



HM Revenue & Customs' civil  
approach to serious tax fraud  
Code of Practice 9

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# Introduction

When HM Revenue & Customs (HMRC) decides not to prosecute a taxpayer for tax fraud, their specialist unit, the Fraud Investigation Service (FIS), may investigate cases of suspected serious tax fraud using the Contractual Disclosure Facility (CDF) outlined in their Code of Practice 9 (COP 9).



The Contractual Disclosure Facility (CDF) and Code of Practice 9 (COP9) offers a unique alternative to a criminal investigation for tax fraud cases. While COP9 is a civil code of practice, it is reinforced by a criminal underpin. Under the CDF, taxpayers who admit to all deliberate and non-deliberate behaviours causing a loss of tax receive assurance from HM Revenue & Customs (HMRC) that they will not initiate a criminal investigation into those upfront disclosures.

In June 2023, HMRC updated their COP9 guidance, highlighting the importance of the criminal underpin. If the terms of the CDF and COP9 are not adhered to, HMRC confirms that they will initiate a criminal investigation. The COP9 can be initiated by HMRC or requested voluntarily by taxpayers to bring their historical tax affairs up to date.

## Deliberate behaviour

The COP9 guidance uses the term 'fraud' interchangeably with 'deliberate' behaviour. The guidance emphasizes that HMRC considers intentional behaviour as indicative of tax fraud, and that taxpayers cannot accidentally commit tax fraud.

# The CDF and COP 9 process

The process is generally standardised. The typical steps are summarised below.

- 1. The first step in the COP9 process is an opening letter that offers the taxpayer a chance to participate in the CDF.** This letter is a standard form and does not provide any indication of HMRC's suspected tax fraud.
- 2. Within the same 60-day period, the taxpayer is required to make an outline disclosure that covers, to the best of their ability, both the historical deliberate and non-deliberate tax irregularities.**
- 3. After receiving the outline disclosure, HMRC will confirm whether the offer of the CDF and the disclosure constitute a valid agreement.** If the client is accepted into the process, HMRC will work with the taxpayer to determine the next steps.
- 4. As part of the COP9 process, the taxpayer and their advisor are typically required to attend an opening meeting.** These meetings can last several hours and involve questions about the taxpayer's outline disclosures and wider tax and financial position. It is important to carefully manage these meetings.
- 5. Taxpayers are required to commission a report that details all historical tax irregularities.** It is crucial that the report provides a complete and accurate disclosure of all tax irregularities. Given the serious consequences, it is recommended that a specialist advisor prepares the report. It is important to carefully scope the report and maintain ongoing dialogue with HMRC during its preparation to demonstrate cooperation. Taxpayers must certify that the report accurately discloses **all** their historical tax irregularities.
- 6. Standard forms must be completed which warn that any false declarations on these forms could result in a criminal investigation with a view to prosecution.** These include certificates confirming bank accounts and credit cards operated, a worldwide statement of assets and liabilities and a certificate confirming that a full disclosure has been made.
- 7. HMRC will review the report and may seek clarifications.** In practice where you have had ongoing dialogue with HMRC as part of the process this work is likely to be limited.
- 8. The final tax, interest, and penalty position will be agreed upon with HMRC through a contract settlement with them.**
- 9. After completing the COP9 process, HMRC will issue a final letter of acceptance.** They may also request a closing meeting with the taxpayer. Throughout the process, taxpayers are expected to make payments on account of the outstanding tax.



# Practical tips to consider for taxpayers offered COP 9



## 1. The criminal underpin

Taxpayers must understand the potential consequences of the criminal underpin upfront. The updated June 2023 guidance explicitly outlines the circumstances under which HMRC may initiate a criminal investigation. These include situations where the taxpayer:

- does not respond to the CDF offer,
- rejects the offer,
- sends an acceptance letter but no outline disclosure,
- makes false statements or submits false documents,
- submits false formal disclosure documents,
- withdraws their admission of deliberate behaviour, or
- fails to submit a disclosure or cooperate.

HMRC emphasizes that their criminal and civil teams work together, and that their civil investigators may be supported by their criminal colleagues when the criminal underpin is required.



## 2. Specialist advice is needed

A COP9 investigation is a serious and in-depth tax investigation, as opposed to a routine tax enquiry. Specially trained officers handle the investigation into the taxpayer's tax affairs. If confronted with a COP9, it is crucial for the taxpayer to seek specialist advice, especially given the renewed focus on the criminal underpin.

Specialist advice is particularly important in the following scenarios:

- ensuring the taxpayer has the right and qualified support during the 60-day window to provide a complete, valid, and accurate outline disclosure,
- demonstrating and ensuring that a full and accurate disclosure is submitted to HMRC, which requires specialist management of the COP9 process,
- carefully considering whether the CDF is appropriate, as it is only suitable for cases involving deliberate behaviour leading to a tax loss, and rejecting the offer of a CDF may be more appropriate,
- demonstrating full cooperation with HMRC while carefully balancing this with defending the client's rights. The implications of not demonstrating cooperation could result in HMRC publishing the taxpayer's details.



## 3. Ongoing compliance obligations

HMRC expects the taxpayer to continue with their ongoing tax compliance activity, even if current returns are impacted by historical disclosures (such as when Directors Loan Accounts are re-drawn). It is important to engage with HMRC on this matter, and any provisional returns made during the course of the COP9 must be clearly highlighted to HMRC.



