



HM Revenue  
& Customs

## **HMRC guidance**

### **FA 2014 Part 4**

### **Follower notices and accelerated payments**

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## Introduction

This guidance concerns the measures on **Follower Notices and Accelerated Payments** in the **Finance Act 2014** (Part 4).

### Changing the economics of avoidance

The government set out in its consultations **Raising the Stakes on Tax Avoidance** (August 2013) and **Tackling Marketed Tax Avoidance** (January 2014) its aims to **change the economics** of entering into tax avoidance schemes, and to **change the behaviours** of taxpayers and promoters in relation to tax avoidance.

Following the consultation process these measures were introduced as part of the **Finance Bill 2014**.

This guidance supports the measures in FA 2014 concerning

- Follower Notices, and
- Accelerated Payments.

<b>Draft Guidance Section</b>	<b>Headings</b>	<b>FA 2014 Reference</b>
Introduction		Part 4 Chapter 1
Section 1	Follower Notices	Part 4 Chapter 2
Section 2	Accelerated Payments	Part 4 Chapter 3
Section 3	ATED, Special rules	Part 4 Chapter 4
Section 4	SDLT, Special rules	Part 4 Chapter 4
Section 5	Definitions	Part 4 Chapter 1
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## **1 Follower Notices**

### **1.1 Background**

#### **1.1.1 Currently little incentive to follow**

When faced with a large number of very similar cases, it is often most efficient for HMRC to investigate 'representative cases', taking them to litigation if necessary. If HMRC is successful in this litigation, unpaid tax is recovered from the litigants but there has been little incentive for those using the same or essentially similar arrangements, to accept the court's findings and pay to HMRC any underpaid tax.

#### **1.1.2 Drive to accelerate litigation**

The follower notice rules are designed to improve the rate at which tax avoidance cases are resolved where the point at issue has, in HMRC's view, already been decided in another taxpayer's case.

When a judicial decision is handed down by the court or tribunal that potentially resolves a large number of cases, many taxpayers with the same or similar arrangements agree to settle, but some do not. They argue that small differences in the arrangements mean that the decision cannot apply to them. This leads to further rounds of litigation, adding months and years to the time taken to resolve a dispute.

Taxpayers who are "followers" will now have to make a clear choice between settling their issue with HMRC in line with the other judicial ruling, or continuing their dispute with the risk of a penalty.

#### **1.1.3 Tax in dispute to be paid to HMRC**

Alongside these rules are the Accelerated Payment rules which will require recipients of a follower notice to pay the disputed tax to HMRC if they decide to continue with the dispute (ie. they do not amend their return or claim or otherwise settle their dispute as requested by the follower notice).

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Accelerated payments will also apply to avoidance arrangements which are within the **Disclosure of Tax Avoidance Schemes (DOTAS) rules** or are issued with a counteraction notice under the **General Anti-Abuse Rule (GAAR)**. See **Section 2, Accelerated Payments**.

#### **1.1.4 Finance Act 2014**

The legislation introducing these rules was announced in the 2014 Budget and enacted in Part 4 of the Finance Act 2014.

### **1.2 Follower Notices**

#### **1.2.1 Overview**

Follower notices can be issued to taxpayers who have used an avoidance scheme which has been shown in another taxpayer's litigation to be ineffective. The notice tells the taxpayer they may be liable to a penalty of up to 50% of the tax in dispute if they do not amend their return or settle their dispute.

#### **1.3 When may a follower notice be given?**

Clause 197

HMRC may give a follower notice to a person (P) if all of the conditions A to D are met.

##### **1.3.1 Condition A**

A tax enquiry (see Annex 1 for definition) is in progress into a return or a claim made by P in relation to a relevant tax (see Annex 1 for list of taxes covered), or P has made a tax appeal in relation to a relevant tax, but the appeal has not been determined by the tribunal or court, or abandoned/disposed of.

This is an important step in the process. HMRC cannot issue a follower notice unless an enquiry has been opened into a return or claim, and is still open, or an appeal has been made against a closure notice, assessment, or determination (for example, a determination under Regulation 80 of the PAYE regulations) and that appeal is still ongoing.

### 1.3.2 Condition B

The return, claim or appeal is made on the basis that a particular tax advantage ('asserted advantage') results from particular tax arrangements ('chosen arrangements'). See Annex 1 for definitions and note that tax arrangements are defined as those where it is reasonable to conclude that the obtaining of a tax advantage is the main, or one of the main, purpose of the arrangements.

For example a taxpayer has claimed a loss of £100,000, based on a set of transactions where one of the main purposes of the transactions was to generate that loss rather than for them to participate in a commercial operation.

### 1.3.3 Condition C

HMRC is of the opinion that there is a judicial ruling which is **relevant** to the chosen arrangements. **Relevant** is explained in more detail in paragraph 1.4.

### 1.3.4 Condition D

No previous follower notice has been given to the same person, by reference to the same tax advantage, tax arrangements, and judicial ruling and tax period; unless the previous notice has been withdrawn.

## 1.4 Judicial Ruling

### 1.4.1 When is the judicial ruling relevant?

A judicial ruling is a ruling of a court or tribunal.

It is 'relevant' to the chosen arrangements if:

- it involves consideration of tax arrangements (see 1.3.2);
- the principles laid down or reasoning given in the ruling would, if applied to the chosen arrangements, deny the asserted advantage or part of that advantage; and
- it is a final ruling.

Section 205

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### 1.4.2 When is the judicial ruling final?

A judicial ruling is **final** if it is,

- A ruling of the Supreme Court.
- A ruling of any other court or tribunal where,
  - no appeal may be made against the ruling;
  - if any appeal may be made against the ruling, the time limit has expired and no application was made or permission was refused;
  - if permission to appeal has been granted, or was not required, no appeal has been made within the time limits;
  - if an appeal was made, it was subsequently abandoned or disposed of before the appeal was determined.

### 1.4.3 Does not need to set a precedent in strict sense

It is important to note that a ruling can be final at any stage in the legal appeal process, including the First Tier Tribunal, if it is not appealed further. It does not therefore have to set a "precedent" in the strictly legal sense that a judgment of a senior court of record (Upper Tribunal/High Court and above) would.

## 1.5 What is a relevant ruling?

### 1.5.1 Intention of legislation

The intention of the legislation is to tackle behaviour by taxpayers involved in tax avoidance schemes, primarily schemes marketed to a large number of taxpayers. Those schemes can have small variations – for example, the avoidance may be based around a different type of asset in different variants, or may be set up slightly differently depending on whether an individual, company or partnership is involved.

This does not mean that follower notices will automatically be issued to users of variants: each case will be considered by a senior HMRC panel (see 1.17.1 for more details of the governance process).

### Example

A scheme designed to generate losses in relation to a specific trading asset is defeated in the Tribunal on the basis that, by the nature of the scheme and structure, there is not a genuine trade. The decision is a final ruling. There are 25 other users of this scheme, who all implemented identical (but for the amount of the loss claimed) transactions. It is anticipated that all 25 of those users would be followers and could receive a follower notice if they chose not to settle in response to the Tribunal decision.

There are also 30 users of a very similar scheme which differs only in the trading asset used. It is very likely that, subject to careful consideration of all the facts and circumstances, that these 30 could also receive follower notices.

There are a further 20 users of a loss generating scheme which uses a different structure, with different financing and a greater degree of participation and risk for the partners. HMRC's primary argument may still be that there is not a genuine trade, but it becomes a much more finely balanced decision whether the first judicial ruling above could be treated as "relevant" to this one as the facts and context have now diverged to a greater extent.

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### 1.5.2 Principles and reasoning

The legislation does not mean that a follower notice can, for example, be issued to any case involving a 'trading or non-trading' argument, solely because there has been a judicial decision on that point. The reasoning and principles behind that decision must be scrutinised to consider whether or not they can be applied to the potential 'follower cases'. That is, the question that must be considered is: 'the tribunal found that this taxpayer was not trading because.....' The reasoning that follows 'because' must then be examined in relation to the follower cases.

This will include considering carefully the context of the decision and whether it is reasonable to apply the same reasoning to the context of the follower case. It is not about extracting a wide general principle from a case and then applying that to other cases where the context and facts are substantially different.

If a later case was to significantly change the effect of the relevant judicial decision, HMRC will reconsider whether any follower notices which have been issued (and the associated accelerated payment notices) should still be maintained or withdrawn or modified.

### 1.5.3 Marketed avoidance

Although the legislation does not exclusively apply to widely marketed schemes, the definition of 'relevant' makes it much less likely that it will apply outside that context. Nonetheless, the legislation could apply to a judicial decision which determines a case against one taxpayer and only one or a small number of others are potential followers. In these cases full enquiries would have been conducted into each potential follower to establish their similarity to the relevant judicial decision and whether the same principles or reasoning can apply to deny the tax advantage. Again, the important point is to consider critically the principles or reasoning in the judgement to see if it can reasonably apply to the follower case.

