



# Finance Act 2014

## 2014 CHAPTER 26

### PART 4 U.K.

#### FOLLOWER NOTICES AND ACCELERATED PAYMENTS

### CHAPTER 3 U.K.

#### ACCELERATED PAYMENT

##### *Accelerated payment notices*

#### **219** Circumstances in which an accelerated payment notice may be given U.K.

- (1) HMRC may give a notice (an “accelerated payment notice”) to a person (“P”) if Conditions A to C are met.
- (2) Condition A is that—
  - (a) a tax enquiry is in progress into a return or claim made by P in relation to a relevant tax, or
  - (b) P has made a tax appeal (by notifying HMRC or otherwise) in relation to a relevant tax but that appeal has not yet been—
    - (i) determined by the tribunal or court to which it is addressed, or
    - (ii) abandoned or otherwise disposed of.
- (3) Condition B is that the return or claim 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) 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 accelerated payment notice, gives) P a follower notice under Chapter 2—
    - (i) in relation to the same return or claim or, as the case may be, appeal, and

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- (ii) by reason of the same tax advantage and the chosen arrangements;
  - (b) the chosen arrangements are DOTAS arrangements;
  - (c) a GAAR counteraction notice has been given in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated 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).
- (5) “DOTAS arrangements” means—
- (a) notifiable arrangements to which HMRC has allocated a reference number under section 311 of FA 2004,
  - (b) notifiable arrangements implementing a notifiable proposal where HMRC has allocated a reference number under that section to the proposed notifiable arrangements, or
  - (c) arrangements in respect of which the promoter must provide prescribed information under section 312(2) of that Act by reason of the arrangements being substantially the same as notifiable arrangements within paragraph (a) or (b).
- (6) But the notifiable arrangements within subsection (5) do not include arrangements in relation to which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty imposed to notify client of reference number).
- (7) “GAAR counteraction notice” means a notice under paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract under the general anti-abuse rule).

## **220 Content of notice given while a tax enquiry is in progress U.K.**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while a tax enquiry is in progress).
- (2) The notice must—
- (a) specify the paragraph or paragraphs of section 219(4) by virtue of which the notice is given,
  - (b) specify the payment required to be made under section 223 and the requirements of that section, and
  - (c) explain the effect of sections 222 and 226, and of the amendments made by sections 224 and 225 (so far as relating to the relevant tax in relation to which the accelerated payment notice is given).
- (3) The payment required to be made under section 223 is an amount equal to the amount which a designated HMRC officer determines, to the best of that officer's information and belief, as the understated tax.
- (4) “The understated tax” means the additional amount that would be due and payable in respect of tax if—
- (a) in the case of a notice given by virtue of section 219(4)(a) (cases where a 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

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- (ii) the necessary corrective action were taken under section 208 in respect of what the designated HMRC officer determines, to the best of that officer's information and belief, as the denied advantage;
  - (b) in the case of a notice given by virtue of section 219(4)(b) (cases where the DOTAS requirements are met), such adjustments were made as are required to counteract what the designated HMRC officer determines, to the best of that officer's information and belief, as the denied advantage;
  - (c) in the case of a notice given by virtue of section 219(4)(c) (cases involving counteraction under the general anti-abuse rule), such of the adjustments set out in the GAAR counteraction notice as have effect to counteract the denied advantage were made.
- (5) “The denied advantage”—
- (a) in the case of a notice given by virtue of section 219(4)(a), has the meaning given by section 208(3),
  - (b) in the case of a notice given by virtue of section 219(4)(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 section 219(4)(c), means so much of the asserted advantage as would be counteracted by making the adjustments set out in the GAAR counteraction notice.
- (6) If a notice is given by reason of two or all of the requirements in section 219(4) being met, the payment specified under subsection (2)(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.
- (7) “The GAAR counteraction notice” means the notice under paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract under the general anti-abuse rule).

## **221 Content of notice given pending an appeal U.K.**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(b) (notice given pending an appeal).
- (2) The notice must—
- (a) specify the paragraph or paragraphs of section 219(4) by virtue of which the notice is given,
  - (b) specify the disputed tax, and
  - (c) explain the effect of section 222 and of the amendments made by sections 224 and 225 so far as relating to the relevant tax in relation to which the accelerated payment notice is given.
- (3) “The disputed tax” means so much of the amount of the charge to tax arising in consequence of—
- (a) the amendment or assessment to tax appealed against, or
  - (b) where the appeal is against a conclusion stated by a closure notice, that conclusion,
- as a designated HMRC officer determines, to the best of the officer's information and belief, as the amount required to ensure the counteraction of what that officer so determines as the denied advantage.

