



Amendment of return to take account of relevant judicial ruling and accelerated payments of tax in follower cases

Who is likely to be affected?

Taxpayers who have sought tax advantages through tax avoidance schemes, particularly those schemes marketed to wide numbers of users where one judicial ruling is likely to have wide application.

General description of the measure

As announced at Autumn Statement and following a consultation that closed in February 2014, the government will legislate to provide that HM Revenue & Customs (HMRC) may issue a notice to the user of a tax avoidance scheme that they should settle their dispute with HMRC when the claimed tax effect has been defeated in other litigation. If the taxpayer does not settle they risk a penalty and must make upfront payment of the tax in dispute.

Policy objective

When faced with a large number of very similar cases, it is sometimes 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 is little incentive for other scheme users, or those using essentially similar arrangements, to accept the court's findings and pay to HMRC any underpaid tax.

The measure widens the circumstances where the disputed tax sits with the Exchequer during a dispute, putting taxpayers that include the tax advantage in their initial self-assessment on the same footing as taxpayers that claim a repayment (currently, repayments can be withheld while the matter is resolved but a taxpayer can include the tax advantage in their initial self-assessment and reduce their liability). This will make the tax system fairer for all compliant taxpayers and secure tax revenues for the provision of public services.

Background to the measure

Budget 2013 announced the Government's intention to give HMRC the power to issue a notice to a taxpayer to the effect that a previously decided case also determines their dispute, and that they should therefore settle their own dispute. A consultation was held during August and September 2013.

At Autumn Statement 2013 the Government announced that accelerated (upfront) payments would apply to those taxpayers who did not settle in response to the notice, and, in addition, the government announced that there would be further consultation in relation to how the accelerated payments measure could be applied more widely to taxpayers who have used avoidance schemes. The consultation, carried out from 24 January to 24 February 2014, proposed the extension of accelerated payments to schemes falling within DOTAS and schemes that HMRC counteracts under the GAAR.

Detailed proposal

Operative date

These measures will have effect from the date that Finance Bill 2014 receives Royal Assent. They will be applicable to all cases where there is an open enquiry or open appeal on or after the day of Royal Assent and where there has been or will be a relevant qualifying judgment.

Current law

Amendment of return to take account of relevant judicial ruling

Under current law, there is no requirement to apply the outcome in another case, even where that other case ruling is publicly available and is to all intents and purposes resolved on the same basis.

Accelerated payments

Most people pay their tax upfront – PAYE, VAT, interest on bank accounts, and some pay on account; for most people it is a case of pay now, dispute later. In certain circumstances, for example where a repayment is claimed, HMRC may retain the tax claimed whilst an enquiry is pursued. In addition, whilst a case is under appeal the taxpayer may postpone some or all of the tax in dispute, but HMRC may seek a tribunal decision to put some or all of that amount into charge during the dispute.

However, under the self assessment systems for income tax, Class 4 National Insurance contributions, capital gains tax, corporation tax, stamp duty land tax and the annual tax on enveloped dwellings the taxpayer can usually claim the benefit of the tax advantage as part of their self assessed liability, and retain the cash benefit whilst the dispute is resolved.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to enable HMRC to issue a 'Follower Notice' to any taxpayer for whom there is an open enquiry or appeal and who has used a tax arrangement that the courts have found to fail. The notice will inform the taxpayer that in HMRC's opinion another judicial decision is relevant to their case and determines their dispute, and that they should therefore amend their return or agree to resolve their appeal in line with the court's decision. The legislation will amend the time limits within which taxpayers may amend their returns in relation to the affected taxes, solely to allow them to comply with the notice.

If the taxpayer has appealed against an amendment to his return when the enquiry is closed, or against a discovery assessment if there was no enquiry, and that appeal relates to a relevant judicial ruling, HMRC will be able to issue a Follower Notice to the effect that the taxpayer should take all reasonable steps to agree his case with HMRC.

Legislation will be introduced in Finance Bill 2014 to enable HMRC to issue a 'Notice to Pay' to any taxpayer for whom there is an open enquiry, or the matter is under appeal, and who has claimed a tax advantage by the use of arrangements that are on the same or on very similar grounds to one that the courts have shown to fail.

