

HMRC serious tax investigations: an update

Amit Puri examines the latest Codes of Practice 8 and 9 tax investigations statistics and shares his insights on what they mean

As outlined in a previous 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 large 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.

With this in mind, my focus returned to the statistics for HMRC's serious civil tax investigations, specifically those cases under Code of Practice 9 (COP9) and Code of Practice 8 (COP8).

The investigations

A COP9 is a civil investigation of suspected tax fraud, where recipients of such investigation notices are challenged as to having acted with deliberate or 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 ultimate 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. HMRC have advised that there are currently 4,427 full-time equivalent FIS staff.

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 and sometimes third party checks 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)). These directorates make up the vast majority of HMRC's investigative personnel.

COP9 Notices of Investigation typically 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.

Latest statistics

For an overview of the COP8 and COP9 statistics – including the new 2020-21 data – see the tables, below:

What do 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). While I don't want to repeat my earlier comments, there are some key takeaways that do need to be repeated!

For example, the man on the street reasonably expects that more specialist resources in areas like FIS, do and will, result in increased tax revenues collected through specialist action. However, over the years HMRC had been managing to open fewer COP8 and COP9 investigations. Perhaps this is owing to the fact that a considerable number of experienced and older investigators have retired and were encouraged to retire early to assist HMRC meet lingering austerity budget cuts.

Now, new COP8 cases opened were almost 30% higher this year, but there was an almost 15% reduction in the number of new COP9 cases opened.

For some reason the total yield secured by HMRC halved in the 240 COP8 cases settled in 2020-21. There is likely to be some correlation between this decrease and the reduced number of COP8 cases settled (328 to 240).

The number of COP9 cases being settled stayed high at 540 and similarly resulted in c.£100m in yield secured (2019-20: 528 settled & c.£121m).

Despite the covid-19 pandemic, HMRC managed to maintain the overall number of new serious civil investigation cases opened. The total number of COP8 and COP9 cases was 715 whereas this was 696 in the previous year.

Interestingly, new COP9 cases tended to exceed new COP8 cases, but this year the numbers were broadly similar. We don't know why this was the case but we're conscious of the seeming shift away from COP9 cases and instead favouring COP8 cases. Perhaps the burden of alleging tax fraud from the outset in COP9 cases was too high during these difficult and unusual times?

How we can help?

Please do get in touch to learn more about how the tax investigations and disputes team have successfully guided clients through the COP9 or COP8 investigation processes.

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CoP8	2016-17	2017-18	2018-19	2019-20	2020-21*
Cases opened	297	369	258	271	352
Cases closed	218	249	380	328	240

Yield recorded	£70,063,729	£73,691,338	£118,473,279	£115,179,253	£56,011,160
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CoP9	2016-17	2017-18	2018-19	2019-20	2020-21*
Cases opened	549	486	438	425	363
Cases closed	340	375	512	528	540
Yield recorded	£161,101,906	£91,132,829	£95,829,887	£121,282,884	£99,031,451