HM Revenue & Customs

Follower Notices and Penalties

Who is likely to be affected

The measure will affect individuals and businesses who have used tax avoidance schemes which HMRC believe have been shown in litigation not to work and who fail to act on subsequent Follower Notices issued to them.

General description of the measure

Subject to certain conditions, HMRC may issue Follower Notices to anyone who has used a tax avoidance scheme which has been shown in the Tribunal or courts not to work. If the person does not take ‘corrective action’ by giving up their claimed tax advantage, but instead elects to continue their dispute with HMRC, they face a penalty of 50% of the avoided tax if they ultimately fail in that dispute. That figure can be reduced to no lower than 10% to reflect any co-operation offered in response to the Follower Notice.

This measure reduces that penalty to 30% of the avoided tax in most cases, but retains the current level of 50% for those deemed by the Tribunal or court to have been time-wasting in pursuing their litigation. This is achieved through the issue of further penalty assessment of 20% when the Tribunal or court makes such a finding. Anyone charged this further amount of penalty will be able to appeal against it, but not on the grounds that it was ‘reasonable in all the circumstances’ not to have taken corrective action.

This measure has no effect on the amount of tax which those receiving Follower Notices have to pay when their dispute is finalised.

Policy objective

The measure aims to enhance the effect of the Follower Notice regime. It achieves this by focussing the highest level of possible penalty on those whose continuation of their dispute with HMRC is without substance and a waste of the time of resources of both HMRC and HM Courts and Tribunals. This improves the balance between encouraging people to settle their disputes with HMRC when their case stands little prospect of success; and giving them a genuine opportunity to continue if they believe their case has merit.

Background to the measure

In December 2018 the House of Lords Economic Affairs Committee published its report 'The Powers of HMRC: Treating Taxpayers Fairly'. In that report, the Committee expressed a view that penalties associated with Follower Notices are draconian and restrict access to justice.

The government rejected the Committee's recommendation that Follower Notice penalties be abolished but undertook that HMRC would examine the Committee's views and work with the Ministry of Justice to investigate possible ways of increasing judicial oversight of the Follower Notice regime. The departments were unable to identify any effective way of achieving this without undermining the purpose of Follower Notices. The government has however, reviewed the operation of the regime and proposes to amend Follower Notice penalties to provide a better balance between encouraging people to settle their disputes with HMRC when their case stands little prospect of success; and giving them a genuine opportunity to continue if they believe their case has merit and does this without impeding the rationale for and operation of the Follower Notice regime.

The consultation 'Follower Notices and Penalties' is published alongside this document.

Detailed proposal

Operative date

The measure will come into effect on Royal Assent for Finance Bill 2021.

Current law

Current law can be found in Part 4 Chapters 1 and 2 of Finance Act 2014 and Schedule 31 to that Act.

Proposed revisions

The measure amends s208 of Finance Act 2014 to reduce the penalty for failing to take timely corrective action from 50% of the disputed tax to 30%.

It introduces a new, further penalty of 20% of the disputed tax when a penalty has been issued under s208 and not withdrawn, the person continues their dispute with HMRC over their use of the scheme as far as making an appeal and either:

- a Tribunal or court strikes out the person's appeal on the grounds it stands no reasonable prospect of success or there has been an abuse of process, or
- the Tribunal or court makes a statement that the person has acted unreasonably in bringing or conducting the proceedings.

The further penalty must be issued by the end of a period of 90 days from the day the Tribunal or court handed down its decision or made the relevant statement.

Anyone who receives a further penalty may appeal against it to the Tribunal. If the penalty charged under s208 Finance Act 2014 is withdrawn for any reason, the further penalty will also be withdrawn.

Summary of impacts

Exchequer impact (£m)

2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024	2024 to 2025	2025 to 2026
	negligible	negligible	negligible	negligible	negligible

The measure is expected to have negligible impact on the Exchequer.

Economic impact

This measure is not expected to have any significant economic impacts.

Impact on individuals, households and families

This proposal will impact on a small number of individuals who have used avoidance schemes, by reducing the maximum rate of penalty they incur for not taking action in response to a Follower Notice to 30%, unless they are found to have been wasting the Tribunals and HMRC's time by perpetuating their dispute. In such cases, the maximum total penalty will remain at the present 50%.

Customer experience for individuals who do not use avoidance schemes is expected to remain the same as it does not change how they interact with HMRC.

The measure is not expected to impact on family formation, stability or breakdown.

Equalities impacts

It is not anticipated that there will be impacts for those in groups sharing protected characteristics.

Impact on business including civil society organisations

This proposal will impact on a small number of businesses who use avoidance schemes by reducing the maximum rate of penalty they incur for not taking action in response to a Follower Notice to 30%, unless they are found to have been wasting the Tribunals and HMRC's time by perpetuating their dispute. In such cases, the maximum total penalty will remain at the present 50%.

There are not expected to be any impacts for businesses that do not use avoidance schemes and their customer experience is therefore expected to remain the same.

There are not expected to be any impacts on civil society organisations.

Operational impact (£m) (HMRC or other)

This proposal is not expected to have operational impact on HMRC. We are assessing the impact on HM Courts & Tribunals service

Other impacts

Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored through monitoring of penalty cases, and through communication with customers and practitioners affected by the measure.

Further advice

If you have any questions about this change, please contact Pete Woodham on Telephone: 03000 586533 or email: peter.woodham@hmrc.gsi.gov.uk

Declaration

Jesse Norman MP, Financial Secretary to the Treasury, has read this tax information and impact note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.