Seeking closure

Management of taxes



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Helen Adams considers the Finance Bill's proposed changes to enquiry closure notices

Key Points

What is the issue?

Enquiry closure notices for income tax, capital gains tax and corporation tax are soon to disappear from statute to be replaced by 'Partial Closure Notices' (PCNs) and

‘Final Closure Notices’ (FCNs).

What does it mean to me?

HMRC may use PCNs to close aspects of enquiries sooner so decisions on whether to appeal and progress contentious issues to court may need to be made earlier than is often currently the case.

What can I take away?

Taxpayers may benefit by obtaining earlier certainty on easily resolved enquiry matters through PCNs, although collection of tax and penalty assessments will be similarly accelerated.

After many years, enquiry closure notices as we know them are on the ‘endangered species’ list as a result of the FB 2017 Cl 123 and Sch 26. Advisers are used to the existing regime in Taxes Management Act 1970 and Finance Act 1998 Sch 18 so why change it now and what will the new regime involve?

What is disappearing?

Currently HMRC issues a closure notice to shut an enquiry for a tax year or an accounting period. The closure notice either confirms that the return requires no amendment or makes changes to it to give effect to the Officer’s conclusions, thus altering the tax due.

Enquiry closure notices will cease to exist when Finance Bill 2017 receives Royal Assent if the legislation is enacted unchanged. This will affect income tax, capital gains tax (CGT) and corporation tax enquiries, significantly amending the following legislative provisions:

- TMA 1970 s 28A and s 28B (closure notices for personal, trustee, non-resident CGT and partnership enquiries);
- FA 1998 Sch 18 paras 32 and 33 (closure notices for corporation tax).

Contract settlements with HMRC under TMA 1970, s54 and Finance Act 1998, Schedule 18, para 51G will remain an option. Contract settlements can encompass more than one tax and more than one tax year, as well as late payment interest and

penalties, thus being an administratively convenient method for closing complex enquiries by mutual agreement, subject to HMRC’s governance procedures.

Why change?

Enquiries often consider several matters within a tax return and sometimes take many years to resolve. Closure notices cannot be issued until enquiries into all the matters are complete. Where there is not mutual agreement enabling joint referral of a matter to the Tribunal, this may delay litigation on specific issues and limit HMRC’s choice of which taxpayers to select as lead cases in litigation against tax avoidance arrangements. It also delays taxpayers having certainty on easily resolved issues within the enquiry, unless the Officer agrees to a contract settlement to finalise them while more difficult issues remain under enquiry.

The proposed replacement regime may:

- Reduce the need for contract settlements;
- Provide greater flexibility to the enquiry framework;
- Enable collection of tax sooner for some aspects of an enquiry.

The proposed regime

Firstly, what isn’t changing? HMRC can only open one enquiry per tax return, plus any enquiries into amendments to the return and other matters such as overpayment relief claims. Taxpayers will be able to amend their return within 12 months of the filing date (e.g. TMA 1970, s 9ZA) although amendments during an enquiry may be taken into account in the enquiry but do not take effect while the enquiry is in progress (e.g. TMA 1970, s 9B continues). There remains no deadline for completion of an enquiry. Taxpayers and HMRC remain able to jointly refer matters to the Tribunal for determination during an enquiry (TMA 1970 s 28ZA-28ZD and FA 1998 Sch 18, para 31A).

The proposals (if enacted as drafted) will enable HMRC to issue a Partial Closure Notice (PCN) to a taxpayer to close any matter in an enquiry and bring the associated tax liability into charge. An unlimited number of PCNs may be issued during each enquiry. As indefinite enquiries are undesirable, HMRC will be able to issue a Final Closure Notice (FCN) shutting the enquiry and specifying any further

adjustments to the taxpayer's return.

