

PAY NOW, ARGUE LATER - HMRC takes powers to issue "accelerated payment notices"

Finance Bill 2014 (effective from mid-July) will extend HMRC's powers to force taxpayers to pay disputed tax up front before the dispute is resolved. This power will affect up to 43,000 individuals and companies concerning over £7 billion of tax.

Our parallel briefing note on the "follower regime" describes the new regime that will deny rights of appeal.

How does it work?

- **The trigger:** a taxpayer has claimed a tax advantage and there is an enquiry or pending appeal and one of three circumstances applies.
- **The three circumstances:**
 - **FOLLOWER CASES:** where a taxpayer has used the tax arrangement to claim a tax advantage and has received a "follower notice" advising it that a judicial ruling in another appeal is relevant to the tax arrangement and, if applied, would deny the tax advantage.
 - **CASES UNDER THE DISCLOSURE OF TAX AVOIDANCE SCHEMES ("DOTAS") REGIME:** where a taxpayer claims a tax advantage under a tax arrangement which is a DOTAS arrangement.
 - **GENERAL ANTI ABUSE RULE ("GAAR") CASES:** where the taxpayer is claiming an advantage and the advantage is subject to a "counteraction notice" by HMRC under GAAR.
- **The notice:** HMRC must comply with a specific

procedure and meet prescribed conditions.

- **The effect:** the taxpayer is required pay the disputed tax within 90 days. The taxpayer may make representations within a limited time objecting to the notice.
- **Penalties:** where the taxpayer fails to pay, penalties apply.

Increased legal challenges

HMRC acknowledges that the measures are "expected to prompt a range of different legal challenges including judicial review proceedings, an increase in closure applications to the Tribunal and disputed enforcement activity". The reasons for this are:

- The new legislation is specific and requires HMRC to comply with prescribed conditions;
- The taxpayer has a limited time within which to object to the accelerated payment notice;
- In each case HMRC's actions and decisions will be carefully scrutinised as they may be subject to legal challenge.

Key questions

- Is there an ongoing tax enquiry or a pending appeal which involves claiming a tax advantage?
- Does the tax advantage arise in any of the following circumstances?
 - Follower cases: has a follower notice been received?
 - DOTAS cases: has the arrangement been allocated a DOTAS reference number?
 - GAAR cases: has a GAAR counteraction notice been received?
- Has an accelerated payment notice been received?
- Have the conditions for compliance with the accelerated payment notice been satisfied?
- Has objection to the accelerated payment notice been made within time?

Specific examples

Follower cases:

A number of individuals have in recent years participated in Film Production Partnership schemes. The schemes were particularly useful for those with significant income tax bills since the schemes were intended to generate a loss that could be offset against other income. HMRC has started to challenge these schemes.

In these cases the following procedure will apply:

- HMRC will first issue a "follower notice" where a judicial ruling in HMRC's favour in another appeal is relevant to the tax arrangement, requiring the taxpayer to amend its tax return or settle its dispute in line with the other judicial ruling.
- Once a follower notice has been issued, HMRC can proceed to issue an "accelerated payment notice" demanding payment of tax.

DOTAS cases:

The DOTAS regime requires advance disclosure of certain tax schemes. Where DOTAS disclosure is made a scheme reference number is supplied by HMRC and the scheme user has to notify HMRC that it is using the scheme by inserting the number in its tax return.

In these cases, HMRC can proceed to issue an "accelerated payment notice" demanding payment of tax if HMRC considers the scheme to be ineffective.

GAAR cases:

The General Anti Abuse Rule ("GAAR") came into force in July 2013 and is one part of the Government's approach to managing the risk of tax avoidance. The GAAR legislation defines what abusive tax arrangements are.

The new legislation will become effective in July 2014. It is now a good opportunity to assess your affairs in anticipation of the implementation of the new regime.

Where HMRC seeks to invoke the GAAR, it has to follow specific procedures including referring the matter to an advisory panel. The panel will provide an opinion on whether it considers the tax arrangements are abusive. If the panel considers the arrangements are abusive, HMRC can give the taxpayer a GAAR "counteraction notice".

In these cases, the following procedure will apply:

- HMRC give the taxpayer a GAAR counteraction notice;
- Then HMRC can issue an "accelerated payment notice", demanding payment of tax.

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