

Partial closure notices (Lecture P1420 – 12.42 minutes)

This article will consider various issues relating to partial closure notices, which can be used by HMRC to settle aspects of an enquiry into a taxpayer's tax return (whether under Income Tax Self-Assessment or Corporation Tax Self-Assessment), and which can be requested from the tax tribunal by a taxpayer. Reference should be made to the separate session on closure notices, which focused on final closure notices, and which help bring a resolution to a HMRC enquiry.

Background

Closure notices are one of the ways in which an enquiry into a taxpayer's return may be concluded and have been an integral part of HMRC compliance checks since the beginning of Self-Assessment. Partial closure notices permit the resolution of a particular matter, or matters, that are being enquired into.

The provisions relating to partial closure notices were introduced in Finance (No. 2) Act 2017 (s 63 and Sch 18), and relate to the completion of compliance checks that were already open at 17 November 2017, or opened on or after that date.

The issue of a partial closure notice is covered by the following legislation:

- Taxes Management Act 1970, s28A and s28B (partial closure notices for personal, trustee, non-resident CGT and partnership enquiries);
- Finance Act 1998, Sch 18, paras 32 and 33 (partial closure notices for corporation tax).

The provisions relating to final closure notices have been covered in a separate session, as noted above.

Partial closure notice issued by HMRC

The issue of a partial closure notice by HMRC requires the authority of an approving officer, unless the tribunal has directed that such a notice be issued. The approving officer is an HMRC officer who is not, or has not been, involved in the subject case.

HMRC's policy is that partial closure notices should be used selectively, and not routinely, particularly if there is the likelihood of an appeal. Where the taxpayer agrees with HMRC's view on a matter, that matter can be finalised by the issue of a partial closure notice. HMRC's guidance indicates, at CH279600, that they will not issue a partial closure notice where the taxpayer does not agree with their view of the matter unless:

- The tribunal has issued a direction for a partial closure notice to be issued:
- The compliance check involves one or more of the following:
 - Tax avoidance
 - Multiple complex issues
- There is a large amount of tax at risk

HMRC will calculate the tax due as a result of amending a return by issuing a partial closure notice based on the information known at that time. Any discrepancy can be resolved when the final closure notice is issued. HMRC officers are advised not to issue a partial closure notice when they are close to issuing a final closure notice.

When a partial closure notice is issued by HMRC, the notice must, in accordance with TMA 1970, s 28A, para 2, "state the officer's conclusions and:

- a) state that in the officer's opinion no amendment of the return is required, or
- b) make the amendments of the return required to give effect to his conclusions".

There is a similar provision at FA 1998, Sch 18, para 34 in relation to CTSA enquiries.

The same appeal rights apply to partial closure notices as they do to final closure notices, and the client has the right of appeal against the partial closure notice. The client may seek a statutory review of the decision, or follow other formal channels (Alternative Dispute Resolution or the tribunal) for resolution of the position. As the HMRC will,

Closure notice application by client

The statutory provisions noted above permit taxpayers to apply to the tax tribunal for the issue of a partial closure notice (in the same way as for a final closure notice). An application can be made at any stage of an enquiry, and there isn't a limit on the number of applications that can be made.

HMRC's Enquiry Manual anticipates particular occasions when a taxpayer might seek the issue of a closure notice from the tribunal:

- Following the issue of the opening letter and request for information (see EM1981);
- Following the issue of a formal notice (see EM1982);
- Following contact with the taxpayer (see EM1983);
- Following delay by the enquiry officer (see EM1984).

There may be other instances where an adviser considers that it would be appropriate to seek a partial closure notice from the tribunal. Each case must be considered on its merits, and the tribunal will consider the particular facts of the case before reaching their decision.

HMRC officers are advised that, when a closure application is made, they should review the enquiry to date, and consider whether requests for information are reasonable and justified. Officers are also advised to consider whether a partial closure notice is appropriate (see EM1980).

