

A fair COP?

Mark Taylor warns of the dangers of COP9 virtual meetings with HMRC

Covid-19 has profoundly changed the way we work. This includes meetings with the HMRC Fraud Investigation Service (FIS) under HMRC's Code of Practice 9 (COP9) investigation of fraud procedure.

What is COP9 and how has it changed since the pandemic started?

COP9 gives taxpayers the opportunity to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct which has led to irregularities in their tax affairs. This is under a contractual arrangement called the Contractual Disclosure Facility (CDF). For taxpayers who accept the CDF and make a full disclosure of their deliberate conduct, HMRC FIS will not pursue a criminal investigation with a view to prosecution.

Following receipt of an Outline Disclosure, where CDF has been accepted or rejected, HMRC FIS ordinarily request an initial meeting. In cases where an Outline Disclosure has been made, the purpose of this meeting, from HMRC FIS's perspective, will be to establish facts and test, or even challenge, your client about the information disclosed (particularly in cases of non-disclosure or incomplete disclosure). If a disclosure report has been commissioned, the meeting can also discuss the scope and timetable for submitting the report. In cases where the CDF has been rejected, the initial meeting provides HMRC FIS with the opportunity to be convinced that its suspicion of fraud is misplaced.

Prior to Covid-19, meetings with FIS were held face-to-face, either at HMRC offices, premises of professional advisers, customers' business premises or their private home. During the initial national Covid-19 restrictions, no such meetings were held and HMRC paused its compliance activity generally. Since we have moved into regional tier restrictions the pause has been lifted and HMRC FIS has had to reinvent the initial meeting process to move its case portfolio forward. Face-to-face has been replaced by virtual meetings, typically over Microsoft Teams. However, the purpose of the meetings for HMRC FIS have not changed and the risks for your client in meeting HMRC FIS through video conferencing (VC) are now more prevalent.

Be together

While there will be at least two HMRC FIS officers that may not be together in person, ensure you and your client are. Practice social distancing within Covid-19 guidelines. If your client and you are together and using two different cameras, ensure your client knows how to activate and deactivate their camera and microphone!

If you cannot be together, then you cannot in my view properly represent your client. In my own experience of this I have told HMRC FIS that a VC meeting cannot be accommodated within Covid-19 guidelines. Cases have then proceeded without the client being at the initial meeting, with no accusation by the HMRC FIS officer that they were uncooperative or not engaged in the CDF process.

I recently had two HMRC FIS officers conduct an opening meeting from their office, the first time they had entered their office since March 2020. So establish if this going to happen so there are no surprises to your client, as, in my view, HMRC FIS officers work better together than apart.

Video on/off

Given HMRC FIS are largely still home working, on the vast majority of the calls I have had, the FIS officers have had their cameras switched off. Therefore, establish in advance whether the meeting will be conducted by HMRC FIS with the camera on or off. If HMRC FIS are not turning on the camera then I would not have my client's or mine turned on either.

Be comfortable with video

Ensure both you and your client are comfortable using VC and that you are able to successfully use the technology. Have a dress rehearsal before the actual call with HMRC FIS. Failure to prepare and a lack of familiarity with VC could lead to your client's body language or behaviour appearing suspicious. It's important that as an adviser you intervene and eradicate any suspicion promptly.

Confirm HMRC's approach

I am finding inconsistency in the way HMRC FIS officers are approaching initial meetings. Some have requested information to be supplied in advance of the meeting, which was not a pre-coronavirus approach. Each FIS office, in my view, is proceeding differently, and some are finding their feet. Don't hesitate to challenge a request that doesn't feel right. HMRC FIS need to show flexibility and there will be no 'one-approach-fits-all'.

Meeting introduction

The opening part of any COP9 meeting is very formal, with HMRC FIS officers reading from a script to ensure your client knows their rights and understands their obligations, and requirements under the CDF. Some clients find this intimidating. To avoid this lengthy introduction, HMRC FIS have introduced a helpful seven-page meeting introduction that you can complete with your client in advance.

Insist on breaks

Initial meetings typically take between half a day and a full day. It is more difficult to read body language without face-to-face meetings and see how HMRC FIS officers are reacting to your client and your responses. Just because the meeting is taking place via VC doesn't mean you can't speak to your client privately whenever you wish, in addition to scheduled breaks.

It's ok to say no!

While HMRC FIS do say that attending meetings is a good sign of your client's cooperation, they are voluntary. Prior to Covid-19, HMRC FIS would resist a request to avoid the initial meeting and proceed by post. Post Covid-19, the fear of catching or spreading the virus, together with issues of mental health and depression, HMRC FIS officers are more understanding to polite declines than they have ever been.

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