#### 4. HMRC may take protective sanctions to safeguard the exchequer

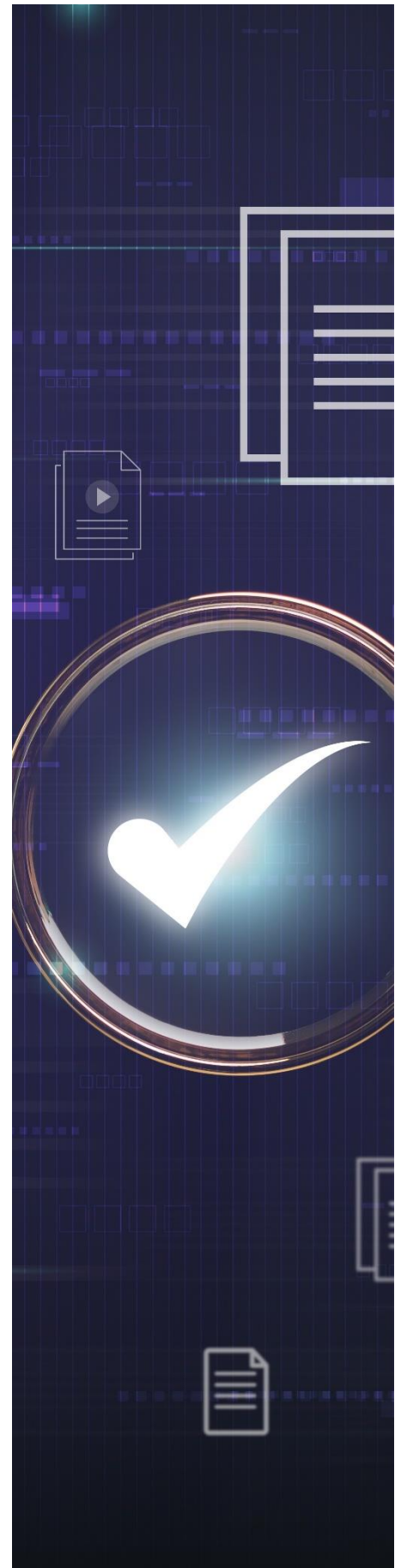
If the taxpayer does not cooperate with HMRC during the COP9 process, HMRC may investigate their suspicions and take various actions, including:

- commencing an investigation that may ultimately be criminal,
- using collection and management powers to obtain information about the taxpayer's financial and business affairs from appropriate third parties (such as banks, customers, and suppliers),
- taking formal action such as raising assessments for any tax, duty, and interest, charging significantly higher penalties,
- commencing legal proceedings to secure some or all assets,
- requiring a financial security from the taxpayer against certain unpaid tax and duty



#### 5. Other law enforcement agencies

The COP9 guidance confirms that while the CDF requires HMRC's undertaking not to criminally investigate frauds against HMRC, it cannot bind other law enforcement agencies. Information submitted to HMRC could be passed on to other agencies. Therefore, the taxpayer's tax advisors may need to work closely with any other professional representatives appointed as necessary.



# What our team can do

Our team of leading tax experts can assist taxpayers with the following:

- Making a voluntary application for a COP9.
- Representing taxpayers throughout the COP9 journey with HMRC, from the initial outline disclosure completion all the way to the end of the process. We are highly experienced in managing the HMRC relationship and ensuring that taxpayers can demonstrate maximum cooperation throughout.
- Preparing disclosures that often require us to work with incomplete information over a period of 20 years. Here, we use data modelling analytics and agree on methodologies upfront with HMRC to avoid unnecessary delays in the process.
- Analysing the application of HMRC's assessment and discovery powers, which may be utilised during the course of the COP9.
- Negotiating on the taxpayers behalf with HMRC in relation to tax-geared penalties.
- Working closely with other professional advisors where taxpayers may be the subject of a multi-regulatory enquiry to ensure a consistent approach.

# Key contacts



## Annis Lampard – Partner, tax controversy

Annis leads our Tax Controversy team, which focuses on high-net-worth families (including their trusts and family offices) and privately-owned or P/E-backed businesses. She has a particular specialisation in complex offshore investigations, including civil fraud disclosures. With over 15 years of experience as an ex-HMRC inspector, Annis is the chair of ICAEW's Compliance and Investigations Committee, a STEP member, and a CEDR-accredited mediator. In 2018, she was a 'Top 35 under 35' winner at the e-private client awards.

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## Karmjit Mader – Director, tax controversy

Karmjit is an experienced member of our private tax controversy team, with over 18 years of experience helping private individuals, owner-manager businesses, companies, and offshore trustees navigate HMRC enquiries and voluntary disclosures to an efficient resolution. She specializes in representing clients who are being investigated for tax fraud under HMRC's civil Code of Practice 9 process. Karmjit is a member of the Association of Taxation Technicians and the Chartered Institute of Tax, and she is also a CEDR-accredited mediator. She uses her mediation skills to help clients resolve complex tax matters.

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## Stuart Ferguson – Consultant, tax controversy

Stuart is an ex-HMRC investigator with over 6 years of experience as a Fraud Investigator dealing with HMRC's most serious civil investigations (COP8 and COP9). Within our controversy team, his specialisation is disclosures to HMRC covering different behavioural aspects.

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