

# CODE OF PRACTICE 9 (“COP 9”) INVESTIGATIONS / THE CONTRACTUAL DISCLOSURE FACILITY (“CDF”)

## What is COP 9?

COP 9 is HMRC’s protocol for the civil investigation of people suspected of serious tax fraud / deliberate wrongdoing – together with any businesses controlled by them as appropriate.

COP 9 has existed for many years and has evolved over time. In its current form, COP 9 is offered with a contractual agreement that if the taxpayer accepts and fully complies with its terms, the taxpayer will not be subject to criminal prosecution – this is called the Contractual Disclosure Facility (“CDF”).

In cases of deliberate wrongdoing, HMRC has the ability to go back up to 20 years to assess and collect any unpaid taxes, as well as late payment interest and tax geared penalties thereon. Depending upon the final amount of tax found to be involved and the quality of the disclosure, individuals may also have their details published on HMRC’s website as deliberate tax defaulters – so-called “naming and shaming”.

## Why have HMRC opened a COP 9 investigation into me?

If you have received a letter from HMRC informing you that they have opened a COP 9 investigation into you, and offering you the terms of the CDF, it is because HMRC have received information that leads them to have a strong suspicion that you and / or businesses under your control have deliberately underpaid tax.

HMRC’s information could have come from a variety of sources – for instance, ongoing investigations into other parties, allegations about unpaid tax made in Court in divorce or other family or commercial dispute hearings, information provided about overseas investments by a foreign tax authority or a disgruntled ex-employee. Of course, the information could be misleading and HMRC’s suspicions might be unfounded.



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Stages of the COP 9 / CDF process



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How we can help

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### What should I do if I receive a COP 9 enquiry letter?

Seek urgent professional advice before responding to HMRC. Failure to correctly engage with HMRC’s civil investigation process could instead result in a criminal investigation or might broaden the scope and duration of a civil investigation and compromise its outcome.

### Stages of the COP 9 / CDF process

COP 9 / CDF investigations follow a prescribed format:

- Initial “Outline Disclosure” – this must be made within 60 days of the date of the opening letter offering the terms of the CDF, and must make an initial admission of any acts of fraud that the individual wishes to disclose with the CDF guarantee of non-prosecution – any omissions can later result in the withdrawal of the CDF terms and the possibility of criminal prosecution. In the absence of any deliberate matters to disclose, the individual can reject the offer to enter the CDF but should instead offer full cooperation. Pending receipt of the Outline Disclosure, HMRC will enter into no dialogue that might indicate the nature of their suspicions.
- Initial interview – HMRC will normally insist on meeting and interviewing the individual. That meeting is not conducted under caution – hence the guarantee of non-prosecution but should still only be attended with professional advisors. Detailed notes are prepared by HMRC of the meeting and are subsequently agreed with the advisors who attended the meeting.
- Scoping meeting – at this meeting, HMRC and the advisors will reconvene to discuss the full scope of HMRC’s concerns, and the information and verification work required to address those concerns.
- Disclosure report – this report is prepared by the advisors consistent with the outcome of the scoping meeting. The report will set out the full relevant background, the advisors’ technical conclusions about the relevant tax treatments and the “behaviours” involved, and compute any outstanding tax and late payment interest based on those conclusions.
- Testing the disclosure and negotiations – upon review of the disclosure report, HMRC are likely to seek some further information to test the conclusions therein. HMRC may also seek to challenge some of the advisors’ technical conclusions or any assumptions made to address any areas where full information could not be obtained. The advisors will negotiate with HMRC to agree the basis of a reasonable settlement.
- Penalties – tax geared penalties are discussed with the advisors and agreed based on the behaviours established during the course of the investigation, and the quality of the disclosure made under so-called “telling, helping, giving” criteria. The level of penalties for an investigation initiated by HMRC where deliberate behaviour is established can be anywhere between a minimum of 35% and a maximum of 100%.
- Contract settlement – a COP 9 investigation will normally be concluded with a contract settlement – a Letter of Offer made by the taxpayer on the basis agreed and a formal letter of acceptance.
- Possible publishing of details as a deliberate defaulter – if the relevant criteria are met.

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### Can I make a voluntary COP 9 disclosure?

Yes, and in some circumstances that might be advisable - if you have a deliberate omission to disclose to HMRC and require the CDF guarantee of non-prosecution subject to full disclosure. That guarantee is not offered by HMRC with other forms of voluntary disclosure. Additionally, at 20%, the minimum deliberate behaviour penalties are lower than for an investigation initiated by HMRC.



### How we can help

We provide an expert comprehensive COP9 investigation service – from initial no-obligation discussions upon the shock of receiving an enquiry letter, through to the conclusion of a negotiated settlement with HMRC.

We use our extensive experience to mediate between you and HMRC throughout the process to achieve the best possible outcome whilst minimising any stress for you so that you can get on with your life whilst matters are addressed.

## Key Contact

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