs on grossed up tax should be included on paper form ND011 or the Employer Liabilities - Details page online.

Question 52: I have found additional expenses or benefits in kind paid to directors which have not been declared/included on my employer returns. Can I include these in my voluntary settlement of employee's liabilities?

No. Where a director received additional benefits in kind, you will need to advise the director of the additional value of the benefits arising in each year. You should also make a disclosure that there are additional benefits/expenses made to director(s) that have not been included in your P11D returns by ticking the appropriate box on paper form NDO13 (or NDO14 if an Agent is acting for you) or the Disclosure Details page online. HMRC will contact you at a later date for details.

Please note: You are liable for payment of any Class 1 or Class1A NICs due in connection with the expenses or benefits in kind. These should be accounted as set out in the answer to "[I am also an employer and I have found that I should have operated PAYE on certain payments to employees, etc but did not. What should I do?](#)"

Question 53: I do not wish to pay my employees tax liabilities arising on the benefits/expense payments. What should I do?

Tell your employees about the additional benefits in kind arising in each year. Also tick the appropriate box on paper form NDO13 (or NDO14 if Agent is acting) or the Disclosure Details page online to make a disclosure that there are additional benefits/expenses payments that have not been entered on P11D returns. HMRC will contact you at a later date for details.

Question 54: What if I have failed to operate PAYE for a company director?

When an employer pays tax that they failed to deduct from the remuneration of a director who has a material interest in a company then, unless the director makes good the tax to the company, an additional tax charge will arise on the director as set out in Section 223 of Income Tax (Earnings and Pensions) Act 2003. For further information on this please follow the link below:

[Booklet 480 chapter 19.](#)

The director will strictly be liable to pay the tax arising. But you can volunteer to settle this liability on the director's behalf on a 'grossed up' basis. If you want to do this, calculate and account for the grossed up figure by following the steps in the answer to "[How do I calculate the tax due on a grossed up basis?](#)"

If you do volunteer to settle the liability on your director's behalf, a further charge to NICs needs be calculated on the grossed up liability for the year of settlement following the guidance at "[How do I calculate the tax due on a grossed up basis?](#)" For more help please follow the link below: [Tax Bulletin 77/05.](#)

Question 55: I either do not have complete records or it would be very time consuming to extract full details from the records to work out how much I owe? What should I do?

Where the employer's records are insufficient or unavailable for the periods required, the only option is to estimate the earnings and the liability due. Where full records are available it can still be time consuming for all concerned to use detailed extracts. Where that is the case you should consider using an estimated computation to save time, but estimates of earnings are not appropriate if:

- records are available, and
- you believe the employees' earnings may fluctuate around the lower earnings limit (LEL) for National Insurance contributions.

Where both conditions are satisfied these earnings must be accurately determined wherever possible because there is a risk of those employees losing entitlement to Social Security benefit if their earnings are incorrectly shown to be below the LEL. Contact Tax Administration Advice (Newcastle) on 0191 225 4999 if both conditions apply.

For more guidance see Computations: Using Estimates and Obtaining Agreement in HMRC's Employment Compliance Handbook (ECH12045). Please use the link below: [ECH12045](#)

Companies

Question 56: How are liabilities to be calculated on sums borrowed from a company by director/shareholder? (S419 ICTA 1988)

This issue is complex and you should consult the professional adviser who prepared the company's accounts. Further information is available below.

Question 57: How do I disclose the company's liability under S419 ICTA 1988?

Make sure your choices on the Select Forms page online include Company Liabilities or complete the paper form NDO10. The company will incur S419 liability for each accounting period in which the amount lent increases. Enter the Section 419 liability incurred by the company in each of the relevant accounting periods together with interest on that amount and the [penalty](#) of 10 per cent of the liability.

Question 58: What if all or part of the loan is repaid to the company?

Where the previous lending is reduced interest should be calculated from the due date for the accounting period in which the loan was made to the date the loan, or part of it, was repaid.

Where the loan balance reduces the company will be entitled to S419(4) relief for the accounting period. This will not affect either the online or paper forms. This relief will be given in the letter of offer.

Question 59: What letter of offer do I need?

The letter of offer provided online and in the paper forms (NDO16) can be used for all corporation tax liabilities including S419 except for companies where there has been a net loan repayment during any accounting period and relief is due under S419(4). For a different letter of offer to suit your circumstances please telephone 0191 644 2053. You can still complete your disclosure online but you will need to send in the letter of offer separately by post.

Question 60: How do I account for the loans in the next company accounts?

You should show the revised loan balances in the next company accounts.

Question 61: How does the company get S419(4) relief for repayment of loans after the period of the NDO?

The company should contact the HMRC office that deals with its corporation tax affairs to claim the relief.

Inheritance Tax issues**Question 62: What should I disclose for IHT?**

You should disclose any IHT liabilities that are unpaid. IHT may be payable on:

- gifts made by a person in the seven years before they died
- assets owned by someone (including assets owned jointly with another person) when they died
- cash or other assets settled into a trust during a person's lifetime
- assets either held in a trust or distributed from a trust.

