



COP8 and COP9 FAQ

What is a Code of Practice 8?

HMRC will issue a COP8 where they suspect an individual has taken advantage of a scheme or device to deliberately reduce their liability. In many cases this is where a taxpayer has sought and relied on advice from a professional which subsequently turns out to be incorrect or where the interpretation of applicable legislation differs between HMRC and the taxpayer.

What is a Code of Practice 9?

HMRC will issue a COP9 where they suspect serious fraud. Fraud is the deliberate misrepresentation of income / expenses with the intention to underpay tax.

What do HMRC know?

HMRC takes a commercial approach to investigating taxpayers and will only issue COP8 and COP9 where they have a reasonable amount of evidence in their possession to suspect that there are significant tax irregularities. The process by which HMRC obtain the information is covered in more detail in "What can HMRC find out?", but it would be sensible to assume they are in possession of information that makes it practical for them to investigate your tax affairs in more detail.

What can HMRC find out?

HMRC use a piece of software that allows them to connect information on taxpayers from a myriad of sources such as banks, land registry, companies house, employers and electoral rolls. They also have the power to make informal and formal requests from third parties, imposing fines for non-compliance. Furthermore, over 50 countries have signed up to the Automatic Exchange of Information and there is a surprising amount of information readily available in the public domain.

What is the Contractual Disclosure Facility?

Where HMRC issue COP9 they will offer the taxpayer a contract whereby they agree to make a full and complete disclosure of all tax irregularities. In return for making a full disclosure the taxpayer is protected from prosecution. The Contractual Disclosure Facility (CDF) is only suitable for people who want to admit to tax fraud. It's not for people who want to tell HMRC about errors, mistakes or avoidance schemes where there isn't fraud. The CDF is for individuals only; this disclosure facility is not suitable for companies.

Can I be prosecuted?

Under the CDF the taxpayer is given the opportunity to make a complete and accurate disclosure of all their behaviour that has led to irregularities in their tax affairs. Where HMRC suspects that the taxpayer has failed to make a full disclosure, the taxpayer has provided materially false statements or information, or the behaviour continues throughout the disclosure process HMRC reserve the right to start a criminal investigation with a view to prosecute.

How far can HMRC go back?

In any case where there has been an underpayment of tax HMRC can look back over the past four years. Where the behaviour which lead to the underpayment is deliberate they can extend this period to 20 years. By it's very nature acceptance of the CDF confirms deliberate behaviour, so you should be prepared for potentially higher penalties although these can be mitigated. Furthermore, the deliberate behaviour may not relate to all tax irregularities and therefore the higher penalties may only apply to certain tax liabilities whereas others may attract much lower penalties. HMRC may incorrectly assert that the deliberate penalty applies more broadly than it should.

How long will this take?

The taxpayer has 60 days from the date of issue of COP9 to sign and return their intention, or otherwise, to enter the CDF. After this date HMRC will generally request submission of the full disclosure report within six months. In some cases, the period covered and the quantum of information to be analysed can mean that this timescale is not realistic. HMRC should be kept up to date of progress throughout the process. Where there are complex negotiations over either the tax treatment or the behaviour of the taxpayer the full timescale can be much longer.

What do I need to tell HMRC?

By entering the CDF you are agreeing to disclose all tax irregularities to HMRC. Given the complexities of tax law you may not be aware that errors have been made, particularly if HMRC are reviewing the past twenty years. At the outset of a disclosure, the parameters can be agreed with HMRC and may identify a particular period of time under review as well as the areas of review. However, if there are known irregularities these should be disclosed.

What is the process involved in making a disclosure?

Having entered into the CDF you will work with your advisor (if one has been appointed) to provide HMRC with the information they require to ascertain the amount of tax underpaid. An effective method is the preparation of a report (see 'What is a disclosure report?') after which time HMRC may have further queries. At this time negotiations on the finer points of the disclosure may be entered into.

What is a disclosure report?

The report is a generally accepted method of supplying information to HMRC without, in most cases, providing twenty years worth of primary documentation. This ultimately depends on the scope of the disclosure as agreed with HMRC but normally includes bank statements, trading accounts, invoices, receipts and other primary documentation for a period of time. This will be collated and prepared into a report to be submitted to HMRC.

Do I need to deal with HMRC personally?

HMRC's charter states that they must accept that a taxpayer can appoint a representative. Due to the serious nature of COP8 and COP9 it would be prudent to engage a tax specialist with relevant experience and with whom you can work. You should give your professional adviser all the facts because, ultimately, you are personally responsible for your tax affairs and the accuracy of any information contained within the disclosure.

Do I have to go to a meeting with HMRC?

There is no definitive requirement for the taxpayer to attend a meeting with HMRC. However, not doing so can have a detrimental effect on HMRC's perception of your cooperation unless the reasons are carefully conveyed. When you decide to attend a meeting with HMRC, you will need to anticipate potentially difficult questions and it is possible that your answers will give rise to further enquiries. An experienced tax adviser can help prepare you for a meeting and also defer questions from HMRC.

What happens if I don't tell HMRC everything?

Intentionally not disclosing tax irregularities will put you at significant risk of criminal prosecution. The likelihood of prosecution is enhanced where the items not disclosed are material or that the "offensive" behaviour continues even in a new form. A reputable tax adviser will only represent you where you are willing to make a full and complete disclosure within the parameters of a disclosure facility or those agreed with HMRC.

Do HMRC think I'm guilty?

HMRC have a duty to respect you and treat you as if you are being honest; they will presume you are telling the truth unless they have good reason to believe otherwise. Given the information available to HMRC they are unlikely to open an enquiry of this scale without good reason.

How do I pay the tax?

Where a taxpayer is subject to COP8 or COP9 HMRC will generally request that payments on account are made. This demonstrates a willingness to cooperate with HMRC to bring your tax affairs up to date. The quantum of the payments should be considered once an estimate of the liability has been calculated. HMRC will normally issue a SAFE reference, an account separate to the self-assessment account in order that payments are not allocated against incorrect liabilities.

Is there interest?

Where there has been an underpayment of tax, interest accrues from the original due date until the date of payment. Interest is charged at HMRC's official rate which is currently 3% although this has changed periodically over the past twenty years in line with the Bank of England base rate. Payments on account can go some way to reducing the total amount of interest charged.

What are the penalties?

Penalties are applied where there has been an underpayment of tax as a result of a taxpayer's careless or deliberate behaviour. The maximum penalty chargeable, if the behaviour is deemed to be deliberate with concealment, is 100% of the potential lost revenue. There are reductions when the disclosure is unprompted and the taxpayer has assisted HMRC in calculating the additional tax due. Penalties where the irregularities relate to offshore assets can be up to 200% of the PLR.

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What if I can't afford to pay?

Provided a taxpayer has adhered to the rules of the CDF HMRC are usually willing to agree a payment plan. The taxpayer must demonstrate that they have made an attempt to raise capital either by way of a loan, or by the realisation of assets, but that this has not left sufficient cash to settle the amount in full. A period of 12 months is normally readily accepted, although this is ultimately at the discretion of HMRC and longer periods can be negotiated. We have experienced payment plans of up to seven years although the circumstances were unusual.

What happens once it's over?

Following conclusion of the disclosure and agreeing settlement with HMRC you may be included in a 'managing serious defaulters' list for a period of between two and five years. This list is not published, it is simply held by HMRC and allows them to monitor your tax affairs closely to ensure you remain compliant. Depending on the nature of the disclosed irregularities they may also impose additional reporting requirements in relation to your tax returns.

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