

Specialist Investigations (Fraud and Avoidance)

**Cases where Civil Investigation of Fraud procedures
are not used**

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This Code of Practice explains how the Fraud and Avoidance section of the Specialist Investigations directorate of HM Revenue & Customs (HMRC) carry out investigations. It applies to all investigations where the Civil Investigation of Fraud procedures (Code of Practice 9) are not used. Other sections of Specialist Investigations may also act under this Code from time to time. The Code promises that we will treat you fairly and courteously in accordance with the law and includes 'Our service commitment to you' (inside back cover).

Introduction

Most taxpayers pay what is due and others make genuine mistakes. Some, however, deliberately try to pay less than the correct amount or take advantage of a scheme or device to reduce or eliminate a liability that might otherwise be due. If we suspect this, we will investigate thoroughly to establish the facts. We do not conduct investigations under this Code of Practice with a criminal prosecution in mind but towards a financial recovery of any tax, interest and penalties you owe.

We may adopt a different approach if we suspect or find evidence of serious fraud at any time during our investigation. We may then deal with the investigation either under our published Code of Practice 9 or, if it is being conducted with a view to criminal prosecution, under the Police & Criminal Evidence Act 1984 and the Criminal Procedure & Investigation Act 1996 and their respective Codes of Practice. In Scotland and Northern Ireland criminal investigations are carried out under the law applicable in those parts of the United Kingdom.

General

We will investigate any situation where we believe that there may have been a serious loss of tax. This includes the tax affairs of individuals, partnerships, companies and trusts and covers all of the taxes, duties, levies, contributions and so on for which HMRC is responsible. We set high standards for the way we work.

We take over responsibility for some investigations started in local offices and in other parts of HMRC and start others ourselves.

If our investigation includes an enquiry into a Self Assessment tax return we may deal with the whole tax return or specific aspects of it. If our involvement is limited to aspects of your tax return, a local HMRC office or other specialist office will deal with the other aspects. In such cases we will co-ordinate our work. This Code only applies to our investigation.

We will liaise with your usual HMRC office during the investigation and at its conclusion. At the end of the investigation, your usual HMRC office will again take over responsibility for your taxation affairs.

Sometimes this Code may be issued to you by another part of HMRC, with whom you will be dealing directly. They will have issued this Code because the enquiry is being directed and co-ordinated by Specialist Investigations, usually as part of a larger project.

Confidentiality

You have a right to the same high degree of confidentiality as all taxpayers. We will only give information to people you have not authorised to receive it in the circumstances allowed by the law.

We are a Data Controller under the Data Protection Act. We hold information for the purpose of taxes, tax credits and other legal functions given to us by Parliament and can use the information for our internal functions.

We might check new information we receive about you with our existing records. This includes information provided by you as well as others, such as other Government departments and agencies and overseas tax authorities. We will not give information about you to anyone outside HMRC unless the law allows us.

We will be discreet if we need to ask other people or organisations for information about you or your business during our investigation.

If you have given us a mandate (an authority for a third party such as a bank to provide us with information) we might use it to help our investigation. Mandates can help us to get information usually available only to you. We will sometimes need to use our legal powers whether or not you have given us a mandate.

You can refuse to discuss any matter in front of other people, including your business partners, fellow directors and your spouse or partner. However, discussing issues openly will often help speed up an investigation and reduce costs.

Co-operation

It is entirely for you to decide whether to co-operate with our investigation. In making your decision you may want to obtain assistance from a professional adviser.

See 'Interest and penalties' on page 9 for further comments regarding co-operation.

Professional representation

We recommend that you approach a professional adviser to represent you during our investigation although, again, this is a matter for you.

Your adviser can accompany you to all meetings with us. They may also correspond with us on your behalf.

We make notes of all meetings and you or your professional adviser can ask for copies at any time.

You may change or stop using a professional adviser at any time.

You should give your professional adviser all the facts because **you** are personally responsible for your tax affairs and the accuracy of any information supplied to us.

We expect high standards from professional advisers. We will normally deal with your adviser but if there are delays or difficulties, we might deal directly with you.

Meetings

If you decide to co-operate with us, we regard attendance at meetings as an important part of that co-operation.

Meetings give us both a chance to ask questions and clarify points as the investigation progresses. If our only contact is by correspondence, it could take much longer.

We:

- will make a written record of our meetings with you and you can ask for a copy
- might ask you to sign a copy of our notes to show that they accurately reflect what was said. You are not legally obliged to comply with this request and can comment on any of the contents you do not agree with.

