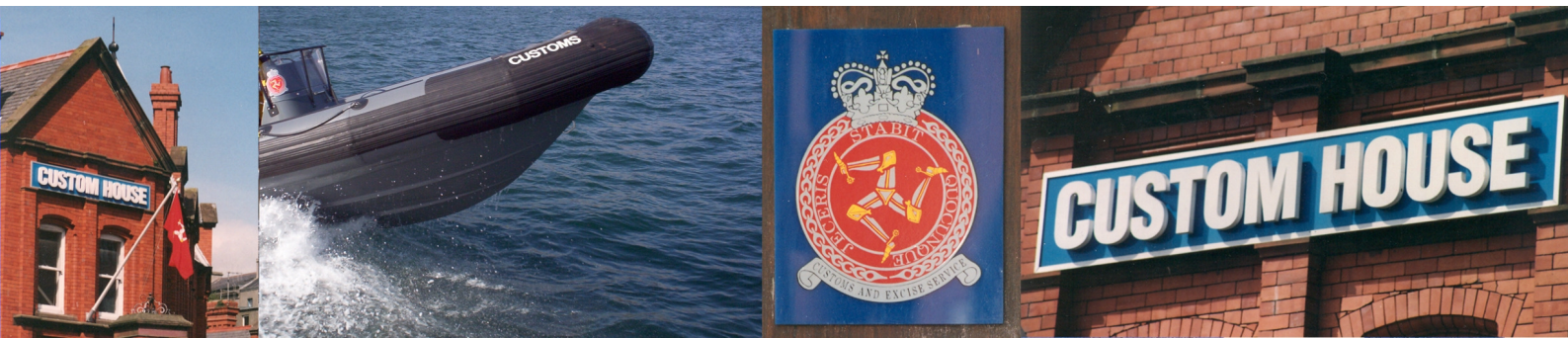


Code of Practice
Civil Investigation of Fraud

Notice COP 9 MAN



July 2009
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Isle of Man
Government

Reilty Ellan Vannin

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Privacy Notice

The Treasury collects information about you in order to administer taxation and carry out other functions for which it is responsible (e.g. National Insurance, customs and excise duties, property rates, social security benefits, state pensions and legal aid etc.), and for the detection and prevention of crime.

Whilst that information will primarily be provided by you, where the law allows we may also get information about you from other organisations, or give information about you to them. This may be to check the accuracy of the information provided, prevent or detect crime or protect public funds in other ways. These organisations may include other government departments, the police and other agencies.

To find out more about how we collect and use personal information, contact any of our offices or visit our website at: <https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/>

This Code of Practice covers cases where we suspect serious fraud and we give you the opportunity to disclose fully all irregularities in your tax affairs.

This revised version applies to investigations begun after 1 August 2011.

Introduction

We will investigate any situation where we suspect serious tax fraud. The investigation will be undertaken with or without your voluntary co-operation. If you do co-operate, the investigation will proceed more quickly, efficiently and advantageously for both parties than if you refuse to co-operate. This Code of Practice is designed to help you make an informed decision on co-operation by telling you how we carry out such investigations and how, through full co-operation and disclosure of irregularities, you may achieve a significant reduction in any penalty found to be due.

The Code of Practice covers indirect taxes including value added tax (VAT) and excise and customs duties.

We will keep an open mind to the possibility that there may be an innocent explanation for the suspected irregularities.

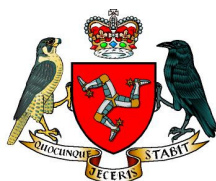
We undertake to treat you fairly and courteously and in accordance with the law,

Civil Investigation of Fraud

Civil investigation of fraud statement

The practice of Treasury in cases of suspected serious tax fraud is as follows.

- The Treasury reserves complete discretion to pursue a criminal investigation with a view to prosecution where it considers it necessary and appropriate.
- Where a criminal investigation is not considered necessary or appropriate, the Treasury may decide to investigate using the Civil Investigation of Fraud procedure.
- Where the Treasury decides to investigate using the Civil Investigation of Fraud procedure —
 - the taxpayer will be given an opportunity to make a full and complete disclosure of all irregularities in their tax affairs and in the affairs of any entities for which they have been responsible



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- the Treasury will not seek a prosecution for a tax fraud committed in any period before the date when it first informed you of their decision to investigate using the Civil Investigation of Fraud procedures. The assurance that the Treasury will not seek prosecution therefore only applies retrospectively.
- However, where materially false statements are made or materially false documents are provided with intent to deceive in the course of a civil investigation, the Treasury may conduct a criminal investigation with a view to a prosecution of that conduct.
- If the Treasury decides to investigate using the Civil Investigation of Fraud procedure the taxpayer will be given a copy of this statement by an authorised officer.

