

Tax avoidance schemes - accelerated payments

We have given you this factsheet because you have used a tax avoidance scheme, and we will soon ask you to make a payment of the amount that relates to your use of the scheme.

This factsheet is one of a series. For the full list of factsheets in our compliance checks series, go to www.hmrc.gov.uk/compliance/factsheets.htm

What is a tax avoidance scheme

A tax avoidance scheme is a set of arrangements that try to use tax legislation to gain a tax advantage that is not intended by the legislation.

What is an accelerated payment

Tax legislation that affects those who have used a tax avoidance scheme was introduced on 17 July 2014. The legislation means that those who have used a tax avoidance scheme may have to make a payment of the amount that relates to their use of the scheme, before the final amount has been agreed or determined. Such a payment is known as an accelerated payment.

When we may issue an accelerated payment notice

We may issue an accelerated payment notice to a person who has used an avoidance scheme if:

- there is a current compliance check into their 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 avoidance scheme used

and one or more of the following applies:

- we have given them a follower notice (this is explained in factsheets CC/FS25a and CC/FS25b)
- they have used arrangements disclosed under the Disclosure of Tax Avoidance Schemes (DOTAS) legislation
- they are subject to a counteraction notice under the General Anti-Abuse Rule (GAAR)

The tax legislation that deals with accelerated payments refers to a compliance check as a 'tax enquiry'.

How we will tell you about your accelerated payment

We will send you an accelerated payment notice which will tell you how much you need to pay and when. It will also tell you what you can do if you disagree with it. When we send the notice, we will tell you how we have calculated the amount you need to pay.

If you are a member of a partnership and the avoidance scheme was used by the partnership, we will send you, and each of the other partners, a partner payment notice instead of an accelerated payment notice.

Throughout this factsheet, the term 'accelerated payment notice' also means partner payment notice.

How we work out the amount of an accelerated payment

The amount payable will be the amount relating to the tax advantage that the use of the avoidance scheme tries to achieve. The legislation refers to this as the 'understated tax' in cases where there is a current compliance check, or the 'disputed tax' in cases where there is an open appeal.

We will calculate the amount to the best of our information and belief. If we do not have all the information we need to establish the exact amount, then the amount shown in the accelerated payment notice may not be the same as the amount due when your compliance check is complete or your appeal is settled.

If the amount in the accelerated payment notice is more than the amount we find to be due once your compliance check is complete or your appeal is settled, we will repay any amount that you have overpaid. We will also pay you any interest that is due to you in respect of the amount overpaid.

If you are a member of a partnership and the avoidance scheme was used by the partnership, your partner payment notice will show the amount relating to your share of the partnership's use of the scheme. This will be the amount that was reflected in your own return or claim as a result of the scheme.

Paying what is due

Payment will be due 90 days after the date you receive the accelerated payment notice.

If you make representations objecting to the accelerated payment notice, the date the payment is due may change. There is more information about this in the section headed 'what to do if you disagree with the accelerated payment notice'.

Problems paying

If you think you may have problems paying, you should tell us straightaway.

Stamp Duty Land Tax and Annual Tax on Enveloped Dwellings: joint purchasers or partnerships

If your use of the avoidance scheme relates to Stamp Duty Land Tax (SDLT) or Annual Tax on Enveloped Dwellings (ATED), we will send an accelerated payment notice to each joint purchaser or partner. Each notice will show the whole of the amount due. This is because, in law, for SDLT and ATED, each joint purchaser or partner is jointly and severally liable, which means that each joint purchaser or partner is responsible for paying the whole amount of the accelerated payment.

Also, if we charge any penalties for late payment of the accelerated payment notice, each joint purchaser or partner will be jointly and severally responsible for paying the whole amount of the penalty.

This **does not** mean that we will require each joint purchaser or partner to pay the whole amount of the accelerated payment or the penalty. It is up to the joint purchasers to decide how much each of them will pay – as long as the amount due is paid in full. You do not need to tell us how much each of you is going to pay.

If the amount due is not paid in full, we can require any one or more of the joint purchasers or partners to pay what is still owing.

