

## TAX FRAUD DEFENCE

## HMRC CODE OF PRACTICE 9

To enter the Contractual Disclosure Facility, one must admit tax fraud. This is difficult. One may be admitting to something that no court would define as fraud. Once in the CDF there are considerable

reliefs including, what amounts to a guarantee from prosecution, so long as all transactions that the Revenue might regard as fraud are disclosed.

The relief from prosecution is hardly onerous but one must declare all one's wrongdoings. The key word here is 'all' and a client who has been prepared to transcend from avoidance to evasion is the sort that wants to control the outcome. The professional advisor is left trawling through the client's affairs, often to the client's chagrin, flushing out those arrangements that might haunt us later. Remedial clients need persuading that things have changed and that what was avoidance has become evasion. The problem is that those tax avoidance schemes or decisions lower down the line could trigger a prosecution later. It's not ideal, and in a world where we have learnt the hard way that honey catches more than vinegar, there must be an element of appeal to the 'hang em and flog ems'.

The statistics support the case. The Revenue estimates that £10 billion a year is lost to tax fraud. The country turns over about £2,500 billion sterling. According to the Revenue's figures, that's less than half of 1%. An auditor might regard financial statements' materiality as 1% of turnover. The tax gap stands at 1.5% or £40 billion. At a stretch, the Revenue might be using similar tactics, so even if we take the higher figure it's at the lower end of material, in real terms. Nevertheless, the Revenue is under pressure to ensure we all pay the right amount of tax. In other words it's in the public interest to enforce the rules even if the additional tax

collected is immaterial.

The Contractual Disclosure Facility under COP9 is not the only disclosure facility. COP8, the Worldwide Disclosure Facility, and the Voluntary Disclosure Office are useful tools. However, in practice it is the CDF under COP9 that we see used most.

Clients worry that they will face additional supervision in future. HMRC don't have the resources to do that in the real world. That said, you must assume that you would face prosecution as a repeat offender.

The CDF operates the law of unintended consequences. In one case the actual disclosure was fraudulent cheque conversion facing a probable jail sentence of eighteen months for a first offender pleading guilty. A bodged leasehold incorporation was a lesser disclosure. The client had taken higher rate personal rents into an incorporated structure, with lower corporation tax and indeed lower income tax, because the dividends were distributed amongst family members. The client had overlooked the requirement to register the buildings for VAT and the subsequent remedial reorganisation saved the client half a million pounds in contingent VAT. This was far more than the tax interest and penalties and even our own costs, so the client made a profit on the CDF.

Another client had been taking cash on rental properties owned by offshore trusts (bringing them onshore). We were able to repatriate illegitimate offshore trusts under the disclosure facility arguing that the trusts had never existed.

Both cases were agreed with the Revenue. Revenue inspectors are human and will suffer human pressure. The hidden advantage of using enquiry specialists is knowing some of HMRC's tricks. By and large the remedial profession has a good relationship where we all want to close the case. Often it's a question of negotiating costs with sometimes not a lot to choose between no penalty and 100% of the tax due.

Pillorying ministers may not be helpful but goes with the job. A quick word on Nadhim Zahawi's 'careless' 30% penalty. These penalties are both a dark art and a precise science and 30% is at the upper end of 'careless.' What do we deduce from the above? COVID-19 may not be history, but it has been moved down the agenda. The Revenue appears to be targeting the soft loans and furloughs issued during the lockdown. A populist government would want to be seen to be clawing its money back and making examples of everyone who accepted their largesse. The Revenue won't have the resources and, under pressure, inspectors may crack and play dirty. They may leave you wondering who is committing the fraud.

And why?

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