



# Finance Act 2014

## 2014 CHAPTER 26

### PART 4

#### FOLLOWER NOTICES AND ACCELERATED PAYMENTS

### CHAPTER 3

#### ACCELERATED PAYMENT

#### *Accelerated payment notices*

#### **219 Circumstances in which an accelerated payment notice may be given**

- (1) HMRC may give a notice (an “accelerated payment notice”) to a person (“P”) if Conditions A to C 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 arrangements (“the chosen arrangements”).
- (4) Condition C is that one or more of the following requirements are met—
  - (a) HMRC has given (or, at the same time as giving the accelerated payment notice, gives) P a follower notice under Chapter 2—
    - (i) in relation to the same return or claim or, as the case may be, appeal, and

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- (ii) by reason of the same tax advantage and the chosen arrangements;
  - (b) the chosen arrangements are DOTAS arrangements;
  - (c) a GAAR counteraction notice has been given in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the matter under paragraph 10 of Schedule 43 to FA 2013 was as set out in paragraph 11(3)(b) of that Schedule (entering into tax arrangements not reasonable course of action etc).
- (5) “DOTAS arrangements” means—
- (a) notifiable arrangements to which HMRC has allocated a reference number under section 311 of FA 2004,
  - (b) notifiable arrangements implementing a notifiable proposal where HMRC has allocated a reference number under that section to the proposed notifiable arrangements, or
  - (c) arrangements in respect of which the promoter must provide prescribed information under section 312(2) of that Act by reason of the arrangements being substantially the same as notifiable arrangements within paragraph (a) or (b).
- (6) But the notifiable arrangements within subsection (5) do not include arrangements in relation to which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty imposed to notify client of reference number).
- (7) “GAAR counteraction notice” means a notice under paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract under the general anti-abuse rule).

## **220 Content of notice given while a tax enquiry is in progress**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while a tax enquiry is in progress).
- (2) The notice must—
- (a) specify the paragraph or paragraphs of section 219(4) by virtue of which the notice is given,
  - (b) specify the payment required to be made under section 223 and the requirements of that section, and
  - (c) explain the effect of sections 222 and 226, and of the amendments made by sections 224 and 225 (so far as relating to the relevant tax in relation to which the accelerated payment notice is given).
- (3) The payment required to be made under section 223 is an amount equal to the amount which a designated HMRC officer determines, to the best of that officer’s information and belief, as the understated tax.
- (4) “The understated tax” means the additional amount that would be due and payable in respect of tax if—
- (a) in the case of a notice given by virtue of section 219(4)(a) (cases where a follower notice is given)—
    - (i) it were assumed that the explanation given in the follower notice in question under section 206(b) is correct, and

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- (ii) the necessary corrective action were taken under section 208 in respect of what the designated HMRC officer determines, to the best of that officer's information and belief, as the denied advantage;
  - (b) in the case of a notice given by virtue of section 219(4)(b) (cases where the DOTAS requirements are met), such adjustments were made as are required to counteract what the designated HMRC officer determines, to the best of that officer's information and belief, as the denied advantage;
  - (c) in the case of a notice given by virtue of section 219(4)(c) (cases involving counteraction under the general anti-abuse rule), such of the adjustments set out in the GAAR counteraction notice as have effect to counteract the denied advantage were made.
- (5) "The denied advantage"—
- (a) in the case of a notice given by virtue of section 219(4)(a), has the meaning given by section 208(3),
  - (b) in the case of a notice given by virtue of section 219(4)(b), means so much of the asserted advantage as is not a tax advantage which results from the chosen arrangements or otherwise, and
  - (c) in the case of a notice given by virtue of section 219(4)(c), means so much of the asserted advantage as would be counteracted by making the adjustments set out in the GAAR counteraction notice.
- (6) If a notice is given by reason of two or all of the requirements in section 219(4) being met, the payment specified under subsection (2)(b) is to be determined as if the notice were given by virtue of such one of them as is stated in the notice as being used for this purpose.
- (7) "The GAAR counteraction notice" means the notice under paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract under the general anti-abuse rule).

## **221 Content of notice given pending an appeal**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(b) (notice given pending an appeal).
- (2) The notice must—
- (a) specify the paragraph or paragraphs of section 219(4) by virtue of which the notice is given,
  - (b) specify the disputed tax, and
  - (c) explain the effect of section 222 and of the amendments made by sections 224 and 225 so far as relating to the relevant tax in relation to which the accelerated payment notice is given.
- (3) "The disputed tax" means so much of the amount of the charge to tax arising in consequence of—
- (a) the amendment or assessment to tax appealed against, or
  - (b) where the appeal is against a conclusion stated by a closure notice, that conclusion,
- as a designated HMRC officer determines, to the best of the officer's information and belief, as the amount required to ensure the counteraction of what that officer so determines as the denied advantage.

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- (4) “The denied advantage” has the same meaning as in section 220(5).
- (5) If a notice is given by reason of two or all of the requirements in section 219(4) being met, the denied advantage is to be determined as if the notice were given by virtue of such one of them as is stated in the notice as being used for this purpose.
- (6) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.

## **222 Representations about a notice**

- (1) This section applies where an accelerated payment notice has been given under section 219 (and not withdrawn).
- (2) P has 90 days beginning with the day that notice is given to send written representations to HMRC—
  - (a) objecting to the notice on the grounds that Condition A, B or C in section 219 was not met, or
  - (b) objecting to the amount specified in the notice under section 220(2)(b) or section 221(2)(b).
- (3) HMRC must consider any representations made in accordance with subsection (2).
- (4) Having considered the representations, HMRC must—
  - (a) if representations were made under subsection (2)(a), determine whether—
    - (i) to confirm the accelerated payment notice (with or without amendment), or
    - (ii) to withdraw the accelerated payment notice, and
  - (b) if representations were made under subsection (2)(b) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount ought to have been specified under section 220(2)(b) or section 221(2)(b), and then —
    - (i) confirm the amount specified in the notice, or
    - (ii) amend the notice to specify a different amount,
 and notify P accordingly.