### **1.5.4 Application to other cases**

In order to decide whether the principles or reasoning in a Judicial Ruling are applicable to other cases, it will be necessary to:

- ensure that the Judicial Ruling itself relates to tax arrangements, i.e. where there is a main tax purpose
- identify the principles and reasoning in the judicial ruling,
- evaluate the facts of the other cases with reference to the evidence currently held by HMRC,
- consider any additional information; eg other judicial rulings in the same area of tax,
- apply the principles/reasoning in the judicial ruling to the facts of the other cases,
- decide whether (and if so to what extent) the asserted tax advantage is denied as a consequence.

### **1.6 What judicial decisions can be used to issue Follower Notices**

Judicial decisions must be final before they can be considered to set down principles and reasoning to be applied to follower cases. "Final" means that the case has either not been appealed further or has been decided by the Supreme Court. Thus a decision can be final at First Tier Tribunal level if it is not appealed to the Upper Tribunal. See section 205(4) of FA 2014.

Before any follower notice is issued in relation to a relevant judicial decision, a senior HMRC governance panel will consider whether it is appropriate to apply the principles or reasoning established by the ruling. As explained below, the issue of a follower notice is also subject to time limits.

### **1.7 Normal Time Limits**

#### **1.7.1 Time limits (section 204(6) of FA 2014)**

A follower notice must be given within 12 months, beginning with the later of

- the day on which the relevant judicial ruling is made (condition C); or

- 
- the day the return or claim was received by HMRC; or
  - the day the tax appeal was made.

See section 1.7.2 for the transitional time limits following enactment of FA 2014.

### **1.7.2 Transitional Time Limits for rulings prior to Royal Assent to FA 2014 (section 217 of FA 2014)**

Where a judicial ruling is made before this legislation was enacted, the time limits for issuing a follower notice are as follows:

A follower notice may not be given after the later of

- two years following the date the Act is passed, or
- 12 months beginning with the day the return or claim was received by HMRC or,
- as the case may be, 12 months beginning with the day the tax appeal (that has not yet been determined by the court) was made.

Here's an example of how the transitional time limits operate.

**Example 1****Transitional time limits**

A **relevant** judicial ruling was made on 1 February 2013.

HMRC received taxpayer's 2013-14 tax return on 1 June 2014.

Royal Assent to the Finance Act 2014 was given on 17 July 2014.

The final date for HMRC to issue a follower notice in this instance is 17 July 2014 + 24 months.

**1.8 Content of a follower notice****1.8.1 Identify the judicial ruling**

Section 206

The notice must identify the judicial ruling and explain why it is relevant. It must also explain how to make representations, the circumstances in which a penalty may be reduced for cooperation, and the maximum penalties if corrective action is not taken. It must also explain that the penalty can be reduced by the quality of co-operation received by HMRC from the taxpayer.

**1.8.2 Explain the consequences**

The notice does not require corrective action to be taken, but explains the consequences if the necessary corrective action is not taken. These consequences include a penalty under section 208 unless the taxpayer carries out the corrective action specified in the notice – see 1.10 and 1.13 below.

## **1.9 Representations**

### **1.9.1 Grounds for representations**

Taxpayers can disagree with a follower notice by making representations to HMRC. Representations must be made in writing and can only be on one or more of the following grounds:

- Condition A, B or D was not met.
- The judicial ruling is not one which is relevant to the arrangements (i.e. that HMRC's opinion under condition C is incorrect), or
- The notice was not given within the time limit.

Taxpayers cannot appeal to the Tribunal against a follower notice.

### **1.9.2 Time limit for representations**

Representations must be made in writing to HMRC within **90 days** of the date the notice was given.

They should give as full a statement as possible of the grounds to enable HMRC to consider them and come to a conclusion.

### **1.9.3 HMRC response**

HMRC must consider the representations and either confirm the follower notice (with or without amending it) or withdraw the notice. HMRC must notify the taxpayer accordingly.

The representations will be considered by an independent HMRC officer who is unconnected with the team which issued the follower notice and the governance panel which decided the judicial decision relied upon was relevant. Section 1.17.2 contains more information on governance.

## 1.10. Corrective Action

### 1.10.1 Ninety days to take corrective action

After a follower notice is given, a person has 90 days to take corrective action in respect of the denied advantage by

- Amending their return or claim to counteract the denied advantage.
- Or, where there is an open tax appeal, taking all necessary action to enter into a written agreement with HMRC to relinquish the denied advantage.

And,

- The person must notify HMRC that they have taken corrective action, the amount of the denied advantage and, if different, the additional amount of tax due and payable.

### 1.10.2 Confirmed notice

Where representations have been made and the notice is confirmed (with or without amendment) the time limit to take corrective action is the later of,

- The end of the 90 day post notice period, and
- The end of 30 days beginning with the day on which P is notified of HMRC's determination following representations.

#### Example 2

Taxpayer receives a follower notice on 1 September 2014 and makes representations to HMRC on 1 November 2014.

An independent HMRC officer considers the representations and confirms the follower notice on 10 December 2014.

The time limit for corrective action following the initial issue of the notice was 29 November 2014.

The time limit for corrective action following HMRC's determination following representations is 8 January 2015 (section 208(8)(b)(ii) allows 30 days beginning with the date of the confirmation by HMRC and HMRC allows additional time for postage).

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Therefore taxpayer has until 8 January 2015 to take the necessary corrective action.

### 1.10.3 Taxpayer can choose how to proceed

The taxpayer has a choice about how to proceed. **The decision to settle or continue the dispute is entirely theirs**, but the taxpayer takes that decision in the light of the penalty consequences if the dispute continues. The legislation **does not** in any way deny taxpayers access to their full appeal rights to the courts and tribunals about the substantive liability (ie: whether the tax arrangements do give the result which the taxpayer believed they did).

## 1.11 Open Appeal - Written Agreement

### 1.11.1 Appeal in progress

If the taxpayer chooses to settle or concede the dispute where there is an open appeal in progress, the taxpayer is required to take all necessary steps to enter into a written agreement with HMRC to give up the advantage that their arrangements sought to obtain. A template will be issued for use in most cases and will include:

- Acceptance that the judicial ruling is relevant to their arrangements;
- Agreement that the effect is that the tax advantage arising from the arrangements is denied;
- Agreement to withdraw the appeal in relation to the arrangements within 14 days of the Agreement. If the appeal covers matters in addition to the tax arrangements, then it only has to be withdrawn to the extent it relates to the tax arrangements;
- Confirmation that any additional tax due as a result of giving up the tax advantage will be (or has been) paid by the required date.
- Signature by the taxpayer or properly authorised person who can sign on behalf of the taxpayer (e.g. a director).

## **1.12 Calculating the denied advantage**

### **1.12.1 Basis of penalty**

The legislation sets out the basis for how the penalty will be calculated (section 208 and 209 and Schedule 30).

The penalty base is the "denied advantage". The denied advantage is defined as being the amount of the "asserted advantage" which is denied when the principles or reasoning laid down in the relevant ruling are applied to this taxpayer's circumstances. The asserted advantage is the tax advantage which would result from the use of the particular tax scheme used, if it achieved its aim.

Therefore, if the asserted advantage is £100, and the principles and reasoning in the relevant ruling mean that all of that advantage cannot be claimed by the taxpayer; then the denied advantage is £100. The penalty will be calculated by reference to £100.

It will not always be the case that the denied advantage and the asserted advantage are the same amount. The principles or reasoning laid down in the relevant ruling may only remove a part of the asserted advantage; or it may be that part of the tax savings resulting from a scheme are not disputed as they rely on an accepted relief or allowance.

Whilst the "denied advantage" may be readily calculated in some cases, and apply to a single period or return, there will be others, for example deferred losses, which are more complicated. Thus the penalty base may be a different number to the amount of tax which is in dispute for a specific return.

### **1.12.2 Schedule 30**

Schedule 30 to FA 2014 applies for calculating the value of the denied advantage for follower penalties.

FA 2014  
Schedule 30

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### **1.12.3 Value of advantage**

The value of the denied advantage is usually the additional amount due or payable in respect of the tax that would be chargeable following corrective action; ie the amount due if the avoidance scheme fails. However, this can be more complex where losses are involved, or where tax would have been deferred.

### **1.12.4 Amounts to include**

The amount includes any amount of tax that

- has not yet been paid;
- has been repaid; and
- could have been repaid had the arrangements achieved the asserted tax advantage.

### **1.12.5 Ignore group relief**

When the value of the denied advantage is calculated group relief should be ignored, and also any relief, under section 458 CTA 2010 (loans to participators: relief in respect of repayment), which is deferred under section 458(5).

### **1.12.6 Losses**

For direct tax, the value of the denied advantage involving losses is:

- as regards the part of the denied advantage resulting from the loss which has been used to reduce the amount of tax, is the additional amount payable in respect of the tax that would be chargeable following corrective action; plus
- 10% of the part of the loss not used (if any).

