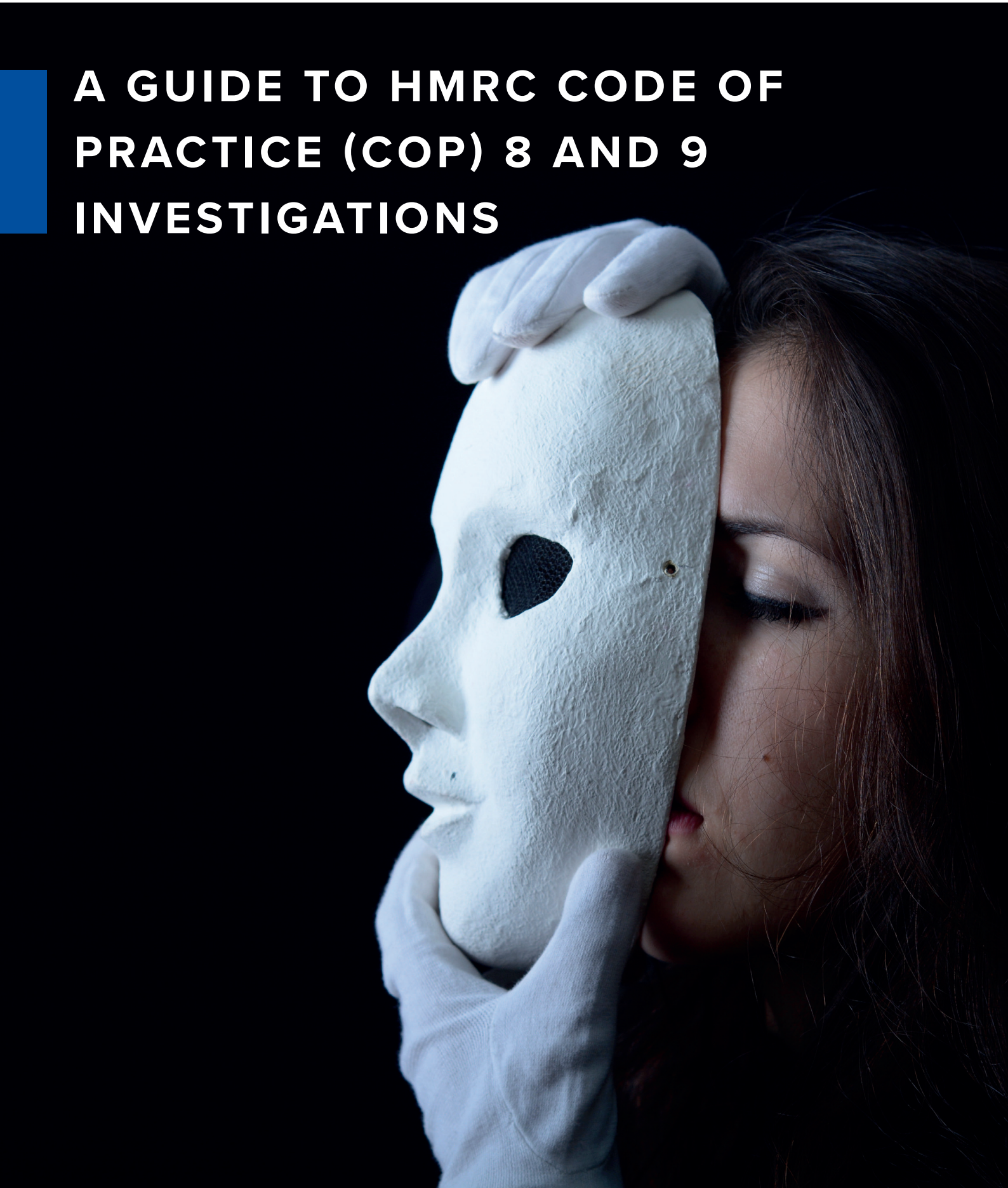
PKF FRANCISCLARK

Chartered accountants & business advisers

SHAREDAMBITION

# A GUIDE TO HMRC CODE OF PRACTICE (COP) 8 AND 9 INVESTIGATIONS



A person who receives a notice from HMRC notifying them that they are being investigated under Code of Practice 8 (COP8) or Code of Practice 9 (COP9) urgently needs to seek the correct advice at an early stage. The nature of these enquiries will centre around an allegation by HMRC of deliberate or fraudulent conduct in not paying the correct amount of tax.

