

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Sections 199 to 233 and Schedules 30-33: Follower Notices and Accelerated Payments

Details of the Sections

Chapter 3 Accelerated Payments

Accelerated payment notices

49. Section 219 explains the circumstances in which an accelerated payment notice may be given. Three conditions must be met.
50. Subsection (2) sets out Condition A, which stipulates that there must be a tax enquiry or a tax appeal.
51. Subsection (3) sets out Condition B, which stipulates that a tax advantage has been claimed that results from the arrangements in question.
52. Subsection (4) sets out Condition C, which has three alternatives. Any one of these is sufficient to trigger a notice (provided that Conditions A and B are also satisfied) but more than one of them may be relevant and may be specified in the notice.
53. Subsection (5) explains what is meant in subsection (4) by “DOTAS arrangements”. The starting point is that HMRC has issued a Scheme Reference Number (SRN) under section 311 of FA 2004. In order to do so, HMRC must have received a disclosure of notifiable arrangements or a notifiable proposal under Part 7 of FA 2004, or must have successfully taken proceedings to require such a disclosure. Subsection 5(c) addresses the situation under section 312(2)(b) of FA 2004 where the promoter must also provide the SRN to clients of arrangements that are substantially the same as those that were the subject of the notified arrangements or notified proposal.
54. Subsection (6) provides that the DOTAS criterion ceases to be satisfied if HMRC gives notice under section 312(6) of FA 2004 that a promoter is no longer required to notify a client of the SRN.
55. Section 220 sets out the contents of an accelerated payment notice given while an enquiry is in progress.
56. Subsection (3) requires that the amount of any accelerated payment must be determined by a designated HMRC officer.
57. Subsections (4) and (5) set out how the amount is to be determined. For those cases linked to a notice under Chapter 2, the amount is the same as would be required if the taxpayer were to have taken the necessary action to settle the dispute. For cases subject to the GAAR, the amount will be the same as specified in the GAAR counteraction

notice. Where DOTAS is the only criterion, the amount must be determined to the best of the designated officer's information and belief.

58. Subsection (6) deals with the situation where more than one Condition C under section 219(4) may be relevant. In such a case, HMRC must stipulate which of them is being applied to determine the amount of the accelerated payment. See section 227(5) and (6) for circumstances where HMRC subsequently amends a notice where more than one Condition C initially applied, but the Condition specified under this subsection or section 221(5) falls away, and an alternative Condition C is still applicable.
59. Section 221 sets out how an accelerated payment notice is given for cases that are under appeal. The 'disputed tax' is all or part of the tax charged in the assessment or determination, or arising in consequence of a conclusion stated in a closure notice that is the subject of the appeal.
60. Section 222 explains how representations may be made to HMRC about an accelerated payment notice, the time limit for making those representations, and what HMRC must do in response.

Forms of accelerated payment

61. Section 223 explains the consequences of an accelerated payment notice given while a tax enquiry is in progress.
62. Subsection (3) explains that the accelerated payment is to be treated as a payment on account of the tax in dispute. When the final liability is agreed, this payment will be set against it, and any interest payable on that final liability will be adjusted so that no interest will be charged on the amount of the accelerated payment from the date that it is paid. If the final liability is lower than the accelerated payment any excess will be repaid with interest.
63. Subsections (4) and (5) set out the time limits for making an accelerated payment.
64. Subsection (6) deals with the special case where Inheritance Tax is payable by instalments. The due date for an accelerated payment that relates to those instalments cannot be earlier than the due date for paying the instalment to which it relates.
65. Subsection (7) deals with the situation where the taxpayer pays some or all of the tax in dispute before an accelerated payment is made. The amount paid will reduce the amount of the accelerated payment that is outstanding.
66. Section 224 sets out how an accelerated payment notice operates for cases under appeal. It operates by amending section 55 of TMA 1970, which applies to income tax, PAYE, corporation tax and capital gains tax; and the equivalent rules for IHT, SDLT and ATED. Any tax that is the subject of an accelerated payment notice cannot be postponed under section 55 of TMA 1970 (and the equivalents), and if the tax has already been postponed the accelerated payment notice has the effect that it is no longer postponed. The time limits for making the payment are the same as in section 223.
67. Section 225 amends the rule in section 56 of TMA 1970 (and its parallels for SDLT and ATED) which directs that the tax in dispute should be paid to the successful litigant pending any further appeal. The amendment permits HMRC to apply to the tribunal or court for an order not to repay the tax where HMRC pursues a further appeal and HMRC considers there would be risk to the Exchequer in making the repayment at that stage.

Penalties

68. Section 226 establishes a late payment penalty in respect of an accelerated payment. The rates and structure are based on Schedule 56 to FA 2009, and a number of paragraphs of that Schedule are applied with any necessary modification.

Withdrawal etc of accelerated payment notice

69. Section 227 explains the process for and consequences of the withdrawal or amendment of an accelerated payment notice.
70. Subsections (3) to (5) explain that where a particular Condition C ceases to apply, the related accelerated payment notice must be withdrawn, but only to the extent that it was given on the basis of that Condition. If another Condition C remains in effect the accelerated payment notice also continues to have effect.
71. Subsections (6) and (7) explain what happens where more than one Condition C was originally applicable, and one of them was referenced as the basis of the accelerated payment notice. Where that Condition no longer applies, HMRC must amend the notice to state the alternative Condition C and must make any consequent reduction in the amount of the accelerated payment.
72. Subsections (8), (9), (10) and (11) explain what happens when a notice given under Chapter 2 is suspended while application is made for a late appeal against a relevant judicial ruling. The accelerated payment notice is also suspended, but where the notice is also given under an alternative Condition C the notice remains in effect in relation to that Condition.
73. Subsection (12) covers the situation where an accelerated payment notice is withdrawn. Any amount paid is to be repaid with interest.
74. Subsection (13) covers the situation where the accelerated payment notice remains in place, but the amount is reduced. If the taxpayer has paid more than the amount specified in the modified notice any excess is repaid with interest.

Partners and partnerships

75. Section 228 refers to the provisions for partners and partnerships in Schedule 3.

Defined terms

76. Section 229 contains definitions for the purposes of Chapter 3.