If the denied advantage creates or increases a loss for a group of companies, group relief may be taken into account.

There's an example for a singleton company overleaf.

**Example 3****Single company**

Company A has profits of £20m and a created loss for the year of £30m.

Losses to carry forward are £10m.

The denied advantage is £5.2m.  $((£20m \times 21\% = 4.2m) + (10m \times 10\% = 1m))$

Now, let's have a look at an example for a group company.

**Example 4****Group Companies**

	Company A £m	Company B £m
Profits	20	30
Created loss	(30)	nil
Group relief	nil	(10)
PCTCT	nil	20

The denied advantage is £6.3m ( $£30m \times 21\%$ ).

This is comprised of £20m loss utilised in the year by Company A plus £10m loss by group relief to Company B.

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### **1.12.7 Denied advantage is a loss**

To the extent the denied advantage results in a loss, the value of the denied advantage is nil if there is no reasonable prospect of the loss being used to reduce a tax liability. "No reasonable prospect" will have to be assessed on a case by case basis, taking all the relevant circumstances of the taxpayer into account.

### **1.12.8 Denied advantage is a deferral of tax**

To the extent the denied advantage is a deferral of tax, the value is

- 25% of the amount of the deferred tax for each year of the deferral; or
- 25% per year of the deferred tax for each separate period of deferral of less than a year,

or, if less, 100% of the amount of the deferred tax.

### **Example**

Taxpayer A engages in a scheme which defers tax of £100,000 due in 2010 so that he pays it over the following 5 years.

If you apply 25% of the tax deferred multiplied by 5 for the years of deferral, you arrive at a penalty base of 125% of the deferred tax.

As the maximum penalty base is 100%, the penalty will be charged on £100,000.

## **1.13 Penalties**

### **1.13.1 Corrective action not taken**

If corrective action is not taken in respect of the denied advantage before the specified time, the taxpayer is liable to a penalty. However, it is important to note that the penalty is not due until assessed (section 211).

Where the penalty has arisen in the course of an open enquiry, HMRC will normally assess the penalty after the closure notice has been issued, as at that stage the figure of understated tax that forms the basis of the penalty will have been calculated for the purpose of the closure notice. In cases where the penalty has arisen when the tax is under appeal, the penalty will normally be assessed when the amount of tax is finally determined. Neither of these situations prevents an earlier assessment of the penalty if the circumstances require, but the important requirement is that figures of tax are available to form the basis of the penalty and therefore earlier assessment is likely to happen only very exceptionally.

### **1.13.2 Rate of penalty**

The maximum penalty is 50% of the value of the denied advantage. The minimum rate, taking into account the full availability of mitigation, is 10%. The penalty rates are different for partnerships (see 1.16.7).

### **1.13.3 Reduction of Penalty for Co-operation**

Providing the penalty has not yet been assessed, and the taxpayer has co-operated with HMRC, then HMRC may reduce the penalty to reflect the quality of that co-operation (timing, nature and extent).

### **1.13.4 Cooperation considered**

We will only consider the person has cooperated with HMRC if they have cooperated in one or more of the following ways.

- Provided reasonable assistance to HMRC in quantifying the tax advantage.

- 
- Counteracted the denied advantage. (But at a time after the specified time for corrective action.)
  - Provided HMRC with information enabling us to take corrective action.
  - Provided HMRC with information enabling us to enter into an agreement with them (to counteract the denied advantage).
  - Allowed HMRC to access tax records to ensure the denied advantage is counteracted.

**The penalty must not be reduced to less than 10% of the value of the denied advantage.**

### **Example 5**

A taxpayer has received a follower notice and not carried out the corrective action by the due date. However, before the due date on the notice, they had engaged with HMRC and provided information in relation to why they thought the notice should not apply and made full representations.

HMRC did not agree with the representations and confirmed the notice. After the due date, but before any penalty assessment, the taxpayer gave full calculations regarding the amount of tax and provided all documents requested within the timescales.

This is likely to constitute, in the circumstances, as much co-operation as the taxpayer could give, whilst maintaining their technical position in relation to the issue.

HMRC would anticipate a maximum reduction in the penalty.

In another case, HMRC receives similar co-operation and the taxpayer, having initially decided to pursue the case, decides to take the corrective action within a very short time after the due date and provides all the details relating to the corrective action. In these circumstances, HMRC would anticipate a maximum reduction in the penalty.

HMRC will consider objectively the timing, nature and extent of the co-operation and allocate one third of the potential mitigation to each element. HMRC will also consider what it is reasonable to expect the taxpayer to have done in the

circumstances. How quickly did the taxpayer take action to fulfil their responsibilities; what was the nature of the response to HMRC requests; and what was the extent of their response to HMRC requests?

### 1.13.5 Part of advantage remaining

If, before the specified time for corrective action in the follower notice, the taxpayer amends a return or claim to counteract part of the denied advantage or takes all necessary action to enter into an agreement with HMRC to relinquish part of the denied advantage, the penalty will only be calculated on the remainder of the denied advantage.

#### Example 6

A taxpayer has received a follower notice in relation to a complex scheme which depends on a number of transactions to produce a cumulative tax saving. Having reconsidered the scheme, the taxpayer accepts that a part of it does not achieve the intended saving, so amends his return only to the extent of that part. They continue to maintain the success of the remaining parts of the scheme.

The amendment to the return was before the due date of the notice.

Any penalty is only calculated on the advantage which is still being claimed as at the due date. Thus the penalty base will be reduced from the original amount for the scheme to the amended amount still on the return or in the appeal.

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### 1.13.6 Assessment of the Penalty

HMRC must notify the person who is liable for the penalty and state the tax period in respect of which the penalty is due.

### 1.13.7 Penalty due date

The penalty is due and payable **30 days** after the person is notified of it.

### 1.13.8 Notification

HMRC must notify the penalty

- If the follower notice was issued whilst an enquiry was open; no later than 90 days after the enquiry is completed or,

where an appeal is pending,

- No later than 90 days beginning with the earliest of
  - the day on which taxpayer takes corrective action
  - the day on which a final ruling is made on the tax appeal by taxpayer
  - the day on which that appeal, or any further appeal is abandoned or disposed of (to the extent it relates to the asserted tax advantage) before it is determined by the court or tribunal.

#### Example

1. HMRC completes the compliance check into a taxpayer's use of an avoidance scheme and issues a closure notice.

If the taxpayer has received a follower notice and not taken the corrective action by the due date, then they are liable to a penalty. Having now concluded the checks and issued the closure notice, HMRC must issue any penalty assessment within 90 days.

Any such penalty assessment will take into account the degree of co-operation provided by the taxpayer.

2. In a situation with an open appeal where a follower notice has been issued, the taxpayer has not taken corrective actions within the time limits; there are three potential time limits.

- The taxpayer decides to take the corrective action and withdraw the appeal and accept the relevant ruling does apply. HMRC must assess any penalty within 90 days of the date that corrective action is taken;
- The case has gone to the Court of Appeal (for example) and the taxpayer loses and does not appeal further. HMRC must assess any penalty within 90 days of the ruling being given out by the relevant court.
- The taxpayer decides to abandon his appeal and concede. HMRC has 90 days from the date that the case is formally acknowledged as abandoned by the court to assess any penalty.

#### **1.13.9 Penalty is enforceable**

The penalty is treated in the same way as an assessment to tax and therefore will be enforced as if it were an assessment to tax. See [section 1.14.2](#), on interest charged on a penalty.

#### **1.13.10 Supplementary penalty assessment**

A supplementary penalty assessment may be issued if the value of the denied advantage was understated. In a case where the advantage was overstated, and a penalty has already been paid, the excess penalty will be repaid with interest.

### **1.14 Appeal against a penalty**

#### **1.14.1 Penalty appeals (section 214)**

A person may appeal against a decision that a penalty is payable and against the amount of the penalty.

- 
- The appeal must be made within 30 days of the day the penalty was notified.
  - The penalty is treated as notified when the penalty notice is delivered to the person.
  - The appeal is treated in the same way as an appeal against an assessment to the tax concerned.

The grounds for an appeal can, in particular, include:

- the same grounds as for making representations, or
- that it was reasonable in all the circumstances for the taxpayer not to have taken the corrective action.

If the Tribunal upholds the appeal against the penalty on the grounds that Conditions A,B, C or D were not satisfied, this would result in the follower notice being cancelled, together with any associated accelerated payment notice if that latter notice was only issued because of the follower notice. If required, HMRC will then, as appropriate, repay any amounts, plus interest, to the taxpayer.

If the Tribunal upholds the appeal against the penalty solely on the grounds that it was reasonable for the taxpayer to proceed, this outcome does not overturn the follower notice itself.

#### **1.14.2 Interest due on penalty**

A person is not required to pay a penalty before an appeal against the assessment of the penalty is determined. However, interest, where appropriate, runs from the original due and payable date of the penalty.

#### **1.14.3 Appeal against a penalty**

The legislation gives the tribunal the power to affirm or cancel HMRC's decision, or to substitute an alternative decision.

