

The Contractual Disclosure Facility (CDF)



The Contractual Disclosure Facility came into force on 31 January 2012 as a means of making a Disclosure to HM Revenue & Customs (HMRC).

What is HMRC's view on tax fraud?

Where HMRC discovers that a taxpayer has committed a tax fraud, HMRC will consider any investigation from a criminal perspective, first and foremost.

If HMRC decides that a criminal prosecution is not be pursued, then they will investigate on a civil basis under Code of Practice 9, entitled "*HM Revenue & Customs investigations where we suspect tax fraud*".

The CDF is not appropriate for people who want to disclose only careless errors, mistakes, or the existence and participation in any tax avoidance arrangements.

What can HMRC do?

HMRC can:

- investigate any taxpayer for up to 20 years
- raise estimated assessments for any unpaid tax, interest and penalties
- take enforcement proceedings, which include bankruptcy

What does the CDF consist of?

The CDF is a process which both the taxpayer and HMRC sign up to as a contract. HMRC will offer the CDF to suitable taxpayers under a fixed timetable. The taxpayer can:

- accept and make an Outline Disclosure; or
- make a denial and either cooperate with HMRC or not

Whichever route is followed, all the relevant facts need to be established.

- If the taxpayer wishes to cooperate, a Disclosure Report will be commissioned by the taxpayer and submitted to HMRC.
- If a denial is made, the taxpayer will still be asked to engage with HMRC with a view to establish all the relevant facts.
- If the non-cooperation route is followed, HMRC will reconsider whether a criminal or civil investigation will be pursued by HMRC.

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Most taxpayers will seek the CDF if it is offered to them by HMRC.

The content of any Disclosure Report will be confined to the matter(s) being disclosed.

An individual can make a disclosure that may impact upon another taxpayer, for example a Director can make a Disclosure about himself and their company.

Following a period of negotiation, a Settlement will be reached identifying the tax, interest and penalties due.

How much will it cost?

Every case will be unique but what is certain is that a Disclosure under the CDF will cost less than a comparable investigation triggered by HMRC.

Cost should not just be measured in terms of tax, interest and penalties or professional fees. There is an “emotional cost” in terms of stress and worry that is as a result of not knowing what may happen next.

Under the CDF, the taxpayer is in control, not HMRC.

HMRC will seek a Settlement with the taxpayer to include all taxes (both direct tax such as income tax and indirect tax such as VAT), for all years, plus interest and a financial penalty.

What if HMRC cannot be paid?

As part of any Settlement negotiations, a Time to Pay plan can be included as well. HMRC may seek assurances that the full amount will be paid ultimately.

In some circumstances, any Time to Pay plan can be renegotiated at a later date, if necessary.

HMRC can seek enforcement if a taxpayer ceases to cooperate.

What happens after the CDF?

HMRC will seek a change in the behaviour of the taxpayer which may be monitored for a period of time going forwards by monitoring future tax returns. In certain circumstances, HMRC may ask for additional information to be submitted as part of that taxpayer's return.

How Haines Watts can help

We will advise you on the full terms of the Contractual Disclosure Facility and the benefits it offers. We can then advise on the cost of seeking a Settlement and the timescales involved.

Haines Watts can negotiate a Settlement with HM Revenue & Customs on your behalf and facilitate discussions with any other intermediaries.

Going forward, taxpayers will have **certainty** that their tax affairs are fully compliant.

To find out how Haines Watts can help, call Paul Malin on + 44 (0)7919 375 650 or email pmalin@hwca.com anytime