



HM Revenue
& Customs

Civil investigation into cases of suspected serious fraud

CODE OF PRACTICE
COP9 (2005)

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This Code of Practice applies only to investigations that started after 1 September 2005. It covers cases where we suspect serious fraud and we give you the opportunity to disclose fully all irregularities in your tax affairs.

Introduction

We will investigate any situation where we suspect serious tax fraud. The investigation will be undertaken with or without your voluntary co-operation. If you do co-operate, the investigation will proceed more quickly, efficiently and advantageously for both parties than if you refuse to co-operate. This Code of Practice is designed to help you make an informed decision on co-operation by telling you how we carry out such investigations and how, through full co-operation and disclosure of irregularities, you may achieve a significant reduction in any penalty found to be due.

The Code of Practice covers direct taxes, including income taxes, corporation tax, capital gains tax and National Insurance contributions and indirect taxes including Value Added Tax and Excise and Customs duties.

We will keep an open mind to the possibility that there may be an innocent explanation for the suspected irregularities.

We undertake to treat you fairly and courteously and in accordance with the law.

Civil investigation of fraud

Civil investigation of fraud statement

The practice of HM Revenue & Customs (HMRC) in cases of suspected serious tax fraud is as follows.

- The Commissioners reserve complete discretion to pursue a criminal investigation with a view to prosecution where they consider it necessary and appropriate.
- Where a criminal investigation is not considered necessary or appropriate, the Commissioners may decide to investigate using the Civil Investigation of Fraud procedure.
- Where the Commissioners decide to investigate using the Civil Investigation of Fraud procedure they will not seek a prosecution for the tax fraud which is the subject of that investigation. The taxpayer will be given an opportunity to make a full and complete disclosure of all irregularities in their tax affairs.
- However, where materially false statements are made or materially false documents are provided with intent to deceive in the course of a civil investigation, the Commissioners may conduct a criminal investigation with a view to a prosecution of that conduct.
- If the Commissioners decide to investigate using the Civil Investigation of Fraud procedure the taxpayer will be given a copy of this statement by an authorised officer.

Outline

You will have received a letter with this Code of Practice inviting you to attend a meeting. We have written to you because we have grounds to suspect that there are irregularities in your tax affairs, which we would like to discuss with you. This investigation is being conducted with a view to the imposition of a civil penalty for fraudulent conduct if our suspicions are confirmed. The investigation is **not** being conducted with a view to your prosecution for tax fraud.

The aim of the investigation is to uncover the full facts, determine the tax liabilities arising and collect these together with interest and, where appropriate, civil penalties for fraudulent conduct.

We will ask you to a meeting and invite you to make a full disclosure of all tax irregularities. This will be your only opportunity to secure the maximum benefit from making a full and complete disclosure of all irregularities in your tax affairs.

It is a matter for you to decide whether or not to attend and respond. If you do, we will ask you to explain the full facts and prepare a report detailing the nature, extent and reason for those tax irregularities, together with supporting evidence. We will then test that disclosure before seeking an agreement with you as to the amount of additional tax, interest and penalties and make arrangements with you for payment. You will be encouraged to make payments on account during the investigation. If you choose not to attend and respond, HMRC will conduct a thorough investigation of your tax affairs and will take into account your conduct during the course of the investigation in determining the level of any penalties due.

Confidentiality

You have a right to the same high degree of confidentiality as all customers. We will only give information to others outside HMRC when authorised to do so or in circumstances allowed by the law.

It may be necessary for us to seek information about you or your business from other people or organisations. If this is the case, we will be as discreet as possible about the reasons for our enquiries.

We may seek a mandate from you to approach a third party such as a bank. We will sometimes need to use our legal powers whether or not you have given us a mandate.

Professional representation

We would encourage you to appoint a professional adviser to represent you during our investigation, although this is a matter for you to decide.

You should give your professional adviser all the facts because you are personally responsible for your tax affairs and the accuracy of any information supplied to us. You are also responsible for ensuring that your adviser complies with timetables agreed between us.

We expect high standards from professional advisers. We will normally deal with your adviser, but if there are delays or difficulties we may deal directly with you.

Before the meeting

Before we begin an investigation we will look at information in your returns, accounts and statements and from other sources. We may also contact other people or organisations before we contact you or your professional adviser.