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- (4) “The denied advantage” has the same meaning as in section 220(5).
- (5) If a notice is given by reason of two or all of the requirements in section 219(4) being met, the denied advantage 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.
- (6) In this section a reference to an assessment to tax, in relation to inheritance tax, is to a determination.

## 222 Representations about a notice U.K.

- (1) This section applies where an accelerated payment notice has been given under section 219 (and not withdrawn).
- (2) P 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 section 219 was not met, or
  - (b) objecting to the amount specified in the notice under section 220(2)(b) or section 221(2)(b).
- (3) HMRC must consider any representations made in accordance with subsection (2).
- (4) Having considered the representations, HMRC must—
  - (a) if representations were made under subsection (2)(a), determine whether—
    - (i) to confirm the accelerated payment notice (with or without amendment), or
    - (ii) to withdraw the accelerated payment notice, and
  - (b) if representations were made under subsection (2)(b) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount ought to have been specified under section 220(2)(b) or section 221(2)(b), and then—
    - (i) confirm the amount specified in the notice, or
    - (ii) amend the notice to specify a different amount,
 and notify P accordingly.

### *Forms of accelerated payment*

## 223 Effect of notice given while tax enquiry is in progress U.K.

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while a tax enquiry is in progress) (and not withdrawn).
- (2) P must make a payment (“the accelerated payment”) to HMRC of the amount specified in the notice in accordance with section 220(2)(b).
- (3) The accelerated payment is to be treated as a payment on account of the understated tax (see section 220).
- (4) The accelerated payment must be made before the end of the payment period.
- (5) “The payment period” means—

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- (a) if P made no representations under section 222, the period of 90 days beginning with the day on which the accelerated payment notice is given, and
  - (b) if P made such representations, whichever of the following periods ends later—
    - (i) the 90 day period mentioned in paragraph (a);
    - (ii) the period of 30 days beginning with the day on which P is notified under section 222 of HMRC's determination.
- (6) But where the understated tax would be payable by instalments by virtue of an election made under section 227 of IHTA 1984, to the extent that the accelerated payment relates to tax payable by an instalment which falls to be paid at a time after the payment period, the accelerated payment must be made no later than that time.
- (7) If P pays any part of the understated tax before the accelerated payment in respect of it, the accelerated payment is treated to that extent as having been paid at the same time.
- (8) Any tax enactment which relates to the recovery of a relevant tax applies to an amount to be paid on account of the relevant tax under this section in the same manner as it applies to an amount of the relevant tax.
- (9) “Tax enactment” means provisions of or made under—
- (a) the Tax Acts,
  - (b) any enactment relating to capital gains tax,
  - (c) IHTA 1984 or any other enactment relating to inheritance tax,
  - (d) Part 4 of FA 2003 or any other enactment relating to stamp duty land tax, or
  - (e) Part 3 of FA 2013 or any other enactment relating to annual tax on enveloped dwellings.

## **224 Restriction on powers to postpone tax payments pending initial appeal** **U.K.**

- (1) In section 55 of TMA 1970 (recovery of tax not postponed), after subsection (8A) insert—
- “(8B) Subsections (8C) and (8D) apply where a person has been given an accelerated payment notice or partner payment notice under Chapter 3 of Part 4 of the Finance Act 2014 and that notice has not been withdrawn.
- (8C) Nothing in this section enables the postponement of the payment of (as the case may be)—
- (a) the understated tax to which the payment specified in the notice under section 220(2)(b) of that Act relates,
  - (b) the disputed tax specified in the notice under section 221(2)(b) of that Act, or
  - (c) the understated partner tax to which the payment specified in the notice under paragraph 4(1)(b) of Schedule 32 to that Act relates.
- (8D) Accordingly, if the payment of an amount of tax within subsection (8C)(b) is postponed by virtue of this section immediately before the accelerated payment notice is given, it ceases to be so postponed with effect from the time that notice is given, and the tax is due and payable—
- (a) if no representations were made under section 222 of that Act in respect of the notice, on or before the last day of the period of 90