Outline

You will receive a letter with this Code of Practice inviting you to attend a meeting. We will have written to you because we have grounds to suspect that there are irregularities in your tax affairs which we would like to discuss with you. The investigation would be conducted with a view to the imposition of a civil penalty for fraudulent conduct, if our suspicions are confirmed. The investigation would **not** be conducted with a view to your prosecution for tax fraud in any period before the date that the Treasury informed you that it was investigating under the Civil Investigation of Fraud procedures.

The aim of the investigation is to uncover the full facts, determine the tax liabilities arising and collect these together with interest and, where appropriate, civil penalties for fraudulent conduct.

We will ask you to a meeting and invite you to make a full disclosure of all indirect tax and duties irregularities. This will be your only opportunity to secure the maximum benefit from making a full and complete disclosure of all irregularities in your tax affairs.

It is a matter for you to decide whether or not to attend and respond. If you do we will ask you to explain the full facts.

Generally, the Treasury will also ask you to prepare a report detailing the nature, extent and reason for those tax irregularities, together with supporting evidence. Treasury will agree a timetable for the submission of the report at the meeting.

We will then test that disclosure, before seeking an agreement with you as to the amount of additional tax, interest and penalties and make arrangements with you for payment. You will be encouraged to make payments on account during the investigation.

If you choose not to attend the meeting and respond, Customs and Excise will conduct a thorough investigation of your tax affairs and will take into account your conduct during the course of the investigation in determining the level of any penalties due.

Where you have a tax debt but refuse to make a payment, the Treasury may commence immediate preventive action to protect its position. Action may include insolvency and bankruptcy petitions, applications for freezing orders over bank accounts and assets, and the imposition of security in appropriate cases.

Confidentiality

You have a right to the same high degree of confidentiality as all our customers. We will only give information to others outside Customs and Excise when authorised to do so or in circumstances allowed by the law.

It may be necessary for us to seek information about you or your business from other people or organisations. If this is the case, we will be as discreet as possible about the reasons for our enquiries.

We may seek a mandate from you to approach a third party such as a bank. We will sometimes need to use our legal powers whether or not you have given us a mandate.

Professional representation

We would encourage you to appoint a professional adviser to represent you during our investigation although this is a matter for you to decide.

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. You are also responsible for ensuring that your adviser complies with timetables agreed between us.

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

Starting the investigation

Before we begin an investigation we will look at information in your returns, accounts and statements, and from other sources. We may also contact other people or organisations before we contact you or your professional adviser.

You should ensure you read this Code of Practice in full before the meeting. If you decide to co-operate with us, and you are under no obligation to do so, we regard attendance at meetings as an important part of that co-operation. You are free to leave a meeting with us at any time if you choose to do so.

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 the meeting.

What happens at the meeting

The meeting may be held at your office or home, at Custom House or at your adviser's office.

At the start of the meeting, we will explain the purpose of the meeting and Treasury's approach to the civil investigation of serious fraud. We will not reveal to you the information we hold that has given rise to our concerns. This is because the aim of an investigation under this Code of Practice is to give you the opportunity to make a full and complete disclosure of all irregularities. The opportunity to make a disclosure —

- extends to all aspects of your taxation affairs involving indirect taxes and duties;

-
- encompasses any dealings you have had with partnerships, companies, trusts or other entities; and
 - covers any period before the date when the Treasury first notified you of its decision to investigate using Civil Investigation of Fraud procedures.

It is a matter for you to decide whether or not to speak to us or assist us generally in our investigation. If you do speak to us we may use what you say or any information you provide, in assessing your liability to tax or to a penalty. We may also seek to give evidence of this in any appeal proceedings.

If you decide to proceed, the next stage will be to ask you to respond 'yes' or 'no' to some formal questions:

See the appendix for questions regarding value added tax.

For other Indirect Taxes (customs and excise duties) the formal questions will be issued with this Code of Practice.

Exceptionally, these questions may be modified to fit the particular circumstances of the case. You should consider your answer to these questions (in consultation with your tax/legal adviser) before you attend the meeting.

