

HMRC announce major changes to civil investigation of fraud

27 January 12

Earlier this month HMRC announced that from 31 January there will be a radical overhaul of the way it deals with Code of Practice 9 (CoP9). The new Contractual Disclosure Facility ("CDF") will operate from this date. It imposes a contractual framework within which future CoP9 enquiries will operate and sets out the new rights and obligations of the taxpayer and HMRC respectively.

Major changes include:

- A contract in writing between HMRC and the taxpayer, under which the taxpayer agrees to make full disclosure and provide continuing co-operation while matters are resolved.
- A written undertaking by HMRC not to pursue a criminal investigation in exchange for full disclosure of all tax frauds and continuing co-operation during the disclosure process.
- HMRC will no longer give an unlimited assurance of no criminal investigation for past wrongdoing if full disclosure and co-operation is not forthcoming.
- A 60 day time limit within which to accept (or reject or ignore) HMRC's offer of a contract and, if accepted, to provide outline disclosure.
- A meeting with the taxpayer, his or her professional adviser and HMRC at which it can be decided whether additional "formal disclosure" is required.
- The risk of investigation for a separate criminal offence if materially false or misleading statements are made, or materially false documents are provided, during the CoP9 investigation.
- For the first time, HMRC will inform taxpayers that "many people find it helpful to appoint a specialist adviser who is familiar with this code, in addition to their regular adviser".

Advice from a professionally qualified lawyer (i.e. solicitor or counsel) is essential if a taxpayer wishes to ensure Legal Professional Privilege applies.

These changes are likely to be of particular relevance to UK taxpayers with bank accounts or other assets in Switzerland, many of whom are entirely innocent of wrongdoing, but others may have matters to disclose. The recently formed Overseas Co-ordination Unit is actively assessing large volumes of data compiled by HMRC from different sources and is believed to be a major beneficiary of the £800m set aside by the UK Government to pursue tax compliance.

The CDF particularly welcomes those who make a voluntary disclosure. Such individuals can expect greatly reduced penalties, but it is essential that a full review of each individual taxpayers' circumstances should be undertaken before any decision is made. Full consideration of alternatives such as the Liechtenstein Disclosure Facility, and the probable impact of the UK-Swiss Treaty should be carried out under Legal Professional Privilege.

Our tax investigation teams in London, Geneva, Zurich and Hong Kong have considerable experience in handling Voluntary Disclosures including under the Liechtenstein Disclosure Facility.

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