



Finance Act 2014

2014 CHAPTER 26

PART 4

FOLLOWER NOTICES AND ACCELERATED PAYMENTS

CHAPTER 2

FOLLOWER NOTICES

Giving of follower notices

204 Circumstances in which a follower notice may be given

- (1) HMRC may give a notice (a “follower notice”) to a person (“P”) if Conditions A to D are met.
- (2) Condition A is that—
 - (a) a tax enquiry is in progress into a return or claim made by P in relation to a relevant tax, or
 - (b) P has made a tax appeal (by notifying HMRC or otherwise) in relation to a relevant tax, but that appeal has not yet been—
 - (i) determined by the tribunal or court to which it is addressed, or
 - (ii) abandoned or otherwise disposed of.
- (3) Condition B is that the return or claim or, as the case may be, appeal is made on the basis that a particular tax advantage (“the asserted advantage”) results from particular tax arrangements (“the chosen arrangements”).
- (4) Condition C is that HMRC is of the opinion that there is a judicial ruling which is relevant to the chosen arrangements.

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- (5) Condition D is that no previous follower notice has been given to the same person (and not withdrawn) by reference to the same tax advantage, tax arrangements, judicial ruling and tax period.
- (6) A follower notice may not be given after the end of the period of 12 months beginning with the later of—
 - (a) the day on which the judicial ruling mentioned in Condition C is made, and
 - (b) the day the return or claim to which subsection (2)(a) refers was received by HMRC or (as the case may be) the day the tax appeal to which subsection (2)(b) refers was made.

205 “Judicial ruling” and circumstances in which a ruling is “relevant”

- (1) This section applies for the purposes of this Chapter.
- (2) “Judicial ruling” means a ruling of a court or tribunal on one or more issues.
- (3) A judicial ruling is “relevant” to the chosen arrangements if—
 - (a) it relates to tax arrangements,
 - (b) the principles laid down, or reasoning given, in the ruling would, if applied to the chosen arrangements, deny the asserted advantage or a part of that advantage, and
 - (c) it is a final ruling.
- (4) A judicial ruling is a “final ruling” if it is—
 - (a) a ruling of the Supreme Court, or
 - (b) a ruling of any other court or tribunal in circumstances where—
 - (i) no appeal may be made against the ruling,
 - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
 - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
 - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (5) Where a judicial ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of subsection (4)(b), the ruling is treated as made at the time when the sub-paragraph in question is first satisfied.

206 Content of a follower notice

A follower notice must—

- (a) identify the judicial ruling in respect of which Condition C in section 204 is met,
- (b) explain why HMRC considers that the ruling meets the requirements of section 205(3), and
- (c) explain the effects of sections 207 to 210.

Representations

207 Representations about a follower notice

- (1) Where a follower notice is given under section 204, P has 90 days beginning with the day that notice is given to send written representations to HMRC objecting to the notice on the grounds that—
 - (a) Condition A, B or D in section 204 was not met,
 - (b) the judicial ruling specified in the notice is not one which is relevant to the chosen arrangements, or
 - (c) the notice was not given within the period specified in subsection (6) of that section.
- (2) HMRC must consider any representations made in accordance with subsection (1).
- (3) Having considered the representations, HMRC must determine whether to—
 - (a) confirm the follower notice (with or without amendment), or
 - (b) withdraw the follower notice,and notify P accordingly.

Penalties

208 Penalty if corrective action not taken in response to follower notice

- (1) This section applies where a follower notice is given to P (and not withdrawn).
- (2) P is liable to pay a penalty if the necessary corrective action is not taken in respect of the denied advantage (if any) before the specified time.
- (3) In this Chapter “the denied advantage” means so much of the asserted advantage (see section 204(3)) as is denied by the application of the principles laid down, or reasoning given, in the judicial ruling identified in the follower notice under section 206(a).
- (4) The necessary corrective action is taken in respect of the denied advantage if (and only if) P takes the steps set out in subsections (5) and (6).
- (5) The first step is that—
 - (a) in the case of a follower notice given by virtue of section 204(2)(a), P amends a return or claim to counteract the denied advantage;
 - (b) in the case of a follower notice given by virtue of section 204(2)(b), P takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing the denied advantage.
- (6) The second step is that P notifies HMRC—
 - (a) that P has taken the first step, and
 - (b) of the denied advantage and (where different) the additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.
- (7) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of subsection (6)(b), it is to be assumed that, where P takes the necessary action as mentioned in subsection (5)(b), the agreement is then entered into.