COP8 enquiries will usually involve larger transactions, tax avoidance schemes or offshore transactions. This is different to suspected deliberate inaccuracies in business records or undisclosed capital gains, where a COP9 notice would be served instead.

These investigations will be initiated by a team working for HMRC's fraud investigation service (FIS). Any letter received by them has to be treated extremely seriously and advice should be sought immediately if you are at all unsure how to respond.

## A FAILURE TO RESPOND TO THESE INVESTIGATIONS CORRECTLY COULD RESULT IN A CRIMINAL PROSECUTION BEING BROUGHT AGAINST AN INDIVIDUAL.

Chris Watts and his investigation team have the expertise to help you, or if you'd prefer, deal with the enquiry directly for you. They have experience of liaising with HMRC in respect of small local compliance enquiries and dealing with HMRC's various campaigns, initiatives and taskforces, to preparing Code of Practice 8 and 9 disclosure reports and Contractual Disclosure Facility (CDF) submissions.

## CODE OF PRACTICE 8 (COP8) – SUSPECTED DELIBERATE OR FRAUDULENT CONDUCT.

HMRC will issue a COP8 letter advising they are looking into suspected deliberate or fraudulent behaviour on the part of a taxpayer. HMRC reserve the right to prosecute in the most severe cases or where a taxpayer does not co-operate with HMRC's investigation; however these occurrences are very rare.

There is no requirement for a disclosure report to be made as part of this type of enquiry, as it is led by HMRC who will instead request details on the transactions from the taxpayer.

WE CAN HELP WITH THE RESPONSES TO HMRC TO ENSURE THE CHANCES OF FURTHER ACTION BY HMRC ARE MINIMAL. WHERE CORRECTIONS ARE REQUIRED TO A TAXPAYER'S AFFAIRS, WE CAN ENSURE AN ADEQUATE DISCLOSURE IS BEING MADE AND HELP MITIGATE ANY PENALTIES.

WE CAN ALSO DEFEND AN ALLEGATION OF FRAUD WHERE A TAXPAYER IS INNOCENT, OR THE ERRORS HMRC SUSPECTED WERE NOT AS A RESULT OF DELIBERATE OR FRAUDULENT BEHAVIOUR.

## CODE OF PRACTICE 9 (COP9) – CONTRACTUAL DISCLOSURE FACILITY (CDF)

HMRC will issue a COP9 notice advising they are looking into suspected deliberate or fraudulent behaviour on the part of a taxpayer. However, they will offer the taxpayer the opportunity to make an outline disclosure, using the CDF forms and provide an immunity from prosecution if a taxpayer provides details of what they have done wrong.

A taxpayer also has the option to respond and refute the allegation, but much care is needed in considering this option and providing information to HMRC which may be relevant to the enquiry, to counter the suggestion that there had been any deliberate or fraudulent conduct.

There is a strict 60 day time limit to respond to HMRC when issued with the opportunity to enter into a CDF. A failure to respond to either accept or refuse the CDF will result in the case being passed to HMRC's criminal investigations team, for them to consider whether to prosecute or pass back for further enquiries to take place.

HMRC will then request a meeting with the taxpayer to discuss the disclosure report, as well as looking at their personal and business affairs to make sure there are no other matters that require attention. We can attend these meetings to help with the discussions and ensure HMRC do not overstep the mark in the questions they are asking, or in their behaviour towards the taxpayer.

WE BELIEVE IT IS IMPORTANT THAT THE CORRECT REPRESENTATION IS PROVIDED, THEREFORE WE OFFER A FIXED FEE FOR THE INITIAL CDF PROCESS FOR A COP9 ENQUIRY AT A COMPETITIVE PRICE. PLEASE CONTACT US FOR MORE DETAILS.

From there we can help with the preparation of a formal disclosure report, which is generally required by HMRC. This provides details of both fraudulent and non-fraudulent activities that has resulted in a loss of tax to HMRC. These reports can be both lengthy and intrusive, as they would cover a period of up to 20 years. Reports are required by HMRC in order to consider all aspects of a person's tax affairs, both business and personal, covering both their UK and worldwide (offshore) matters.

Our team are well placed to advise the taxpayer of what is required and reduce the inevitable stress associated with this type of enquiry, by giving clear and professional advice on the process. We will also liaise with HMRC throughout the process, meaning the taxpayer does not need to have the stress of continually dealing directly with HMRC whilst under enquiry.