We expect you to be truthful, to tell us all relevant facts and to co-operate fully in putting your tax affairs in order. If you are unsure whether particular facts are relevant, you should tell us anyway. We do not necessarily expect precise quantification of irregularities at the time of the initial meeting. We will however ask for an estimate of the amounts involved, how the irregularities occurred, the period covered and what evidence you will use to determine the correct tax figures.

If you make a disclosure

If you tell us that there are matters that need to be disclosed, we will invite you to provide a Disclosure Report, the nature of which will depend on the individual circumstances of the case. Areas to be covered in the report will be:

- a brief business history;
- the nature of the irregularities and how they came about;
- the extent of the irregularities;
- steps taken to verify amounts with supporting documentation and any assumptions made; and
- a detailed schedule of the irregularities for each period involved for each tax.

The Treasury will agree a timetable for producing this report at the meeting. The timetable for producing a report will vary according to the complexity of the case and volume of work required. If you cannot agree a report timescale, or you fail to submit your report by the agreed deadline, the Treasury may decide to carry out its own work instead. You would

then lose your opportunity to earn full credit for co-operation, and any penalty would be higher.

Non-report cases

In some cases, the Treasury may decide it does not need you to prepare and submit a disclosure report. For example, it may think that you have not told it about everything that is wrong, so any report made on that basis will be incomplete. In these cases, the Treasury may begin its own investigations immediately after it has spoken to you.

In other cases the errors that you have disclosed at the meeting may be so straightforward and limited that no report is needed.

During an investigation

It is the intention of the Treasury that it reach an agreement with you about how much is due and how much is to be paid, and when. It expect you to demonstrate a willingness to agree realistic proposals to make early payment of arrears.

The Treasury will invite you to make payments on account towards any tax arrears, both at the initial meeting, and throughout the enquiry. Payments on account will reduce any interest charges.

The Treasury will send you a summary of the main issues discussed at the meeting to agree, or amend, and you will be asked to sign and return it.

You must stop any irregularities immediately. The Treasury may carry out a compliance inspection to check that you have done so. Your disclosure report and subsequent returns must reflect the correct position. If it discover that the irregularities have continued during the course of the investigation, this may result in criminal investigation with a view to prosecution in relation to what you have done since being given this Code of Practice, or a higher level of penalty.

If you do not make a disclosure

If you do not make a disclosure the Treasury will undertake its own investigation, using statutory information powers (including to third parties) if necessary.

If it discovers irregularities it will issue formal assessments and pursue collection of unpaid tax with interest. You will also have lost your opportunity to earn any credit for co-operation, and any penalty would be significantly higher.

If you try to avoid paying your liabilities or if you attempt to dissipate your assets the Treasury may also use insolvency action to ensure that it is able to collect the money that they believe to be due.

These actions could include—

- personal bankruptcy;
- compulsory liquidation;

- appointment liquidators;
- obtaining civil freezing orders over your bank accounts; and
- obtaining legal caution over property.

The Treasury may also seek to impose or increase an amount of security which you will have to pay before it makes any VAT repayment to you.

If you do not co-operate with its enquiries the Treasury may use statutory information notices. These are backed by financial penalties, up to an unlimited tax-related penalty.

What happens in cases where the Treasury asks you to prepare a Disclosure Report

The Treasury will discuss the Disclosure Report with you and your advisers. It will monitor closely preparation of the Disclosure Report to ensure it is progressing to the agreed timetable. This will usually involve regular meetings with your advisers.

The Treasury will suspend its own enquiries into the period before the date when it first notified you of its decision to investigate using the Civil Investigation of Fraud procedure until it receives the Disclosure Report, if it is satisfied that matters are progressing towards a full disclosure of tax irregularities within a reasonable period of time.

However, the Treasury may continue to make checks, inspections and control visits for periods after the date it gave you this Code of Practice.

The Treasury will carry out the investigation itself if it is not satisfied with progress and will tell you in writing if they need to do this. If this happens it will be reflected in the level of any penalties charged. The Treasury may also consider using insolvency action, security, civil freezing orders over bank accounts, legal cautions over property and enforceable information notices, as in the case of non-disclosure (see above).

It is your responsibility to ensure the Disclosure Report is accurate and complete to the best of your knowledge and belief. If you are satisfied that your report is a complete account, it should be signed by you as representing a full disclosure of irregularities, and submitted within the agreed timescale. The Treasury will ask you to certify that this is the case and they will not accept the report as your disclosure unless you do so.