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(8) In this Chapter—

“the specified time” means—

- (a) if no representations objecting to the follower notice were made by P in accordance with subsection (1) of section 207, the end of the 90 day post-notice period;
- (b) if such representations were made and the notice is confirmed under that section (with or without amendment), the later of—
 - (i) the end of the 90 day post-notice period, and
 - (ii) the end of the 30 day post-representations period;

“the 90 day post-notice period” means the period of 90 days beginning with the day on which the follower notice is given;

“the 30 day post-representations period” means the period of 30 days beginning with the day on which P is notified of HMRC’s determination under section 207.

(9) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent P taking the first step mentioned in subsection (5)(a) before the tax enquiry is closed (whether or not before the specified time).

(10) No appeal may be brought, by virtue of a provision mentioned in subsection (11), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by P to a return or claim in taking the first step mentioned in subsection (5)(a) (whether or not that amendment was made before the specified time).

(11) The provisions are—

- (a) section 31(1)(b) or (c) of TMA 1970,
- (b) paragraph 9 of Schedule 1A to TMA 1970,
- (c) paragraph 34(3) of Schedule 18 to FA 1998,
- (d) paragraph 35(1)(b) of Schedule 10 to FA 2003, and
- (e) paragraph 35(1)(b) of Schedule 33 to FA 2013.

209 Amount of a section 208 penalty

- (1) The penalty under section 208 is 50% of the value of the denied advantage.
- (2) Schedule 30 contains provision about how the denied advantage is valued for the purposes of calculating penalties under this section.
- (3) Where P before the specified time—
 - (a) amends a return or claim to counteract part of the denied advantage only, or
 - (b) takes all necessary action to enter into an agreement with HMRC (in writing) for the purposes of relinquishing part of the denied advantage only,
 in subsections (1) and (2) the references to the denied advantage are to be read as references to the remainder of the denied advantage.

210 Reduction of a section 208 penalty for co-operation

- (1) Where—
 - (a) P is liable to pay a penalty under section 208 of the amount specified in section 209(1),

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- (b) the penalty has not yet been assessed, and
 - (c) P has co-operated with HMRC,
- HMRC may reduce the amount of that penalty to reflect the quality of that co-operation.
- (2) In relation to co-operation, “quality” includes timing, nature and extent.
 - (3) P has co-operated with HMRC only if P has done one or more of the following—
 - (a) provided reasonable assistance to HMRC in quantifying the tax advantage;
 - (b) counteracted the denied advantage;
 - (c) provided HMRC with information enabling corrective action to be taken by HMRC;
 - (d) provided HMRC with information enabling HMRC to enter an agreement with P for the purpose of counteracting the denied advantage;
 - (e) allowed HMRC to access tax records for the purpose of ensuring that the denied advantage is fully counteracted.
 - (4) But nothing in this section permits HMRC to reduce a penalty to less than 10% of the value of the denied advantage.