You should ensure you read this Code of Practice in full before the meeting. If you decide to co-operate with us, and you are under no obligation to do so, we regard attendance at meetings as an important part of that co-operation. Meetings give us both a chance to ask questions and clarify points as the investigation progresses. You are free to leave a meeting with us at any time if you choose to do so.

Please tell us in advance if you need an interpreter or have any special needs so that we can take these into account when we prepare for the meeting.

What happens at the meeting?

The meeting may be held at your office or home, at an HMRC office or at your adviser's office.

At the start of the meeting, we will explain the purpose of the meeting and HMRC's approach to the civil investigation of serious fraud. We will not reveal to you the information we hold that has given rise to our concerns. This is because the aim of an investigation under this Code of Practice is to give **you** the opportunity to make a full and complete disclosure of all irregularities. The opportunity to make a disclosure extends to all aspects of your taxation affairs and encompasses any dealings you have had with partnerships, companies, trusts or other entities.

It is a matter for you to decide whether or not to speak to us or assist us generally in our investigation. If you do speak to us we may use what you say or any information you provide, in assessing your liability to tax or to a penalty. We may also seek to give evidence of this in any appeal proceedings.

If you decide to proceed, the next stage will be to ask you to respond 'yes' or 'no' to some formal questions.

- See Appendix 1 for questions regarding direct taxes.
- See Appendix 2 for questions regarding Value Added Tax.

For other indirect taxes and Customs and Excise duties the formal questions will be issued with this Code of Practice.

Exceptionally, these questions may be modified to fit the particular circumstances of the case. You should consider your answer to these questions (in consultation with your tax or legal adviser) before you attend the meeting.

We expect you to be truthful, to tell us all relevant facts and to co-operate fully in putting your tax affairs in order. If you are unsure whether particular facts are relevant, you should tell us anyway. We do not necessarily expect precise details of irregularities at the time of the initial meeting. We will however ask for an estimate of the amounts involved, how the irregularities occurred, the period covered and what evidence you will use to determine the correct tax figures.

During the meeting we will make it clear to you whether the questions we ask are relevant to direct taxes, indirect taxes or both.

If you make a disclosure

If you tell us that there are matters that need to be disclosed, we will invite you to provide a disclosure report, the nature of which will depend on the individual circumstances of the case. Areas to be covered in the report should include

- a brief business history
- the nature of the irregularities and how they came about
- the extent of the irregularities
- the steps you have taken to verify amounts with supporting documents and any assumptions you have made
- a detailed schedule of the irregularities for each period involved for each tax.

We will agree a timetable for producing this report at the meeting. In most cases we would expect the disclosure report to be submitted within six months of the opening meeting. The timetable will vary according to the complexity of the case and the volume of work required, for example, in more straightforward cases the report could be submitted considerably sooner.

It is our intention that we reach an agreement with you about how much is due and how much is to be paid and when. We expect you to demonstrate a willingness to agree realistic proposals to make early payment of arrears.

We will invite you to make payments on account towards any tax arrears, both at the initial meeting and throughout the enquiry. Payments on account will reduce any interest charges.

We will send you a summary of the main issues discussed at the meeting to agree or amend and you will be asked to sign and return it.

You must stop any irregularities immediately. Your disclosure report and subsequent returns must reflect the correct position. If we discover that the irregularities have continued during the course of the investigation, this may be reflected in the level of penalties.

If you do not make a disclosure

If you do not make a disclosure we will undertake our own investigation, using statutory information powers (including contacting third parties) if necessary. If we discover irregularities, we will issue formal assessments and pursue collection of unpaid tax with interest. Any penalties due are likely to be significantly higher to reflect the fact that you did not take the opportunity given to you to disclose the irregularities.

What happens after the meeting?

We will discuss the disclosure report with you and your advisers. We will monitor closely preparation of the disclosure report to ensure it is progressing to the agreed timetable. This will usually involve regular meetings with your advisers. We will suspend our

own enquiries until we receive the disclosure report, if we are satisfied that matters are progressing towards a full disclosure of tax irregularities within a reasonable period of time.

We will carry out the investigation ourselves if we are not satisfied with progress and will tell you in writing if we need to do this. If this happens it will be reflected in the level of any penalties charged.

It is your responsibility to ensure the disclosure report is accurate and complete to the best of your knowledge and belief. If you are satisfied that your report is a complete account, you should sign it as representing a full disclosure of irregularities and submit it within the agreed timescale. We will ask you to certify that this is the case and we will not accept the report as your disclosure unless you do so.