The notice will require the taxpayer to pay the tax in dispute within 90 days, or a further 30 days where the taxpayer requests that HMRC should reconsider the 'follower notice' or the amount of the payment notice. Where the matter is under appeal, the measure will operate so as to remove any postponement of the disputed tax. Penalties will apply for late payment.

Summary of impacts

Exchequer impact (£m)		2014-15	2015-16	2016-17	2017-18	2018-19
	Follower notices (Budget 2013)	+55	+75	+30	+30	+30
	Accelerated payment for followers (Autumn Statement 2013)	+15	+305	+300	+200	+100
	These figures are set out in Tables 2.2 of the Budget document and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings documents published alongside Budget 2013, Autumn Statement 2013 and Budget 2014.					
Economic impact	This measure may impact the timing of saving and consumption decisions made by individuals using the affected avoidance schemes.					
Impact on individuals and households	<p>It is estimated that accelerated payment notices relating to existing avoidance cases currently under dispute will be issued to approximately 33,000 individual taxpayers concerning £5.1bn of tax under dispute under this measure and the Budget 2014 measure applying accelerated payments to schemes covered by the DOTAS rules or counteracted under the GAAR. The majority of taxpayers will be covered by the Budget measure.</p> <p>Estimates of the distributional impacts of these measures are affected by the use of avoidance schemes that deflate the income reported on self-assessment returns. Having noted this caveat, analysis shows that the population of individuals affected:</p> <ul style="list-style-type: none"> • have a mean gross income of £262,000, compared to £29,000 for the wider income tax paying population; • around 85 per cent of individuals have multiple sources of income, with employment income (including self-employment) the predominant income source for 54 per cent and non-employment, non-pension income the predominant income source for 42 per cent of the individuals affected respectively, compared to 78 per cent and 5 per cent for the wider income tax paying population respectively. 					
Equalities impacts	<p>These measures will predominantly affect individuals with above average incomes. It will therefore have greater effect on those protected equality groups who are overrepresented in more affluent populations.</p> <p>Of the protected characteristics, HMRC only hold taxpayer data on age and gender. Analysis shows that of the individuals affected by these measures:</p> <ul style="list-style-type: none"> • 85 per cent are male and 15 per cent are female • the majority (87per cent) are aged between 35 and 64. 5 per cent are under 35, and 9 per cent are 65 or over. 					
Impact on business including civil society organisations	This measure will have no impact on business and civil society organisations who are undertaking normal commercial transactions; it will only impact on the small number of businesses that are using avoidance schemes affected by this measure.					

	It is estimated that accelerated payment notices relating to existing avoidance cases currently under dispute will be issued to around 10,000 corporates for £2.1 billion of tax under dispute, under this measure and the Budget 2014 measure applying accelerated payments to schemes covered by the DOTAS rules or counteracted under the GAAR. The majority of taxpayers will be covered by the Budget measure.
Operational impact (£m) (HMRC or other)	<p>This measure and the Budget 2014 DOTAS and GAAR measure will require Payment Notices to be issued to around 43,000 taxpayers involved in avoidance schemes currently under dispute with HMRC. The vast majority of notices are expected to be issued over the course of 2014-15 and 2015-16.</p> <p>These measures are expected to prompt a range of different legal challenges including judicial review proceedings, an increase in closure applications to the Tribunal and disputed enforcement activity. Flexible legal resource options are being considered to meet the expected demands of this work. This legal resource will be increased and adapted depending on the scale and scope of any legal challenges.</p> <p>The Government will ensure that Departments have the necessary resources to deliver this key policy successfully.</p>
Other impacts	<p><u>Small and micro business assessment</u>: small and micro businesses will only be affected if they participate in tax avoidance schemes.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The measure will be kept under review through regular communication with affected taxpayer groups.

Accelerated payments will be monitored through monitoring of disclosures of new avoidance schemes to circumvent the measure, and through regular communication with affected taxpayers and practitioners.

Further advice

If you have any questions about the issue of 'follower notices', please contact Pete Woodham on 03000 586533 (email: peter.woodham@hmrc.gsi.gov.uk). If you have any questions on accelerated payments, please contact Brian New on 03000 536935 (email: brian.new@hmrc.gsi.gov.uk); or contact David Edney on 03000 585985 (email: david.edney1@hmrc.gsi.gov.uk).