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- days beginning with the day the notice or partner payment notice is given, and
- (b) if representations were so made, on or before whichever is later of—
- (i) the last day of the 90 day period mentioned in paragraph (a), and
  - (ii) the last day of the period of 30 days beginning with the day on which HMRC's determination in respect of those representations is notified under section 222 of that Act.”
- (2) In section 242 of IHTA 1984 (recovery of tax), after subsection (3) insert—
- “(4) Where a person has been given an accelerated payment notice under Chapter 3 of Part 4 of the Finance Act 2014 and that notice has not been withdrawn, nothing in this section prevents legal proceedings being taken for the recovery of (as the case may be)—
- (a) the understated tax to which the payment specified in the notice under section 220(2)(b) of that Act relates, or
  - (b) the disputed tax specified in the notice under section 221(2)(b) of that Act.”
- (3) In Schedule 10 to FA 2003 (SDLT: returns, enquiries, assessments and appeals), in paragraph 39 (direction by the tribunal to postpone payment), after sub-paragraph (8) insert—
- “(9) Sub-paragraphs (10) and (11) apply where a person has been given an accelerated payment notice under Chapter 3 of Part 4 of the Finance Act 2014 and that notice has not been withdrawn.
- (10) Nothing in this paragraph enables the postponement of the payment of (as the case may be)—
- (a) the understated tax to which the payment specified in the notice under section 220(2)(b) of that Act relates, or
  - (b) the disputed tax specified in the notice under section 221(2)(b) of that Act.
- (11) Accordingly, if the payment of an amount of tax within sub-paragraph (10) (b) is postponed by virtue of this paragraph immediately before the accelerated payment notice is given, it ceases to be so postponed with effect from the time that notice is given, and the tax is due and payable—
- (a) if no representations were made under section 222 of that Act in respect of the notice, on or before the last day of the period of 90 days beginning with the day the notice is given, and
  - (b) if representations were so made, on or before whichever is later of—
    - (i) the last day of the 90 day period mentioned in paragraph (a), and
    - (ii) the last day of the period of 30 days beginning with the day on which HMRC's determination in respect of those representations is notified under section 222 of that Act.”
- (4) In paragraph 40 of that Schedule (agreement to postpone payment of tax), after sub-paragraph (3) insert—
- “(4) Sub-paragraphs (9) to (11) of paragraph 39 apply for the purposes of this paragraph as they apply for the purposes of paragraph 39.”

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(5) In Schedule 33 to FA 2013 (annual tax on enveloped dwellings: returns, enquiries, assessments and appeals), in paragraph 48 (application for payment of tax to be postponed), after sub-paragraph (8) insert—

“(8A) Sub-paragraphs (8B) and (8C) apply where a person has been given an accelerated payment notice under Chapter 3 of Part 4 of FA 2014 and that notice has not been withdrawn.

(8B) Nothing in this paragraph enables the postponement of the payment of (as the case may be)—

- (a) the understated tax to which the payment specified in the notice under section 220(2)(b) of that Act relates, or
- (b) the disputed tax specified in the notice under section 221(2)(b) of that Act.

(8C) Accordingly, if the payment of an amount of tax within sub-paragraph (8B) (b) is postponed by virtue of this paragraph immediately before the accelerated payment notice is given, it ceases to be so postponed with effect from the time that notice is given, and the tax is due and payable—

- (a) if no representations were made under section 222 of that Act in respect of the notice, on or before the last day of the period of 90 days beginning with the day the notice is given, and
- (b) if representations were so made, on or before whichever is later of—
  - (i) the last day of the 90 day period mentioned in paragraph (a), and
  - (ii) the last day of the period of 30 days beginning with the day on which HMRC's determination in respect of those representations is notified under section 222 of that Act.”

(6) In paragraph 49 of that Schedule (agreement to postpone payment of tax), after sub-paragraph (3) insert—

“(4) Sub-paragraphs (8A) to (8C) of paragraph 48 apply for the purposes of this paragraph as they apply for the purposes of paragraph 48.”

## **225 Protection of the revenue pending further appeals** **U.K.**

(1) In section 56 of TMA 1970 (payment of tax where there is a further appeal), after subsection (3) insert—

“(4) Subsection (5) applies where—

- (a) an accelerated payment notice or partner payment notice has been given to a party to the appeal under Chapter 3 of Part 4 of the Finance Act 2014 (and not withdrawn), and
- (b) the assessment has effect, or partly has effect, to counteract the whole or part of the asserted advantage (within the meaning of section 219(3) of that Act) by reason of which the notice was given.

