

## **Code of Practice 8 investigations (Lecture P1265 – 12.56 minutes)**

### *What is Code of Practice 8?*

Historically, there was a clear demarcation between HMRC's Codes of Practice 8 and 9. Whereas Code of Practice 9 dealt with cases of suspected (serious) fraud, Code of Practice 8 was used to tackle tax avoidance, over a wide range of risk areas. HMRC's current guidance refers to Code of Practice 8 as "Specialist investigations for fraud and bespoke avoidance".

The current version of Code of Practice 8 covers "civil investigations in certain cases where the Code of Practice 9 is not used". The document goes on to say that it will cover cases where a taxpayer has "deliberately" tried to pay less than the correct amount of tax. Advisers will be aware that, absent an admission by a taxpayer, the onus is on HMRC to demonstrate deliberate behaviour.

Code of Practice 8 investigations are undertaken by HMRC's Fraud Investigation Team, and will be used where there may have been a "significant" loss of tax.

Particular care is required when dealing with this type of investigation, as, if HMRC suspect or find evidence of fraud, they can switch to Code of Practice 9, or commence a criminal investigation. The taxpayer does not, at the start of the investigation, have the protections afforded by Code of Practice 9 if there has been fraud. It should be noted that Code of Practice 8 does not give HMRC any additional statutory powers.

### *What type of cases are investigated under Code of Practice 8?*

The investigations cover a broad range of taxpayers, and include individuals, partnerships, limited liability partnerships (LLPs), companies and trusts.

Cases conducted under this Code of Practice cover a broad range of issues. As well as tackling cases involving bespoke avoidance, as noted above, other cases investigated by HMRC using this process include offshore matters, domicile and complex issues. For example, one of the cases I dealt with recently involved a taxpayer's property transactions over a 20-year period.

### *The investigation process*

The investigation will start with notification in writing that HMRC are using the Code of Practice 8 procedure. The Fraud Investigation Service investigator may take over an existing compliance check, or there can be a stand-alone investigation.

The opening letter will, usually, contain a request for the information and documents that the investigator wants to see. The request is usually extensive, and may cover a long period. The letter may also include a request for a meeting with the taxpayer, and/or a visit to the business premises. Requests for information, or meetings, should be considered on their merits, and in the context of the case, to determine what is reasonable.

When the inspector's queries have been dealt with, the case will, usually, be settled by a contract settlement, where there are additional liabilities. The position regarding penalties will need to be considered, and the normal rules apply. In other cases, including where agreement cannot be reached, the case may be concluded via a formal route. Where the inspector's enquiries have not

identified additional liabilities, the case should be closed (unless the adviser has established that there is a disclosure to make).

#### *Use of a specialist adviser*

HMRC use specialist investigators for Code of Practice 8 cases. It is prudent for advisers to seek specialist assistance where they do not have the relevant experience. Typically, the specialist adviser will work with the existing accountant.

A Code of Practice 8 investigation can have a significant impact on an adviser's resources, particularly given the extensive, and complex, information requests that typically accompany such cases. There is usually a large amount of data to be gathered, together with extensive analysis, which can place a disproportionate strain on the adviser, especially in smaller firms.

Specialist advisers can conduct a case review, to determine the best response to a Code of Practice 8 investigation, and whether any challenges are necessary to the HMRC queries. A specialist can also help to identify whether it is necessary to seek the client's voluntary inclusion in the Contractual Disclosure Facility (Code of Practice 9) where fraud is established (helping to reduce the risk of a criminal investigation, where HMRC identify the fraud). The specialist adviser can help to protect the client, and the regular adviser.

*Contributed by Phil Berwick (Director, Berwick Tax)*