## PENALTIES

HMRC can charge severe penalties where a tax liability has arisen due to deliberate or fraudulent conduct. Even where this is not the case, a penalty for careless behaviour where there has been a lack of co-operation or an incomplete disclosure, can also result in a large penalty.

The penalty is charged on the potential lost revenue (PLR), which is the figure for the total additional tax liabilities which HMRC consider to have arisen as a result of their enquiry.

The penalty range HMRC can charge for inaccuracies is as follows :-

| Behaviour | Penalty charge for unprompted disclosure | Penalty range for prompted disclosure |
|---|---|---|
| Careless | 0% - 30% | 15% - 30% |
| Deliberate | 20% - 70% | 35% - 70% |
| Deliberate and concealed | 30% - 100% | 50% - 100% |

*The penalty is charged as a percentage of that figure for the PLR.*

WE CAN ADVISE ON HOW BEST TO MITIGATE PENALTIES BY ENSURING DISCLOSURES TO HMRC ARE BOTH COMPLETE AND ACCURATE, ENSURING GOOD CO-OPERATION IS MAINTAINED THROUGHOUT THE ENQUIRY PROCESS.

Statutory late payment interest is also charged, calculated back to the due date for each tax year. Where a disclosure covers 20 years, the interest charge alone can exceed the tax liability in many of the earliest years. This can be mitigated by lodging a payment on account of final settlement at the earliest opportunity. The making of a payment on account will also help with discussions on the level of penalties, although HMRC will never confirm this.

## PUBLICATION OF DELIBERATE DEFAULTERS

HMRC has the power to publish the names of individuals or companies where a tax liability exceeding £25,000 has arisen through deliberate conduct. However, where full mitigation of penalties has been obtained, HMRC will not do so or representations can be made as to why details should not otherwise be published.

Getting the correct advice through the enquiry process will help in achieving the necessary criteria for details not to be published.

## SETTLEMENT

At the end of the enquiry process, we can help with negotiating the final settlement of tax, interest and penalties. Time to pay arrangements can also be agreed with HMRC where appropriate, if it is apparent that the final settlement cannot be paid in full. HMRC will generally be more receptive to these arrangements where good levels of disclosure and co-operation have been received.

WITH OUR TEAM'S COMBINED EXPERIENCE, FROM SUCCESSFULLY HELPING TAXPAYERS SUBJECT TO ENQUIRIES UNDER COP8 AND COP9, TOGETHER WITH THE FACT THAT A NUMBER USED TO WORK FOR HMRC, WE KNOW WE CAN HELP NAVIGATE YOU SUCCESSFULLY THROUGH THIS VERY DIFFICULT TIME.

## MEET THE TEAM

Chris specialises in COP8 and COP9 tax investigations, working with clients to represent them at HMRC meetings and prepare disclosure reports, including where HMRC have wrongly alleged a client has been involved in fraudulent conduct. He has a wealth of experience at challenging HMRC at all levels of tax investigations to ensure clients get the correct result and HMRC act within their own internal guidance as well as the tax legislation. He also represents clients at Alternative Dispute Resolution meetings with HMRC.

His background from tax compliance also enables Chris to produce detailed tax planning reports which covers all aspects of personal tax, capital gains tax, family company structures and inheritance tax.

Mark is a law graduate who has specialised in tax for over 30 years. He has principally worked as a general practitioner to the SME sector and has developed specialisms in HMRC tax enquiries/investigations (inc. criminal based investigations); business valuations/sales & acquisitions; R&D claims; capital allowance claims; share scheme implementation; and business incorporations.

He also has extensive experience of working with employment businesses including HMRC employment status enquiries (inc. IR35, MSCs, CIS); umbrella company reviews and dispensation applications; Employment agency reviews/HMRC enquiries; and employment business creation & planning/operational support.

Dave joined PKF Francis Clark in October 2018 after a 27 year career working for HMRC. Working as part of the tax advisory investigations team, Dave oversees all manner of HMRC tax investigations, from COP9 suspected fraud enquiries to S9A local compliance checks. As a former tax inspector, Dave has over 20 years' experience of working in a varied range of enforcement and compliance roles, including employer compliance, local compliance, specialist personal tax trusts and estates and counter-avoidance enquiries into tax avoidance schemes.

His vast enquiry experience gained whilst working for HMRC overseeing, working and settling many hundreds of tax enquiries ensures that he can offer valued support and a robust defence.

IF YOU HAVE ANY QUERIES PLEASE EMAIL US AT INVESTIGATIONS@PKF-FRANCISCLARK.CO.UK OR BY PHONE 01803 320100