(5) If, on the application of HMRC, the relevant court or tribunal considers it necessary for the protection of the revenue, it may direct that subsection (2) does not apply so far as the tax relates to the counteraction of the whole or part of the asserted advantage, and—

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- (a) give permission to withhold all or part of any repayment, or
  - (b) require the provision of adequate security before repayment is made.
- (6) “Relevant court or tribunal” means the tribunal or court from which permission or leave to appeal is sought.”
- (2) In Schedule 10 to FA 2003 (SDLT: returns, enquiries, assessments and appeals), in paragraph 43 (payment of stamp duty land tax where there is a further appeal), after sub-paragraph (2) insert—
- “(3) Sub-paragraph (4) applies where—
- (a) an accelerated payment notice has been given to a party to the appeal under Chapter 3 of Part 4 of the Finance Act 2014 (and not withdrawn), and
  - (b) the assessment to which the appeal relates has effect, or partly has effect, to counteract the whole or part of the asserted advantage (within the meaning of section 219(3) of that Act) by reason of which the notice was given.
- (4) If, on the application of HMRC, the relevant court or tribunal considers it necessary for the protection of the revenue, it may direct that sub-paragraph (1) does not apply so far as the stamp duty land tax relates to the counteraction of the whole or part of the asserted advantage, and—
- (a) give permission to withhold all or part of any repayment, or
  - (b) require the provision of adequate security before repayment is made.
- (5) “Relevant court or tribunal” means the tribunal or court from which permission or leave to appeal is sought.”
- (3) In Schedule 33 to FA 2013 (annual tax on enveloped dwellings: returns, enquiries, assessments and appeals), in paragraph 53 (payment of tax where there is a further appeal), after sub-paragraph (2) insert—
- “(3) Sub-paragraph (4) applies where—
- (a) an accelerated payment notice has been given to a party to the appeal under Chapter 3 of Part 4 of FA 2014 (and not withdrawn), and
  - (b) the assessment to which the appeal relates has effect, or partly has effect, to counteract the whole or part of the asserted advantage (within the meaning of section 219(3) of that Act) by reason of which the notice was given.
- (4) If, on the application of HMRC, the relevant court or tribunal considers it necessary for the protection of the revenue, it may direct that sub-paragraph (1) does not apply so far as the tax relates to the counteraction of the whole or part of the asserted advantage, and—
- (a) give permission to withhold all or part of any repayment, or
  - (b) require the provision of adequate security before repayment is made.
- (5) “Relevant court or tribunal” means the tribunal or court from which permission or leave to appeal is sought.”



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## *Penalties*

### **226 Penalty for failure to pay accelerated payment** **U.K.**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while tax enquiry is in progress) (and not withdrawn).
- (2) If any amount of the accelerated payment is unpaid at the end of the payment period, P is liable to a penalty of 5% of that amount.
- (3) If any amount of the accelerated payment is unpaid after the end of the period of 5 months beginning with the penalty day, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the accelerated payment is unpaid after the end of the period of 11 months beginning with the penalty day, P is liable to a penalty of 5% of that amount.
- (5) “The penalty day” means the day immediately following the end of the payment period.
- (6) Where section 223(6) (accelerated payment payable by instalments when it relates to inheritance tax payable by instalments) applies to require an amount of the accelerated payment to be paid before a later time than the end of the payment period, references in subsections (2) and (5) to the end of that period are to be read, in relation to that amount, as references to that later time.
- (7) Paragraphs 9 to 18 (other than paragraph 11(5)) of Schedule 56 to FA 2009 (provisions which apply to penalties for failures to make payments of tax on time) apply, with any necessary modifications, to a penalty under this section in relation to a failure by P to pay an amount of the accelerated payment as they apply to a penalty under that Schedule in relation to a failure by a person to pay an amount of tax.

### *Withdrawal etc of accelerated payment notice*

### **227 Withdrawal, modification or suspension of accelerated payment notice** **U.K.**

- (1) In this section a “Condition C requirement” means one of the requirements set out in Condition C in section 219.
- (2) Where an accelerated payment notice has been given, HMRC may, at any time, by notice given to P—
  - (a) withdraw the notice,
  - (b) where the notice is given by virtue of more than one Condition C requirement being met, withdraw it to the extent it is given by virtue of one of those requirements (leaving the notice effective to the extent that it was also given by virtue of any other Condition C requirement and has not been withdrawn), or
  - (c) reduce the amount specified in the accelerated payment notice under section 220(2)(b) or 221(2)(b).
- (3) Where—
  - (a) an accelerated payment notice is given by virtue of the Condition C requirement in section 219(4)(a), and
  - (b) the follower notice to which it relates is withdrawn,

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HMRC must withdraw the accelerated payment notice to the extent it was given by virtue of that requirement.