This is fairly broadly drawn. Section 214 sets out some grounds on which the tribunal can consider and uphold an appeal, but these grounds are not intended to be exhaustive. It means that the tribunal could, for example, discharge the penalty because the tribunal does not agree that the decision cited by HMRC as the basis for a Follower Notice was 'relevant', even though HMRC was ultimately successful in the substantive litigation. The relevance or otherwise may only have emerged during the tribunal's consideration of the substantive appeal.

#### **1.14.4 Taxpayer successful**

Where the taxpayer is successful in the substantive litigation, the penalty will be discharged as it is a tax-g geared penalty and there will be no disputed tax to form the basis of the penalty. It should not normally be necessary for the penalty appeal to be heard by the tribunal in such instances.

Whilst the penalty does not have to be paid pending litigation, some taxpayers may pay it in order to prevent interest accruing on it. Any amount of penalty already paid will be repaid with interest in those circumstances. In addition, tax may be repayable, together with interest, to the taxpayer.

#### **1.14.5 Aggregate Penalties**

## Section 212

The penalty for failure to take corrective action following receipt of a follower notice is based on the "denied advantage" (being the amount of the tax advantage that the taxpayer has tried to obtain that is actually denied by the application of the relevant judicial principle or reasoning). The taxpayer may also become liable to a penalty under other legislation, for example on the grounds that their return was incorrect because of deliberate action on their part. The follower notice penalties legislation is restricted so that the total penalties in relation to the same tax liability do not in aggregate exceed the maximum of certain of these other penalties.

If two or more penalties are determined by reference to the same amount of tax and

- one is for failure to comply with a follower notice, and

- 
- one or more are incurred under,
    - Schedule 24 FA 2007 – penalties for errors
    - Schedule 41 FA 2008 – penalties for failure to notify
    - Schedule 55 FA 2009 – penalties for failure to make returns.

The aggregate amounts charged must not exceed the “relevant percentage”. The relevant percentage will usually be the maximum percentage chargeable under the other penalty if that exceeds 100%. In other cases, the maximum aggregated penalty will be 100%.

## **1.15 Late appeals against a final judicial ruling**

### **1.15.1 Late appeals**

It may be the case that HMRC has issued follower notices based on a tribunal or court decision that had not initially been appealed within the time limit, and had therefore become ‘final’ for this purpose, but where a taxpayer has subsequently applied for and obtained leave to make a late appeal, (section 49 TMA 1970). In those circumstances, the process for follower notices is suspended while the late appeal into that decision is heard.

### **1.15.2 Penalty not due**

This means that any penalty assessed will not be due and payable during this time, and any accelerated payment will not be due for payment if the payment notice is based solely on the follower notice requirement of Condition C. If the late appeal is determined in favour of the taxpayer, any follower notice given on the basis of that decision will be discharged and any penalties paid or accelerated payments made as a result of that notice repaid with interest.

### **1.15.3 Leave to appeal out of time granted**

This applies where the final judicial ruling is the subject of an appeal where the court or tribunal has granted leave to appeal out of time.

If a follower notice has been given identifying the original ruling (now subject to a late appeal), HMRC must notify the recipient of the notice as soon as practicable.

#### **1.15.4 Follower notice suspended**

If a follower notice has been given identifying the original ruling (now subject to a late appeal), HMRC must notify the taxpayer as soon as practicable.

The follower notice is suspended until HMRC notifies taxpayer that either

- the appeal has resulted in a judicial ruling which is a final ruling, or
- the appeal as been abandoned or otherwise disposed of.

If the new final ruling is not a judicial ruling which is relevant to the chosen arrangements then the follower notice ceases to have effect.

#### **1.15.5 Notice remains effective**

In any other case where leave to appeal is not granted, and HMRC are successful and the principles and reasoning previously identified are still relevant, the follower notice continues to have effect after the end of the period of suspension. It is treated as if it were in respect of the new final ruling resulting from the appeal.

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## 1.16 Partnerships

### 1.16.1 Overview

Special rules for members of partnerships can be found in Schedules 31 and 32 to FA 2014. These rules essentially reflect the general tax treatment of partnerships. In summary:

- A partnership follower notice for a partnership tax arrangement will be issued to the representative partner, or their successor, in that capacity, on behalf of the partnership as a whole.
- That follower notice can then apply to generate a partner payment notice to each member of the partnership individually.
- The members can also be given a follower or accelerated payment in respect of a scheme in their personal capacity, for example where a claim made personally relates to the tax affairs of the partnership but is not derived directly from the partnership return (eg: a personal loan interest claim).
- In those instances these will relate directly to their own tax return, which will include their share of the partnership profits and gains.

### 1.16.2 Special rules for SDLT and ATED

Specific partnership rules apply for Stamp Duty Land Tax (**SDLT**) and Annual Tax on Enveloped Dwellings (**ATED**) to reflect the particular treatment of partnerships in relation to those taxes.

### 1.16.3 Partnership Follower Notice

The follower notice for a partnership is called a **Partnership Follower Notice** (PFN). The PFN is not materially different to a follower notice in content or purpose, but is issued to the representative partner rather than to all the partners. There is provision in the law to issue the PFN to a successor of the representative partner where necessary.

These rules apply only to partnerships which are subject to the rules in TMA 1970 s12AA. Rules applicable to SDLT and ATED are set out in Chapter 4 of the Finance Act and guidance is to be found at Section 3 and 4 of this guidance.

#### **1.16.4 Representative partner**

The representative partner is the person who is required to deliver the partnership return under TMA 1970 s12AA(2) or (3). It is the responsibility of the representative partner to take the corrective action, if agreed to by the partners, in response to the PFN.

#### **1.16.5 Partners are responsible for penalties**

Whilst it is the representative partner's responsibility to take the corrective action on behalf of the partnership, any follower penalty which arises will be the responsibility of all the partners to pay.

#### **1.16.6 Partnership denied advantage**

The calculation of the penalty is based on the denied advantage, which will be calculated by reference to the amount by which the partnership return would be amended to negate the effects of the relevant judicial ruling. Therefore the denied advantage for a partnership is a profit/loss figure rather than being the tax advantage figure. This is why the corresponding penalty rates for partners are different to those for other taxpayers.

This gives the total penalty for the partnership as a whole, which needs to be apportioned across the partners by reference to their individual share in the partnership. Normally this would be by reference to their share in the profits or losses of the partnership.

#### **1.16.7 Maximum penalty rate for partnerships**

The rate of the penalty is modified by these rules from a maximum 50% to a maximum of 20% to be shared across the partners. Similarly the minimum amount of penalty, following any mitigation for co-operation, is 4%.

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### **1.16.8 Penalty aggregation applies**

Penalty aggregation rules apply to partners as they would for other taxpayers.

### **1.16.9 Representations**

Representations can be made by the representative partner if they disagree with the PFN.

### **1.16.10 Partnership appeals**

Only the representative partner can appeal against the calculation of the total penalty and the fact of the penalty. The representative partner cannot appeal against the calculation of the share of the penalty for an individual partner.

### **1.16.11 What if an individual partner wants to withdraw?**

Only the representative (often known as the “nominated”) partner can take the corrective action. Therefore, individual partners who would like to withdraw from the scheme transactions may still face a share of the follower penalty if the other partners do not agree to take the corrective action and instruct the representative partner to do so.

## **1.17 Governance**

### **1.17.1 Selection of the “follower” cases**

Decisions over the issue of follower notices will be taken by a senior HMRC panel. This panel will consider the principles and reasoning established by final judicial rulings and the context within which those principles arise.

For Large Business cases, the CRM will have input into the information going to the panel. However, the decision will be the panel’s and not the CRM’s.

The panel will be independent from the teams who investigate cases. It will consider both existing final cases which may be relevant, as well as new cases which will arise from time to time.

### **1.17.2 Review of representations**

Representations made by taxpayers about the issue of a notice will be considered by an independent team within the appeals and reconsiderations unit. This team will not be part of the investigating or case team or connected to the governance panel.

**End of this section**

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## **2 Accelerated Payments**

### **2.1 Overview**

#### **2.1.1 Remove cash flow advantage**

There is no inherent presumption that tax in dispute should sit with the taxpayer rather than the Exchequer. Under current rules, taxpayers who can self-assess the claimed tax advantage from an avoidance scheme can hold the money in dispute while the dispute is resolved. This can take a considerable time as these schemes are often highly complex and a considerable amount of information needs to be obtained from taxpayers and advisers, and litigation may be required to resolve the dispute.

#### **2.1.2 Repayments can already be retained**

In certain circumstances, the disputed tax already rests with HMRC until the dispute is resolved. For example, where a taxpayer has to claim a repayment, the Exchequer can retain the money while the dispute proceeds. The accelerated payment proposals bring the vast majority of remaining tax avoidance cases into line with this position.