Any meetings you have with us can be at:

- the office of your professional adviser
- our office or another HMRC office
- your business premises, or
- your home.

You can ask your professional adviser to attend these meetings. We will be discreet during meetings at any of your premises.

Please tell us in advance if you need an interpreter or have any special needs so that we can take these into account when we prepare for any meeting.

Opening the investigation

Before we begin an investigation or take over an existing one, we may look at the information in your tax returns, accounts and statements and from other sources. We might also make enquiries of other people and organisations before we contact you or your professional adviser in order to decide whether or not we need to proceed.

If we decide to investigate under this Code we will tell you and your professional adviser in writing.

We will normally tell you the reasons for starting the investigation although we are not obliged to do so. Sometimes we are unable to give you the reasons on grounds of confidentiality or if our investigation might be prejudiced.

We will identify the particular issues on which we intend to focus. However, during an investigation, it can become necessary to enquire into issues other than those identified at the outset.

We will normally invite you to a meeting to openly discuss the issues and give you the opportunity to tell us the relevant facts.

We expect you to be open and honest with us and to provide complete and accurate information. It is your responsibility to do so and to make sure that answers you give are correct to the best of your knowledge and belief. If you are unsure whether particular facts are relevant, you should tell us anyway.

You should tell us without delay if you:

- subsequently think that you may have provided incorrect or incomplete information, or
- want to add anything to what you have already told us.

You should consider very carefully any points we have raised and respond as fully and promptly as possible.

Your costs

We know that dealing with our investigation can cost you time and money, so we will make sure that our enquiries are reasonable and necessary to your case.

We will close our investigation as soon as we are satisfied that your tax affairs are in order or settled.

Our leaflet *C/FS Complaints* explains when we pay compensation for mistakes we make.

Keeping you informed

You can ask us at any time to explain:

- your legal rights
- why we have taken a particular action
- your obligation under the law.

You can ask for these explanations even if we have already given them to your professional adviser. You can also ask for a copy of any of our other publications.

We will deal promptly with letters from you or your adviser, normally within 20 working days. If we cannot do so we will let you or your professional adviser know the reason for the delay.

Providing information

We will always be courteous, fair and professional and will only ask for the information we believe to be reasonably required for our investigation.

We will often ask you for information and documents to assist our investigation. We will give you a reasonable amount of time to provide any information. If you think that we have not given you enough time, you should tell us how much more time you need and why. We will let you have more time if this seems reasonable. If we cannot agree we will explain our reasons.

You should tell us straightaway if you have difficulty obtaining the information we have asked for and we will discuss with you how you might get it. You should also tell us if you think the information is not relevant to our investigation. We will discuss and try to agree the situation with you.

Parliament has given HMRC legal powers to obtain information and documents from you and, where necessary, from third parties. If we need to use these powers formally, you may have the right to make representations or to appeal to an independent tribunal, depending on the circumstances. We will make sure that these rights are explained to you.

You should ensure that any information you provide and any answers you give are correct. If you are unsure about any matter you should say so. It is important that you give us all the relevant

facts even if you are in doubt about the tax consequences of a particular matter. If, subsequently, you realise that something you have told us or provided to us may have been wrong, you should tell us straightaway.

You have the right to ask us why we are continuing with our investigation if, for example, you believe that you have provided all the relevant information and explanations and we have had adequate time to investigate the position and bring matters to a close. If we are unable at that time to conclude the investigation, we will explain the reasons why. For example, we may feel it necessary to seek further information by approaching other persons or organisations.

Where our investigation includes an enquiry into a Self Assessment tax return, you may ask an independent tribunal to consider whether that enquiry should be closed. We can explain to the tribunal the reasons for not closing that enquiry. You may want to discuss matters with your professional adviser before deciding upon such action.

Records

You must keep certain records to help you to complete your tax returns. You can get further guidance from any Enquiry Centre, local HMRC office or from our website at **www.hmrc.gov.uk**

Please make sure that you keep all existing records, including computer records, during our investigation whether or not you are required to do so by law.

We may ask to see your business and private financial records. We can arrange to examine these at your premises, at the premises of your professional adviser, or at our own office. Where necessary we may retain original records or copies, for which we will give a receipt.

You may ask for the return of any records that we hold if you need them at any time. If we have to keep them we will give you copies of any documents you need. We will do this free of charge and we will agree a timetable for this.

We will advise you, if necessary, of what you need to do if your business or personal records do not meet the legal requirements or if we consider they are inadequate in any other way. If you are still in doubt about the records you need to keep for the future, you should ask your professional adviser or us for help.

