



Corporation tax: accelerated payments and group relief

Who is likely to be affected?

Companies in groups who have claimed or surrendered group relief arising from tax advantages through tax avoidance schemes that fall within the Disclosure of Tax Avoidance Schemes (DOTAS) rules, are counteracted under the General Anti-Abuse Rule (GAAR), or are the subject of a Follower Notice.

General description of the measure

This measure ensures that the accelerated payment legislation in Part 4 of the Finance Act (FA) 2014 operates effectively where the benefit of a loss or other amount is surrendered as group relief.

Policy objective

The accelerated payments legislation widens the circumstances where the disputed tax sits with the Exchequer during a dispute. This measure extends those circumstances so that, taking a group of companies as whole, the disputed tax will sit with the Exchequer during a dispute.

Background to the measure

The accelerated payments legislation was introduced as Part 4 of FA 2014. At Autumn Statement 2014 the Government announced that it would amend the legislation to take account of group relief claims and surrenders.

Detailed proposal

Operative date

This measure will have effect from the date that Finance Bill 2015 receives Royal Assent. It will be applicable to all cases involving group relief where there is an open enquiry or open appeal on or after the day of Royal Assent.

Current law

Part 4 of FA 2014 allows HM Revenue & Customs (HMRC) to issue an Accelerated Payment Notice (APN) to a person where certain criteria are met. The APN requires that person to pay over the amount in dispute, or prevents that person postponing the payment of the amount in dispute.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend Part 4 of FA 2014. Where a company makes a return asserting a tax advantage from chosen arrangements, and then surrenders all or part of that advantage as group relief, the legislation will allow HMRC to issue an APN to the effect that the asserted advantage may not be surrendered while the dispute is in progress.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	+425	-345	-40	-30	nil
	These figures are set out in Table 2.1 of Autumn Statement 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2014.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	This measure does not affect individuals. The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	This measure does not affect individuals and so no impact is anticipated.					
Impact on business including civil society organisations	This measure will have no impact on businesses 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.					
Operational impact (£m) (HMRC or other)	There will be no significant additional operational impact on HMRC as a result of this measure.					
Other impacts	Other impacts have been considered and none have been identified.					

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 this change, please contact David Edney on 03000 585985 (email: david.edney1@hmrc.gsi.gov.uk).

1 Accelerated payments and group relief

Schedule 1 contains makes provision about the relationship between accelerated payments and group relief.

SCHEDULE 1

Section 1

ACCELERATED PAYMENTS: GROUP RELIEF

- 1 Part 4 of FA 2014 (accelerated payments etc) is amended as follows.
- 2 In section 199 (overview of Part 4), in paragraph (c) omit the “and” at the end of sub-paragraph (ii), and after sub-paragraph (iii) insert “, and
 - (iv) provision restricting the surrender of losses and other amounts for the purposes of group relief.”
- 3 (1) Section 220 (content of notice given while a tax enquiry is in progress) is amended as follows.
 - (2) In subsection (2) –
 - (a) in paragraph (b), after “the payment” insert “(if any)”, and
 - (b) omit the “and” at the end of that paragraph, and after paragraph (c) insert “, and
 - (d) if the denied advantage consists of or includes an asserted surrenderable amount, specify that amount and any action which is required to be taken in respect of it under section 225A.”
 - (3) After subsection (4) insert –
 - “(4A) “Asserted surrenderable amount” means so much of a surrenderable loss as a designated HMRC officer determines, to the best of that officer’s information and belief, to be an amount –
 - (a) which would not be a surrenderable loss of P if the position were as stated in paragraphs (a) to (c) of subsection (4), and
 - (b) which is not the subject of a claim by P for relief from corporation tax reflected in the understated tax amount (and hence in the payment required to be made under section 223).
 - (4B) “Surrenderable loss” means a loss or other amount within section 99(1) of CTA 2010 (or part of such a loss or other amount).”
 - (4) In subsection (6), for “the payment specified under subsection (2)(b)” substitute “any payment specified under subsection (2)(b) or amount specified under subsection (2)(d)”.
- 4 (1) Section 221 (content of notice given pending an appeal) is amended as follows.
 - (2) In subsection (2) –
 - (a) in paragraph (b), after “the disputed tax” insert “(if any)”, and
 - (b) omit the “and” at the end of paragraph (b) and after paragraph (c) insert “, and
 - (d) if the denied advantage consists of or includes an asserted surrenderable amount (within the meaning of section 220(4A)), specify that amount and any

action which is required to be taken in respect of it under section 225A.”

