

THE CONTRACTUAL DISCLOSURE FACILITY



AN OPPORTUNITY TO RECTIFY DELIBERATE TAX ERRORS WITHOUT BEING PROSECUTED FOR TAX FRAUD

The background

HM Revenue and Customs (HMRC) operates Code of Practice 9, which is also called the Contractual Disclosure Facility (CDF), as it is an efficient way to investigate taxpayers. This process is intended to lead to a civil settlement in cases of tax fraud.

Tax fraud includes:

- Deliberately submitting a tax return despite knowing that it is incorrect;
- Deliberately failing to notify HMRC of chargeability to tax;
- Deliberately submitting a tax return more than 12 months after the filing deadline.

When taken together with HMRC's Managing Serious Defaulters programme and HMRC's powers to publish the names, addresses and other information relating to people who deliberately evade tax after 1 April 2010, the CDF is a significant tool in HMRC's arsenal of ways to resolve tax fraud cases and deter people from committing fraud in the first place.

Who is affected?

People who HMRC considers committed tax fraud will initially be screened to identify those who should be investigated with a view to a criminal prosecution. Those who are not going to be prosecuted will then be offered a chance to participate in the CDF. In addition, people who want to voluntarily admit tax fraud can ask to participate. They will all receive the CDF invitation by letter and will have just 60 days to respond.

The CDF process

The taxpayer will be asked to sign a form to confirm or deny whether they committed tax fraud. If they admit fraud then they also have to submit an 'outline disclosure' form within the same 60 day period.

The fixed 60 day deadline is quite tight considering that the outline disclosure should include a description of the errors, how they arose, when they happened, details of the records held and an estimate of the amounts involved. It should also include details of all other, non-deliberate errors and omissions.

The key point to bear in mind is that a taxpayer only gets protection from criminal prosecution for the issues included on the outline disclosure form. If any deliberate errors or omissions are missing from the form then they risk being prosecuted for those frauds.

If a person fails to reply to HMRC's initial letter or denies fraud then HMRC is likely to commence its own investigation. This may include issuing demands for information to the person, their banks, customers, suppliers and tax advisers. In some cases this investigation may lead to a criminal prosecution. If a person intends to deny fraud and there are non-deliberate issues to rectify then these should be taken into account in any communication to HMRC about the denial form.

The process after submission of the outline disclosure

Once HMRC receives the outline disclosure and admission of fraud it will check the disclosure against the information it already holds. Providing the taxpayer has disclosed all the deliberate errors and omissions that HMRC is aware of then the CDF will continue.

In many cases the taxpayer, in the presence of his adviser, will then be interviewed by two HMRC officers. The adviser will then investigate the issues before submitting a comprehensive disclosure report detailing what happened and the tax due. In preparing the report the adviser uses his experience to make assumptions and propose plausible solutions where there is a lack of information or documentation on a particular matter, eg where it is impossible to obtain all bank statements due to the length of time elapsed.

After the report is submitted, it is usual for there to be discussions with HMRC about technical issues and on the estimates and assumptions used in the report. Cases then progress to a civil settlement with tax, late payment interest and a tax geared penalty being negotiated and agreed. Undeclared tax is payable for a period of up to 20 years (with the exception of IHT where there is no time limit in some circumstances). Tax geared penalties can be up to 100% of the tax at stake (up to 300% on some offshore issues).

The benefit of this process is that one HMRC officer deals with all tax issues. They are experienced in resolving cases where there is a lack of information due to the time elapsed since the fraud. The settlement brings the taxpayer's UK tax affairs up to date so that they can move forward.

How can we help?

If HMRC invites you to participate in the CDF it is crucial to get specialist advice immediately from a tax adviser who is experienced in handling Code of Practice 9 cases, as the process and its pitfalls are very different from any other sort of HMRC enquiry. The 60 day deadline may seem a long way away but there is much that should be done before the deadline expires. We have the expertise and experience of managing tax investigations under Code of Practice 9 and can help you with every stage of the process, tailoring our work to your specific circumstances.

As specialist advisers we use our experience to reach a pragmatic settlement in relation to the tax due, which also minimises the penalties charged. In addition, if necessary, we negotiate time for our clients to pay the settlement liabilities bearing in mind their financial position.

If you know that you have not declared and paid all the tax you should have in the past **then do not delay** hoping HMRC will never find out - they often do - so ask us for advice today. If you make a voluntary disclosure to HMRC before it opens an enquiry or investigation into your affairs then you will incur lower penalties. We can advise on the most appropriate method to make a voluntary disclosure.

However, once the HMRC issues the opening enquiry or investigation letter, the chance to make a disclosure is gone and the cost in terms of settlement with HMRC, time and fees will be higher.

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