Visits

If you are running a business, we may decide to visit your business premises. Where you run a business using part of your home, we may visit those parts that are used for running the business. Otherwise, we will not visit your home, unless you invite us to.

We may need to inspect your business premises, the assets you use in the business or the stock you hold. But on most occasions the visit will be to inspect your business records.

A visit will usually be arranged in advance, by mutual agreement. We will give you prior warning of a visit, unless there is a clear operational need not to do so.

We will usually tell you in advance how many officers will visit. Every officer will carry identification, which you are entitled to see. Before the visit we will also give you a contact number which you can use to verify the officer's identity if you have any doubts.

Our officers will be considerate and polite, and they will only ask you about matters that may be relevant to your tax position.

Paying tax during our enquiries

We will ask you to make a payment on account of any additional liability we think is due pending the conclusion of the investigation. Making a payment on account will help to reduce any interest charges and will demonstrate your willingness to reach a money settlement.

We might take action to charge tax on you or your company before the end of our investigation if we think that you might not pay any additional tax due unless we act quickly, or if statutory time limits for assessing are about to expire.

You have the right to appeal against any assessments or amendments we make, and in some cases you can ask to postpone payment. If we cannot agree, you can ask an independent tribunal to decide how much tax you should pay.

Tax returns

You must send us complete and accurate tax returns by the legal deadline even if we are investigating your tax affairs under this Code. We will regard it as a serious offence if you deliberately submit an incorrect tax return.

If you are unable to provide final figures you should include your best estimated figures in your tax return and highlight any figures you think will be affected by our existing investigation.

Reviews and appeals

Our decision letters will explain what to do if you do not agree.

We will try to reach agreement with you about your tax liabilities without the need for a formal appeal.

You have the right to have your case reviewed by a different officer from the one who made the decision, or to appeal to an independent tribunal against any amendment or assessment that we make that you do not think is correct.

You can find out more about reviews and how to appeal by:

- reading the notes with the amendment or assessment
- reading our published guidance on appeals (at www.hmrc.gov.uk/factsheets/hmrc1.pdf), or
- asking us to explain the process to you.

Where you have sent an appeal to the tribunal, we can ask the tribunal for an adjournment if we need more time to investigate. The tribunal will decide if they will accept the request for an adjournment.

You have the right to put your case to the tribunal and to tell them the figures you believe to be correct. You can choose whether or not to have your case presented for you by a professional representative or by any other person, providing the tribunal do not object.

After listening to both parties and considering all the evidence, the tribunal will decide whether the amendment or assessment should remain unchanged, be increased or reduced.

You can ask the Tribunals Service to explain anything you do not understand about the appeal hearing procedure.

Concluding the investigation

If our investigation finds nothing wrong with your tax affairs, we will let you know that our investigation has been completed.

If it is appropriate to seek a money settlement at the conclusion of our investigation, we will try to reach an agreement with you covering the amount of tax and other duties, interest and penalties we believe are due. We will only suggest adjustments that we consider to be reasonable in the light of the information

we hold. You should ask us to explain if you do not understand any of the figures we propose for settling matters.

If we cannot reach agreement, we may formally determine the tax, interest and penalties we consider appropriate. You have the right to have any appeals you make heard by an independent tribunal.

We can use the information or documents provided by you during the investigation in any proceedings to determine your liability to tax or other duties, interest and penalties.

Where there have been errors or omissions in your accounts or tax returns, we may ask you to sign a Certificate of Full Disclosure confirming that you have now declared all your taxable income, gains and other duties. We will not ask for a Certificate if the investigation showed nothing wrong.

We will take a very serious view if you sign a Certificate of Full Disclosure you know to be false. You should consider the Certificate very carefully before signing it. If you sign a Certificate you know to be false, you may be prosecuted.

You should always make sure you understand what, if anything, was wrong with your accounts or tax returns. You should ask us or your professional adviser what you need to do to make sure you get them right in the future.

Interest and penalties

Tax paid late, for whatever reason, carries interest at the statutory rate.

You may also incur a penalty for:

- failing to notify us of your liability to a tax
- failing to make a return by the statutory filing date, or at all
- carelessly or deliberately giving us an inaccurate tax return or other specified document
- failing to correct, within a reasonable time, a mistake you notice in a tax return
- failing to tell us, within a reasonable time, that an estimated assessment to tax is inadequate
- failing to pay on time.

You are responsible for the accuracy and completeness of your tax returns even if a professional adviser is acting on your behalf.