- 5 (1) Section 222 (representations about a notice) is amended as follows.
- (2) In subsection (2) omit the “or” at the end of paragraph (a), and after paragraph (b) insert “, or
- (c) objecting to the amount specified in the notice under section 220(2)(d) or section 221(2)(d).”
- (3) In subsection (4) –
- (a) omit the “and” at the end of paragraph (a),
- (b) in paragraph (b), after “different amount” insert “(or no amount)”, and
- (c) omit the “or” after sub-paragraph (i) of that paragraph and after sub-paragraph (ii) insert “, or
- (iii) remove from the notice the provision made under section 220(2)(b) or section 221(2)(b), and
- (c) if representations were made under subsection (2)(c) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount (or no amount) ought to have been specified under section 220(2)(d) or 221(2)(d), and then –
- (i) confirm the amount specified in the notice,
- (ii) amend the notice to specify a different amount, or
- (iii) remove from the notice the provision made under section 220(2)(d) or section 221(2)(d);”.
- 6 (1) Section 223 (effect of notice given while tax enquiry is in progress) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies where –
- (a) 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), and
- (b) an amount is stated in the notice in accordance with section 220(2)(b).”
- (3) In subsection (2), for “the amount specified in the notice in accordance with section 220(2)(b)” substitute “that amount”.
- (4) Accordingly, in the heading for that section after “progress” insert “: accelerated payment”.
- 7 After section 225 insert –

“Prevention of surrender of losses

225A Effect of notice: surrender of losses ineffective, etc

- (1) This section applies where –

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- (a) an accelerated payment notice is given (and not withdrawn), and
 - (b) an amount is specified in the notice in accordance with section 220(2)(d) or 221(2)(d).
 - (2) P may not consent to any claim for group relief in respect of the amount so specified.
 - (3) Subject to subsection (2), paragraph 75 (other than sub-paragraphs (7) and (8)) of Schedule 18 to FA 1998 (reduction in amount available for surrender) has effect as if the amount so specified ceased to be an amount available for surrender at the time the notice was given to P.
 - (4) For the purposes of subsection (3), paragraph 75 of that Schedule has effect as if, in sub-paragraph (2) of that paragraph for “within 30 days” there were substituted “before the end of the payment period (within the meaning of section 223(5) of the Finance Act 2014)”.
 - (5) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made in accordance with paragraph 75(6) of Schedule 18 to FA 1998 where, pursuant to subsection (3), a claimant company receives—
 - (a) notice of the withdrawal of consent under paragraph 75(3) of that Schedule, or
 - (b) a copy of a notice containing directions under paragraph 75(4) of that Schedule.
 - (6) Subsection (7) applies where—
 - (a) a company makes such an amendment to its company tax return at a time when an enquiry is in progress into the return, and
 - (b) paragraph 31(3) of that Schedule prevents the amendment from taking effect until the enquiry is completed.
 - (7) Section 219 (circumstances in which an accelerated payment notice may be given) has effect, in its application to that company in a case where section 219(2)(a) applies (tax enquiry in progress), as if—
 - (a) for the purposes of section 219(3), that amendment to the return had not been made, and
 - (b) in section 219(4), after paragraph (c) there were inserted—
 - “(d) P has amended its company tax return, in accordance with paragraph 75(6) of Schedule 18 to FA 1998, in circumstances where pursuant to section 225A(3), P has received—
 - (i) notice of the withdrawal of consent under paragraph 75(3) of that Schedule, or
 - (ii) a copy of a notice containing directions under paragraph 75(4) of that Schedule,but paragraph 31(3) of that Schedule prevents that amendment having effect.”,
 - (c) in section 220(4), after paragraph (c) there were inserted—
 - “(d) in the case of a notice given by virtue of section 219(4)(d) (cases involving withdrawal of consent for losses claimed), it were assumed that P had never made the

