

## **HMRC guidance**

**Finance Act 2014 Part 4**

**The National Insurance Contributions Act 2015: section 4 and Schedule 2**

**Follower notices and accelerated payments**

## **Introduction**

This guidance relates to follower notices and accelerated payments. It supports the measures set out in the Finance Act 2014 (Part 4) (FA 2014) and the National Insurance Contributions Act 2015 (sections 4 and Schedule 2) (NICA 2015).

Where this guidance refers to an accelerated payment, it also means an accelerated partner payment, and where it refers to an accelerated payment notice, it also means a partner payment notice - except where specifically mentioned.

Finance Act 2015 extends the scope of Finance Act 2014 (Part 4) to situations involving a loss or other amount which has been claimed or surrendered as group relief. There will be separate guidance about such provisions.

### **Changing the economics of avoidance**

The government set out in its consultations 'Raising the Stakes on Tax Avoidance' (August 2013) and 'Tackling Marketed Tax Avoidance (January 2014) its aims to change the economics of entering into tax avoidance schemes, and to change the behaviours of people and promoters in relation to tax avoidance.

Following that consultation process, the measures on follower notices and accelerated payments were introduced by legislation enacted in FA 2014 and NICA 2015.

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## **Section 1 Follower notices (FA2014, Part 4, Chapter 2)**

### **1 Follower notices**

#### **1.1 Background**

##### **1.1.1 Little incentive to follow**

When faced with a large number of very similar cases, it is often most efficient for HMRC to investigate 'representative cases'; taking those cases to litigation, if necessary.

If HMRC is successful in that litigation, unpaid tax and/or National Insurance contributions (NICs) is recovered in those cases. However, there has been little incentive for others using the same or essentially similar arrangements (known as 'followers') to accept the court's findings, and pay any underpaid tax and/or NICs to HMRC.

##### **1.1.2 Drive to accelerate litigation**

The follower notice rules are designed to improve the rate at which avoidance cases are resolved where the point at issue has, in HMRC's view, already been decided in another person's case.

When a judicial ruling is made by the court or tribunal that potentially resolves a large number of cases, many 'followers' agree to settle, but some do not. They argue that small differences in the arrangements mean that the decision does not apply to them. This leads to further litigation, adding months or years to the time taken to resolve their dispute.

A person who is a 'follower' will now be given a follower notice. If they do not settle their dispute (known as 'taking corrective action'), they will be at risk of a penalty.

##### **1.1.3 Tax and/or NICs in dispute to be paid to HMRC**

Alongside the 'follower' rules are the accelerated payment rules, which require recipients of an accelerated payment notice to pay the disputed tax and/or NICs to HMRC. So, if a person is given a follower notice and an accelerated payment notice and decides not to settle their dispute as requested by the follower notice, they will be required to pay the disputed tax and/or NICs to HMRC under the accelerated payment rules.

Accelerated payments will also apply to avoidance arrangements which are within the Disclosure of Tax Avoidance Schemes (DOTAS) rules or are given with a counteraction notice under the General Anti-Abuse Rule (GAAR). See Section 2 of this guidance 'Accelerated payments'.

##### **1.1.4 Part 4 Finance Act 2014 and National Insurance Contributions Act 2015**

The legislation introducing these rules was announced in the 2014 Budget and enacted in Part 4 of the Finance Act 2014 (FA 2014). Part 4 was applied to NICs with effect from 12 April 2015 by the National Insurance Contributions Act 2015 (NICA 2015).

## **1.1.5 The National Insurance Contributions Act 2015 (NICA 2015)**

### **Class 4 and Class 2 collected through Self-Assessment**

Class 4 NICs are assessed and collected along with income tax via the Self-Assessment (SA) regime. These contributions are also subject to the SA enquiry regime. Section 16 of the Social Security Contributions and Benefits Act 1992 (SSCBA) has been amended by NICA 2015 so that Part 4 FA 2014 applies to Class 4 NICs, with necessary modifications (section 4(3) and Part 3 of Schedule 2 to NICA 2015).