Making a statement you know to be false, may render you liable to prosecution

You may be asked for other certified documents such as statements of your assets and liabilities and of bank and other accounts including debit and credit cards operated.

Once the signed report has been received, the Treasury will test the information supplied to satisfy itself that it is correct and complete. In doing so it may need to exercise its legal powers to obtain information. Sometimes the law allows the Treasury to do this without your knowledge or approval. If it disagrees with or needs to clarify any aspect of the report, it may be necessary to have a further meeting, at which it will make every effort to resolve these issues and reach an agreement with you.

Your costs

You have to pay for any costs that you incur in dealing with our investigation, including the fees of an advocate, accountant or other professional adviser.

We know that dealing with our enquiries 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.

Keeping you informed

You can ask us at any time to explain:

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

You can ask for these explanations even if we have already given them to your professional adviser. We will deal promptly with letters from you or your adviser. If we cannot do so we will let you or your professional adviser know the reason for the delay.

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. If you ask us, we will, where possible, indicate our expected timetable for reviewing and testing the disclosure report. It may be necessary for us to seek information from other people or organisations. We undertake to do this as expeditiously as we can and to keep you informed.

Providing information

We will ask you for the information and documents that we need. We will give you a reasonable amount of time to provide any information.

You should tell us straightaway if you have difficulty obtaining the information we have requested and we will discuss with you how you might obtain 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.

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.

Records

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. Where necessary we may ask to retain original records or copies.

There may be occasions when we exercise statutory powers conferred on us and remove certain records from you. If this happens, you will be provided with a receipt for those documents. If asked we will provide copies to you and at the end of the investigation we will return the originals to you.

Reaching an agreement

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

Once we have agreed the nature and extent of any irregularities, the procedures for concluding the investigation and paying amounts due are slightly different for some taxes.

We will write to you informing you of the amount of tax, interest and any penalty due. If you do not agree with the contents of the letter you can send us any comments or additional information.

Where you do agree, you will be asked to sign and return a copy of the letter. Once we have received this, we will write to you formally notifying you of the assessment for tax, interest and any penalty. We will also ask you for your payment, less any amounts paid on account. Whilst tax subject to interest charges remains unpaid, interest charges will continue to accrue.

If we cannot reach agreement

If we cannot reach agreement we may seek to formally determine the tax, interest and penalties we consider appropriate. We will use information or documents that you provided during the investigation in any proceedings to determine your liability for tax, interest and penalties.

You have the right to appeal any formal determination of tax or penalty.

Appeals are to the VAT and Duties Tribunal.

How interest and penalties are worked out

Interest is calculated on any tax paid late. In some cases we could also charge you a surcharge.

Penalty rules depend on which periods are affected, as follows -

- VAT periods beginning on or after 1st April 2008 and for which a return is due on or after 1st April 2009 come under the Penalty for Inaccuracies Rules; or
- all other periods come under the "old rules".

You may therefore be liable to penalties under the old rules for some periods, and under the Penalty for Inaccuracies Rules for other periods. If this is the case, the different penalties will be calculated separately, under the different rules.

Penalties - "old rules"

The maximum penalty is an amount equal to 100% of the tax understated. The level of penalty can be significantly reduced in certain circumstances.

If we identify irregularities due to dishonest conduct a civil evasion penalty will normally be applied.

How "old rules" penalties can be reduced

It is for you to decide whether or not to co-operate and make a full disclosure. You should be clear that there are arrangements to reduce penalties where you do choose to co-operate and disclose.

You should tell us about anything you think is relevant when we are working out the penalty charge.

The maximum penalty of 100% tax evaded is reduced by an amount which depends on whether you have disclosed full details of the true VAT liability, and by the extent of your co-operation during the whole enquiry.

Reductions from the 100% penalty figure will normally be made, to the maximum percentages specified, as follows:

- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them; and
- up to 40% - fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, including full written disclosure, attending meetings and answering questions.

In most cases, therefore, the maximum reduction obtainable will be 80% of the culpable tax. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

Penalties - Penalties for Inaccuracies Rules

Where these Rules apply a person may be charged a penalty where they give us an inaccurate document and the inaccurate document either amounts to or leads to -

- an understatement of a person's liability to tax;
- a false or inflated statement of a loss by the person; or
- a false or inflated claim to repayment of tax;

and the inaccuracy was -

- careless;
- deliberate; or

-
- deliberate and concealed.