- claim to group relief to which the amendment to its company tax return relates.”, and
- (d) in section 227(10), for “or (c)” there were substituted “, (c) or (d)”.
- (8) Subsections (2) and (3) are subject to –
- (a) section 227(14) to (16) (provision about claims for group relief, and consents to claims, following amendment or withdrawal of an accelerated payment notice), and
 - (b) section 227A (provision about claims for group relief, and consents to claims, once tax position finally determined).”
- 8 (1) Section 227 (withdrawal, modification or suspension of accelerated payment notice) is amended as follows.
- (2) In subsection (2) omit the “or” after paragraph (b) and after paragraph (c) insert “, or
- (d) reduce the amount specified in the accelerated payment notice under section 220(2)(d) or 221(2)(d).”
- (3) In subsection (4), after “(2)(c)” insert “or (d)”.
- (4) In subsection (6)(b), after “advantage” insert “etc”.
- (5) In subsection (7), omit the “and” after paragraph (a) and after paragraph (b) insert “, and
- (c) if the amount of the asserted surrenderable amount is less than the amount specified in the notice, amend the notice under subsection (2)(d) to substitute the lower amount.”
- (6) After subsection (12) insert –
- “(12A) Where, as a result of an accelerated payment notice specifying an amount under section 220(2)(d) or 221(2)(d), a notice of consent by P to a claim for group relief in respect of the amount specified (or part of it) became ineffective by virtue of section 225A(3), nothing in subsection (12) operates to revive that notice.”
- (7) After subsection (13) insert –
- “(14) If the accelerated payment notice is amended under subsection (2)(d) or withdrawn –
- (a) section 225A(2) and (3) (which prevents consent being given to group relief claims) cease to apply in relation to the released amount, and
 - (b) a claim for group relief may be made in respect of any part of the released amount within the period of 30 days after the day on which the notice is amended or withdrawn.
- (15) The time limits otherwise applicable to amendment of a company tax return do not apply to the extent that it makes a claim for group relief within the time allowed by subsection (14).
- (16) “The released amount” means –
- (a) in a case where the accelerated payment notice is amended under subsection (2)(d), the amount [represented by the reduction], and

- (b) in a case where the accelerated payment notice is withdrawn, the amount specified under section 220(2)(d) or 221(2)(d).”

9 After section 227 insert –

“Group relief claims after accelerated payment notices

227A Group relief claims after accelerated payment notices

- (1) This section applies where as a result of an accelerated payment notice given to P –
- (a) P was prevented from consenting to a claim for group relief in respect of an amount under section 225A(2), or
 - (b) pursuant to section 225A(3), a consent given by P to a claim for group relief in respect of an amount was ineffective.
- (2) If a final determination establishes that the amount P has available to surrender consists of or includes the amount referred to in subsection (1)(a) or (b) or a part of it (“the allowed amount”) –
- (a) section 225A(2) and (3) (which prevents consent being given to group relief claims) ceases to apply in relation to the allowed amount, and
 - (b) a claim for group relief in respect of any part of the allowed amount may be made within the period of 30 days after the relevant time.
- (3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes a claim for group relief in respect of any part of the allowed amount within the time limit allowed by subsection (2)(b).
- (4) In this section –
- “final determination” means –
- (a) a conclusion stated in a closure notice under section 28A of TMA 1970 against which no appeal is made;
 - (b) the final determination of a tax appeal within paragraph (d) or (e) of section 203;
- “relevant time” means –
- (a) in a case within paragraph (a) above, the end of the period during which the appeal could have been made;
 - (b) in the case within paragraph (b) above, the end of the day on which the final determination occurs.”

10 (1) Schedule 32 (accelerated payments and partnerships) is amended as follows.

- (2) In paragraph 4 (content of partner payment notice) –
- (a) in sub-paragraph (1), in paragraph (b), after “the payment” insert “(if any)”;
 - (b) in that sub-paragraph omit the “and” at the end of paragraph (b) and after paragraph (c) insert “, and
 - (d) if the denied advantage consists of or includes an asserted surrenderable amount, specify that amount and any action which is required to be taken in respect of it under paragraph 6A.”;