Where the law specifies a penalty not exceeding a maximum figure, we will calculate our view of the appropriate amount by taking into account:

- how and when you tell us about the offence
- how and when you co-operate with us to get things right.

Detailed rules about penalties vary depending on the period and type of tax involved. Our officers can explain more about this, and will give you more detailed guidance if it becomes relevant.

False statements

You should make sure that answers given at meetings, in correspondence and all other information you provide to us are correct and complete to the best of your knowledge and belief.

If you make a statement you know to be false, you may be prosecuted.

Publishing details of deliberate defaulters

A few people deliberately get things wrong to evade paying tax. In some circumstances we can publish their details as well as charging them a penalty. Deliberate evaders can stop us publishing their details by telling us, as soon as we start the check, about everything they deliberately did wrong. Also, the more help they give us, the lower the penalty will be. You can find more information about publishing deliberate evaders' details in factsheet CC/FS13 *Publishing details of deliberate defaulters*.

Putting things right

If you have a complaint please try to resolve it on the spot with our officer. If you are unable to resolve your complaint, please ask the officer how you can progress your complaint or ask for a copy of our factsheet *C/FS Complaints*. This lays out our complaints process and tells you what you can do next. You will find further information on our website. Go to www.hmrc.gov.uk and under *Quick links* select *Complaints & appeals*.

If we are unable to resolve your complaint to your satisfaction, you can ask the Adjudicator to investigate. The Adjudicator, whose services are free, is a fair and unbiased referee whose recommendations are independent of HMRC.

You can contact the Adjudicator at:

The Adjudicator's Office
8th Floor
Euston Tower
286 Euston Road
London NW1 3US

Phone: **0300 057 1111**

Fax: **0300 057 1212**

www.adjudicatorsoffice.gov.uk

The Adjudicator's leaflet A01 gives information about complaining to the Adjudicator.

Finally, you can ask your MP to refer your case to the independent Parliamentary and Health Service Ombudsman. The Ombudsman will accept referrals from any MP, but you should approach your own MP first. Further information is available from:

The Parliamentary and Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP

Phone: **0345 015 4033**

Fax: **0300 061 4000**

www.ombudsman.org.uk

Your Charter

To find out what you can expect from us and what we can expect from you, go to www.hmrc.gov.uk/charter and have a look at Your Charter.

Further information

We produce a wide range of booklets, helpsheets and leaflets designed to explain different aspects of your tax or National Insurance in plain English, and to assist with the completion of tax returns. Most of them are free, and most are also available in Welsh.

We have a full range of services for people with disabilities, including leaflets in Braille, audio and large print. For details, please ask any HMRC office, Enquiry Centre or go to our website **www.hmrc.gov.uk**

Our *Catalogue of leaflets and factsheets* gives further information about our publications, most of which you can get from any Enquiry Centre, HMRC office, National Insurance Contributions and Employer Office or our website. Addresses are in *The Phone Book* under 'HM Revenue & Customs'. Most offices are open to the public from 8.30am to 5.00pm, Monday to Friday, and some are also open outside these hours.

Social Security offices and Jobcentre Plus offices (part of the Department for Work and Pensions), and your library or Citizens' Advice Bureau may also have copies of our leaflets.

You can also get most of our leaflets:

- on the Internet at **www.hmrc.gov.uk**
- by calling our orderline on **0845 9000 404** between 8.00am and 10.00pm, seven days a week (except Christmas Day)
- by fax on **0845 9000 604**
- by email on **saorderline.ir@gtnet.gov.uk**
- by writing to:
PO Box 37
St Austell
Cornwall PL25 5YN

Helpline and orderline calls are charged at local rates.

Our service commitment to you

HM Revenue & Customs is committed to serving your needs well by:

Acting fairly and impartially

We:

- treat your affairs in strict confidence, within the law
- want you to receive or pay only the right amount due.

Communicating effectively with you

We aim to provide:

- clear and simple forms and guidance
- accurate and complete information in a helpful and appropriate way.

Providing good quality service

We will aim to:

- handle your affairs promptly and accurately
- be accessible in ways that aim to meet your needs
- keep your costs to the minimum necessary
- be courteous and professional.

Taking responsibility for our service

If you wish to comment or make a complaint we want to hear from you so we can improve our service. We will advise you how to do this.

We can provide a better service if you help us by:

- keeping accurate and up to date records
- letting us know if your personal / business circumstances change
- giving us correct and complete information when we ask for it
- paying on time what you should pay.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk

Customer Information Team

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HMRC 11/10net



**HM Revenue
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