You can find more information about penalties below.

Penalties for not paying the accelerated payment notice on time if there is a current compliance check

If there is a current compliance check and you do not pay the full amount shown in your accelerated payment notice by the date it is due, we may charge you a penalty. You would have to pay any such penalty as well as the accelerated payment.

If your payment is not made in full:

- on or before the date it is due, you will be liable to a penalty equal to 5% of the amount you still owe
- on or before 5 months of the date it is due, you will be liable to a penalty equal to 5% of the amount you still owe - this is as well as the 5% explained in the previous bullet
- on or before 11 months of the date it is due, you will be liable to a penalty equal to 5% of the amount you still owe - this is as well as the 2 previous 5% penalties

These penalties apply to all the taxes covered by the accelerated payment legislation.

Surcharges and penalties for not paying the accelerated payment notice on time if there is a current appeal

Surcharges for accelerated payment notices that relate to Income Tax and Capital Gains Tax

If your accelerated payment notice

- relates to Income Tax or Capital Gains tax
- is for the tax year 2009 to 2010 or earlier

and you do not pay the full amount shown in the notice, we may charge you a surcharge. You would have to pay any such surcharge as well as the accelerated payment.

If your payment is not made in full:

- within 28 days of the date it is due, you will be liable to a surcharge of an amount equal to 5% of the amount you still owe
- on or before 6 months of the date it is due, you will be liable to a further surcharge of an amount equal to 5% of the amount that you still owe – this is as well as the 5% explained in the previous bullet

Penalties for accelerated payment notices that relate to Income Tax, Capital Gains Tax and Annual Tax on Enveloped Dwellings

If your accelerated payment notice relates to:

- Income Tax or Capital Gains tax and is for the tax year 2010 to 2011 and later
- Annual Tax on Enveloped Dwellings

and you do not pay the full amount shown in the notice, we may charge you a penalty. You would have to pay any such penalty as well as the accelerated payment.

The date on which you become liable to such a penalty is known as 'the penalty date'. The penalty date is 31 days after the date you were due to pay.

If your payment is not made in full:

- by the penalty date, you will be liable to an initial penalty, which will be an amount equal to 5% of the amount you still owe
- on or before 5 months from the penalty date, you will be liable to a further penalty, which will be an amount equal to 5% of the amount that you still owe – this is as well as the 5% explained in the previous bullet
- on or before 11 months from the penalty date, you will be liable to a second further penalty, which will be an amount equal to 5% of the amount that you still owe – this is as well as the 2 previous 5% penalties

General information about surcharges and penalties for not paying the accelerated payment notice on time

How we tell you about a surcharge or penalty

We will send you a notice to tell you how much the surcharge or penalty is and how we have worked it out.

Letting us know about any special circumstances

If there are any special circumstances that you believe we should take into consideration when calculating the surcharge or penalty, you should tell us straightaway.

When we will not charge a surcharge or penalty for not paying the accelerated payment on time

We will not charge you any surcharges or penalties for paying your accelerated payment late if you had a reasonable excuse for paying late – as long as you paid without delay once the reasonable excuse had ended.

A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond your control. What is, or is not, a reasonable excuse depends on the person's abilities and circumstances. Those abilities and circumstances may mean that what is a reasonable excuse for one person, may not be a reasonable excuse for another.

If you think you have a reasonable excuse please tell us. If we accept that your excuse is a reasonable excuse, we will not charge you a surcharge or penalty. If we have already charged you a surcharge or penalty for not paying on time, we will cancel it.

What if you disagree with any surcharges or penalties

If we charge you any surcharges or penalties for paying the accelerated payment late, you will be able to appeal against them if you disagree. You can find out more about this in factsheet HMRC1 'HM Revenue & Customs decisions – what to do if you disagree'. You can get a copy online. Go to www.hmrc.gov.uk/factsheets/hmrc1.pdf

Interest for paying late

We do not charge interest for late payment of the accelerated payment notice itself. However, we do charge interest for late payment of tax - from the date the tax was originally due, until the date it is paid.