- (c) after sub-paragraph (4) insert –
- “(4A) “Asserted surrenderable amount” means so much of a surrenderable loss which the relevant partner asserts to have as a designated HMRC officer determines, to the best of that officer’s information and belief, to be an amount –
 - (a) which would not be a surrenderable loss of that partner if the position were as stated in paragraphs (a) to (c) of sub-paragraph (3), and
 - (b) which is not the subject of a claim by the relevant partner to relief from corporation tax which is reflected in the amount of the understated partner tax of that partner (and hence in the payment required to be made under paragraph 6).
 - (4B) “Surrenderable loss” means a loss or other amount within section 99(1) of CTA 2010 (or part of such a loss or other amount).”, and
 - (d) in sub-paragraph (5), for “the payment specified under sub-paragraph (1)(b)” substitute “any payment specified under sub-paragraph (1)(b) or amount specified under sub-paragraph (1)(d)”.
- (3) In paragraph 5 (representations about a partner payment notice) –
- (a) in sub-paragraph (2) omit the “or” at the end of paragraph (a), and after paragraph (b) insert “, or
 - (c) objecting to the amount specified in the notice under paragraph 4(1)(d).”,
 - (b) in sub-paragraph (4), omit the “and” at the end of paragraph (a),
 - (c) in paragraph (b) of that sub-paragraph, after “different amount” insert “(or no amount)”,
 - (d) in that paragraph, omit the “or” at the end of sub-paragraph (i) and after sub-paragraph (ii) insert “, or
 - (iii) remove from the notice the provision made under paragraph 4(1)(b).”, and
 - (e) after that paragraph insert “, and
 - (c) if representations were made under sub-paragraph (2)(c) (and the notice is not withdrawn under paragraph (a)), determine whether a different amount (or no amount) ought to have been specified under paragraph 4(1)(d), and then –
 - (i) confirm the amount specified in the notice,
 - (ii) amend the notice to specify a different amount, or
 - (iii) remove from the notice the provision made under paragraph 4(1)(d).”,
- (4) In paragraph 6 (effect of partner payment notice) –
- (a) for sub-paragraph (1) substitute –
 - “(1) This paragraph applies where –
 - (a) a partner payment notice has been given to a relevant partner (and not withdrawn), and
 - (b) an amount is stated in the notice in accordance with paragraph 4(1)(b).”, and

-
- (b) in sub-paragraph (2) for “the amount specified in the notice in accordance with paragraph 4(1)(b)” substitute “that amount”.
- (5) After paragraph 6 insert –
- “6A (1) This paragraph applies where –
- (a) an accelerated payment notice is given (and not withdrawn), and
 - (b) an amount is specified in the notice in accordance with paragraph 4(1)(d).
- (2) The relevant partner may not at any time when the notice has effect consent to any claim for group relief in respect of the amount so specified.
- (3) Subject to sub-paragraph (2), paragraph 75 (other than sub-paragraphs (7) and (8)) of Schedule 18 to FA 1998 (reduction in amount available for surrender) has effect at any time when the notice has effect as if that specified amount ceased to be an amount available for surrender at the time the notice was given to the relevant partner.
- (4) For the purposes of subsection (3), paragraph 75 of that Schedule has effect as if, in sub-paragraph (2) of that paragraph for “within 30 days” there were substituted “before the end of the payment period (within the meaning of paragraph 6(5) of Schedule 32 to the Finance Act 2014)”.
- (5) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made in accordance with paragraph 75(6) of Schedule 18 to FA 1998 where the relevant partner withdraws consent by virtue of subsection (3).”
- (6) In paragraph 8 (withdrawal, suspension or modification of partner payment notices), in sub-paragraph (2) –
- (a) before paragraph (a) insert –
 - “(za) section 227(2)(d), (12A) and (16) has effect as if the references to section 220(2)(d) or 221(2)(d) were to paragraph 4(1)(d) of this Schedule,” and
 - (b) omit the “and” after paragraph (a) and after paragraph (b) insert “, and
 - (c) section 227(12A) has effect as if the reference to section 225A(3) were to paragraph 6A(3) of this Schedule.”
- 11 (1) Section 225A(3) of FA 2014 (effect of notices: surrender of losses ineffective) (inserted by paragraph 7 of this Schedule) has effect in relation to an amount specified in a notice in accordance with section 220(2)(d) or 221(2)(d) of that Act (inserted by paragraphs 3(2) and 4(2) of this Schedule) whether the consent to a claim for group relief was given, or the claim itself was made, before or on or after the day on which this Act is passed.
- (2) Paragraph 6A(3) of Schedule 32 to FA 2014 (partnerships: effect of notices: surrender of losses ineffective) (inserted by paragraph 10(5) of this Schedule) has effect in relation to an amount specified in a notice in accordance with paragraph 4(1)(d) of that Schedule (inserted by paragraph 10(2) of this

Schedule) whether the consent to a claim for group relief was given, or the claim itself was made, before or on or after the day on which this Act is passed.

EXPLANATORY NOTE

ACCELERATED PAYMENTS AND GROUP RELIEF

SUMMARY

1. This measure makes a change to the accelerated payment legislation in Part 4 of Finance Act 2014 (FA 2014) to ensure that those rules work effectively where avoidance arrangements give rise to losses or other amounts surrendered as group relief.