#### **2.1.3 Legislation**

Legislation was announced in the Budget 2014 and enacted in part 4 of the Finance Act 2014. The government has also announced its intention to introduce legislation to extend these rules to National Insurance Contributions. Relevant guidance will be issued when that further legislation takes effect.

### **2.2 Conditions for an AP**

#### **2.2.1 Certain conditions must be satisfied**

APNs may be issued to taxpayers who have used an avoidance scheme and where certain conditions are satisfied:

- They have received a Follower Notice (see part 1 of this guidance),

- They have used a DOTAS notifiable arrangement, or
- They are subject to a GAAR counteraction.

The **accelerated payment notice** (APN) tells the taxpayer they must pay the specified amount which equates to the tax in dispute as a result of their use of the avoidance scheme.

### 2.2.2 When may an APN be given?

#### Section 219

HMRC may give an APN to a person (P) if all three conditions A to C are met (Section 219).

#### 2.2.3 Condition A

A tax enquiry is in progress into a return or claim made by P in relation to a relevant tax; or P has made a tax appeal in relation to a relevant tax, but the appeal has not been determined by the tribunal or court, or abandoned/disposed of.

This is an important step in the process. **HMRC cannot issue an APN unless an enquiry has been opened into a return, or an appeal has been made against a closure notice, assessment, or determination** (for example, a determination under Regulation 80 of the PAYE regulations). The taxpayer should therefore be aware that their tax arrangements are being challenged.

Once the enquiry is opened and not closed or the appeal is made and not determined by the Tribunal or Court to which it is addressed there is **no specific time limit for HMRC to issue an APN**. In the case of a closure notice, determination or assessment, HMRC would normally expect to use the amounts used in arriving at that point to establish the amount of the APN. Where an enquiry is open, HMRC will take necessary steps to obtain information from the taxpayer and their advisers to enable an accurate figure to be established.

#### 2.2.4 Condition B

The return or claim (or appeal) is made on the basis that a particular tax advantage (the asserted advantage) results from particular arrangements (the chosen arrangements).

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The arrangements must meet one of the criteria in Condition C.

### **2.2.5 Condition C**

There are three alternative requirements within condition C, any one or more of which is sufficient to trigger an APN (provided that conditions A and B are also satisfied).

**More than one** of the following may be relevant and **each must be specified** in the APN if relevant:

#### **2.2.6 Condition C, requirement 1: Follower Notice**

HMRC has given a follower notice (see part 1 of this guidance) in relation to the same return, claim or appeal and by reason of the same tax advantage and chosen arrangements.

#### **2.2.7 Condition C, requirement 2: DOTAS**

The chosen arrangements are DOTAS arrangements.

#### **2.2.8 Condition C, requirement 3: GAAR**

A GAAR counteraction notice has been given in relation to the same tax advantage (or part of), in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel concluded that entering into the arrangements was not a reasonable course of action.

#### **2.2.9 The DOTAS requirement**

The DOTAS requirement requires two conditions to be satisfied:

- The arrangements have been given a DOTAS Scheme Reference Number (SRN) under the DOTAS legislation (section 311 of FA 2004), and
- The taxpayer has made a return asserting a tax advantage based on those arrangements.

Note that the requirement for there to be an open enquiry or appeal must be met. HMRC cannot issue an APN on the basis of the DOTAS requirement when the disclosure is made unless there is also an open enquiry or appeal at that point in time in relation to those disclosed arrangements.

It is also important to note that there must have been a disclosure that has given rise to an SRN. HMRC cannot issue an APN unless there has been a disclosure or HMRC has successfully taken action under FA 2004 to enforce a disclosure.

Only those DOTAS SRNs which are published by HMRC on a list (to be updated from time to time) will be within the scope for receiving an accelerated payment notice. See 2.2.13 below.

Here's an example.

### **Example 7**

A taxpayer has gross income of £150,000 and claims a loss arising from an arrangement disclosed under DOTAS of £50,000. The taxpayer completes and submits a self-assessment tax return on that basis, showing taxable income of £100,000 (subject to any other reliefs and allowances available). In this case, tax on £50,000 is the tax advantage referred to in the legislation.

If part of the relief claimed under the DOTAS disclosed arrangement is not considered to arise from an avoidance scheme, the tax advantage for these purposes will exclude that part of the total amount.

Let's look at an example of this.

### **Example 8**

Of the £50,000 referred to above, £30,000 is considered to arise from a claim to relief in line with the relevant legislation and £20,000 is considered to arise from tax avoidance. In this instance, the tax advantage is tax on £20,000.

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### **2.2.10 Does a SRN have to be notified by the taxpayer**

Where a taxpayer is obliged by the law to notify HMRC of the SRN, but fails to do so, the legislation still applies providing the two criteria at 2.2.9 are satisfied.

### **2.2.11 Not in possession of a DOTAS number**

It is not open to a taxpayer to object to an APN simply on the grounds that they have not been given the SRN by the person who was required to do so by the DOTAS legislation. The legislation simply requires that the taxpayer's return has been made on the basis of a tax advantage arising from arrangements that have been given a DOTAS SRN.

### **2.2.12 Two or all three criteria: Condition C**

It is possible for a notice to be issued on the basis of two or all three criteria within condition C. See 2.8 and 2.9 for more details about what happens in these circumstances and the particular rules that apply.

### **2.2.13 Publication of scheme reference numbers**

HMRC has published a list of DOTAS Scheme Reference Numbers (SRNs). Users of schemes on that list may receive a notice from HMRC requiring an accelerated payment to be made.

HMRC will update the list at quarterly intervals.

### **2.2.14 Programme of work**

The majority of accelerated payments based on current disclosed schemes will be issued through a phased programme of work over the period from Royal Assent through to the end of March 2016. This work will be ongoing and, as and when new schemes are disclosed, APNs will be issued as appropriate where the SRNs are on the published list. Those who will receive a notice will be contacted by HMRC before it is sent out.

Where applicable, copies of correspondence will also be sent to the taxpayer's agent.

As noted above, an APN can only be issued once an enquiry has been opened (or there is an open appeal), and, where it is based solely on the DOTAS requirement, the DOTAS SRN appears on the published list.

## **2.3 Content of an Accelerated Payment Notice (APN) where enquiry is in progress**

### **2.3.1 Notices**

Clause 213

An APN must:-

- specify the conditions that have been satisfied (including all applicable requirements under condition C);
- inform the taxpayer of the amount of the payment required;
- explain that the accelerated payment is to be treated as a payment on account of the tax in dispute;
- set out the time limits for making the accelerated payment;
- specify the late payment penalty terms, rates and structure;
- explain that any amounts subject to an accelerated payment notice cannot be postponed;
- explain how representations may be made to HMRC about an APN, including the time limit and what HMRC must do in response; and
- inform the taxpayer that in the event of their successful litigation, HMRC may apply to the court or tribunal for an order not to repay the tax in dispute, where HMRC pursues a further appeal, in order to protect the revenue.

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### 2.3.2 Designated officer

A **designated officer** - a senior official in HMRC - will determine the amount of the payment required in an APN. The payment required is the amount of the understated tax (see Annex 1 definitions) calculated to the best of the officer's information and belief.

The information available will include that held by CRMs and case teams.

### 2.3.3 Understated tax

The **understated tax** is the additional amount that would be due and payable on the basis that the tax advantage has been denied. In each case this will be determined by the designated HMRC officer. In follower notice and GAAR counteraction cases, the expected position would be as follows -

- Follower notices
  - If HMRC has issued a follower notice the amount is the same as would be required if the taxpayer were to have taken the necessary corrective action to amend the return or otherwise settle the dispute.
- GAAR counteraction notice
  - The amount will be the same as specified in the GAAR counteraction notice.

### 2.3.4 Requirements in Condition C

Section 227

In the event that more than one of the requirements in condition C is met, HMRC must specify in the notice which of them is being applied to determine the amount of the required accelerated payment. Note that this may have further consequences if one or more of the original conditions changes – see the guidance below on section 227 2.8 and 2.9.

### 2.3.5 Denied tax advantage

The legislation for the DOTAS criterion uses the term 'so much of the asserted advantage as is not a tax advantage which results from the chosen arrangements, or otherwise'.

That is, it is the amount which the taxpayer has asserted as a tax advantage but which HMRC considers will not ultimately be a tax advantage when the enquiry or appeal is finally resolved.

In Example 7, this would be tax on the claimed loss of £50,000 (in the example where the whole amount arises from avoidance) or tax on £20,000 in Example 8.

### 2.3.6 Content of an APN given pending an appeal

Section 221

Where an appeal is pending an APN must –

- Specify the conditions that have been satisfied (including the additional conditions in requirement C);
- Specify the amount of the disputed tax;
- Explain that any tax subject to an APN cannot be postponed;
- Set out the time limits for making the accelerated payment;
- Explain how representations may be made to HMRC about an APN, including the time limit and what HMRC must do in response; and
- Inform the taxpayer that in the event of the taxpayer's successful litigation, HMRC may apply to the court or tribunal for an order not to repay the tax in dispute, where HMRC pursues a further appeal, in order to protect the revenue.

