



Chartered  
Institute of  
Taxation

Excellence in Taxation

## Follower Notices Clause 115 and Schedule 27

### Executive Summary

**This measure reduces the rate of penalty in some Follower Notice cases. We are supportive but expect its impact to be fairly limited. We are disappointed that there continues to be no right of appeal to a tribunal over the issuing of a Follower Notice, and we think HMRC need to make their communications and guidance clearer to reduce confusion.**

### 1. Overview

- 1.1. Under legislation passed in Finance Act 2014, subject to various conditions, HMRC may issue a Follower Notice to anyone who has used tax arrangements to gain a tax advantage and where HMRC believe those arrangements have been shown to fail by the tribunal or courts in another party's litigation. Anyone who receives a Follower Notice must decide whether to give up the tax advantage they have asserted, or continue their dispute with HMRC and risk a penalty of 50% if they are ultimately unsuccessful.
- 1.2. Clause 115 and Schedule 27 amend the 2014 legislation. The standard rate of the penalty is to be reduced from 50% to 30% of the tax under dispute, but the higher rate is maintained for those taxpayers whose continued refusal to settle with HMRC is deemed to be unreasonable by the tax tribunal.
- 1.3. HMRC say that the purpose behind the proposal to reduce the standard rate of the penalty to 30% is to provide a more genuine choice to those taxpayers who believe their own case is different and has a strong chance of success, and who wish to continue to pursue their appeal, instead of taking corrective action.

- 1.4. There was a consultation<sup>1</sup> on this measure during December 2020 and January 2021 to which the CIOT responded<sup>2</sup>. The consultation was in response to *'The Powers of HMRC: Treating Taxpayers Fairly'*, a report<sup>3</sup> by the House of Lords' Economic Affairs Committee in December 2018. It recommended that the Follower Notice legislation be amended to include a right of appeal to the tax tribunal and that the Follower Notice penalty regime be abolished (see paras 94 and 104 of the report).

## 2. CIOT comments

- 2.1. In general, we agree with the proposals. The high level of the current Follower Notice penalty (50%) can act as a disincentive for a taxpayer to continue with their appeal even if they consider that their case has a strong chance of success.
- 2.2. However, we anticipate that this disincentive will remain even at a penalty level of 30%. In other words, the change does not overcome the fundamental problem with the Follower Notice penalty regime which is that it puts pressure on a taxpayer not to exercise their legal rights, i.e not to continue with their appeal even if they believe it has a good chance of success.
- 2.3. When we commented on the draft legislation that introduced the Follower Notice penalty provisions that are now in Finance Act 2014 s 208 to s 214, we said that we anticipated that the measure would effectively mean a taxpayer would be prevented from pursuing their case any further even if they genuinely believed that their case was different to the case defeated in another person's litigation (and so was not a 'follower' case). We said that this could not have been the intention of the legislation, so we were pleased that HMRC consulted again on this. However, it was disappointing that the recent consultation did not consider broader points such as the lack of appeal rights against the issue of the Follower Notice itself.
- 2.4. This is unfortunate, because, although we support in principle the concept of follower cases (where the facts of a case are the same or very similar to an already decided judicial ruling and the taxpayer has declined to concede in their own case), the way of achieving it should not be to take away a taxpayer's normal safeguards and rights of appeal and to give HMRC almost unprecedented executive powers to decide who falls within the mischief they intend to deal with. This simply does not fit with a fair and balanced legal system. Indeed, as noted above, the House of Lords in its December 2018 report on HMRC's Powers recommended that the Follower Notice legislation be amended to include a right of appeal to the tax tribunal.

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<sup>1</sup> Follower Notices and Penalties Summary of responses 3 March 2021

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/965908/Follower\\_Notices\\_and\\_Penalties\\_-\\_Summary\\_of\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965908/Follower_Notices_and_Penalties_-_Summary_of_responses.pdf)

<sup>2</sup> Follower Notices and Penalties – HMRC Consultation. Response by the Chartered Institute of Taxation  
<https://www.tax.org.uk/sites/default/files/210126%20Follower%20Notices%20and%20Penalties%20-%20CIOT%20response.pdf>

<sup>3</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldconaf/242/242.pdf>

- 2.5 The changes being introduced to the penalty regime needs to be clearly communicated in HMRC's letters and guidance so a taxpayer who receives a Follower Notice can make an informed choice whether to take corrective action or not.
- 2.6 We know that taxpayers can already find the Follower Notice regime confusing. Often the follower notice will be issued by HMRC at the same time as an accelerated payment notice to collect the tax HMRC say is due. Taxpayers fail to deal with the follower notice correctly because they wrongly assume that the follower notice penalty will be avoided simply by paying the tax due. And sometimes a taxpayer appeals against an assessment or enquiry closure notice in respect of an avoidance arrangement on several grounds and this can lead to confusion about how to deal with a Follower Notice where there are other grounds for their appeal unrelated to the avoidance arrangement. HMRC could make this clearer in their communications and guidance, so that the taxpayer understands better how to respond to the Follower Notice if they want to continue their appeal on those other grounds.

### **3. The Chartered Institute of Taxation**

- 3.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 3.2. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
- 3.3. The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation

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