



HMRC criminal investigations

June 2025

Guidance note

Introduction

1. Although HMRC is responsible for investigating crime involving all of the taxes and other regimes it administers, it is not responsible for criminal prosecutions. The decision whether to bring a criminal prosecution is made in England and Wales by the Crown Prosecution Service (the CPS), in Northern Ireland, by the Public Prosecution Service, and in Scotland, it is the Crown Office and Procurator Fiscal Service.
2. There is no offence of “tax evasion”, instead, the relevant prosecuting authorities have several statutory and common law offences under which they can investigate and charge individuals and companies suspected of evading tax, including:
 - fraud (section 1, Fraud Act 2006)
 - false accounting (section 117, Theft Act 1968)
 - fraudulent evasion of VAT (section 72(1), Value Added Tax Act 1994)
 - false statement for VAT purposes (section 72(3), Value Added Tax Act 1994)
 - conduct amounting to an offence (section 72(8), Value Added Tax Act 1994)
 - fraudulent evasion of income tax (section 106A, Taxes Management Act 1970)
 - improper importation of goods (section 50(1)(a) and (2), Customs and Excise Management Act 1979), and
 - cheating the public revenue (a common law offence).
3. There are some strict liability criminal tax offences, where dishonesty does not need to be proven, for example sections 106B, 106C and 106D, Taxes Management Act 1970. There are, additionally, the corporate criminal offences of failure to prevent tax evasion (foreign and domestic) under sections 45 and 46, Criminal Finances Act 2017 (see guidance note: Failure to prevent the facilitation of tax evasion). The Economic Crime and Corporate Transparency Act 2023 will further introduce an offence of failure to prevent fraud; this is scheduled to come into force from September 2025.
4. HMRC often relies on the common law offence of cheating the public revenue. This offence is available in relation to all taxes, charges and duties within the care and management of HMRC. On conviction, the maximum penalty is life imprisonment and/or an unlimited fine. Cheating can only be tried on indictment, which means it must be tried in the Crown Court before a jury.

Investigating suspected tax fraud

5. While HMRC is responsible for investigating crime involving all of the taxes and other regimes within its remit, civil and criminal investigations are separate. Not all HMRC officers are authorised to use HMRC's criminal investigation powers and HMRC is not permitted to use its criminal investigation powers to further a non-criminal enquiry.
6. HMRC has issued a statement of its prosecution policy, most recently updated in July 2021¹. HMRC's stated policy is to deal with fraud by the procedures under Code of Practice 9 (see guidance note: Civil Tax Fraud Investigations - Code of Practice 9) wherever appropriate, whereas "[c]riminal investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate". These include:
 - cases of organised criminal gangs attacking the tax system
 - where an individual holds a position of trust or responsibility
 - where materially false statements are made, or materially false documents provided, during the course of a civil investigation
 - where reliance is placed on a false or altered document
 - where there is suspicion of deliberate concealment, deception, conspiracy or corruption
 - cases involving importation or exportation breaching prohibitions and restrictions
 - cases involving money laundering with a particular focus on advisers, accountants, solicitors and others acting in a professional capacity, who provide the means to put tainted money beyond the reach of law enforcement
 - where the perpetrator has committed previous offences or there is a repeated course of unlawful conduct or previous civil action
 - cases involving theft, or the misuse or unlawful destruction of HMRC documents
 - where there is evidence of assault on, threats to, or the impersonation of, HMRC officials
 - where there is a link to suspected wider criminality, domestic or international.

Phases of a criminal investigation and prosecution

7. Unlike civil investigations, where notification of the opening of an investigation is given to a taxpayer, it is often the case that a suspect under criminal investigation does not know that they are under criminal investigation.
8. In most instances, the investigation will be conducted by way of interviews of witnesses and obtaining documents from third parties, but covert investigation can also include:

Surveillance

Surveillance is defined in section 48, Regulation of Investigatory Powers Act 2000 (RIPA), as including "*monitoring, observing or listening to persons, their movements, their communications, their conversations or their other activities or communications; recording anything monitored, observed or listened to in the course of surveillance; and surveillance by or with the assistance of a surveillance device*"². As might be expected, surveillance, due to the level of intrusion involved, is highly regulated under Part II, RIPA.