You may be asked for other certified documents such as statements of your assets and liabilities and of bank and other accounts, including your debit and credit cards.

Making a statement you know to be false may render you liable to prosecution.

Once the signed report has been received, we will test the information supplied to satisfy ourselves that it is correct and complete. In doing so we may need to exercise our legal powers to obtain information. Sometimes the law allows us to do this without your knowledge or approval. If we disagree with or need to clarify any aspect of the report, it may be necessary to have a further meeting, at which we will make every effort to resolve these issues and reach an agreement with you.

Your costs

You have to pay for any costs that you incur in dealing with our investigation, including the fees of a solicitor, accountant or other professional adviser.

We know that dealing with our enquiries can cost you time and money, so we will make sure that our enquiries are reasonable and necessary to your case.

Keeping you informed

We will close our investigation as soon as we are satisfied that your tax affairs are in order or settled.

You can ask us at any time to explain

- your legal rights
- why we have taken a particular action
- your obligation under the law.

You can ask for these explanations even if we have already given them to your professional adviser. We will deal promptly with letters from you or your adviser. If we cannot do so we will let you or your professional adviser know the reason for the delay.

You have the right to ask us why we are continuing with our investigation if, for example, you believe that you have provided all the relevant information and explanations. If you ask us, we will, where possible, indicate our expected timetable for reviewing and testing the disclosure report. It may be necessary for us to seek information from other people or organisations. We undertake to do this as quickly as we can and to keep you informed.

Providing information

We will ask you for the information and documents that we need. We will give you a reasonable amount of time to provide any information.

You should tell us straightaway if you have difficulty obtaining the information we have requested and we will discuss with you how you might obtain it. You should also tell us if you think the information is not relevant to our investigation. We will discuss and try to agree the situation with you.

You should ensure that any information you provide and any answers you give are correct. If you are unsure about any matter you should say so. It is important that you give us all the relevant facts even if you are in doubt about the tax consequences of a particular matter.

Records

Please make sure that you keep all existing records, including computer records, during our investigation, whether or not you are required to do so by law. We may ask to see your business and private financial records. We can arrange to examine these at your premises. Where necessary we may ask to retain original records or copies.

There may be occasions when we exercise statutory powers conferred on us and remove certain records from you. If this happens, you will be provided with a receipt for those documents. If asked we will provide copies to you and at the end of the investigation we will return the originals to you.

Reaching an agreement

If our investigation finds nothing wrong with your tax affairs we will let you know that our investigation has finished.

Once we have agreed the nature and extent of any irregularities, the procedures for concluding the investigation and paying amounts due are slightly different for direct and indirect taxes.

Direct taxes

We will try and reach an agreed figure with you covering the amount of tax, interest and penalties due. We will only suggest adjustments that we consider to be reasonable in the light of the information we hold. You should ask us to explain if you do not understand any of the figures we may propose. We will invite you to sign a letter offering to pay an agreed sum and if we agree the sum we will issue a letter of acceptance. This exchange of letters is a legal contract between us and we are both bound by its terms.

Indirect taxes

We will write to you informing you of the amount of tax, interest and any penalty due. If you do not agree with the contents of the letter you can send us any comments or additional information.

Where you do agree, you will be asked to sign and return a copy of the letter. Once we have received this, we will write to you, formally notifying you of the assessment for tax, interest and any

penalty. We will also ask you for your payment, less any amounts paid on account. While tax subject to interest charges remains unpaid, interest charges will continue to accrue.

If we cannot reach agreement

If we cannot reach agreement we may seek to formally determine the tax, interest and penalties we consider appropriate. We will use information or documents that you provided during the investigation in any proceedings to determine your liability to tax, interest and penalties.

You have the right to appeal against any formal determination of tax or penalty.

For direct taxes appeals are to the Appeals Commissioners and for indirect taxes appeals are to the VAT and Duties Tribunal.

How interest and penalties are worked out

Interest is calculated on any tax paid late. In some cases we could also charge you a surcharge.

The maximum penalty for both direct and indirect tax is an amount equal to 100% of the tax understated. The level of penalty can be significantly reduced in certain circumstances.

For direct taxes we can charge you a penalty for an incorrect tax return if it was delivered fraudulently or negligently or if you find that it is incorrect and fail to correct the error within a reasonable time.

For indirect taxes, if we identify irregularities due to dishonest conduct, a civil evasion penalty will normally be applied.

