



Finance Act 2014

2014 CHAPTER 26

PART 4

FOLLOWER NOTICES AND ACCELERATED PAYMENTS

CHAPTER 2

FOLLOWER NOTICES

Penalties

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

- (1) This section applies where a follower notice is given to P (and not withdrawn).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

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- (b) of the denied advantage and (where different) the additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.
- (7) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of subsection (6)(b), it is to be assumed that, where P takes the necessary action as mentioned in subsection (5)(b), the agreement is then entered into.
- (8) In this Chapter—
- “the specified time” means—
- (a) if no representations objecting to the follower notice were made by P in accordance with subsection (1) of section 207, the end of the 90 day post-notice period;
- (b) if such representations were made and the notice is confirmed under that section (with or without amendment), the later of—
- (i) the end of the 90 day post-notice period, and
- (ii) the end of the 30 day post-representations period;
- “the 90 day post-notice period” means the period of 90 days beginning with the day on which the follower notice is given;
- “the 30 day post-representations period” means the period of 30 days beginning with the day on which P is notified of HMRC’s determination under section 207.
- (9) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent P taking the first step mentioned in subsection (5)(a) before the tax enquiry is closed (whether or not before the specified time).
- (10) No appeal may be brought, by virtue of a provision mentioned in subsection (11), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by P to a return or claim in taking the first step mentioned in subsection (5)(a) (whether or not that amendment was made before the specified time).
- (11) The provisions are—
- (a) section 31(1)(b) or (c) of TMA 1970,
- (b) paragraph 9 of Schedule 1A to TMA 1970,
- (c) paragraph 34(3) of Schedule 18 to FA 1998,
- (d) paragraph 35(1)(b) of Schedule 10 to FA 2003, and
- (e) paragraph 35(1)(b) of Schedule 33 to FA 2013.

[^{F1}208A Additional penalty for unreasonable tax appeal

- (1) In the case of a follower notice given by virtue of section 204(2)(a) in relation to a tax enquiry into a return or claim made by P, this section applies where—
- (a) P makes a tax appeal addressed to the tribunal in relation to the return or claim, and
- (b) P is assessed to a penalty under section 208.
- (2) In the case of a follower notice given by virtue of section 204(2)(b) in relation to a tax appeal made by P, this section applies where—
- (a) the tax appeal is addressed to the tribunal, and

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- (b) P is assessed to a penalty under section 208.
- (3) P is liable to pay a penalty (in addition to the penalty under section 208) if P or P's representative is found to have acted unreasonably in bringing or conducting relevant proceedings.
- (4) For the purposes of subsection (3), P or P's representative is found to have acted unreasonably in bringing or conducting relevant proceedings if (and only if) subsection (5) or (6) applies.
- (5) This subsection applies if—
 - (a) the proceedings are struck out—
 - (i) because there is no reasonable prospect of P's case, or part of it, succeeding, or
 - (ii) because of something that P or P's representative has done (or not done),
 - (b) the appeal period has ended, and
 - (c) the proceedings have not been reinstated or (where the strike out was not automatic) the decision to strike out the proceedings has not been set aside or overturned on appeal.
- (6) This subsection applies if—
 - (a) on an application by HMRC, the tribunal to which the proceedings are addressed makes a declaration that P or P's representative acted unreasonably in bringing or conducting the proceedings,
 - (b) the appeal period has ended, and
 - (c) the decision to make the declaration has not been set aside or overturned on appeal.
- (7) The powers of the tribunal in relation to relevant proceedings are to be taken to include the power to make a declaration for the purposes of subsection (6)(a).
- (8) For the purposes of this section, the following are “relevant proceedings” in relation to P—
 - (a) where the whole of the proceedings on P's tax appeal relate to the chosen arrangements, the whole of those proceedings;
 - (b) where part only of the proceedings on P's tax appeal relates to the chosen arrangements, that part of those proceedings;
 - (c) proceedings before the Upper Tribunal on any further appeal by P in relation to relevant proceedings within paragraph (a) or (b) (where those proceedings were determined by the First-tier Tribunal).
- (9) For the purposes of subsection (8), P's tax appeal is the tax appeal mentioned in subsection (1)(a) or (2)(a) (as the case may be).
- (10) For the purposes of this section, “the appeal period” is—
 - (a) the period during which an appeal could be brought against the striking out of the proceedings or, as the case may be, the decision to make the declaration under subsection (6)(a) (ignoring any possibility of an appeal out of time), or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.

