Proposed new rules for dismembering and resolving enquiries

Technical

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The Autumn Statement included the announcement that the government would ‘consult on a proposal to introduce a new power, enabling HMRC to achieve early resolution and closure of one or more aspects of a tax enquiry while leaving other aspects open’. HMRC issued its consultation paper on 18 December.

The consultation is taking place at stage 1 of the tax policy development process with its stated purpose being to ‘seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform’. This is welcomed because it creates the best opportunity for responses to influence the policy and legislation that will emerge from the consultation.

The key driver behind the proposals is the concern that the law on the closure of enquiries, as it stands, prevents any part of a multi-dispute enquiry being closed until every part can be closed. HMRC believe that this delays the resolution of disputes and frustrates challenges to avoidance schemes. In both cases, this causes the delayed payment of tax.

The main proposal being offered for consideration is a new power enabling HMRC to refer to the tribunal a specific issue within an enquiry, as distinct from the whole enquiry.
Currently, such a dismemberment of an enquiry can be achieved only as a joint referral to the tribunal by the parties under the seldom used provisions of Taxes Management Act 1970 s 28ZA. Given the purpose of the proposed change, it is no surprise that the consultation proposes an accompanying amendment to the act’s provisions to enable closure in accordance with the tribunal’s decision on the dismembered part of the enquiry, with consequent implications for the payment or

repayment of tax.

The consultation proposes another amendment, the purpose of which appears to be to enable agreed aspects of an enquiry to be closed in advance of the whole enquiry, again with implications for the payment or repayment of tax.

To align the consequences of a joint referral to the tribunal under s 28ZA with the consequences of a 'sole referral' by HMRC under the proposed provisions, a further amendment is proposed. At present, although a joint referral to the tribunal brings finality on a particular issue, the payment or repayment consequences are given effect only when the whole enquiry is closed. Accordingly, HMRC propose that a joint referral should result in a 'tribunal referral closure notice' in the same way as where there had been a sole referral. So any tax payable would be due in advance of the closure of the whole enquiry.

The consultation emphasises repeatedly that HMRC expect to use the sole referral power 'sparingly'. Examples are given as 'cases involving significant tax under consideration or involving issues which are novel, complex, or have a wider impact, including those which can include tax avoidance'. Reference is made to 'operational; arrangements', including the nomination of senior officials whose consent would be required before the new power could be used.

Provision is included for a taxpayer to be able to appeal against a 'tribunal referral notice', which advises the taxpayer that HMRC was invoking the new power, but the consultation does not indicate what grounds of appeal might be considered by the tribunal.

In keeping with the scope of stage 1, its nine questions are relatively open and allow answers to be wide-ranging. Importantly, the closing date for responses is 12 March 2015 so if you are reading this any time before the middle of February you can get involved in the consultation. It is often just a couple of bullet points along the lines of 'what would happen if…?' or 'has anyone spotted that this could mean…?' that can add enormously to the strength and credibility of a response to a consultation. CIOT and ATT members can email comments to mcurran@ciot.org.uk or wsilsby@att.org.uk, respectively.

For readers without the time or inclination to digest the 26-page consultation paper, question 3 simply asks for suggestions on the terminology of the new notice, referred to in this article by its working title of 'tribunal referral notice'.

If the terminology suggested by a member is adopted by HMRC, we will highlight this in a subsequent issue of Tax Adviser.

The consultation document can be found at www.tinyurl.com/khox5v5