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### 2.3.7 Disputed tax

The **disputed tax** is the amount HMRC is asking the taxpayer to pay. It will be determined by a designated officer and, in most cases, it is expected to be the amount which is under appeal in relation to the avoidance arrangements which have led to the APN. Care will be taken to distinguish what is the tax advantage arising from the chosen arrangements and any other amounts which may be in dispute arising from the same or other arrangements.

## **2.4 Representations**

### **2.4.1 Representations can be made**

Taxpayers can object to an APN by making representations in writing to HMRC.

### **2.4.2 Time limit for representations**

The recipient of an APN has 90 days from the date of the notice to send written representations to HMRC.

### **2.4.3 Grounds for representations**

Representations must be in writing and can only be made on one or more of the following grounds:

- Conditions A, B or C are not met, or
- The amount specified in the notice does not accurately reflect the amount of tax in dispute in relation to the asserted advantage.

These should give as full a statement as possible of the grounds to enable HMRC to consider them and come to a conclusion.

### **2.4.4 HMRC makes determination**

The representations will be considered by an independent HMRC officer who is unconnected with the team which issued the APN.

If representations are made objecting to whether requirements A, B or C are met, HMRC must determine whether to confirm the APN (with or without amendment), or to withdraw the APN.

### **2.4.5 Changes to the amount specified**

If representations are made objecting to the amount specified in the notice, HMRC must determine whether a different amount ought to have been specified and either confirm the amount in the notice, or amend the notice to specify a different amount.

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#### **2.4.6 How to make representations**

Full information about where to send a representation and what it should contain will be included on the Notice.

HMRC must receive the representation within the statutory time limit of 90 days from the date of the notice. The normal timing rules that apply to determine, for example, the date of the submission of tax returns and the date of their receipt, will apply to APNs and representations.

Representations can be made by the taxpayer's duly authorised agent.

#### **2.4.7 HMRC must notify outcome**

HMRC must consider the representations and either confirm the accelerated payment notice (with or without amending it) or withdraw the notice. HMRC must notify the taxpayer accordingly.

The representations will be considered by an independent HMRC officer who is unconnected with the team which issued the follower notice. Section 1.17.2 contains more information on governance in relation to follower notices.

#### **2.4.8 Revised payment date**

If an accelerated payment is still payable following notification of HMRC's decision, the taxpayer must pay the amount due by the later of the period of 30 days beginning with the date of the decision or 90 days after the APN was given.

#### **2.4.9 Accurate information essential**

It is important for taxpayers and their advisers to take all steps to give HMRC full information at the earliest opportunity so that an accurate figure can be established for the accelerated payment. The accelerated payment is intended to represent only the additional amount that the taxpayer would have to pay for the chargeable period if their avoidance scheme fails. This may not necessarily be the total tax involved in the appeal or dispute as there may be other reliefs and allowances to take into account.

### 2.4.10 Consequential effects

Where denial of the disputed tax advantage would have a consequential effect on other areas of the taxpayer's returns that will also be taken into account. This could include consequential effects on other periods, for example where claims to capital allowances are involved.

### 2.4.11 More than one set of arrangements

It may be the case that a taxpayer has become involved with more than one set of arrangements that in aggregate would, if successful, lead to their claiming more relief than their aggregate income and gains for the period. The total accelerated payment for the period would not be more than the tax on their total amount of income and gains for the same period, having regard to reliefs and allowances available (outside those claimed in relation to the arrangements).

Let's have a look at an example.

#### Example 9

A taxpayer has gross income of £200,000 for a particular year, but enters into avoidance schemes that could generate losses of £250,000. The APN for that year will be no greater than tax on £200,000 (after taking into account other reliefs and allowances, such as the personal allowance). In this instance the balance of £50,000 loss may be claimed to be carried into a different period. A separate APN for that other period would be needed to deal with that amount in that other period, again depending on other income, gains, reliefs and allowances for that particular period.

Additionally, for example, if a scheme runs for a number of periods, bringing in an annual benefit, we would issue APNs separately for each tax period.

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#### **2.4.12 Certificates of Tax Deposit**

If a taxpayer has purchased a Certificate of Tax Deposit, they can redeem it against the accelerated payment in the normal way. Taxpayers in that position should contact HMRC as soon as possible to ensure that the amounts are allocated in the correct way.

#### **2.4.13 Tax enquiry in progress**

An accelerated payment in respect of an APN is treated as if it were a payment on account of the understated tax for the period. This means that, once the final liability has been decided or agreed, the accelerated payment will be set against it.

#### **2.4.14 IHT**

If the accelerated payment relates to inheritance tax (IHT) and this tax is being paid by instalments, as it is in special circumstances, then the due date for making an accelerated payment cannot be set before the due date for paying the instalment to which it relates.

#### **2.4.15 Part of under-statement paid**

If a taxpayer has paid any part of the understated tax before an APN is issued, this amount will reduce the size of payment required by the APN.

Where amounts have been paid on account, but not yet allocated, or certificates of tax deposit purchased, HMRC will discuss with the taxpayer how and if those may be used against the accelerated payment.

### **2.5 Interest**

#### **2.5.1 AP does not attract late payment interest**

Any late paid accelerated payment does not itself attract interest, but will normally be subject to a late payment penalty (see Section 2.7.1). However, as it is paid in relation to the disputed tax it will have an effect on the interest which is ultimately due and payable when the dispute is settled or agreed.

### 2.5.2 Alleviates interest on disputed tax

On receipt of the accelerated payment, interest will cease to accrue further on the disputed tax to the extent it is covered by the payment made.

Here's an example.

#### Example 10

A taxpayer makes a tax return for the year ended 5th April 2009, with any tax due on 31st January 2010. The taxpayer self-assesses on the basis that an avoidance scheme will succeed. An APN is given on 1st September 2014, which the taxpayer pays on 31st October 2014.

If the taxpayer is ultimately unsuccessful and their self-assessment is amended upwards to reflect the additional tax, interest will be due on the extra amount from 31 January 2010 (the original payable date) to 31 October 2014 (the date when the accelerated payment was paid). If the final additional amount is more or less than the accelerated payment, the interest will be adjusted accordingly.

### 2.5.3 AP attracts repayment interest

If an accelerated payment is received by HMRC and later has to be partly or wholly repaid, then repayment interest at the prevailing rates will be paid to the taxpayer.

### 2.5.4 Payment Arrangements for APNs

If a taxpayer enters into a payment arrangement with HMRC and this is agreed before the payment date, no late payment penalties will be charged provided the payment arrangement is adhered to (paragraph 10 of schedule 56 to FA 2009, applied by section 226(7) of FA 2014).

### 2.5.5 Payment dates for APNs

The time limits for making an accelerated payment depend on whether a representation has been made. They are as follows:

- If no representations have been made - 90 days from the date the notice is issued.

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- If representations have been made - 30 days from when HMRC issues its decision, following consideration of those representations, or 90 days from the date of the original notice, whichever is later.

### **2.5.6 Restriction on postponement**

Tax under appeal can be subject to postponement under section 55 of TMA 1970, and the equivalents for other taxes. However, accelerated payments made under this new legislation cannot be postponed under section 55.

### **2.5.7 AP cancels postponement**

If the payment of tax has already been postponed then the APN has the effect of cancelling the postponement. The amount involved becomes due and payable under the normal rules for the head of duty concerned, except that the 90 day time limit for payment under the accelerated payment rules applies rather than any shorter payment period that might otherwise apply for the specific tax involved.

### **2.5.8 Tax not in an avoidance dispute**

None of this affects the postponement of any other tax under appeal in respect of the same tax return, but where that tax is not subject to the accelerated payment rules. For example, a taxpayer may be involved in a dispute over an avoidance scheme involving their income tax liability, and they may also be challenging a liability to capital gains tax, which does not involve any form of accelerated payment. The liability to capital gains tax can continue to be postponed under the existing rules.

## **2.6 Protection of revenue pending further appeals**

### **2.6.1 Additional power for AP**

Section 56 of TMA 1970, and its equivalents for other taxes, directs that the unsuccessful party in a tribunal or court appeal must pay (in the case of the taxpayer) or repay (in the case of HMRC) the tax involved. The accelerated payments rules are not intended to override that position in the normal course of events. However, the new legislation does provide an additional, limited, power (see 2.6.2).

### **2.6.2 No repayment cases**

Where a taxpayer has been successful in litigation in a case where an APN has been issued, the tax in dispute does have to be repaid to the taxpayer unless:

- HMRC applies to the tribunal or court in order to pursue a further appeal; and
- the relevant tribunal or court considers a risk to the Exchequer will develop if a repayment is made and gives a direction.

In these cases the tribunal or court may:

- grant permission to withhold all or part of the repayment; or
- rule that the taxpayer must provide adequate security before being repaid.