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(11) For the purposes of subsection (10), an appeal includes an application to reinstate proceedings that have been struck out or for the tribunal to set aside its decision.

(12) In this section, “tribunal” means the First-tier Tribunal or Upper Tribunal.]

Textual Amendments

F1 S. 208A inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 2](#)

209 Amount of a section 208 [^{F2}or 208A] penalty

(1) The penalty under section 208 is [^{F3}30%] of the value of the denied advantage.

[^{F4}(1A) The penalty under section 208A is 20% of the value of the denied advantage.]

(2) Schedule 30 contains provision about how the denied advantage is valued for the purposes of calculating penalties under this section.

(3) Where P before the [^{F5}relevant time] —

- (a) amends a return or claim to counteract part of the denied advantage only, or
- (b) takes all necessary action to enter into an agreement with HMRC (in writing) for the purposes of relinquishing part of the denied advantage only,

in subsections (1) [^{F6}, (1A)] and (2) the references to the denied advantage are to be read as references to the remainder of the denied advantage.

[^{F7}(4) The “relevant time” means—

- (a) in the case of a penalty under section 208, the specified time;
- (b) in the case of a penalty under section 208A, the day after the end of the appeal period.

(5) “The appeal period” has the same meaning for the purposes of this section as it has for the purposes of section 208A (see section 208A(10) and (11)).]

Textual Amendments

F2 Words in s. 209 heading inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(2\)](#)

F3 Word in s. 209(1) substituted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(3\)](#)

F4 S. 209(1A) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(4\)](#)

F5 Words in s. 209(3) substituted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(5\)\(a\)](#)

F6 Words in s. 209(3) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(5\)\(b\)](#)

F7 S. 209(4)(5) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 3\(6\)](#)

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210 Reduction of a section 208 penalty for co-operation

- (1) Where—
 - (a) P is liable to pay a penalty under section 208 of the amount specified in section 209(1),
 - (b) the penalty has not yet been assessed, and
 - (c) P has co-operated with HMRC,HMRC may reduce the amount of that penalty to reflect the quality of that co-operation.
- (2) In relation to co-operation, “quality” includes timing, nature and extent.
- (3) P has co-operated with HMRC only if P has done one or more of the following—
 - (a) provided reasonable assistance to HMRC in quantifying the tax advantage;
 - (b) counteracted the denied advantage;
 - (c) provided HMRC with information enabling corrective action to be taken by HMRC;
 - (d) provided HMRC with information enabling HMRC to enter an agreement with P for the purpose of counteracting the denied advantage;
 - (e) allowed HMRC to access tax records for the purpose of ensuring that the denied advantage is fully counteracted.
- (4) But nothing in this section permits HMRC to reduce a penalty to less than 10% of the value of the denied advantage.

211 Assessment of a section 208 penalty

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

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- (ii) the day on which a ruling is made on the tax appeal by P, or any further appeal in that case, which is a final ruling (see section 205(4)), and
 - (iii) the day on which that appeal, or any further appeal, is abandoned or otherwise disposed of before it is determined by the court or tribunal to which it is addressed.
- (6) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.