From the tax year 6 April 2015 to 5 April 2016, most Class 2 NICs will also be assessed and collected via SA, and subject to its enquiry regime. New section 11A of SSCBA (and equivalent legislation for Northern Ireland), introduced by NICA 2015, ensures that Part 4 FA 2014 applies to Class 2 NICs, with necessary modifications (section 2 and Schedule 1 NICA 2015).

Where this guidance deals with how Part 4 FA 2014 applies to tax, it includes Part 4 FA 2014 as applied with necessary modifications to these classes of contributions collected through SA.

### **Class 1, 1A, 1B NICs and Class 2 NICs not collected through Self-Assessment**

For Class 1, 1A, 1B and Class 2 NICs that are not collectible through the SA system, NICA 2015 gives effect to Part 4 of FA 2014 and makes modifications to that Part so that it applies to both tax and NICs.

These classes of contributions are defined in NICA 2015 as “relevant contributions” (paragraph 22 of Schedule 2).

Where this guidance deals with how Part 4 FA 2014 is modified by Part 1 of Schedule 2 to NICA 2015, it applies to relevant contributions (see Annex 1 of this guidance for definitions).

## **1.2 Follower notices**

### **1.2.1 Overview**

A follower notice can be given to a person (P) who has used an avoidance scheme that has been shown in another person’s litigation to be ineffective. The follower notice tells P that they may be liable to a penalty of up to 50% of the tax and/or NICs in dispute if they do not amend their return or settle their dispute.

A ‘person’ (P) is as defined in Schedule 1 to the Interpretation Act 1978, and includes “a body of persons corporate or unincorporated”, as well as individuals.

### **1.3 When a follower notice may be given**

HMRC may give a follower notice to a person (P) if all of the conditions A to D are met.

### **1.3.1 Condition A**

Condition A is met if:

- for tax, a tax enquiry is in progress into a return or a claim made by P in relation to a relevant tax; or P has made a tax appeal in relation to a relevant tax, but the appeal has not been determined by the tribunal or court, or abandoned or otherwise disposed of ('Tax' includes Class 4 NICs. It also includes Class 2 NICs for the tax year 6 April 2015 to 5 April 2016 and later years)
- for NICs, a relevant contribution dispute is in progress (see section 1.4 and Annex 1 of this guidance); or P has made a NICs appeal in relation to a relevant contribution, but the appeal has not been determined by the tribunal or court, or abandoned or otherwise disposed of

This is an important step in the process. It means that HMRC cannot issue a follower notice unless:

- for tax
  - an enquiry has been opened into a return, or
  - an appeal has been made against a closure notice, assessment, or determination, (for example, a determination under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003)
- for NICs
  - a relevant contributions dispute is in progress (see section 1.4 and Annex 1 of this guidance), or
  - an appeal has been made against a NICs decision (see Annex 1 of this guidance for definition of NICs decision and NICs appeal)

The person should, therefore, already be aware that their tax and/or NICs arrangements are being challenged.

### **1.3.2 Condition B (for tax)**

Condition B is met for tax if the return, claim or appeal is made on the basis that a particular tax advantage ('asserted advantage') results from particular tax arrangements ('chosen arrangements'). ('Tax' includes Class 4 NICs. It also includes Class 2 NICs for the tax year 6 April 2015 to 5 April 2016 and later years.)

Note: The term 'tax arrangements' is defined as arrangements where it is reasonable to conclude that the obtaining of a tax advantage is the main, or one of the main, purposes of the arrangements. For example a person has claimed a loss of £100,000, based on a set of transactions where one of the main purposes of the transactions was to generate that loss - rather than for them to participate in a commercial operation.

### **1.3.3 Condition B (for NICs)**

Condition B is met for NICs if the appeal is made on the basis that a particular NICs advantage ('asserted advantage') results from particular NICs arrangements ('chosen arrangements'). Condition B is also met if, in a relevant contributions dispute (see section 1.4 and Annex 1 of this guidance for definition), a person disputes liability for relevant contributions on that same basis, regardless of whether the person notified HMRC of the dispute on that basis.

Note: The modifications ensure that "tax arrangements" includes "NICs arrangements". That is, arrangements where it is reasonable to conclude that the

obtaining of a NICs advantage is the main, or one of the main, purposes of the arrangements.