DETAILS OF THE SCHEDULE

2. Paragraphs 1 and 2 are introductory

3. Paragraph 3 introduces and defines the term ‘asserted surrenderable amount’. This is the amount that would be available for surrender if the taxpayer’s arrangements were to achieve their objective, taking into account any amount of relief claimed by the company itself against its own profits; but which an HM Revenue & Customs (HMRC) officer considers will not be so available if those arrangements fail to achieve their objective.

4. Paragraph 4 amends section 221 of FA 2014. If the denied advantage consists of or includes an ‘asserted surrenderable amount’, it adds a requirement for HMRC to specify in an Accelerated Payment Notice (APN) the amount of any group relief that HMRC considers should not be available for surrender.

5. Paragraph 5 amends section 222 of FA 2014. It extends the taxpayer’s right to make representations to cover the amount that HMRC has specified which cannot be surrendered as group relief.

6. Paragraph 7 inserts section 225A of FA 2014. Section 225A sets out that where HMRC has given a notice to the effect that a specified amount may not be surrendered, the company may not consent to surrender that amount. As a result, this means that no company in the group may claim that amount as group relief. If any amount has been claimed, the claimant company or companies must amend their return(s) to reflect the new situation. The time limit for amending a company tax return is relaxed for this purpose.

7. Section 225A(6) and (7) of FA 2014 cover the situation where a claimant company is required to amend their return as a result of a notice under this legislation, but that amendment cannot take effect because there is an open enquiry into that return. In that particular situation, there would be no cash payment to the Exchequer so that the cashflow benefit would remain with the taxpayer while the dispute was in progress. Section 225A(6) and (7) allow HMRC to issue an APN to the claimant company (or companies) under the existing provision in section 219 of FA 2014 to ensure that the amount in dispute does sit with the Exchequer.

8. Paragraph 8 amends section 227 of FA 2014, which gives HMRC the power to amend or withdraw an APN. The amendment enables HMRC to reduce or cancel a specified amount that cannot be surrendered as group relief. Where such a reduction or cancellation takes place, the original surrender and claim(s) are not automatically reactivated (section 227(12A) of FA 2014). Instead the companies may make revised surrenders and claims. The relevant time limits are relaxed for this purpose.

9. Paragraph 9 inserts new Section 227A of FA 2014. This applies where the final result of a dispute, whether by agreement or by final decision of a court or tribunal, is to allow some or all of the amounts that had originally been surrendered (or which could have been surrendered but for the issue of an APN) as group relief. A company in the group (not necessarily the original group relief claimant) may make a claim within 30 days of the final determination of the amount available.

10. Paragraph 10 makes changes to Schedule 32 to FA 2014 to have the same effect for Partner Payment Notices (PPN) as for APNs, with necessary adaptations.

11. Paragraph 11 sets out that this change to the accelerated payment legislation applies to group relief surrenders whenever they were made, provided all the necessary requirements for an accelerated payment are met. This ensures that APNs or PPNs issued as a result of this change are on the same footing as any other APN or PPN issued under this legislation.

BACKGROUND NOTE

12. The Accelerated Payment Legislation was introduced in Part 4 of FA 2014. It permits HMRC to issue an Accelerated Payment Notice (APN) or Partner Payment Notice (PPN) requiring payment up front of the tax in dispute in certain specified circumstances.

13. Where a company has losses or certain other amounts that derive from arrangements that meet the criteria, an APN would not require it to pay over any amounts at that point because it may have no actual tax to pay when the dispute is resolved. However, it could surrender some or all of those amounts as group relief so that the cash timing benefit passes to other companies in the group.

14. This change therefore prevents those amounts being surrendered and claimed while the dispute is in progress, so that the relevant cash amount can be held by the Exchequer during the dispute.

15. Where a company is a member of a partnership that generates a loss through arrangements that meet the criteria, the issue of a PPN will prevent that company surrendering its share of those losses to another company in its group. This has no effect on other members of the partnership who may be claiming or using the losses in different ways. The final amount of any loss that can be surrendered will be determined through the partnership return, and any revision will then flow through to the partners in the normal way. When that happens HMRC will revise any PPN accordingly.

16. If you have any questions about this change, or comments on the legislation, please contact David Edney on 03000 585985 (email: david.edney1@hmrc.gsi.gov.uk).