



HMRC's accelerating counter avoidance activity

Within an Autumn Statement widely regarded as unremarkable it was interesting to note an announcement that the Government is investing further in HMRC to increase its activity on countering avoidance and taking cases forward for litigation.

What HMRC activity is the investment focused on?

This investment will provide HMRC with additional resource of up to 200 full-time equivalent staff each year from 2018-19 to 2021-22, with the aim of capitalising on recent strengthening of HMRC's powers with supporting compliance activity.

The additional HMRC resources will be deployed to:

- Increase the number of cases challenged under the General Anti-Abuse Rule (GAAR)
- Further accelerate litigation and Follower Notices (FNs)
- Expand litigation settlement activity amongst those who have used avoidance Schemes

What does this mean in practice?

This is a package of resources allocated to HMRC to expand activities countering tax avoidance, effectively enabling HMRC to do more, and do it faster. The largest revenue raising element of this package is to provide resources to expand HMRC's use of Accelerated Payment Notices (APNs), and associated Follower Notices (FNs) mentioned above, in tackling the use of tax avoidance schemes.

The APN regime applies to arrangements within the Disclosure of Tax Avoidance Schemes (DOTAS) regime and also to arrangements HMRC has successfully litigated. With the introduction of the APN regime HMRC have sought to prevent taxpayers benefitting from the cash flow advantage achieved by using tax avoidance schemes where historically the disputed tax wasn't paid until a decision on whether the scheme works is finally determined in court.

The process of investigating tax avoidance schemes and securing a final decision can take many years. The effect of the APN regime is to obtain payment of the disputed tax up-front while investigation or litigation of the avoidance scheme progresses. Only if the taxpayer is ultimately successful will any amount of the accelerated payment be refunded. In addition where HMRC secures a final decision in litigation, where the outcome can be applied to other taxpayers with the same matter in dispute, HMRC can issue a FN to those other taxpayers together with a request for payment of the disputed tax via an APN. There is no right of appeal against an APN or FN, although representations can be sent to HMRC for consideration before the notices are finalised.

This investment therefore reinforces HMRC's desire to remove this cash flow benefit by requiring taxpayers to pay now and argue later and to further fast-track the collection of disputed tax. HMRC has aimed to issue around 60,000 APNs and FNs to taxpayers and this additional resource will enable this to happen sooner.

Another element of the package is that it will increase the number of cases challenged under the General Anti Abuse Rule (GAAR). So far, in accordance with the expected timeframe within which the GAAR would have effect, there have not been any instances of the GAAR being applied. However, this investment is evidence of HMRC gearing-up in preparation for its use and means that



taxpayers possibly within the reach of the GAAR could now be subjected to increased intervention by HMRC in a much shorter timeframe.

Although 200 extra staff doesn't sound like adding much to HMRC's overall headcount of around 50,000 people, it will represent something like a 20% increase in resource for the Counter-Avoidance team. In summary, HMRC is being given additional resources to ensure that the anti-avoidance measures it has at its disposal can be used to the full.

What is the investment expected to yield?

The return on this investment is estimated to bring forward over £450 million in expected tax revenues by 2021-22. This package won't necessarily increase the overall tax take but will accelerate the collection of tax from the mid-term to the shorter term.

Implications for taxpayers likely to be affected

HMRC's strategy for issuing APNs has been unclear but in general the initial wave of notices appeared to concentrate on individual taxpayers and with corporate taxpayers receiving them more latterly. The majority of the 60,000 APNs aimed for have now been issued and HMRC's counter avoidance team will have been under pressure not only to get these dispensed but also consider and respond to taxpayer representations and deal with a number of judicial review proceedings. These additional resources will enable HMRC to issue the remaining APNs and focus attention on issuing FNs and progressing litigation of avoidance schemes. Further Government investment in resourcing litigation of avoidance schemes is understandable given HMRC's current 90% success rate in the courts.

In summary, taxpayers who have implemented DOTAS schemes, or otherwise engaged in activity post the implementation of the GAAR which is susceptible to challenge, should prepare themselves to receive APNs and or FNs. This will require decisions to be made regarding the payment of disputed tax and potentially litigating the disputed issue in order to achieve repayment of all or some of the tax.

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