How penalties can be reduced

It is for you to decide whether or not to co-operate and make a full disclosure. You should be clear that for both direct and indirect taxes there are arrangements to reduce penalties where you do choose to co-operate and disclose.

You should tell us about anything you think is relevant when we are working out the penalty to charge.

Direct taxes

When calculating any penalty we will take the following into account.

- Disclosure – a reduction of up to 20% (30% for full voluntary disclosure where there was no fear of early discovery by us). This reflects the extent of any voluntary disclosure of irregularities you make.
- Co-operation – a reduction of up to 40%. You will get the maximum reduction if you supply information quickly, attend interviews, answer questions honestly and accurately, give all the relevant facts including full written disclosure and pay tax on account when it becomes possible to estimate the amount due.
- Seriousness – a reduction of up to 40%. This reflects the seriousness of your errors or omissions.

Indirect taxes

The maximum penalty of 100% tax evaded is reduced by an amount that depends on whether you have disclosed full details of the true VAT liability and by the extent of your co-operation during the whole enquiry.

Reductions from the 100% penalty figure will normally be made as follows.

- Up to 40%. An early and truthful explanation as to why the arrears arose and the true extent of them.
- Up to 40%. Fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, including full written disclosure, attending meetings and answering questions.

In most cases, therefore, the maximum reduction obtainable will be 80% of the tax on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

Further information

For more on this subject please

- contact us by phone. You will find us in *The Phone Book* under Inland Revenue
- visit www.hmrc.gov.uk
- visit one of our Enquiry Centres. You will find the address
 - in *The Phone Book* under Inland Revenue
 - at www.hmrc.gov.uk/enq

Getting advice

You can get advice from a professional adviser or organisation.

Customer Service

Our commitment to you

We are here to ensure that everyone understands and receives what they are entitled to and understands and pays what they owe, so that everyone contributes to the UK's needs.

We will

- listen carefully
- answer accurately and respond promptly
- keep your personal and business details confidential
- treat you fairly and with respect.

Putting things right

If you are not satisfied with our service, please let the person dealing with your affairs know what is wrong. We will work as quickly as possible to put things right and settle your complaint.

If you are still unhappy, ask for your complaint to be referred to the Complaints Manager.

Customers with particular needs

We offer a range of facilities for customers with particular needs, including

- wheelchair access to nearly all HMRC Enquiry Centres
- home visits, if you have limited mobility or caring responsibilities and cannot get to one of our Enquiry Centres
- services of an interpreter
- help with filling in forms
- for people with hearing difficulties
 - BT Typetalk
 - induction loops
 - sign language interpretation
- leaflets in large print, Braille and audio.

Appendix 1

The five questions that we ask in relation to **direct taxes**.

Question 1

Have any transactions been omitted from or incorrectly recorded in the books of any business with which you are, or have been, concerned, whether as a director, partner or sole proprietor, to the best of your knowledge or belief?

Question 2

Are the accounts sent to HM Revenue & Customs for each and every business with which you are, or have been, concerned, whether as a director, partner or sole proprietor, correct and complete to the best of your knowledge and belief?

Question 3

Are all the tax returns of each and every business with which you are, or have been, concerned, whether as a director, partner or sole proprietor, correct and complete to the best of your knowledge and belief?

Question 4

Are all your personal tax returns correct and complete to the best of your knowledge and belief?

Question 5

Will you allow an examination of all business books, business and private bank statements and any other business and private records in order that HM Revenue & Customs may be satisfied that your answers to the first four questions are correct?

False statements may result in a criminal investigation with a view to prosecution.

Appendix 2

The four questions that we ask in relation to **Value Added Tax**.

Question 1

Have any transactions been omitted from, or incorrectly recorded, in the books and records of [name of legal entity] for which you are [responsible status]?

Question 2

Are the books and records you are required to keep by HM Revenue & Customs for [name of legal entity] for which you are [responsible status], correct and complete to the best of your knowledge and belief?

Question 3

Are all the VAT returns of the [name of legal entity] for which you are [responsible status] correct and complete to the best of your knowledge and belief?

Question 4

Were you aware that any of the VAT returns were incorrect or incomplete at the time they were submitted?

False statements may result in a criminal investigation with a view to prosecution.

If the investigation is concerned with other indirect taxes or Customs or Excise duties a separate set of formal questions will be sent with this Code of Practice.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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**HM Revenue
& Customs**