

HMRC jeopardy amendments (Lecture B1430 – 8.44 minutes)

This article will consider HMRC's jeopardy amendments, the circumstances in which they can be issued, and practical points for advisers.

What is a jeopardy amendment?

Jeopardy amendment is the term used to describe an amendment made by an HMRC officer to a taxpayer's Self Assessment when an enquiry cannot be closed. HMRC's guidance notes that this is not a routine process (see COM71040) and should only be used in certain circumstances.

A jeopardy amendment can be issued to an individual, a trust, or a company, where there is an open Self Assessment enquiry, and there is evidence that the Self Assessment is inadequate. A jeopardy amendment cannot be issued to a partnership, but one can be issued to a partner in the partnership (providing there is an open s9A enquiry for the same year).

The relevant statutory provisions are at TMA 1970, s9C (ITSA) and FA 1998, Schedule 18, paragraph 30 (CTSA).

When will a jeopardy amendment be issued?

The legislation (see TMA 1970, s9C(2), for ITSA, with similar provisions under the CTSA regime) provides that a jeopardy amendment may be made where an officer forms the opinion:

- a) "That the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
- b) That unless the assessment is immediately amended there is likely to be a loss of tax to the Crown".

The circumstances in which an HMRC officer will, in practice, issue a jeopardy amendment, include situations where the officer discovers, or has evidence to suspect, that (see EM1953):

- An individual taxpayer, a partner, or a company intends to dispose of significant assets;
- An individual taxpayer, a partner, or a company intends to become non-resident;
- An individual taxpayer or a partner intends to apply for bankruptcy, or a company intends to go into liquidation;
- An individual taxpayer or a partner may be about to go to prison.

A jeopardy amendment will not be issued once a company has gone into liquidation, or an individual has been made bankrupt. HMRC may issue a jeopardy amendment to a company where the officer establishes that the company's director may be about to go to prison.

Officers are instructed to consider making a jeopardy amendment where a taxpayer will not agree to make a payment on account, and the officer is of the opinion that tax is at risk.

An HMRC officer will also consider making a jeopardy amendment where the taxpayer refuses to co-operate.

However, the officer must have already established, with some degree of certainty, that the self-assessment is deficient. Advisers need to consider whether a deficiency has been established, if the officer raises a jeopardy amendment in such circumstances.

Appeals

The client has the right of appeal against a jeopardy amendment. The appeal must be made in writing, setting out the grounds for appeal, and submitted within 30 days of the issue of the amendment. The appeal will not be settled until after the enquiry is concluded.

The client does not have the ability to request a statutory review, or appeal to the tribunal, during an enquiry in respect of the jeopardy amendment until the matters to which the amendment relates are settled by a partial or final closure notice.

However, there can be an appeal to the tribunal in relation to the officer's decision about a postponement application, see below.

Postponement applications

The client can also submit a postponement application. However, there needs to be a valid appeal before the postponement application can be made. The normal rules apply, in that the postponement application:

- Must be made in writing;
- Must be made within 30 days of the issue of the amendment;
- Must set out the amount of tax believed to be overcharged;
- Must set out the reason why the taxpayer believes it is overcharged;
- Does not need to be made at the same time as the appeal.

HMRC will seek to agree the amount of tax, if any, to be postponed. If agreement cannot be reached, the client can write to the tribunal to ask it to decide the amount to be postponed. The request must be made within 30 days of HMRC's letter notifying the client of the amount, if any, that it agrees can be postponed.

Given the circumstances in which jeopardy amendments are issued, HMRC's internal guidance is that any postponement application should be "considered carefully".

It is unlikely that HMRC will agree that the full amount of tax charged should be postponed, but each case must be considered on its merits.

HMRC's Alternative Dispute Resolution ("ADR") process can be used to determine the amount of tax to be postponed. HMRC do not consider that ADR is suitable for cases where the taxpayer has refused to co-operate or has withdrawn co-operation.

HMRC officers are instructed that, if they receive more information, such that the tax postponed is excessive, they should agree a revised figure of tax with the taxpayer or refer the application back to the tribunal.

Practical considerations

It is important to remember that the issue of a jeopardy amendment is not a routine process. The relevant provisions should only be used where there is a risk of the loss of, typically, substantial amounts of tax. This will be most likely in cases where it has been determined that there has, for example, been an omission of taxable profits, but the taxpayer has not made a payment on account or the officer has information suggesting that the taxpayer is about to remove assets abroad, or become bankrupt, in the case of an individual, or bankrupt, in the case of a company. Where the adviser has carefully managed the tax enquiry, and the client has co-operated, and made appropriate payments on account, the possibility of a jeopardy amendment should not become an issue.

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