

# mlm insight

## Accelerated Payment Notice Regime Targeting Aggressive Tax Planning Strategies

### Background

In the UK the vast majority of people plan and manage their tax affairs to ensure they pay the tax they owe when it is due. Most people mitigate their tax liability by saving in a tax-free ISA, making donations to charity through Gift Aid, claiming capital allowances on assets used in their business or paying into a pension scheme. However, a small number of people, usually high earners, have been sold aggressive tax planning products which promise significant tax savings. These schemes are not risk free and generally depend on exploiting loop holes in tax law or on pushing at the boundaries of tax law, often beyond the original intention of Parliament when the law was introduced. In July 2014 the Government introduced new tax legislation to target those who have used aggressive tax planning strategies. This briefing looks at HMRC's Accelerated Payment powers and how it has been used to target complex tax products which have left many high-earning footballers and other celebrities facing bankruptcy.

### What you need to know

2014 saw the introduction of the Accelerated Payment Scheme which allows HMRC to demand upfront payment of tax, even when the actual sum due has not been determined. They are also used in circumstances where HMRC deems a particular scheme to be a tax avoidance scheme and the case is still being heard by a Tax Tribunal.

The guidance, published by HMRC in September 2014, states that APN's can be used when:

- there is a current compliance check into an individual's return or claim, or there is an open appeal
- the return or claim, or the appeal is made on the basis that there is a tax advantage from the scheme used

and one or more of the following applies:

- a follower notice has been given

- the individual has used arrangements disclosed under the Disclosure of Tax Avoidance Schemes legislation
- they are subject to a counteraction notice under the General Anti-Abuse Rule (GAAR)

Having published a list of 1,200 tax schemes which are to be challenged it is anticipated that, over the coming years, HMRC will issue APN's to 33,000 individuals and 10,000 businesses in a bid to reclaim £7.1bn of unpaid tax.

The first wave of APN's has targeted individuals who invested in "tax-efficient" schemes promoted by media investment and advisory groups. Scheme partners became directors of film related partnerships, originally designed to boost investment in the British film industry. These partnerships made losses which could be offset against investors' other income, thus reducing their tax bills. High-earning footballers and other media stars were targeted by financial advisers for these products and having received payment demands from HMRC many of them are in severe financial difficulties and even facing bankruptcy.

## Key Facts

- HMRC will send individuals an APN which advises how much needs to be paid and when
- The amount payable is the amount relating to the tax advantage that the scheme achieved
- Payment is due 90 days after the date the APN is received
- Penalty charges may apply if full amount shown in APN is not paid by due date (even if there is a current compliance check or appeal under way)
- Interest is not charged for late payment of the APN but charged on late payment of tax
- Refunds (including interest) will be made if the compliance check or appeal (if settled) shows an overpayment has been made
- If the scheme was used by a partnership, the partner payment notice will show the amount relating to an individual's share of the partnership's use of the scheme
- There is no right of appeal against the APN but representations can be made in writing within 90 days of APN being received if:
  - the conditions for issuing the notice have not been met
  - the amount shown in the notice is not correct
- If representation is made before the date the payment is due, and the notice is not withdrawn, the deadline for paying may be extended.

## Summary

As the post-recession austerity measures continue to impact public spending, the Government has identified and targeted those pursuing aggressive tax planning strategies as a source of recouping significant sums of money. The strategies, typically used by the most affluent in society, are hugely complex with investors not fully aware as to what they were signing up to. The APN legislation has empowered HMRC to demand payment within 90 days, even if the investigation into the scheme is progressing through the court system. Restricted access to cash within such a short period may result in insolvency.

## About mlm Solutions

In our experience, if someone is under threat of receiving an APN, it is better to be proactive and

take mitigating action in advance of the notice being received. Investors in film schemes should check whether the scheme will be subject to a demand from HMRC. The 8 digit tax scheme number can be entered into our online APN Search facility available at <http://www.mlmsolutions.co.uk/apn-search.html>. If the scheme is listed, we recommend that professional advice is sought immediately. Our approach is to help minimise future exposure by assisting our clients to leave the scheme. We can determine whether the scheme promoter is appealing HMRC's finding and where the case is in relation to the legal process. We review our client's financial position to determine whether it is feasible to make an offer to settle. If not, we will work through the options available which vary depending on where our client is based within the UK.

## For further information contact



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