### **2.6.3 Genuine risk of non payment**

HMRC only expects to make application to the tribunal or court in cases where HMRC considers there is a genuine risk that tax due may not be paid on the outcome of the case.

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## 2.7 Penalty for failure to pay an AP

### 2.7.1 Late payment penalties for open enquiry cases

Where an APN has been given and the APN remains unpaid, the taxpayer is liable to late payment penalties as follows:

- On the penalty day – 5% of the amount unpaid.
- Five months after the penalty day – if tax is still unpaid a 5% penalty is levied on the total owing at that date.
- 11 months after the penalty day – if the tax is still unpaid a 5% penalty is levied on the total amount owing.

**The penalty day is the day immediately following the end of the payment period.**

Note: much of Schedule 56 to FA 2009 (late payment penalties) applies to late payment of APNs. This includes the rule that where an agreement for deferred payment is made there will not be a late payment penalty provided the taxpayer keeps to the terms of the payment arrangement.

#### Example 11

An AP notice is given to taxpayer in the amount of £100,000 on 1 October 2014. The payment is therefore due by 29 December 2014.

Taxpayer does not pay the AP.

A 5% penalty is due on 30 December 2014 (the penalty day) of £5000.

A further 5% penalty of £5,000 is due on 30 May 2015 (5 months after the penalty day)

If taxpayer continues not to pay, an 11 month penalty of £5,000 is charged on 30 November 2015.

Let's look at another example.

#### Example 12

An AP notice is given to taxpayer in the amount of £100,000 on 1 October 2014. The payment is therefore due by 29

December 2014.

Taxpayer pays £50,000 on 28 December 2014 therefore £50,000 is still outstanding.

A 5% penalty is due on 30 December 2014 (the penalty day) of £2,500 which is duly paid.

Taxpayer pays the remaining £50,000 on 1 April 2015.

Taxpayer has now fully complied with the APN and no further penalties for late payment are due.

### 2.7.2 Late payment penalties for open appeal cases

For these cases, the late payment penalties derive directly from Schedule 56 to FA 2009. The penalty day will be the day after 30 days after the due date in the follower notice.

Thus the first 5% will arise on the penalty day and then:

- Five months after the penalty day – if tax is still unpaid a 5% penalty is levied on the total owing at that date.
- 11 months after the penalty day – if the tax is still unpaid a 5% penalty is levied on the total amount owing.

Note that, for open appeal cases, penalties will only apply to those taxes which are already within the scope of Schedule 56.

### 2.7.3 Appeals against late payment penalties

Taxpayers have the right to appeal to the Tribunal against late payment penalties. The rules set out in FA 2009, Schedule 56, paragraph 13 apply to late payment penalties for APNs.

A taxpayer can also claim a “reasonable excuse” for their late payment which, if upheld by HMRC or the relevant Tribunal, remove the liability to a penalty.

## 2.8 Withdrawal, modification or suspension of APN

### 2.8.1 Conditions

Where an APN has been issued, HMRC may, at any time:

- 
- withdraw the notice;
  - reduce the amount of the accelerated payment when one of the requirements of condition C ceases to exist. (This occurs when the notice remains effective as it is supported by another of the alternatives to condition C);  
or
  - reduce the amount specified in the notice (this includes where there are multiple arrangements in the same tax year and one or more is successful in litigation).

### **2.8.2 Excess repaid**

If the amount of an accelerated payment is reduced and a greater amount than this has already been paid, then HMRC will repay the excess with interest.

Similarly, if a late payment penalty has been charged and paid a replacement assessment for the correct penalty will be issued and any excess repaid.

### **2.8.3 Specified amount repaid**

If an APN is withdrawn, the specified amount paid plus any penalties will be repaid with interest.

### **2.8.4 Taxpayer wants to settle**

If, after receiving the APN, a taxpayer wants to settle the dispute with HMRC, there are a number of ways of dealing with this. Two are set out here:

- the taxpayer may agree to amend his return or claim and pay the tax arising. He can choose to pay the tax either by the APN due date or the normal deadline (if earlier than the APN due date);
- the taxpayer may want to enter into a settlement agreement, accepting HMRC's view of the tax results of the scheme, with a payment instalment plan because he cannot pay all the tax due at once. Having entered into this settlement agreement, HMRC may withdraw the APN.

## 2.9 Modifications to an APN

### 2.9.1 Follower Notice

If an APN is issued because it has been triggered by a Follower Notice which is either:

- withdrawn; or
- amended (when there has been a new relevant final judicial ruling after a late appeal);

then HMRC must amend or withdraw the APN.

### 2.9.2 DOTAS arrangements

If an APN has been triggered because of DOTAS arrangements and these arrangements are no longer notifiable or applicable, then HMRC must reduce the amount (as appropriate) of the accelerated payment to the extent to which it was based on this requirement. For example, HMRC has withdrawn the obligation to notify the scheme.

### 2.9.3 Condition C requirements

If at least one of the Condition C requirements continues to be satisfied then the APN will continue to have effect. Where more than one of the Condition C requirements was originally applicable and one or more no longer applies, HMRC must:

- withdraw the notice to the extent it is given by virtue of those requirements;
- notify the modification of the APN to show one of the remaining Condition C requirements; and
- reduce the amount of the accelerated payment due if the disputed tax determined under the substituted requirement is less than the amount initially stated on the notice.

### 2.9.4 Specify Condition C requirement

Sections 220(6) and 221(5) require HMRC to specify which Condition C requirement is used as the basis of an APN, where more than one of those requirements could apply. In the majority of cases it is likely that the resulting accelerated payment will be the same, but it might not be.

Sections  
220(6) and  
221(5)

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Any amount found to be overpaid as a result will be repaid with interest.

## **2.10 Suspension of an APN**

### **2.10.1 Late appeal**

If a follower notice is suspended because of a late appeal against the relevant judicial decision, then an accelerated payment notice will also be suspended if it is based solely on the follower notice requirement of Condition C.

### **2.10.2 APN remains effective despite late appeal against relevant judicial decision**

If another Condition C requirement is still met (either DOTAS arrangements or a GAAR counteraction notice) then the APN will not be suspended and remains effective in relation to those conditions. In this circumstance HMRC must:

- withdraw the follower notice requirement;
- notify the modification of the APN to show the remaining Condition C requirements;
- reduce the amount of accelerated payment due if the disputed tax determined under the substituted requirement is less than the amount initially stated on the notice.

## 2.11 Partnerships - Summary

### 2.11.1 Special rules

FA2014, Sch 31  
& 32

Special rules for members of partnerships can be found in Schedules 31 and 32. These rules essentially reflect the general tax treatment of partnerships. In summary:

- A follower notice will be issued to the representative partner, in that capacity, on behalf of the partnership as a whole.
- That follower notice can then apply to generate an APN to the members of the partnership.
- The members can also be given a follower notice or an APN in respect of a scheme in their personal capacity.
- In those instances these will relate directly to their own tax return, which will of course include their share of the partnership profits and gains.

These points are discussed in more detail below.

### 2.11.2 Actions taken separately by partners

All actions taken in respect of accelerated payments, including the issue of the notice, representations, payment, late payment penalties, etc are undertaken separately by the individual partners. The representative partner has no role in that capacity, but may of course be involved in their personal capacity

### 2.11.3 Partners' APs may vary

It is entirely possible for different partners to receive APNs for different amounts, depending on other reliefs and allowances that they may have available personally

### 2.11.4 SDLT & ATED rules

Specific partnership rules apply for SDLT and ATED to reflect the particular treatment of partnerships in relation to those heads of duty.

More can be found in the Guidance relating to **ATED** and **SDLT** and in the **Partnerships** section.

### 2.11.5 Partnership Notices

Schedule 32 to FA 2014 sets out the additional special rules for partnerships. These rules apply to partnerships which are subject to TMA 1970 s12AA.

### 2.11.6 Partner Payment Notice

An APN for a partner is called a **Partner Payment Notice (PPN)** and each partner of the partnership will receive an individual notice. The partner is responsible for paying the amount set out in their PPN and will be liable for a late payment penalty if the amount is not paid by the due date.

### 2.11.7 Issue of a PPN

The rules for issuing a PPN are adapted to refer to partnership returns as appropriate. Apart from this they are fundamentally the same as the rules for other taxpayers.

### 2.11.8 Calculation of tax advantage

The contents of a PPN and calculation of the payment are very similar to an Accelerated Payment, with modifications for partners. The denied advantage is calculated by reference to the amount of tax that becomes due and payable by counteracting the tax advantage in the relevant claim or return of the partner.

### 2.11.9 Partner representations

There is no direct right to appeal against a PPN, but each partner has the right to make written representations to HMRC on the basis that either:

- Any of the Conditions A-C are not met; or
- The amount specified in the PPN is not correct.

### 2.11.10 Notification of decision

HMRC must consider the representations and notify the partner in writing of their decision – which will normally be to confirm, withdraw or modify the PPN.

