

Update

Tax Investigations

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Contractual Disclosure Facility – Code of Practice 9 (COP9)

Introduction

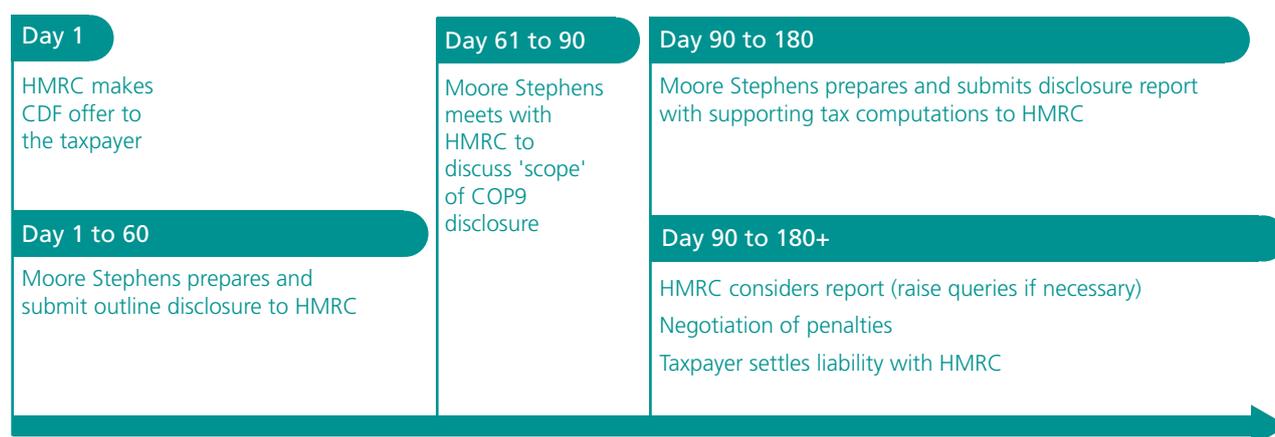
HM Revenue & Customs (HMRC) issue Code of Practice 9 in selected cases where they suspect serious tax fraud. In such cases, HMRC will write to taxpayers inviting them to make a full disclosure under an arrangement called the Contractual Disclosure Facility (CDF).

Providing a full and complete disclosure is made within agreed time limits, a civil settlement will be reached with HMRC and the person will not be subject to criminal prosecution.

The CDF can also be used by taxpayers to make voluntary disclosures, before an approach by HMRC.

Contractual Disclosure Facility – the Moore Stephens approach

The complexity and scope of each case will differ but a typical chronology will be as follows:



A valid outline disclosure must be made within 60 days of the date the CDF is offered. During this time HMRC will not discuss their reasons for suspecting tax fraud has been committed. It is up to the taxpayer to decide whether or not to make a disclosure to HMRC.

HMRC will normally expect to receive a completed disclosure report within six months, although this should not be viewed as standard. More straightforward cases might be settled within three months and conversely more complex cases may exceed six months.

HMRC will expect payments on account to be made during the CDF process once liabilities are established. Making early payments may also reduce the amount of penalties payable.

Changes to the CDF process from 30 June 2014

COP9 has been amended for CDF offers made on or after 30 June 2014. Before that date, under the 'old' version those offered CDF had three choices:

1. Accept the offer and prepare a full and complete disclosure report.
2. Deny the fraud but offer to cooperate with the HMRC investigation ('denial route').
3. Do nothing, in which case HMRC would carry out its own investigation.

From 30 June 2014 onwards, taxpayers will no longer be able to opt for the 'denial route'. Under the 'new' version the taxpayer only has the following two options:

1. Admit the fraud and co-operate with HMRC by making a full disclosure under the terms of the Contractual Disclosure Facility. A taxpayer must accept in writing that their deliberate conduct brought about a loss of tax.

or,

2. Reject the CDF offer.

If the taxpayer does not respond within 60 days from the date of the CDF offer letter they will be treated as having denied the fraud. Taxpayers who elect for option 2 will also be at risk of having the terms of the CDF withdrawn, which could mean that HMRC takes over the investigation and/or seeks to criminally prosecute the taxpayer. With the 'old' denial route no longer an option, it is possible that taxpayers could face higher penalties as well as the admission of partaking in 'fraud', thus having

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much wider ramifications, for example being 'named and shamed' on the HMRC website.

The removal of the 'old' denial route means that taxpayers subject to COP9 must consider very carefully whether or not to make an admission of tax fraud. In view of the potential consequences for the taxpayer, both Moore Stephens and HMRC strongly advise that those offered COP9 seek professional advice.

How can Moore Stephens help?

Moore Stephens' expert Tax Investigations and Disputes team has extensive experience in handling disclosures under Code of Practice 9 and the CDF. Our aim is to achieve the best possible outcome for our clients, whilst always complying with tax legislation.

We can help taxpayers identify what HMRC may think is wrong about their tax affairs and then work with them and, where applicable, their advisers to make the appropriate disclosures.

Moore Stephens LLP
150 Aldersgate Street, London EC1A 4AB
T +44 (0)20 651 1400
E taxinvestigations@moorestephens.com
www.moorestephens.co.uk