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Details about this article including indexing

Delivery options, PDF version, Add to Folder and Annotations

Jump to the next article in this Issue by using this arrow

Example:

R. (on the application of Rowe and Others) v HMRC

Francis Fitzpatrick

'B.T.R. 25 Introduction

R. (on the application of Rowe and Others) v HMRC [1992] 3 All E.R. 1

In the long anticipated decision of the Court of Appeal on the grounds for challenge to accelerated payment notices (APNs), introduced by the Finance Act 2004 (FA 2004), for partnerships, the equivalent notices are partnership payment notices (PPNs). 

The background to the introduction of this legislation was a perception by HMRC that taxpayers who entered into tax avoidance arrangements, which were then challenged, had little licence to either progress the litigation or settle it. As the tax would, typically, not have to be paid until the end of the appeal process, there was an incentive to string out the litigation to enjoy the cash flow advantage of holding on to the disputed tax for as long as possible. Whilst statutory interest would be payable, taxpayers might well be able to achieve a better return in the interim so that there would be a net cash flow benefit. Moreover, where an APN was issued, the taxpayer had to pay the tax in immediately.

The APN does not have to be paid immediately but request that a time extension be made may be made to pay the tax over a period of up to five years. The APN however is a notice of an intention to make a collection order and thus secures the assets of the taxpayer to ensure that, with the exception of the taxpayer’s household and business residence, all assets are available for the proceeds of the order.

The APN is therefore a device designed to ensure that the taxpayer’s assets are protected from potential action by HMRC. It is a notice of an intention to make a collection order, with the corresponding assets frozen. To prevent the taxpayer from using the time extension to do as they please, HMRC must make a collection order before the expiry of the time extension.

The taxpayer can either make a payment to HMRC on the amount of tax and interest that he or she estimates is due, or can contest the APN within a defined time period (in a similar manner to making a VAT appeal). If the taxpayer contest the APN within the defined time period and is successful, the APN is cancelled. If the taxpayer is unsuccessful, the APN is converted into a collection order and HMRC has the power to enforce the collection of the tax and interest by various means, including: the seizure of the assets, ability to take legal proceedings and proceedings to recover the tax and interest.