(4) Where—

- (a) an accelerated payment notice is given by virtue of the Condition C requirement in section 219(4)(a), and
- (b) the follower notice to which it relates is amended under section 216(7)(b) (cases where there is a new relevant final judicial ruling following a late appeal),

HMRC may by notice given to P make consequential amendments (whether under subsection (2)(c) or otherwise) to the accelerated payment notice.

(5) Where—

- (a) an accelerated payment notice is given by virtue of the Condition C requirement in section 219(4)(b), and
- (b) HMRC give notice under section 312(6) of FA 2004 with the result that promoters are no longer under the duty in section 312(2) of that Act in relation to the chosen arrangements,

HMRC must withdraw the notice to the extent it was given by virtue of that requirement.

(6) Subsection (7) applies where—

- (a) an accelerated payment notice is withdrawn to the extent that it was given by virtue of a Condition C requirement,
- (b) that requirement is the one stated in the notice for the purposes of section 220(6) or 221(5) (calculation of amount of the accelerated payment or of the denied advantage), and
- (c) the notice remains effective to the extent that it was also given by virtue of any other Condition C requirement.

(7) HMRC must, by notice given to P—

- (a) modify the accelerated payment notice so as to state the remaining, or one of the remaining, Condition C requirements for the purposes of section 220(6) or 221(5), and
- (b) if the amount of the accelerated payment or (as the case may be) the amount of the disputed tax determined on the basis of the substituted Condition C requirement is less than the amount specified in the notice, amend that notice under subsection (2)(c) to substitute the lower amount.

(8) If a follower notice is suspended under section 216 (appeals against final rulings made out of time) for any period, an accelerated payment notice in respect of the follower notice is also suspended for that period.

(9) Accordingly, the period during which the accelerated payment notice is suspended does not count towards the periods mentioned in the following provisions—

- (a) section 223;
- (b) section 55(8D) of TMA 1970;
- (c) paragraph 39(11) of Schedule 10 to FA 2003;
- (d) paragraph 48(8C) of Schedule 33 to FA 2013.

(10) But the accelerated payment notice is not suspended under subsection (8) if it was also given by virtue of section 219(4)(b) or (c) and has not, to that extent, been withdrawn.

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- (11) In a case within subsection (10), subsections (6) and (7) apply as they would apply were the notice withdrawn to the extent that it was given by virtue of section 219(4) (a), except that any change made to the notice under subsection (7) has effect during the period of suspension only.
- (12) Where an accelerated payment notice is withdrawn, it is to be treated as never having had effect (and any accelerated payment made in accordance with, or penalties paid by virtue of, the notice are to be repaid).
- (13) If, as a result of a modification made under subsection (2)(c), more than the resulting amount of the accelerated payment has already been paid by P, the excess must be repaid.

### *Partners and partnerships*

## **228 Accelerated partner payments** **U.K.**

Schedule 32 makes provision for accelerated partner payments and modifies this Chapter in relation to partnerships.

### *Defined terms*

## **229 Defined terms used in Chapter 3** **U.K.**

In this Chapter—

- “the accelerated payment” has the meaning given by section 223(2);
- “accelerated payment notice” has the meaning given by section 219(1);
- “arrangements” has the meaning given by section 201(4);
- “the asserted advantage” has the meaning given by section 219(3);
- “the chosen arrangements” has the meaning given by section 219(3), except in Schedule 32 where it has the meaning given by paragraph 3(3) of that Schedule;
- “the denied advantage” has the meaning given by section 220(5), except in paragraph 4 of Schedule 32 where it has the meaning given by paragraph 4(4) of that Schedule;
- “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for the purposes of this Part;
- “follower notice” has the meaning given by section 204(1);
- “HMRC” means Her Majesty's Revenue and Customs;
- “P” has the meaning given by section 219(1);
- “partner payment notice” has the meaning given by paragraph 3 of Schedule 32;
- “relevant tax” has the meaning given by section 200;
- “tax advantage” has the meaning given by section 201(2);
- “tax appeal” has the meaning given by section 203;
- “tax enquiry” has the meaning given by section 202(2).

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