[^{F8}211A Assessment of a section 208A penalty

- (1) Where a person is liable for a penalty under section 208A, HMRC must—
 - (a) assess the penalty,
 - (b) notify the person who is liable for the penalty, and
 - (c) state in the notice a tax period in respect of which the penalty is assessed.
- (2) A penalty under section 208A must be paid before the end of the period of 30 days beginning with the day on which the person is notified of the penalty under subsection (1).
- (3) Subsection (4) of section 211 applies to an assessment under this section as it applies to an assessment under that section.
- (4) An assessment of a penalty under section 208A must be made before the end of the period of 90 days beginning with the day after the end of the appeal period.
- (5) “The appeal period” has the same meaning for the purposes of this section as it has for the purposes of section 208A (see section 208A(10) and (11)).]

Textual Amendments

F8 S. 211A inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 4](#)

212 Aggregate penalties

- (1) Subsection (2) applies where—
 - (a) two or more penalties are incurred by the same person and fall to be determined by reference to an amount of tax to which that person is chargeable,
 - (b) one of those penalties is incurred under section 208, and
 - (c) one or more of the other penalties are incurred under a relevant penalty provision.
- (2) The aggregate of the amounts of the penalties mentioned in subsection (1)(b) and (c) [^{F9}and any penalty under section 208A that is additional to the penalty mentioned in subsection (1)(b)], so far as determined by reference to that amount of tax, must not exceed—
 - (a) the relevant percentage of that amount, or
 - (b) in a case where at least one of the penalties is under paragraph 5(2)(b) or 6(3)(b), (4)(b) or (5)(b) of Schedule 55 to FA 2009, £300 (if greater).

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- (3) In the application of section 97A of TMA 1970 (multiple penalties), no account is to be taken of a penalty under section 208 [^{F10}or 208A].
- (4) “Relevant penalty provision” means—
- (a) Schedule 24 to FA 2007 (penalties for errors),
 - (b) Schedule 41 to FA 2008 (penalties: failure to notify etc), ^{F11} ...
 - (c) Schedule 55 to FA 2009 (penalties for failure to make returns etc)[^{F12}, ^{F13} ...
 - (d) Part 5 of Schedule 18 to FA 2016 (serial tax avoidance).][^{F14}, or
 - (e) section 212A of FA 2013 (general anti-abuse rule).]
- (5) “The relevant percentage” means—
- (a) 200% in a case where at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(4)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(c) of Schedule 55 to FA 2009,
 - (b) 150% in a case where paragraph (a) does not apply and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(3)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(b) of Schedule 55 to FA 2009,
 - ^{F15}(ba) 125% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(2)(c) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(2)(a) of Schedule 41 to FA 2008, or
 - (iii) paragraph 6(3A)(a) of Schedule 55 to FA 2009,]
 - (c) 140% in a case where [^{F16}none of paragraphs (a) to (ba) applies] and at least one the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(4)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(4)(b) of Schedule 41 to FA 2008,
 - (iii) paragraph 6(4A)(c) of Schedule 55 to FA 2009,
 - (d) 105% in a case where [^{F17}none of paragraphs (a) to (c) applies] and at least one of the penalties is determined by reference to the percentage in—
 - (i) paragraph 4(3)(b) of Schedule 24 to FA 2007,
 - (ii) paragraph 6(3)(b) of Schedule 41 to FA 2008,
 - (iii) paragraph 6(4A)(b) of Schedule 55 to FA 2009, and
 - (e) in any other case, 100%.

Textual Amendments

- F9** Words in s. 212(2) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 5\(2\)](#)
- F10** Words in s. 212(3) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 5\(3\)](#)
- F11** Word in s. 212(4)(b) omitted (with effect in accordance with Sch. 18 para. 63 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 60\(a\)](#)
- F12** S. 212(4)(d) and preceding word inserted (with effect in accordance with Sch. 18 para. 63 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 18 para. 60\(b\)](#)