If our suspicions of serious fraud turn out to be justified we will expect to charge penalties for deliberate inaccuracies, or for deliberate and concealed inaccuracies, depending on the facts.

Penalties for careless inaccuracies may also be charged where appropriate.

A penalty for a deliberate inaccuracy will normally apply where you deliberately -

- understate the tax you owe;
- choose to misrepresent your liability; or
- overstate a claim.

A penalty for a deliberate and concealed inaccuracy will normally apply where you take active steps to cover up a deliberate inaccuracy.

The normal maximum and minimum penalty for each inaccuracy depends on the behaviour that saved it as follows -

- inaccuracy despite taking reasonable care - no penalty;
- careless inaccuracy - between 15% and 30%;
- deliberate inaccuracy - between 35% and 70%; or
- deliberate and concealed inaccuracy - between 50% and 100%.

The above figures are percentages of the tax lost.

If you have made an unprompted disclosure of the inaccuracy, that is, you have told us about it before you had any reason to believe that we have discovered or are about to discover it, then the minimum penalty is reduced in each case as follows -

- careless inaccuracy - to nil;
- deliberate inaccuracy - to 20%; and
- deliberate inaccuracy with concealment - to 30%.

Reductions under Penalties for Inaccuracies Rules

The minimum penalty for deliberate error will normally be 35% and the maximum penalty 70%.

The minimum penalty for deliberate and concealed error will normally be 50% and the maximum penalty 100%.

The penalty may be set at any level between the minimum and the maximum and in

calculating this we will normally give the following reductions -

- up to 30% for "telling" - the extent to which you admit the inaccuracy, tell us promptly about its full extent and explain how it arose;
- up to 40% for "helping" - the extent to which you help us to quantify the inaccuracy, give positive assistance, actively engage and volunteer information; or
- up to 30% for "giving access" - the extent to which you respond positively to requests for information and documents, give us access to business and other records and explain their function and significance.

If you have made an unprompted disclosure of the inaccuracy the minimum penalty may be set at 20% for deliberate error and at 30% for deliberate and concealed error. An unprompted disclosure is one where you have told us about the irregularity before you had any reason to believe that we have discovered or are about to discover it.

What happens after the investigation is over

The Treasury expects you to change your behaviour and comply with all your tax obligations and not to revert to any fraudulent conduct. It is likely that it will carry out a check at some time after its enquiry has ended, to make sure that this is so.

Further information

For further information on this subject please

- contact us by phone, fax or email
- visit our Advice Centre.

The address and other contact details are:

Custom House
North Quay
Douglas
Isle of Man
IM99 1AG
Tel: (01624) 648130
Fax: (01624) 661725
Email: customs@gov.im

Getting advice

You can get advice from a professional adviser or organisation.

Customer Service

Our commitment to you

We are here to ensure that everyone understands and receives what they are entitled to and understands and pays what they owe, so that everyone contributes to the Island's needs.

We will:

- listen carefully
- answer accurately and respond promptly
- keep your personal and business details confidential
- treat you fairly and with respect.

Putting things right

If you are not satisfied with our service, please let the person dealing with your affairs know what is wrong and try to resolve it on the spot with our officer. We will work as quickly as possible to put things right and settle your complaint.

If you are still unhappy, ask for your complaint to be referred to the Collector.

Customers with particular needs

We offer a range of facilities for customers with particular needs, including:

- home visits, if you have limited mobility or caring responsibilities and cannot get to our office
- services of an interpreter
- help with filling in forms
- leaflets in large print, Braille and audio.

Appendix

The four questions which are asked in relation to value added tax:

Question 1

Have any transactions been omitted from, or incorrectly recorded, in the books and records of (name of legal entity) for which you are (responsible status)?

Question 2

Are the books and records you are required to keep by Customs and Excise for (name of legal entity) for which you are (responsible status), correct and complete to the best of your knowledge and belief?

Question 3

Are all the VAT returns of the (name of legal entity) for which you are (responsible status) correct and complete to the best of your knowledge and belief?

Question 4

Were you aware that any of the VAT returns were incorrect or incomplete at the time they were submitted?

False statements may result in a criminal investigation with a view to prosecution.

If the investigation is concerned with other indirect taxes (customs or excise duties) a separate set of formal questions will be sent with this Code of Practice.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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