



HMRC ACCELERATED PAYMENT NOTICES

A game changer in the tax planning world

HMRC have stepped up their attempts to recover disputed tax and taxpayers may find themselves drawn unexpectedly into litigation. 35,000 are expected to be targeted for tax of over £5 billion.

There has been a lot of publicity recently about the proposed introduction of powers for HMRC to have direct access to taxpayers' bank accounts to recover outstanding tax liabilities. This may seem like an extreme step and the Revenue do, of course, make mistakes but this legislation does come with several safeguards and covers cases where liability is not in dispute. It also follows similar provisions already in force in France and the US.

Discussion of this direct access has overshadowed other legislation which more fundamentally alters the relationship between tax payer and tax authority, effectively forcing the taxpayer to litigate in certain situations to preserve traditional rights, by fixing the taxpayer with a liability he disputes unless he takes active steps to overturn it.

To understand how we got to this situation we need to go back several years when, following the introduction of self-assessment for income tax which placed the onus on the taxpayer to calculate his own tax liability, a large number of tax avoidance schemes were launched allowing the taxpayer to offset losses or allowances generated by the scheme against other taxable income. In many cases this led to claims for large repayments which, under the principles of self-assessment, the Revenue handed over. It has to be said that this was often a double-edged sword because it was still open to the Revenue to challenge these repayments (within a minimum of a 12 month period) and when they did so successfully the taxpayer had often spent the money. This appears to have been the cause of numerous bankruptcies of high earning but financially unsophisticated and poorly advised individuals – Premiership footballers amongst them.

So it came as little surprise when the Revenue started routinely to enquire into the schemes, thereby blocking the repayments before starting long investigations which they often seemed in little hurry to finish. Whilst this was inconvenient for taxpayers trying to recover tax already paid (often under PAYE) it was less of a problem for those looking to shelter tax on income received gross, for example from self-employment or rent. They were able to hold on to their money for longer and the hike in income tax rates to 50% increased this advantage.

Against this background there have been two major initiatives by UK Government to deal with tax avoidance. The first was the introduction by Gordon Brown of a regime for disclosure of tax avoidance schemes (DOTAS) for promoters of schemes to disclose their details to the Revenue (so they were on notice to change the law). More recently in Finance Act 2013 introduced a General Anti Abuse Rule (GAAR) to enable action to be taken to nullify the tax benefits of planning which is determined (by an independent panel using government guidelines) to be abusive.



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So, returning to the new proposals which aim to make tax collection easier at some cost to taxpayers' rights.

The new proposals will allow HMRC to issue a "follower notice" to any taxpayer for whom there is an open tax enquiry or tax appeal and who has done some tax planning which the courts have found to fail. This, reinforced by a notice to pay after 90 days, effectively requires the taxpayer to settle their tax affairs on HMRC's terms - or litigate.

More controversially HMRC will also be able to issue a notice to pay in situations where they have launched an enquiry into the taxpayer's affairs in a context covered by the DOTAS or GAAR rules referred to above. It is more controversial because the notice to pay can be issued even though there has been no litigation on these or similar facts. There is only confirmation that there has been an attempt at tax avoidance. In a case where the panel set up by GAAR have deemed it abusive one might be confident that it was aggressive tax avoidance but this is not necessarily the case under DOTAS which was intended by the Revenue as a warning indicator so it could change the legislation where appropriate. The measures are thought by some to be retrospective because those entering into tax avoidance steps would originally have done so in the expectation, based on the principle of self-assessment that they would not have to pay the disputed tax unless their case was litigated and judgment found against them. This may sound like a protest lacking in merit but one needs to bear in mind that many of these cases have been open for many years and how the attitude to tax avoidance has varied during that time

As stated in the header, the scope for applying these measures is very considerable. It is probably worth being pro-active if you are likely to be caught up in all this and we can help to steer you through the process.



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