Time to come clean

With HMRC under pressure to ramp up its action against ESS, Sarah Mawson explains why now is the time to disclose

One year on from our article 'ESS under renewed HMRC focus', recent developments in HMRC's campaign against Electronic Sales Suppression (ESS) have signalled a shift in their compliance strategy.

With legal action now impacting those behind the creation and distribution of ESS tools, HMRC is under renewed pressure to extend its focus to the businesses that used them. For those that may have used these tools, the opportunity to come forward voluntarily is narrowing and the risks associated with inaction are growing.

This article explores why HMRC is now under more pressure than ever to act, what businesses can expect in the months ahead, and why making a disclosure now is imperative.

A new chapter

We understand that in September the courts will oversee the sentencing of individuals involved in the development, and provision, of ESS software.

If the tools were designed to suppress sales and misrepresent tax liabilities, then those who used them are likely to face scrutiny next.

HMRC has faced criticism from the National Audit Office (NAO) for failing to act on intelligence it already holds in relation to ESS. Now, with judicial support reinforcing the seriousness of ESS related fraud, HMRC has both the precedent and the pressure to escalate its response, and we expect that there will be a stronger focus on potential criminal enforcement action against those who have not yet come forward to disclose the use of ESS.

Nudge that didn't work

In our article of last year, we noted that in late 2022 HMRC launched a campaign of 'nudge' letters aimed at businesses suspected of using ESS tools. These letters were designed to encourage voluntary disclosure without the need for formal investigation. However, the campaign didn't have the desired effect, with around only one in seven businesses responding to these letters. This low response rate has prompted a strategic rethink.

In March 2025, HMRC issued a new ESS related nudge campaign, stating it was the recipient's final opportunity to make a complete disclosure. The department is now expected to escalate its efforts, moving from soft-touch nudges to more formal, and forceful, interventions. One likely outcome is a rise in Code of Practice 9 (CoP9) investigations.

CoP9 is issued when HMRC suspects deliberate behaviour. Once a CoP9 letter is issued the terms of engagement change. The opportunity to negotiate a favourable settlement diminishes, and the risk of reputational damage increases. For this reason, businesses that suspect they may be on HMRC's radar should consider making a voluntary disclosure before a CoP9 letter arrives.

Treasury pressure and the 'tax gap'

The expected hardening of HMRC's approach regarding ESS is not happening in isolation. It is part of a broader effort by HMRC to close the UK's tax gap. In their first Budget since being elected, Labour set out that closing the tax gap was a priority for the government.

According to HMRC's own figures, small businesses account for a significant portion of this tax gap at almost 60%, particularly in sectors like hospitality and retail, where ESS tools have most commonly been used.

With public finances under strain and political pressure mounting, HMRC is being urged to deliver results. ESS investigations offer a high-impact, data-driven way to do just that. The department already knows which businesses purchased these tools. The only question is how and when HMRC will act.

Voluntary disclosure still matters

HMRC continues to offer a route for businesses to come forward voluntarily. Whilst HMRC operates a disclosure facility specifically for ESS, it is important that ESS tool users also consider making use of HMRC's Contractual Disclosure Facility (CDF) where appropriate. This offers the taxpayer an opportunity to make a full disclosure which, if accepted, provides immunity from criminal prosecution.

It is crucial for businesses to remember that this protection offered by the CDF is only available to those who make a full and accurate disclosure before HMRC initiates a criminal investigation.

Even businesses that haven't received a nudge letter should not assume they are safe. HMRC has confirmed that not all suspected users were contacted in the initial, and subsequent, campaigns. Those who haven't yet heard from HMRC could be in the best position to secure a reduced settlement by making a voluntary disclosure before HMRC writes to them.

Courses of action

Revisit past communications: If you received a nudge letter and didn't act, now is the time to reconsider. The risks of inaction have increased significantly.

Seek expert advice: Disclosure is a complex process. Engaging with experienced tax dispute professionals, especially those who previously worked as HMRC investigators and have a good understanding of how HMRC operates, can make all the difference.

Act before CoP9 arrives: Once a CoP9 letter is issued, the opportunity for a favourable outcome narrows. Voluntary disclosure offers more flexibility and better terms.

Understand the risks: HMRC's information powers are extensive. They can inspect documents, visit premises unannounced, and use third-party data to build their case. If you've used ESS tools it's unlikely to remain hidden for long.

Don't assume silence means safety: Just because you haven't heard from HMRC doesn't mean you're not on their radar. In fact, those who come forward before being contacted are often in the strongest position to negotiate.

The window is closing

The sentencing of ESS software developers is likely to change the enforcement landscape.

For businesses that may be affected, the message is clear – don’t wait to be investigated. The opportunity to disclose voluntarily and avoid the most severe consequences is still available, but it won’t last forever.

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