The disclosure will normally be made by the executor or administrator of the estate or if a trust is involved by the trustees. But you may also be liable to make a disclosure if you either received lifetime gifts or inherited assets from the deceased person following their death and these have not been disclosed elsewhere. You may also be liable to make a disclosure if you made a lifetime transfer into a trust.

There is no limit on how far back the disclosure should go when you are disclosing undeclared IHT liabilities and some penalties for IHT are not tax geared.

For more detailed information about when IHT is payable and how to calculate the IHT that is due please see the link below:

[Inheritance Tax](#)

Question 63: What impact does a person's domicile have on IHT?

The general position is that if someone is domiciled outside the UK only their UK assets are liable to IHT. This means that if a deceased person was not domiciled in the UK when they made a gift from an offshore account then there will be no IHT to pay on that gift. Similarly if someone was non UK domiciled when they died and there was an offshore bank account in the estate this account does not need to be disclosed.

Domicile also affects the IHT that is payable on transfers into a trust and the IHT liability of the trustees. If the Settlor is domiciled outside the UK when the trust was made then there is no liability for IHT on any offshore assets, including bank accounts, transferred into the trust. And as long as

the assets are still offshore at subsequent chargeable events (ten-year anniversaries and distributions from the trust or termination of an interest in a trust) then they will not be liable to IHT.

Question 64: What are the special ‘deemed domicile’ rules that apply for IHT?

Although the general law principles of domicile are equally applicable to ‘domicile’ for IHT purposes, the IHT regime also includes some different rules in relation to ‘deemed domicile’. These can in some circumstances result in a non-domiciled person being treated as domiciled in the UK.

These additional ‘deemed’ domicile rules apply only for IHT.

Broadly speaking for IHT purposes someone is considered to be ‘deemed domiciled’ in the UK if

- they have been resident in the UK for tax purposes for 17 out of 20 tax years immediately prior to the chargeable event, or
- they were UK domiciled at any time in the three years prior to death or making a gift.

If either of the above apply and there are liabilities from an offshore bank account that have not previously been paid you should consider making a disclosure.

Question 65: I have settled all or part of an offshore account into a trust. Am I liable for IHT?

This will depend on your domicile status, the amount of money transferred, when the transfer was made and the type of trust into which the money was transferred. If you were UK domiciled for IHT purposes at the time of the transfer then IHT may be due. Further information on when tax may be payable on lifetime transfers into trusts and how it is calculated can be found by following the link below:

[Inheritance Tax on transfers into trust](#)

If tax is due and it has not previously been disclosed then you will need to consider making a disclosure.

IHT may also be payable on subsequent ten-year anniversaries of a relevant property settlement or on capital distributions from the settlement.

Question 66: What should I do if I’ve received gifts from an offshore account or I have inherited an offshore account from a deceased person?

Usually the executor or administrator will be expected to make the disclosure for any IHT that is due. But there are circumstances when you may also be liable for unpaid IHT and you should consider making a disclosure. This may be the case where, for example

- the executor or administrator have not previously been told about the gift or inheritance
- the value of the gift received was substantial and either in its own right or when aggregated with earlier chargeable gifts exceeded the IHT threshold (in these circumstances the recipient of the gift is a liable person for IHT)
- no UK grant of representation was taken out for the estate because either most of the estate comprised of offshore assets or the estate comprised of a joint owned account which passed directly to you or others
- the executor or administrator is for some other reason not in a position to pay any tax that is due.

Question 67: Why don’t the normal fixed penalties that are available under NDO apply for all IHT disclosures?

If you have previously submitted an IHT account for a chargeable event and you are now disclosing additional tax liabilities in respect of assets left out of the account then the same tax geared penalties will apply as for other disclosures made under NDO. However, different rules apply if we have not previously received an IHT account. This is because penalties for the late disclosure of Inheritance Tax liabilities are not tax geared but fixed at a maximum level of up to £3,200. In such cases, the maximum penalty payable under NDO will usually be either £320 or £640 depending on whether the 10 per cent or 20 per cent rate of penalty is appropriate for the disclosure being made.

Question 68: Why can IHT disclosures go back more than 20 years?

The IHT legislation differs from that for other taxes in that there is no limit on how far back HMRC can go when tax has been underpaid as a result of fraud, wilful default or neglect.

Question 69: What interest is payable on unpaid IHT?

Interest is payable from the date the IHT became due until the date it is paid. The due date for payment will depend on whether the IHT is due on an estate or for other chargeable events. Further information about due dates and the rates of interest that are charged on unpaid IHT can be found by following the link below:

[When Inheritance Tax is due](#)

Tax Credits

Question 70: What if I or my partner are receiving Tax Credits or have recently made a claim for Tax Credits?

You should still make a disclosure but also tick the appropriate box in the online disclosure page or on the paper form NDO13 (or NDO14 if disclosure by an Agent). The information will be passed on to the Tax Credit team for them to consider. You will be notified separately of any changes that may be required to the amount of Tax Credits you receive or have received for the relevant year(s). If you have made a joint claim to Tax Credits you may wish to tell your partner that the Tax Credit award may be adjusted as a result of your disclosure.