211 Assessment of a section 208 penalty

- (1) Where a person is liable for a penalty under section 208, HMRC may assess the penalty.
- (2) Where HMRC assess the penalty, HMRC must—
 - (a) notify the person who is liable for the penalty, and
 - (b) state in the notice a tax period in respect of which the penalty is assessed.
- (3) A penalty under section 208 must be paid before the end of the period of 30 days beginning with the day on which the person is notified of the penalty under subsection (2).
- (4) An assessment—
 - (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Chapter),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (5) No penalty under section 208 may be notified under subsection (2) later than—
 - (a) in the case of a follower notice given by virtue of section 204(2)(a) (tax enquiry in progress), the end of the period of 90 days beginning with the day the tax enquiry is completed, and
 - (b) in the case of a follower notice given by virtue of section 204(2)(b) (tax appeal pending), the end of the period of 90 days beginning with the earliest of—
 - (i) the day on which P takes the necessary corrective action (within the meaning of section 208(4)),
 - (ii) the day on which a ruling is made on the tax appeal by P, or any further appeal in that case, which is a final ruling (see section 205(4)), and
 - (iii) the day on which that appeal, or any further appeal, is abandoned or otherwise disposed of before it is determined by the court or tribunal to which it is addressed.

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- (6) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.

212 Aggregate penalties

- (1) Subsection (2) applies where—
- (a) two or more penalties are incurred by the same person and fall to be determined by reference to an amount of tax to which that person is chargeable,
 - (b) one of those penalties is incurred under section 208, and
 - (c) one or more of the other penalties are incurred under a relevant penalty provision.
- (2) The aggregate of the amounts of the penalties mentioned in subsection (1)(b) and (c), so far as determined by reference to that amount of tax, must not exceed—
- (a) the relevant percentage of that amount, or
 - (b) in a case where at least one of the penalties is under paragraph 5(2)(b) or 6(3)(b), (4)(b) or (5)(b) of Schedule 55 to FA 2009, £300 (if greater).
- (3) In the application of section 97A of TMA 1970 (multiple penalties), no account is to be taken of a penalty under section 208.
- (4) “Relevant penalty provision” means—
- (a) Schedule 24 to FA 2007 (penalties for errors),
 - (b) Schedule 41 to FA 2008 (penalties: failure to notify etc), or
 - (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc).
- (5) “The relevant percentage” means—
- (a) 200% in a case where at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(4)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(c) of Schedule 55 to FA 2009,
 - (b) 150% in a case where paragraph (a) does not apply and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(3)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(b) of Schedule 55 to FA 2009,
 - (c) 140% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(4)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(b) of Schedule 41 to FA 2008,
 - (iii) paragraph 6(4A)(c) of Schedule 55 to FA 2009,
 - (d) 105% in a case where none of paragraphs (a), (b) and (c) applies and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(3)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(b) of Schedule 41 to FA 2008,
 - (iii) paragraph 6(4A)(b) of Schedule 55 to FA 2009, and
 - (e) in any other case, 100%.

213 Alteration of assessment of a section 208 penalty

- (1) After notification of an assessment has been given to a person under section 211(2), the assessment may not be altered except in accordance with this section or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the denied advantage.
- (3) An assessment or supplementary assessment may be revised as necessary if it operated by reference to an overestimate of the denied advantage; and, where more than the resulting assessed penalty has already been paid by the person to HMRC, the excess must be repaid.

214 Appeal against a section 208 penalty

- (1) P may appeal against a decision of HMRC that a penalty is payable by P under section 208.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P under section 208.
- (3) The grounds on which an appeal under subsection (1) may be made include in particular—
 - (a) that Condition A, B or D in section 204 was not met in relation to the follower notice,
 - (b) that the judicial ruling specified in the notice is not one which is relevant to the chosen arrangements,
 - (c) that the notice was not given within the period specified in subsection (6) of that section, or
 - (d) that it was reasonable in all the circumstances for P not to have taken the necessary corrective action (see section 208(4)) in respect of the denied advantage.
- (4) An appeal under this section must be made within the period of 30 days beginning with the day on which notification of the penalty is given under section 211.
- (5) An appeal under this section is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (6) Subsection (5) does not apply—
 - (a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Part.
- (7) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.
- (8) On an appeal under subsection (1), the tribunal may affirm or cancel HMRC's decision.
- (9) On an appeal under subsection (2), the tribunal may—
 - (a) affirm HMRC's decision, or

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- (b) substitute for HMRC’s decision another decision that HMRC had power to make.
- (10) The cancellation under subsection (8) of HMRC’s decision on the ground specified in subsection (3)(d) does not affect the validity of the follower notice, or of any accelerated payment notice or partner payment notice under Chapter 3 related to the follower notice.
- (11) In this section “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of subsection (5)).

