

Status: Point in time view as at 17/07/2014.

Changes to legislation: Finance Act 2014, SCHEDULE 32 is up to date with all changes known to be in force on or before 11 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 32

Section 228

ACCELERATED PAYMENTS AND PARTNERSHIPS

Interpretation

- 1 (1) This paragraph applies for the purposes of this Schedule.
- (2) “Partnership return” means a return in pursuance of a notice under section 12AA(2) or (3) of TMA 1970.
- (3) “The representative partner”, in relation to a partnership return, means the person who was required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver the return.
- (4) “Relevant partner”, in relation to a partnership return, means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required.
- (5) References to a “successor”, in relation to the representative partner, are to be construed in accordance with section 12AA(11) of TMA 1970.

Restriction on circumstances when accelerated payment notices can be given

- 2 (1) This paragraph applies where—
 - (a) a tax enquiry is in progress in relation to a partnership return, or
 - (b) an appeal has been made in relation to an amendment of such a return or against a conclusion stated by a closure notice in relation to a tax enquiry into such a return.
- (2) No accelerated payment notice may be given to the representative partner of the partnership, or a successor of that partner, by reason of that enquiry or appeal.
- (3) But this Schedule makes provision for partner payment notices and accelerated partner payments in such cases.

Circumstances in which partner payment notices may be given

- 3 (1) Where a partnership return has been made in respect of a partnership, HMRC may give a notice (a “partner payment notice”) to each relevant partner of the partnership if Conditions A to C are met.
- (2) Condition A is that—
 - (a) a tax enquiry is in progress in relation to the partnership return, or
 - (b) an appeal has been made in relation to an amendment of the return or against a conclusion stated by a closure notice in relation to a tax enquiry into the return.

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- (3) Condition B is that the return or, as the case may be, appeal is made on the basis that a particular tax advantage (“the asserted advantage”) results from particular arrangements (“the chosen arrangements”).
- (4) Paragraph 3(3) of Schedule 31 applies for the purposes of sub-paragraph (3) as it applies for the purposes of Condition B in section 204(3).
- (5) Condition C is that one or more of the following requirements are met—
- (a) HMRC has given (or, at the same time as giving the partner payment notice, gives) the representative partner, or a successor of that partner, a follower notice under Chapter 2—
 - (i) in relation to the same return or, as the case may be, appeal, and
 - (ii) by reason of the same tax advantage and the chosen arrangements;
 - (b) the chosen arrangements are DOTAS arrangements (within the meaning of section 219(5) and (6));
 - (c) the relevant partner in question has been given a GAAR counteraction notice in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the matter under paragraph 10 of Schedule 43 to FA 2013 was as set out in paragraph 11(3)(b) of that Schedule (entering into tax arrangements not reasonable course of action etc).
- (6) “GAAR counteraction notice” has the meaning given by section 219(7).

Content of partner payment notices

- 4 (1) The partner payment notice given to a relevant partner must—
- (a) specify the paragraph or paragraphs of paragraph 3(5) by virtue of which the notice is given,
 - (b) specify the payment required to be made under paragraph 6, and
 - (c) explain the effect of paragraphs 5 and 6, and of the amendments made by sections 224 and 225 (so far as relating to the relevant tax in relation to which the partner payment notice is given).
- (2) The payment required to be made under paragraph 6 is an amount equal to the amount which a designated HMRC officer determines, to the best of the officer's information and belief, as the understated partner tax.
- (3) “The understated partner tax” means the additional amount that would become due and payable by the relevant partner in respect of tax if—
- (a) in the case of a notice given by virtue of paragraph 3(5)(a) (case where a partnership follower notice is given)—
 - (i) it were assumed that the explanation given in the follower notice in question under section 206(b) is correct, and
 - (ii) what the officer may determine to the best of the officer's information and belief as the denied advantage is counteracted to the extent that it is reflected in a return or claim of the relevant partner;
 - (b) in the case of a notice given by virtue of paragraph 3(5)(b) (cases where the DOTAS arrangements are met), such adjustments were made as are required to counteract so much of what the designated HMRC officer so determines

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- as the denied advantage as is reflected in a return or claim of the relevant partner;
- (c) in the case of a notice given by virtue of paragraph 3(5)(c) (cases involving counteraction under the general anti-abuse rule), such of the adjustments set out in the GAAR counteraction notice are made as have effect to counteract so much of the denied advantage as is reflected in a return or claim of the relevant partner.
- (4) “The denied advantage” —
- (a) in the case of the notice given by virtue of paragraph 3(5)(a), has the meaning given by paragraph 4(3) of Schedule 31,
 - (b) in the case of a notice given by virtue of paragraph 3(5)(b), means so much of the asserted advantage as is not a tax advantage which results from the chosen arrangements or otherwise, and
 - (c) in the case of a notice given by virtue of paragraph 3(5)(c), means so much of the asserted advantage as would be counteracted by making the adjustments set out in the GAAR counteraction notice.
- (5) If a notice is given by reason of two or all of the requirements of paragraph 3(5) being met, the payment specified under sub-paragraph (1)(b) is to be determined as if the notice were given by virtue of such one of them as is stated in the notice as being used for this purpose.

Representations about a partner payment notice

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

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Effect of partner payment notice

- 6 (1) This paragraph applies where a partner payment notice has been given to a relevant partner (and not withdrawn).
- (2) The relevant partner must make a payment (“the accelerated partner payment”) to HMRC of the amount specified in the notice in accordance with paragraph 4(1)(b).
- (3) The accelerated partner payment is to be treated as a payment on account of the understated partner tax (see paragraph 4).
- (4) The accelerated partner payment must be made before the end of the payment period.
- (5) “The payment period” means—
- (a) if the relevant partner made no representations under paragraph 5, the period of 90 days beginning with the day on which the partner payment notice is given;
 - (b) if the relevant partner made such representations, whichever of the following ends later—
 - (i) the 90 day period mentioned in paragraph (a);
 - (ii) the period of 30 days beginning with the day on which the relevant partner is notified under paragraph 5 of HMRC's determination.
- (6) If the relevant partner pays any part of the understated partner tax before the accelerated partner payment in respect of it, the accelerated partner payment is treated to that extent as having been paid at the same time.
- (7) Subsections (8) and (9) of section 223 apply in relation to a payment under this paragraph as they apply to a payment under that section.

Penalty for failure to comply with partner payment notice

- 7 Section 226 (penalty for failure to make accelerated payment on time) applies to accelerated partner payments as if—
- (a) references in that section to the accelerated payment were to the accelerated partner payment,
 - (b) references to P were to the relevant partner, and
 - (c) “the payment period” had the meaning given by paragraph 6(5).

Withdrawal, suspension or modification of partner payment notices

- 8 (1) Section 227 (withdrawal, modification or suspension of accelerated payment notice) applies in relation to a relevant partner, a partner payment notice, Condition C in paragraph 3 and an accelerated partner payment as it applies in relation to P, an accelerated payment notice, Condition C in section 219 and an accelerated payment.
- (2) Accordingly, for this purpose—
- (a) section 227(6)(b) and (7)(a) has effect as if the references to section 220(6) were to paragraph 4(5) of this Schedule, and
 - (b) the provisions listed in section 227(9) are to be read as including paragraph 6(5) of this Schedule.

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