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- F13** Word in s. 212(4)(c) omitted (with effect in accordance with s. 158(15) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 158\(11\)\(a\)](#)
- F14** S. 212(4)(e) and preceding word inserted (with effect in accordance with s. 158(15) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 158\(11\)\(b\)](#)
- F15** S. 212(5)(ba) inserted by 2015 c. 11, Sch. 20 para. 21(2) (as inserted by [Finance Act 2021 \(c. 26\), Sch. 28 para. 14](#))
- F16** Words in s. 212(5)(c) substituted (10.6.2021) by 2015 c. 11, Sch. 20 para. 21(3) (as inserted by [Finance Act 2021 \(c. 26\), Sch. 28 para. 14](#))
- F17** Words in s. 212(5)(d) substituted (10.6.2021) by 2015 c. 11, Sch. 20 para. 21(4) (as inserted by [Finance Act 2021 \(c. 26\), Sch. 28 para. 14](#))

213 Alteration of assessment of a section 208 [^{F18}or 208A] penalty

- (1) After notification of an assessment has been given to a person under section 211(2) [^{F19}or 211A(1)], the assessment may not be altered except in accordance with this section or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the denied advantage.
- (3) An assessment or supplementary assessment may be revised as necessary if it operated by reference to an overestimate of the denied advantage; and, where more than the resulting assessed penalty has already been paid by the person to HMRC, the excess must be repaid.

Textual Amendments

- F18** Words in [s. 213 heading](#) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\), Sch. 28 para. 6\(2\)](#)
- F19** Words in [s. 213\(1\)](#) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\), Sch. 28 para. 6\(3\)](#)

214 Appeal against a section 208 penalty

- (1) P may appeal against a decision of HMRC that a penalty is payable by P under section 208.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P under section 208.
- (3) The grounds on which an appeal under subsection (1) may be made include in particular—
 - (a) that Condition A, B or D in section 204 was not met in relation to the follower notice,
 - (b) that the judicial ruling specified in the notice is not one which is relevant to the chosen arrangements,
 - (c) that the notice was not given within the period specified in subsection (6) of that section, or
 - (d) that it was reasonable in all the circumstances for P not to have taken the necessary corrective action (see section 208(4)) in respect of the denied advantage.

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- (4) An appeal under this section must be made within the period of 30 days beginning with the day on which notification of the penalty is given under section 211.
- (5) An appeal under this section is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (6) Subsection (5) does not apply—
 - (a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Part.
- (7) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.
- (8) On an appeal under subsection (1), the tribunal may affirm or cancel HMRC's decision.
- [^{F20}(8A) If the tribunal cancels a decision of HMRC that a penalty is payable by P under section 208, any penalty additional to that penalty to which P is liable under section 208A is also cancelled.]
- (9) On an appeal under subsection (2), the tribunal may—
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (10) The cancellation under subsection (8) of HMRC's decision on the ground specified in subsection (3)(d) does not affect the validity of the follower notice, or of any accelerated payment notice or partner payment notice under Chapter 3 related to the follower notice.
- (11) In this section “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of subsection (5)).

Textual Amendments

F20 S. 214(8A) inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 7](#)

[^{F21}214A Appeal against a section 208A penalty

- (1) P may appeal against a decision of HMRC that a penalty is payable by P under section 208A.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P under section 208A.
- (3) An appeal under subsection (1) may be made only on one or more of the following grounds—
 - (a) that section 208A did not apply when the decision was made or no longer applies;

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- (b) that the condition in section 208A(3) was not met when the decision was made or is no longer met;
 - (c) that the penalty was not assessed before the end of the period mentioned in section 211A(4).
- (4) An appeal under this section must be made within the period of 30 days beginning with the day on which notification of the penalty is given under section 211A.
- (5) On an appeal under subsection (1), the tribunal may affirm or cancel HMRC's decision.
- (6) On an appeal under subsection (2), the tribunal may—
- (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (7) Subsections (5) to (7) of section 214 apply to an appeal under this section as they apply to an appeal under that section.
- (8) In this section “tribunal” has the meaning it has for the purposes of section 214 (see section 214(5) and (11)).]

Textual Amendments

F21 S. 214A inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 28 para. 8](#)

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