#### **1.3.4 Condition C**

Condition C is met if HMRC is of the opinion that there is a judicial ruling which is relevant to the chosen arrangements.

#### **1.3.5 Condition D (for tax)**

Condition D is met for tax if no previous follower notice has been given to the same person, by reference to the same tax advantage, tax arrangements, judicial ruling and tax period; unless the previous notice has been withdrawn.

#### **1.3.6 Condition D (for NICs)**

Condition D is met for NICs if no previous follower notice has been given to the same person, by reference to the same NICs advantage, NICs arrangements, judicial ruling and tax period; unless the previous notice has been withdrawn.

### **1.4 Relevant contributions dispute (Paragraph 6 of Schedule 2 to the National Insurance Contributions Act 2015)**

#### **1.4.1 Giving follower notices for NICs**

For tax, follower notices can only be given where there is either an open tax enquiry or an open appeal.

Whilst there is a NICs equivalent of an open appeal (against a NICs decision), there is no direct equivalent of a tax enquiry for NICs. Because of this, the National Insurance Contributions Act 2015 introduces the concept of a 'relevant contributions dispute' (see Annex 1 for definition). Creating this concept allows HMRC to give a follower notice in circumstances where there is a dispute about a NICs liability, but before an appealable NICs decision has been issued.

#### **1.5 Giving follower notices for tax and NICs at different times**

There are time limits for issuing tax assessments and determinations but not for issuing NICs decisions.

Because of this, HMRC may issue tax assessments or determinations sooner than they issue NICs decisions in relation to the same avoidance scheme used. This could mean that a tax appeal may be in place before there is a relevant contributions dispute or an appeal against a NICs decision.

Where there is an appeal against a tax assessment or determination and HMRC considers that NICs are also due, they may give the person a follower notice for tax before they give the follower notice for NICs. Once there is a relevant contributions dispute or NICs appeal, HMRC may then give the person a follower notice for NICs.

### **1.6 Judicial ruling**

#### **1.6.1 When a judicial ruling is relevant**

A judicial ruling is a ruling of a court or tribunal.

It is 'relevant' to the chosen arrangements if:

- it involves consideration of tax or NICs arrangements (see sections 1.3.2 and 1.3.3 or Annex 1)
- the principles laid down or reasoning given in the ruling would, if applied to the chosen arrangements, deny the asserted advantage or part of that advantage

- it is a final ruling

### **1.6.2 When the judicial ruling is final**

A judicial ruling is final if it is:

- a ruling of the Supreme Court
- a ruling of any other court or tribunal where:
  - no appeal may be made against the ruling
  - if any appeal may be made against the ruling, the time limit has expired and no application was made or permission was refused
  - if permission to appeal has been granted, or was not required, no appeal has been made within the time limits
  - if an appeal was made, it was subsequently abandoned or disposed of before the appeal was determined

### **1.6.3 Ruling does not set a precedent**

It is important to note that a ruling can be final at any stage in the legal appeal process, including the First-tier Tribunal, if it is not appealed further. It does not, therefore, have to set a 'precedent' in the strictly legal sense that a judgment of a senior court of record (Upper Tribunal/High Court and above) would.

## **1.7 What is a relevant ruling**

### **1.7.1 Intention of legislation**

The intention of the legislation is to tackle behaviour by those who use avoidance schemes; primarily schemes marketed to a large number of people. Those schemes can have small variations – for example, the avoidance may be based around a different type of asset in different variants, or may be set up slightly differently depending on whether an individual, company or partnership is involved.

This does not mean that follower notices will automatically be given to users of variants: each case will be considered by a senior HMRC panel (see section 1.19 of this guidance for more details about the governance process).

### **Example 1:**

A tax avoidance scheme designed to generate losses in relation to a specific trading asset is defeated in the Tribunal on the basis that, by the nature of the scheme and structure, there is not a genuine trade. The decision is a final ruling. There are 25 other users of this scheme, who all implemented identical (but for the amount of the loss claimed) transactions. It is anticipated that all 25 of those users would be 'followers' and could be given a follower notice if they chose not to settle in response to the Tribunal decision.

