

Briefing document

Accelerated payment notices

Introduction

When taxpayers are in dispute with HMRC, HMRC have, since 2014, had the right in certain cases to issue an Accelerated Payment Notice (APN) or Partner Payment Notice (PPN) requiring an upfront payment of the disputed tax pending the resolution of the matter in the Courts or otherwise, at which time the tax position will be finalised.

Notices can only be issued (broadly) in cases where the same or similar planning has already failed in the Tax Tribunal or the Courts, or where a tax avoidance scheme has been disclosed to HMRC under the Disclosure of Tax Avoidance Scheme (DOTAS) rules, or where HMRC consider that the General Anti-Abuse Rule (GAAR) should apply to the planning.

Follower notices

HMRC are able to issue a Follower Notice (FN) to taxpayers who have entered into tax arrangements which, in HMRC's opinion, are the same or substantially similar to another case (a relevant ruling) which has been decided in HMRC's favour in a final ruling (i.e. either a Supreme Court ruling or a ruling of a lower Court or Tax Tribunal, which either cannot or will not be appealed). For these purposes it does not matter that a ruling of the First-tier Tribunal is not legal precedent. HMRC will decide whether a ruling is relevant.

In order for a FN to be given the taxpayer must have an open enquiry into the arrangement, or have appealed against an assessment of the tax due.

Taxpayers can make representations to HMRC, including challenging whether a ruling is a relevant ruling. These representations must be made within 90 days of receiving the FN and will be considered by an independent HMRC officer who is unconnected with the team which issued the FN. These representations do not extend to an appeal as to the effectiveness of the tax planning.

After a FN is issued taxpayers have a choice about how to proceed. Taxpayers may settle or continue the dispute. The legislation does not deny taxpayers access to their full appeal rights about the substantive liability. If taxpayers decide to continue with their dispute, there could be additional penalties of up to the 50% of the denied tax advantage should HMRC's challenge be successful.

Generally, an FN must be given within 12 months of the relevant judicial decision or, if later, the date of the tax return, tax claim or appeal.

Accelerated Payment Notices (APNs)

HMRC also have the power to issue APNs or a Partner Payment Notice (PPN) requiring an advance payment of tax pending resolution of the matter in the Courts or otherwise. APNs apply to arrangements entered into by taxpayers in their own right, and PPNs to those entered into through partnerships.

APNs/PPNs can apply in the following circumstances:

- A return has been made claiming a tax advantage from a particular arrangement;
- The return is under enquiry, or there is an appeal which has not been determined; and
- Either
 - a FN, as set out above, has been given;
 - the arrangements are DOTAS arrangements (the DOTAS number should have been included in the relevant tax return); or
 - HMRC are of the opinion that the GAAR applies to the planning.

The APN will specify the amount of tax to be paid. Essentially this will be HMRC's calculation of the tax that has been/could be saved as a result of entering into the arrangement in question. The APN will specify the amount of tax to be paid. Usually this will be HMRC's calculation of the tax that has been/could be saved as a result of entering into the arrangement in question, but be aware that in some cases HMRC is using estimated figures and the tax paid by settling the APN will not necessarily be the final liability when the planning is settled.

HMRC periodically publish a list of scheme reference numbers for existing disclosed arrangements for which an APN could be issued. Taxpayers may make representations within 90 days of the notice. These representations do not extend to an appeal as to the effectiveness of the tax planning, merely as to whether the requirements for issuing such a notice (set out above) have been met or whether the amount of the tax is correctly calculated. The representations will be considered by an independent HMRC officer.

Any tax demanded under an APN must be paid within 90 days. This payment would take the form of a 'payment on account' towards any final tax liability. The APN should only relate to tax payable in respect of the arrangement subject to the notice and not to other amounts of disputed tax.

There is a penalty regime based on any unpaid APN tax which will be charged at the following rates:

- 5% where the disputed amount remains unpaid after the 90 day period;
- A further 5% on any unpaid amounts 5 months after expiry of the 90 day period;
- A further 5% on any unpaid amount 11 months after expiry of the 90 day period.

These penalties could be in addition to any other penalties that may be due in respect of the underlying matter.

If HMRC's challenge is not successful, and there is no tax to pay, the APN payments plus any penalties paid will be repaid with interest. If there is tax to pay, but it is less than the APN payments, any overpaid tax will be repaid with interest. If the matter involves litigation, repayments will not necessarily be made immediately following litigation decided in favour of the taxpayer. The tax in dispute does not need to be repaid when HMRC applies to the Tribunal or Court to pursue a further appeal and that Tribunal or Court considers there is a risk to the Exchequer if a repayment is made.

If there is additional tax to pay once a matter has been resolved, this will be payable to HMRC plus interest.

Find out more...

This briefing note reflects the law as at 7 March 2019. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Patricia Mock (pmock@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.

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