

Let's get serious

Amit Puri investigates the latest statistics for HMRC serious tax investigations.

I first wrote about HMRC's serious civil tax investigations' statistics in September 2019 (article available [here](#)). Following further Freedom of Information Act 2000 requests to HMRC I have an updated version of my article. This is perhaps even more poignant currently as HMRC targets Covid-19/furlough related frauds. Introduction Entrepreneurs and businesses know full well how exhausting and nervewracking it is to be under HMRC's microscope. Even routine looking enquiries can pile on the pressure, but HMRC's most serious investigations dig deep and often rattle clients. As experienced tax investigations specialists we fully understand this. We make it our mission to keep upto-date with the latest statistics and approaches being taken by HMRC to reduce the uncertainty and worry for our clients – offering them peace of mind and, of course, being their trusted 'buffer'.

Background As previously outlined in my original article, HMRC's investigations carried out under their Codes of Practice 8 and 9 are intensive and resource hungry. Without careful and experienced handling a client's interests cannot be fully protected and the processes managed with more certainty. HMRC are looking for lost taxes, interest for the late payment of those taxes, and typically penalties for failing to submit correct tax returns or failing to notify HMRC that taxes were payable. In addition to this, HMRC will usually seek to name and shame clients publicly – their non-financial weapon. Serious tax investigations – latest statistics As a qualified former senior Inspector of Taxes with HMRC, it is crucial to my current role at Lancaster Knox to keep up-to-date regarding HMRC's structure, projects and current activities as well as policy intentions. With this in mind my focus recently returned to the statistics for HMRC's serious civil tax investigations, specifically those cases run under Code of Practice 9 (COP9) and Code of Practice 8 (COP8). A COP9 is a civil investigation of suspected tax fraud, where recipients of such investigation notices are challenged as to having acted with deliberate/fraudulent intent. They are then given an opportunity to admit tax fraud at the outset (at high-level) as part of being able to voluntarily disclose the details. They must disclose all the background and history, compute the taxes payable, the late payment interest and penalties payable thereon, and all at their own cost.

HMRC's framework in these circumstances allows people and businesses to commission suitably comprehensive disclosure reports, usually prepared by seasoned tax investigations specialists, instead of lengthy, in-depth and intrusive investigations by HMRC in correspondence and meetings, which can run on for many years. I have also queried statistics relating to COP8 investigations, where large amounts of tax are considered to be at stake but not necessarily due to tax fraud.

These are usually reserved for cases of mass marketed avoidance and/or bespoke tax planning, where HMRC is likely to have made a discovery of historic tax risks as a result of uncovering new information. It may also be the case that HMRC are acting on intelligence

received (e.g. from unhappy family members, (ex) business partners, domestic or foreign banks). These investigations also typically span numerous tax years and accounting periods for businesses. COP9 and COP8 investigations are carried out exclusively by HMRC's Fraud Investigation Service (FIS), formerly Specialist Investigations. These are non-routine civil interventions, with a view to financial recovery (as opposed to Criminal Investigations where the objective is a prosecution).

FIS investigators are often referred to as the 'elite' of HMRC inspectors due to the amounts of tax involved, the number of years and accounting periods involved, sometimes in addition to the number and calibre of the professional advisers representing individuals and businesses. Certainly, one cannot usually expect to reply to these investigators once or twice to bring about swift conclusions. The investigations are usually much more involving, because HMRC invest significant time in preparation, carrying out internal checks and sometimes third party checks too well in advance. There are comparatively fewer of these specialist investigators up and down the country compared to the number of non-specialist inspectors (for example, those operating in other front-line directorates like Wealthy & Mid-sized Business Compliance (WMBC) and Individuals & Small Business Compliance (ISBC). The latter parts make up the vast majority of HMRC's investigative personnel (see tables, below).

An overview of the serious civil tax investigations (COP8 and COP9) statistics

	2016-17	2017-18	2018-19	2019-20
CoP8				
Cases opened	297	369	258	271
Cases closed	218	249	380	328
Yield recorded	£70,063,729	£73,691,338	£118,473,279	£115,179,253

	2016-17	2017-18	2018-19	2019-20
CoP9				
Cases opened	549	486	438	425
Cases closed	340	375	512	528
Yield recorded	£161,101,906	£91,132,829	£95,829,887	£121,282,884

What the statistics mean The statistics previously painted a mixed picture of priorities at HMRC and I covered them in detail in my previous article (please see here). I'll avoid repeating most of those considerations here for the sake of brevity, but some things need to be re-said! For

example, the man on the street can reasonably expect that more specialist resources in areas like FIS, do and will, result in increased tax revenues collected through this specialist action.

However, it is clear that over the years HMRC have managed to open fewer COP8 and COP9 investigations. Perhaps this is owing to the fact that a considerable number of experienced and older investigators have moved on, retired and are being encouraged to retire early, to assist HMRC meet lingering austerity budget cuts. Notably, HMRC still seem to prefer launching COP9 cases over COP8.