### **2.11.11 Time limits**

Time limits for payment are the same as for other taxpayers:

90 days from the date the PPN was given; or

If representations have been made, the later of the original 90 day period or the end of a 30 day period beginning on the date HMRC confirms their decision to issue the PPN.

### **2.11.12 Late-payment penalties**

A late payment penalty applies to partners who do not pay by the due date. They operate in the same way as set out above at [Section 2.7](#).

### **2.11.13 Changes to PPN**

The rules for withdrawing, suspending and amending PPNs are the same as for APNs.

**End of this section.**

## 3 Annual Tax on Enveloped Dwellings

### 3.1 Amendments for ATED (section 231)

The guidance for Follower Notices and Accelerated Payments applies to ATED with the following amendments. They reflect the specific treatment of partnerships and other forms of joint ownership for ATED

### 3.2 Partners

Where the relevant tax is ATED, and the chargeable person is

- a partnership, or
- two or more persons jointly and severally liable to pay the relevant tax,

anything required or authorised (by the follower notice and accelerated payments legislation) to be done in relation to a taxpayer must be done in relation to all the responsible partners and persons jointly and severally liable to pay the relevant tax.

This in particular means that each person must receive a separate notice.

### 3.3 Liability

Any liability to:

- an accelerated payment,
- a penalty for failure to pay an accelerated payment, or
- a penalty for failure to take corrective action in response to a Follower Notice

is the joint and several liability of all responsible partners, or all persons jointly and severally liable to pay the relevant tax.

### 3.4 Responsible partners

The **responsible partners** are all persons who are members of the partnership on the first day of the period of ownership of the dwelling in the chargeable period.

### **3.5 Representations**

Where a Follower Notice or an APN is given to more than one person then representations against either may be made by each of those persons separately or by two or more of them jointly.

**End of this section.**

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## **4 Stamp Duty Land Tax (SDLT)**

### **4.1 Amendments for SDLT (section 230)**

The guidance for Follower Notices and Accelerated Payments applies to SDLT with the following amendments. They reflect the specific treatment of partnerships and other forms of joint ownership for SDLT.

### **4.2 Partners**

Where the relevant tax is SDLT, and

- a partnership, or
- two or more persons acting jointly are the purchasers in respect of the land transaction,

then anything required or authorised (by the follower notice and accelerated payments legislation) to be done in relation to P must be done in relation to all the responsible partners and persons acting jointly.

This means, in particular, that each person involved must be given a separate notice.

### **4.3 Liability**

Any liability to:

- an accelerated payment.
- a penalty for failure to pay an accelerated payment.
- a penalty for failure to take corrective action in response to a Follower Notice

is the joint and several liability of all responsible partners, or all persons acting jointly as purchasers in respect of the land transaction.

### **4.4 Effective date of transaction**

However neither the accelerated payment nor the penalties can be recovered from a person who became a responsible partner after the effective date of the transaction in respect of which the accelerated payment relates.

#### **4.5 Responsible partners**

The **responsible partners** in relation to a transaction are the persons who are partners at the effective date of the transaction.

#### **4.6 Trustees**

Where the trustees of a settlement are liable to pay an accelerated payment or a penalty relating to SDLT, the payment or penalty may be recovered (but only once) from any one or more of the trustees.

However the penalty may not be recovered from any person who became a trustee after the time when the omission occurred that caused the penalty to become payable.

#### **4.7 Representations**

Where a Follower Notice or an APN is given to more than one person, representations may be made by each of those persons separately or by two or more of them jointly.

**End of this section.**

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## 5 Annex 1: Definitions

Item	Definition
Relevant Tax	<ul style="list-style-type: none"><li>• Income tax</li><li>• Capital gains tax</li><li>• Corporation tax, including any amount chargeable or treated as if it were corporation tax</li><li>• Inheritance Tax</li><li>• Stamp Duty Land Tax</li><li>• Annual Tax on Enveloped Dwellings</li></ul>
Tax Advantage  The term tax advantage includes:	<ul style="list-style-type: none"><li>• Relief or increased relief from tax</li><li>• Repayment or increase in repayment of tax</li><li>• Avoidance or reduction of a charge or assessment to tax</li><li>• Avoidance of a possible assessment to tax</li><li>• Deferral of a payment of tax or advancement of a repayment of tax</li><li>• Avoidance of an obligation to deduct or account for tax</li></ul>
Tax arrangements	Arrangements are tax arrangements if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes of the arrangements.

Item	Definition
A tax enquiry means	<ul style="list-style-type: none"> <li>• An enquiry into self assessment returns for income tax and capital gains tax (section 9A or 12AC TMA 1970). This includes deemed enquiries by virtue of section 12 AC (6) TMA 1970.</li> <li>• An enquiry into a claim made otherwise than by being included in a return (paragraph 5 Schedule 1A TMA 1970).</li> <li>• An enquiry into a company tax return for corporation tax (paragraph 24 of Schedule 18 to FA 1988). This includes deemed enquiries by virtue of section 12 AC (6) TMA 1970.</li> <li>• An enquiry into an SDLT return (para 12 Schedule 10 FA 2003).</li> <li>• An enquiry into annual tax for enveloped dwellings returns (para 8 Sch 22 FA 2013).</li> </ul>
A period for which an enquiry is in progress	Begins with the day on which the notice of enquiry is given, and ends on the day on which the enquiry is completed.
For Inheritance Tax each of the following is treated as a return	<ul style="list-style-type: none"> <li>• An account delivered by a person under s216 or 217 of IHTA 1984 including an account delivered in accordance with regulations under section 256 of that Act</li> <li>• An statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account</li> <li>• Information or a document provided by a person in accordance with regulations under section 256 of that Act</li> <li>• And such a return is to be treated as made by the person in question.</li> </ul>
For Inheritance Tax an enquiry is deemed to be in progress during the period which	<ul style="list-style-type: none"> <li>• Begins with the time the account is delivered or the statement, declaration, information or document is produced, and</li> <li>• Ends when the person is issued with a certificate or discharge under section 239 of that Act, or is discharged by virtue of section 256(1)(b) of that Act, in respect of the return (at which point the enquiry is to be treated as completed).</li> </ul>
Tax Appeal A tax appeal	<ul style="list-style-type: none"> <li>• An appeal under section 31 TMA 1970 (income tax appeals against amendments of self-assessment, amendments made by closure notices under section 28A or 28B of that Act) including an appeal under that section by virtue of regulations under Part 11 of IEPA</li> </ul>

Item	Definition
means	<p data-bbox="523 302 694 331">2003 (PAYE)</p> <ul style="list-style-type: none"> <li data-bbox="480 360 1433 472">• An appeal under paragraph 9 of Schedule 1A to TMA 1970 (income tax: appeals against amendments made by closure notices under paragraph 7(2) of that Schedule etc)</li> <li data-bbox="480 501 1385 568">• An appeal under section 705 of ITA 2007 (income tax: appeals against counteraction notices)</li> <li data-bbox="480 598 1433 748">• An appeal under paragraph 34(3) or 48 of Schedule 18 to FA 1998 (corporation tax: appeals against amendment of a company's return made by closure notice, assessments other than self assessments etc)</li> <li data-bbox="480 777 1441 844">• An appeal under section 750 of CTA 2010 (corporation tax: appeals against counteraction notices)</li> <li data-bbox="480 873 1441 1068">• An appeal under section 222 of IHTA 1984 (appeals against HMRC determinations) other than an appeal made by a person against a determination in respect of a transfer of value at a time when a tax enquiry is in progress in respect of a return made by that person in respect of that transfer</li> <li data-bbox="480 1097 1409 1209">• An appeal under paragraph 35 of Schedule 10 to FA 2003 (stamp duty land tax: appeals against amendment of self assessment, discovery assessments etc)</li> <li data-bbox="480 1238 1417 1350">• An appeal under paragraph 35 of Schedule 22 to FA 2013 (annual tax on enveloped dwellings: appeals against amendment of self-assessment, discovery assessments etc),</li> </ul> <p data-bbox="480 1379 507 1408">or</p> <ul style="list-style-type: none"> <li data-bbox="480 1438 1377 1467">• An appeal against any determination of an appeal listed above.</li> </ul>
Tax Period	Tax period means a tax year, accounting period or other period in respect of which tax is charged.
DOTAS arrangements	DOTAS arrangements are notifiable arrangements to which 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 under Part 7 of FA 2004 to require such a disclosure.

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Item	Definition
GAAR counteraction notice	<p data-bbox="475 331 1398 448">A GAAR counteraction notice means a notice under paragraph 12 of Schedule 43 to FA 2013. A GAAR counteraction notice is a written notice given if a designated officer considers:</p> <ul data-bbox="475 472 1270 607" style="list-style-type: none"><li data-bbox="475 472 1270 546">• that a tax advantage has arisen to a taxpayer from tax arrangements that are abusive; and</li><li data-bbox="475 568 1142 607">• that the advantage ought to be counteracted.</li></ul>

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## 6 Notes & Comments

Notes