Advisers should note that making an application for a partial closure notice, or indicating to the officer that one will be made, may focus the officer's attention on the case, such that he issues a partial closure notice, or takes other action which moves the case forward. A discussion with the enquiry officer to establish why they have not been able to close the enquiry, or to conclude a particular aspect of a case, may prove fruitful. However, that will not always be the case.

Where the application proceeds to the tribunal, the legislation provides that “The tribunal shall give the direction applied for unless satisfied that there are reasonable grounds for not issuing the partial ... closure notice within a specified period” (TMA 1970, s28A (6), with a similar provision in FA 1998, Sch 18). Thus, the onus is firmly on HMRC to convince the tribunal why the partial closure notice should not be issued.

Outcome at the tribunal

There are various potential outcomes when a partial closure notice application is made.

The tribunal may direct that a partial closure notice should be issued within a specified period, and, as noted above, this is the default outcome under the legislation if HMRC are not able to persuade the tribunal otherwise. The period granted to HMRC will vary from case to case, and the officer could, potentially, be given several months to issue the partial closure notice. The officer must base their conclusion and figures on whatever information is held.

Advisers should note that the issue of a partial closure notice does not necessarily mean that the particular matter is settled, as the officer will issue the notice based on his conclusions, which may not be the same as those of the adviser or client. In such circumstances, the taxpayer can appeal when the partial closure notice is issued, so that the substantive issues can be resolved (whether by ADR or at the tribunal).

The client can appeal a point of law against the tribunal’s decision if they do not direct that a partial closure notice is issued. Similarly, HMRC can appeal against the tribunal’s decision to issue a partial closure notice if they consider that the tribunal has made an error in law in its judgment.

Where the tribunal does not direct that a partial closure notice be issued, the taxpayer can make further applications for a partial closure notice, or, if appropriate, a final closure notice. Advisers should consider whether the circumstances have changed sufficiently to improve the chance of success. A succession of applications for a partial closure notice in a short period of time, particularly when in relation to the same matter, is unlikely to be a prudent, or cost-effective, approach.

Practical considerations

There are various issues that the agent should consider when dealing with a partial closure notice issued by HMRC, and these include the following:

- Check the conclusions, and any figures, contained in the partial closure notice, and associated assessments or formal notices, to ensure that they agree with the outcome of negotiations with HMRC;
- Where the officer has used his own figures in the partial closure notice, the agent should consider the appropriate remedy (usually this will be one or more of the following - statutory review, Alternative Dispute Resolution or the tax tribunal);
- Where HMRC consider there is liability to a penalty following the issue of a partial closure notice, the officer is instructed to start formal penalty proceedings.

As noted above, HMRC will usually only issue a partial closure notice where there is agreement with the agent on the particular matter, except in limited circumstances.

Where the agent is considering whether the client should seek a direction from the tribunal for the issue of a partial closure notice, the following points should be borne in mind:

- Advise the client as to the potential outcomes;
- If the tribunal direct HMRC to issue a partial closure notice, that is not necessarily the end of the matter. It may be necessary to appeal against the notice, when issued, so that the substantive points relating to that matter can be heard at the tribunal;
- Timing of the application is crucial, as seeking a partial closure notice too early will reduce the chance of success;
- Where information has been submitted to the officer, it is prudent to allow a reasonable time for that information to be reviewed, before seeking a partial closure notice direction;
- What is reasonable will vary from case to case;
- Consider a partial closure notice if the enquiry officer continues to ask questions beyond what is considered reasonable and has embarked on a 'fishing expedition';
- Consider seeking a partial closure notice where there are multiple matters being reviewed, and progress into resolving them is being made at a different pace;
- Speak to the enquiry officer, if possible, before making an application to the tribunal, as that may help to focus his mind on the enquiry, and to move the case forward;
- There is a risk that if a partial closure notice is sought prematurely, and HMRC subsequently establish a significant tax irregularity, your client may be exposed to higher penalties than would otherwise be the case;
- Consider whether an application for a final closure notice may be more appropriate than a partial closure notice (see separate session).

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