Perhaps this is because COP9 Notices of Investigation tend to send shivers down the spines of recipients given the clear allegation of suspected tax fraud. Usually if the person has not sought out the COP9 process voluntarily (to secure immunity from a criminal investigation and potential prosecution), then after exploratory conversations with their advisers they normally accept HMRC's offer which is that they confirm the tax frauds at high-level and then commission a detailed report (at their own cost) to bring out what happened, when, why, how, with whom, plus evidence and figures etc.

From my experience, most tend to opt to make full disclosures to safeguard their positions – which is what HMRC bank on! COP8 Notices of Investigation are comparatively underrated, because HMRC don't always explain what their interest is at the outset. So in many cases they appear similar to more routine looking enquiries. However, as things progress clients and accountants tend to realise that HMRC's investigators are looking at transactions/matters concerning periods that are several years old and are ready to force their hand by using formal Information Notices to gather facts and evidence. They even approach third parties with relatively less discourse.

These investigators are well equipped to suspect/allege careless behaviour and sometimes even deliberate actions/fraud, so as to confirm their reasoning for looking at older periods and any intentions to raise assessments if their investigations are resisted, or delayed, etc.. Those with experience of carrying out these types of investigations and others who have witnessed them will be familiar with the two completely different approaches. It follows that in a COP9, a client and their advisers can and should take control of the case by securing the disclosure process, that is, investigating matters in detail themselves and approaching third parties themselves, e.g. suppliers, customers, banks etc. if necessary.

They can and should manage HMRC's expectations regarding timeframes, progress, and the making of payments on account. Conversely, in a COP8, HMRC are investigating from the outset, that is, they are asking the questions to confirm the risks they've identified and identifying evidence to support that (or sometimes to support clients' arguments/contentions). From experience, I would say that a COP8 is more difficult to manage due to the uncertainty in not always knowing what HMRC are thinking and doing and why, add to this their ability to investigate using third parties directly – the outcome of which can result in reputational damage. Turning back to the new statistics, I don't consider the changes in the number of cases opened,

cases closed and the yield secured by HMRC regarding COP8 investigations to suggest anything material or meaningful for us.

However in the case of COP9, where only a few less cases were opened and a few more were closed, the yields secured rose sharply from £95,829,887 to £121,282,884 – that is some feat. It would seem that HMRC's suspicions of tax fraud have been proven increasingly or maybe HMRC's policy for identifying COP9 cases has been improving. With there being far fewer experienced and seasoned investigators around nowadays I believe it's the latter; projects' criteria seems to be proving more fruitful.

Alternatively, perhaps a small number of high-yielding cases have been concluded which have skewed these figures. Ancillary statistics Previously, we highlighted that the financial yield figures excluded results from other cases being worked elsewhere within HMRC (e.g. WMBC & ISBC) where FIS investigators were involved with leading and project managing those. Interestingly HMRC have this time provided some "experimental statistics representing FIS led investigations that feature joint working where compliance yield has been recorded by the other business area". We can confirm that the yield figures quoted above included corresponding £2,976,639 and £1,930,388 amounts respectively from COP8 and COP9 cases...

These figures are curious, because we have never seen such before. We know only FIS carry out such serious civil investigations and are aware that COP8 cases are used sometimes to project manage many similar cases, risks and groups of clients. Also, both COP8 and COP9 cases lead to information about other persons which is then shared within HMRC to commence appropriate action, i.e. spin-offs inside and outside of FIS as appropriate. We have seen the corresponding number of such cases opened and closed too (included in the totals given above) but we cannot currently gauge the value these brought so we don't comment on them here further. HMRC continue to increase their resources in FIS, now with 5,181 employees working there (as at 30 June 2020). It's safe to say we expect FIS to be increasingly more active going forward.

Curiously though, HMRC have confirmed they only published details of 10 'deliberate tax defaulters' from the 'fraud investigations' closed in 2016-17, and a further 26 from investigations closed in 2017-18. They did not differentiate between COP9 and COP8 investigations, but then why would they since the numbers are so low (in absolute terms)! Nonetheless, this is a huge leap, which means investigators are getting better at arguing their cases and more confident in pursuing this non-financial sanction. There were no figures for 2019-20 as some of those cases remain scheduled for publication, "however, the publication has been delayed until later this year".

Also, the media is currently full of news about businesses being accused of fraudulent financial claims under the Covid-19/furlough schemes. We can assist in examining those allegations and identifying, gathering and considering evidence to support struggling businesses being incorrectly targeted. How we can help Get in touch to learn more about how we have

successfully guided clients through the COP9 or COP8 investigation processes. You can learn more about how we have helped clients through their kind feedback here.

- Amit Puri – Tax Director, Lancaster Knox. Email amit@lancasterknox.com or call 07747 462 731.