

## A fair COP?

*Amit Puri shares the latest Codes of Practice 8 and 9 tax investigations statistics, including 2021-22 figures straight from HMRC, and shares his insights on what they mean*

As previously outlined in my [original article](#) in 2019 and [subsequent updates in 2020 and 2021](#), HMRC 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/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 again, 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 (*and many older names*). 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, typically fewer than the number and calibre of the professional advisers representing the individuals and/or businesses.

HMRC have advised that there are currently 4,994 (4,427 last year) full-time equivalent FIS staff. That's an increase of nearly 13%, which I suspect was driven by resource needed to tackle high-end covid-19 related initiatives, for example furlough claims fraud.

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.

### **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 articles](#). Whilst 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.

New COP8 and COP9 cases opened were lower this year, which is likely still due to stretched resources, especially where furlough claims are being scrutinised and other covid-19 related support packages continue to take up HMRC FIS time.

However, HMRC's focus appears to have been on COP9 over COP8, which suggests they were sure enough to allege suspected tax fraud in new cases rather than setting out to investigate themselves under COP8 which of course takes a lot more time and effort.

For some reason the total COP8 yield secured by HMRC in 2020/21 had halved– in the 240 cases settled, but then there were fewer cases settled. Conversely, in 2021/22 the total yield has increased, but this looks largely commensurate with the higher number of cases settled (240 to 279).

The number of COP8 and COP9 cases being settled stayed high, but no conclusions can reasonably be drawn as to the disparity between them.

We're conscious the number of new COP8 cases opened has halved in 2021/22 and it cannot be said that any resources saved were put to new COP9 cases instead. Therefore we can only assume that HMRC FIS resources were being deployed elsewhere in HMRC, to perhaps support/lead other interventions, e.g. furlough/covid-19 related, across WMBC and ISBC.

The total COP9 yield only marginally increased this year, but a lot fewer cases were settled (from 540 to 401), so the average settlements appear to have been much larger at c. 260,000£ each.

In 2020/21 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 opened was 715, whereas in 2021/22 this reduced to 517. Our view on why this may be even where the total headcount has increased is shared above re resource deployment.

Unsurprisingly, new COP9 cases still exceeded new COP8 cases. Also, unlike in the previous year, there does not seem to be a shift away from COP9 cases in favour of COP8 cases.

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## Latest statistics

An overview of the COP8 and COP9 statistics – including the new 2021-22 data:

CoP8	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Cases opened	297	369	258	271	352	176
Cases closed	218	249	380	328	240	279
Yield recorded	£70,063,729	£73,691,338	£118,473,279	3115,179,253	£56,011,160	£70,180,302
CoP9	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22

Cases opened	549	486	438	425	363	341
Cases closed	340	375	512	528	540	401
Yield recorded	£161,101,906	£91,132,829	£95,829,887	£121,282,884	£99,031,451	£104,343,387