Accepting the PCN or FCN closes the issues covered by the notice, subject to HMRC's discovery powers. Taxpayers will be able to appeal against PCNs and FCNs in the normal way. An appeal against an FCN would not affect matters covered by PCNs, unless the Tribunal agrees to grant the taxpayer a late appeal in respect of those matters. Hopefully mediation (aternative dispute resolution (ADR)) will be available on an issue by issue basis so that a PCN or a FCN could follow a mediation at which agreement was reached informally.

Taxpayers will be able to informally ask HMRC to issue a PCN or a FN. If HMRC agrees, the PCN/FCN would be issued using the above process. If HMRC disagrees then the taxpayer may apply to the Tribunal for a direction instructing HMRC to issue the PCN/FCN (as is currently the case for existing provisions such as TMA 1970, s 28A(4) – (6)). If the Tribunal agrees the PCN/FCN is issued by a specified deadline; if not, the enquiry continues.

The changes will apply to enquiries open on or after the date on which the Bill receives Royal Assent (FB 2017 Sch 26 para 44.

So, when is tax payable?

The legislation specifies that references to closure notices in the Taxes Acts are to be taken as references to a PCN or FCN. Consequently TMA 1970, Sch 3ZA, para 5 and 8 will specify that additional income tax and CGT charged by either notice is payable 30 days after the date on which the PCN/FCN is issued. Repayments are due by the same date, apart from those processed under s9B(3)(b) TMA 1970 as a consequence of a taxpayer amendment to a return during an enquiry which are due 30 days after the FCN is issued. Postponement of collection of the additional tax during an appeal can be requested as at present.

What about penalty determinations?

The combined effect of the legislation and FA 2007 Sch 24 Para 13(3) will enable HMRC to assess a penalty for error on the taxpayer following both PCNs and FCNs. Ideally there will be discussions between the HMRC officer and the adviser so that the penalty is assessed (or there is confirmation that no penalty is due) shortly after

the PCN or FCN is issued, in order that the client has certainty over their position. If several tax years are affected it still may be easier to use a contract settlement to agree tax, interest and penalties simultaneously instead of a series of PCNs, FCNs and their associated penalty determinations.

Practical considerations

HMRC should update its enquiry guidance following Royal Assent of Finance Bill 2017 to take into account the above changes in the normal way. Such guidance may clarify in practical terms how the above changes sit with other aspects of the tax admin legislation (e.g. amendments to group relief) and clarify whether these need to be undertaken after every PCN/FCN.

In terms of practical changes to the conduct of enquiries open at or after Royal Assent, assuming that the legislation is enacted without change, let’s take a hypothetical example of Fred, a taxpayer with complex tax affairs and an open enquiry into his 2011/12 tax return at Royal Assent. Fred’s adviser Bob reviews the enquiry identifying:

- Several issues for which verbal agreement was reached with HMRC some time ago;
- A tax avoidance arrangement (TAA) for which Fred received an Accelerated Payment Notice nine months ago;
- Remaining matters involving HMRC’s technical specialists relating to Fred’s non-UK domicile status and remittances.

Bob realises that the new legislation changes the enquiry’s conduct so he makes a note to tell Fred that:

- HMRC can issue a PCN to close the issues for which verbal agreement was reached and may follow it with a penalty assessment as the previous inspector suggested Fred was careless, unless Bob can negotiate suspension;
- He needs to have the funds to pay the tax ready as it will be due 30 days after the PCN arrives, unless there is a need to appeal it;
- HMRC could issue a PCN for the TAA, which Fred will need to appeal if he wishes to progress the matter to Court as HMRC appears unlikely to agree that the TAA achieves its aims. Fred should discuss with the promoter whether he is likely to be selected as a lead case;

- A FCN closes the enquiry and may not be issued for some months as the domicile matters are complicated.

The new rules will hopefully enable taxpayers to get certainty on aspects of enquiries sooner than is currently the case. The main beneficiary might be HMRC as it will be able to collect tax, interest and penalties sooner and move single issues towards the Courts faster than is currently the case for multi-faceted enquiries. It will be interesting to see whether the changes accelerate the issue of FCNs compared to existing closure notices.