

COP9. HMRC's weapon for waging war on Tax fraud

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What options are available to those facing a COP9 investigation and why expert advice must be used when choosing the right one.

For many, the first they learn of their tax affairs being investigated is when they receive a letter. Quite often, the letter may say that a person's tax payments are being investigated under Code of Practice 9 (COP9).

For many people, such a letter raises more questions than it answers:

- What should they do now?
- Why are they being investigated?
- And what is a COP9?

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The COP9 procedure can be stressful and drawn out. And for someone not familiar with the workings of HM Revenue and Customs (HMRC) it can prove a daunting prospect. People need to know exactly what a COP9 is before they can do anything in response to it. The chances are that HMRC has started to investigate a person's tax affairs because they have a strong suspicion or belief that they are not paying what they should. If such a person is being investigated then the best thing they can do is seek legal advice immediately. In such circumstances, anyone under investigation needs the help of someone who can expertly present the facts to the investigators. Just as importantly, however, any solicitor hired has to be familiar with the workings of the HMRC – how it works, its approach to different types of cases and the tools it has at its disposal. COP9 is such a tool. It is used by HMRC when investigating avoidance of any type of tax – income tax, VAT, inheritance tax, corporation tax, capital gains tax, national insurance and customs duties.

HMRC will initially write to a taxpayer to advise them that they are suspected of serious tax fraud and enclose the COP9 explanatory booklet. This will be accompanied by paperwork by which the person can make a full disclosure of their tax affairs under the Contractual Disclosure Facility. HMRC will not tell the person what evidence it has of a person's alleged tax fraud. It sends the letter and gives the person three clear options:

- **Disclosure:** A person can accept they have committed serious tax fraud and can state their wish to co-operate by entering into a Contractual Disclosure Facility (CDF) contractual arrangement with HMRC. Under a CDF, the person will disclose the full extent of their tax fraud.
- **Denial:** A person can deny they have committed tax fraud but state that they will co-operate with the HMRC investigation.
- **Non co-operation:** This person denies committing tax fraud and will not co-operate with HMRC's COP9 investigation.

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The taxpayer under COP9 investigation has 60 days to decide whether to enter into a CDF contractual arrangement with HMRC to disclose any tax fraud they have been involved in. If they agree to do so, HMRC will give an undertaking that it will not pursue a criminal tax investigation with a view to potential prosecution of the tax frauds disclosed. Instead, HMRC will devise a civil monetary settlement that will cover the tax owed plus interest plus a financial penalty.

The Disclosure Option

If a taxpayer chooses this option they must make an 'outline disclosure' of the tax frauds. They will also have to provide a certified statement that they have made a full, complete and accurate disclosure of all tax irregularities. This statement must be backed up with financial statements and other supporting evidence so HMRC has a full and complete picture of the tax irregularities that have been carried out. The outline disclosure needs to be an honest description of the tax fraud. It has to set out the series of events, the amounts involved and the records available. At this stage, the HMRC will only agree not to carry out a criminal investigation into the amounts and events mentioned in the outline disclosure – it may still start criminal investigations into any other tax irregularities it uncovers that were not mentioned in the outline disclosure. This is just one reason why anyone in such a situation must seek expert legal help immediately. Making the right decisions at this stage is vital.

The Denial Option

If a person chooses the denial option, HMRC retains the right to criminally investigate the taxpayer's affairs with a view to prosecution. HMRC is not even obliged to tell a person if they have started a criminal tax investigation - a taxpayer's denial letter can even be used as evidence against them. Whatever option is chosen it has to be a decision based on careful consideration and expert legal advice.

The Non-Cooperation Option

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If a taxpayer decides on non-cooperation, the HMRC begin a criminal investigation into the person, obtain information about a taxpayer's financial affairs direct from third parties, raise tax assessments and charge much higher penalties than would have been imposed under the CDF option. Legal proceedings could even be brought to secure a charge over the person's assets.

If a case is particularly complex, HMRC may state that it wants to meet the person under investigation to discuss the scope of the outline disclosure report and the frauds involved. However, it may be sufficient for HMRC just to meet your specialist adviser. COP9 investigations are usually carried out by HMRC specialist investigations staff, which is an indication that it believes significant amounts of tax may have gone unpaid. Putting it bluntly, the stakes in such investigations are high and for this reason alone expert legal advice is essential. Even HMRC's COP9 booklet states "You are strongly recommended to seek specialist independent professional advice... many people find it helpful to appoint a specialist adviser who is familiar with this Code, in addition to their regular adviser."

However innocent a person under a COP9 investigation is and whichever course of action they choose to take, they have to act after taking the best legal advice available. As mentioned earlier, the three options each carry their own consequences. And only the right legal advice can ensure a person is fully aware of the consequences of their actions when they are involved in a COP9 investigation.

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