Surveillance can be conducted in a number of ways and in a variety of locations ranging from observations of people in a public place through to recording a person's activities in their private residence. As the level of intrusion into private life increases, so too do the statutory protections.

While investigating fraud, HMRC may carry out surveillance, for example of business premises, and make recordings of any activity or conversation which occurs in public. HMRC may also monitor those entering or leaving a premises.

¹ <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy>

² A surveillance device is any apparatus designed or adapted for use in surveillance.

Obtaining communications data

As well as powers to conduct surveillance, HMRC can, under the Investigatory Powers Act 2016, request data held by telecommunication operators including the time, duration and location of a phone call, together with the number dialled. However, it cannot, without the authority of the secretary of state, ascertain what is being said on the call; this is sometimes described as the “who”, the “when” and the “where”, but not the “what”.

When investigating suspected fraud, HMRC may also obtain records of text messages and media (including images and links) sent to and from specified phone numbers.

Interview and arrest

9. The first time most people find out that they are under criminal investigation is when they are either requested to attend an interview under caution or they are arrested.
10. Both arrest and interview under caution are serious matters which require specialist legal advice (see guidance note: What to do if you or your client is arrested by HMRC).
11. Following interview under caution, it is likely that the suspect will be released under investigation pending charge and HMRC will continue to conduct their investigation.
12. Routine criminal investigation powers are mainly contained in the Police and Criminal Evidence Act 1984 (PACE), the principal powers available to officers of HMRC are:
 - the power of arrest for all indictable tax offences (section 24)
 - the power to search premises (section 8 and Schedule 1) (see guidance note: HMRC dawn raids - a step-by-step guide to managing an HMRC dawn raid)
 - the power to apply for production orders for special procedure material (Schedule 1, paragraphs 7-11) (see guidance note: How to challenge and respond to an HMRC production order)
 - the power to enter and search premises to effect an arrest (section 17)
 - the power to enter, search and seize evidence on premises occupied or controlled by a person who is under arrest, subject to authorisation by a senior ranking investigating officer (section 18)
 - the power to seize material found on premises on which an HMRC officer is lawfully present, including power to require production of electronic matter in a readable form (section 19)
 - the power to search an arrested person for evidence and to enter, search and seize evidence on premises where an arrested person was found immediately before arrest (section 32).
13. Not all the powers contained in PACE are available to HMRC. For example, HMRC may not take fingerprints, or charge or bail suspects; these procedures must be carried out by a police officer.
14. The above criminal investigation powers can be used only by HMRC officers authorised to use such powers. PACE provides that some powers can be exercised only by officers of a particular grade.
15. The final stage of a criminal investigation is the referral to the CPS for a charging decision. HMRC will prepare a file for the CPS summarising all of their allegations and providing all of the evidence that they have collected. To issue a charge, the CPS has to be satisfied of two things:
 - there is sufficient evidence to provide a reasonable prospect of conviction, and
 - bringing the case to court is in the public interest.
16. In reaching its decision, the CPS will take into consideration any submissions that the suspect wishes to make concerning whether they should be charged. These can be in relation to:
 - the sufficiency of the evidence
 - the lack of public interest in the prosecution, and/or
 - the suspect will not receive a fair trial.

17. Once the CPS has reviewed the file and considered any submissions made on behalf of the suspect, it will decide whether the suspect should be charged. If it determines that a charge will be laid, the suspect will then be given a date to appear in court.

Top tips

- An HMRC criminal investigation is very different to an HMRC civil enquiry and specialist legal advice should be sought from the outset.
- No discussions or correspondence with HMRC should take place prior to the obtaining of expert legal advice.
- Tax fraud can be complex and it be appropriate to see legal advice from lawyers who specialise in both tax law and financial crime.

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