Partners and partnerships

215 Follower notices: treatment of partners and partnerships

Schedule 31 makes provision about the application of this Chapter in relation to partners and partnerships.

Appeals out of time

216 Late appeal against final judicial ruling

- (1) This section applies where a final judicial ruling (“the original ruling”) is the subject of an appeal by reason of a court or tribunal granting leave to appeal out of time.
- (2) If a follower notice has been given identifying the original ruling under section 206(a), the notice is suspended until such time as HMRC notify P that—
 - (a) the appeal has resulted in a judicial ruling which is a final ruling, or
 - (b) the appeal has been abandoned or otherwise disposed of (before it was determined).
- (3) Accordingly the period during which the notice is suspended does not count towards the periods mentioned in section 208(8).
- (4) When a follower notice is suspended under subsection (2), HMRC must notify P as soon as reasonably practicable.
- (5) If the new final ruling resulting from the appeal is not a judicial ruling which is relevant to the chosen arrangements (see section 205), the follower notice ceases to have effect at the end of the period of suspension.
- (6) In any other case, the follower notice continues to have effect after the end of the period of suspension and, in a case within subsection (2)(a), is treated as if it were in respect of the new final ruling resulting from the appeal.
- (7) The notice given under subsection (2) must—
 - (a) state whether subsection (5) or (6) applies, and
 - (b) where subsection (6) applies in a case within subsection (2)(a), make any amendments to the follower notice required to reflect the new final ruling.
- (8) No new follower notice may be given in respect of the original ruling unless the appeal has been abandoned or otherwise disposed of before it is determined by the court or tribunal to which it is addressed.

- (9) Nothing in this section prevents a follower notice being given in respect of a new final ruling resulting from the appeal.
- (10) Where the appeal is abandoned or otherwise disposed of before it is determined by the court or tribunal to which it is addressed, for the purposes of the original ruling the period beginning when leave to appeal out of time was granted, and ending when the appeal is disposed of, does not count towards the period of 12 months mentioned in section 204(6).

Transitional provision

217 Transitional provision

- (1) In the case of judicial rulings made before the day on which this Act is passed, this Chapter has effect as if for section 204(6) there were substituted—
- “(6) A follower notice may not be given after—
- (a) the end of the period of 24 months beginning with the day on which this Act is passed, or
 - (b) the end of the period of 12 months beginning with the day the return or claim to which subsection (2)(a) refers was received by HMRC or (as the case may be) with the day the tax appeal to which subsection (2)(b) refers was made,
- whichever is later.”
- (2) Accordingly, the reference in section 216(10) to the period of 12 months includes a reference to the period of 24 months mentioned in the version of section 204(6) set out in subsection (1) above.

Defined terms

218 Defined terms used in Chapter 2

For the purposes of this Chapter—

- “arrangements” has the meaning given by section 201(4);
- “the asserted advantage” has the meaning given by section 204(3);
- “the chosen arrangements” has the meaning given by section 204(3);
- “the denied advantage” has the meaning given by section 208(3);
- “follower notice” has the meaning given by section 204(1);
- “HMRC” means Her Majesty’s Revenue and Customs;
- “judicial ruling”, and “relevant” in relation to a judicial ruling and the chosen arrangements, have the meaning given by section 205;
- “relevant tax” has the meaning given by section 200;
- “the specified time” has the meaning given by section 208(8);
- “tax advantage” has the meaning given by section 201(2);
- “tax appeal” has the meaning given by section 203;
- “tax arrangements” has the meaning given by section 201(3);
- “tax enquiry” has the meaning given by section 202(2);

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“tax period” means a tax year, accounting period or other period in respect of which tax is charged;

“P” has the meaning given by section 204(1);

“the 30 day post-representations period” has the meaning given by section 208(8);

“the 90 day post-notice period” has the meaning given by section 208(8).