When your tax position is settled, we will work out whether there is any interest for you to pay. For interest purposes, we will treat the amount you pay in respect of the accelerated payment notice as if it were payment of the tax. This will mean that interest will stop accruing on the amount of tax equal to the amount of accelerated payment you pay, from the date you pay it.

We also charge interest on the late payment of any surcharges and penalties.

What to do if you disagree with the accelerated payment notice

There is no right of appeal against an accelerated payment notice. However, you can make representations to us if you believe that one or both of the following applies:

- the conditions for issuing the notice have not been met – these are shown in the section headed 'when we may issue an accelerated payment notice'
- the amount shown in the notice is not correct - if this is the case you will need to tell us what you think the correct amount is and why

Your representations must be in writing, and must reach us no later than 90 calendar days from the date that you receive the notice. We will then consider what you say and let you know our findings.

If you make representations, you cannot ask for postponement of the amount shown in the accelerated payment notice.

However, if you make representations **before** the date the payment is due, and we do not withdraw the notice, the deadline for paying may be extended. Payment will be due on the later of:

- the due date shown in the accelerated payment notice
- 30 days after the date on which you receive our decision about the representations you made

If the deadline for paying is extended, any penalties for paying late will apply from the extended deadline date.

If you are a member of a partnership, you can make representations regarding your own partner payment notice. You cannot make representations on behalf of any of the other partners, or on behalf of the partnership as a whole.

What if you want to settle your tax affairs

If you want to settle your tax affairs once we tell you that we are going to send you an accelerated payment notice, we will work with you to settle the compliance check or appeal.

It is entirely up to you whether you settle your tax affairs. If you do not want to settle, then the compliance check or appeal will remain open.

About your appeal rights in respect of your current compliance check or appeal

When you pay the accelerated payment notice, this does **not** mean that your current compliance check or appeal is settled.

Although you cannot appeal against the accelerated payment notice, the legislation covering accelerated payments does not affect your appeal rights to the tribunals and courts in relation to your tax liability. This means that if you:

- have a current compliance check – you will still have your full appeal rights if you do not agree with the outcome of that check
- have already appealed against the outcome of your compliance check – you will still have your full appeal rights

What if you have appealed and we had postponed the tax that you are disputing

If we have already completed a compliance check into your tax return or claim and you have:

- appealed against our decision about the outcome of that compliance check
- asked us to postpone some or all of the tax in dispute

the postponement is cancelled when we send you the accelerated payment notice. You will then have to pay all the tax that had previously been postponed by paying the accelerated payment notice.

What will happen if you pay the accelerated payment notice and a court or tribunal later rule that the scheme does produce a tax advantage

If a tribunal or court decides that the scheme does produce the tax advantage, we would normally repay the amount you have paid under the accelerated payment notice, along with any interest that is due to you.

However, if we appeal against the decision to a higher court or tribunal, we may, in certain cases, also ask for their permission not to repay the amount to you. We would only do this if we believed that there was a risk that, if we were successful with our appeal, you would not then pay the amount you owe.

General information

Customers with particular needs

If there is anything about your health or personal circumstances that may make it difficult for you to deal with this matter, please let us know. Telling us will mean that we can help you in the most appropriate way. For more details go to www.hmrc.gov.uk/contactus/particular-needs.htm

The taxes to which this factsheet relates

This factsheet relates to accelerated payments for Annual Tax on Enveloped Dwellings, Capital Gains Tax, Corporation Tax, Income Tax and Stamp Duty Land Tax.

Accelerated payments also apply to Inheritance Tax and Income Tax in Pay As You Earn (PAYE) cases. If you need to know more about such cases, you should contact the office that gave you this factsheet.

The Disclosure of Tax Avoidance Schemes legislation and the General Anti-Abuse Rule

You can find more information about the Disclosure of Tax Avoidance Schemes (DOTAS) online. Go to www.hmrc.gov.uk/aiu/summary-disclosure-rules.htm

You can find more information about the General Anti-Abuse Rule (GAAR) online. Go to www.hmrc.gov.uk/avoidance/gaar.htm