There are also 30 users of a very similar scheme, which differs only in the trading asset used. It is very likely that, subject to careful consideration of all the facts and circumstances, these 30 could also be given follower notices.

There are a further 20 users of a loss-generating scheme that uses a different structure; with different financing and a greater degree of participation and risk for the partners. HMRC's primary argument may still be that there is not a genuine trade, but it becomes a much more finely balanced decision whether the first judicial ruling above could be treated as 'relevant' to this one, as the facts and context have now diverged to a greater extent.

### **1.7.2 Principles and reasoning**

The legislation does not mean that a follower notice can, for example, be issued to any case involving a ‘trading or non-trading’ argument, solely because there has been a judicial ruling on that point. The reasoning and principles behind that ruling must be scrutinised to consider whether or not they can be applied to the potential ‘follower cases’. That is, the question that must be considered is: ‘the tribunal found that this person was not trading because.....’ The reasoning that follows ‘because’ must then be examined in relation to the follower cases.

This will include considering carefully the context of the ruling and whether it is reasonable to apply the same reasoning to the context of the follower case(s). It is not about extracting a wide general principle from a case and then applying that to other cases where the context and facts are substantially different.

If a later case was to significantly change the effect of the relevant judicial ruling, HMRC will reconsider whether any follower notices that have been given (and any associated accelerated payment notices) should still be maintained, withdrawn or modified.

### **1.7.3 Marketed avoidance**

Although the legislation does not exclusively apply to widely marketed schemes, the definition of ‘relevant’ makes it much less likely that it will apply outside that context. Nonetheless, the legislation could apply to a judicial ruling which determines a case against one person, and there is only one or a small number of others that are potential followers. In these cases, facts would have been gathered about each potential follower to establish their similarity to the relevant judicial ruling, and whether the same principles or reasoning can apply to deny the tax and/or NICs advantage. Again, the important point is to consider critically the principles or reasoning in the ruling to see if it can reasonably apply to the follower case(s).

### **1.7.4 Application to other cases**

To decide whether the principles or reasoning in a judicial ruling are applicable to other cases, it will be necessary to:

- ensure that the judicial ruling itself relates to tax and/or NICs arrangements, i.e. where there is a main tax and/or NICs purpose
- identify the principles and reasoning in the judicial ruling
- evaluate the facts of the other cases with reference to the evidence currently held by HMRC
- consider any additional information; e.g. other judicial rulings in the same area of tax and/or NICs
- apply the principles/reasoning in the judicial ruling to the facts of the other cases
- decide whether (and, if so, to what extent) the asserted tax and/or NICs advantage is denied as a consequence

## **1.8 What judicial rulings can be used to give follower notices**

Judicial rulings must be final before they can be considered to set down principles and reasoning to be applied to follower cases. ‘Final’ means that the case has either not been appealed further or has been decided by the Supreme Court. Thus a ruling can be final at First-tier Tribunal level if it is not appealed to the Upper Tribunal. See section 205(4) of FA 2014.

Before any follower notice is given in relation to a relevant judicial ruling, a senior HMRC governance panel will consider whether it is appropriate to apply the

principles or reasoning established by the ruling. As explained below, the issue of a follower notice is also subject to time limits.

## **1.9 Normal time limits**

### **1.9.1 Time limits (section 204(6) FA 2014)**

A follower notice must be given within 12 months, beginning with the later of the day:

- on which the relevant judicial ruling is made (Condition C); and
- that the return or claim, or notification of dispute in relation to a relevant contribution dispute, was received by HMRC; or
- that the tax and/or NICs appeal was made

See section 1.9.2 for the transitional time limits following enactment of FA 2014.

### **1.9.2 Transitional time limits for rulings prior to Royal Assent of FA 2014 (section 217 FA 2014)**

Where a judicial ruling is made before this legislation was enacted, a follower notice must be given on or before the later of:

- 24 months following the date FA 2014 was passed
- 12 months beginning with the day the return or claim, or notification of dispute in relation to a relevant contribution dispute, was received by HMRC
- (if there is an appeal that has not yet been determined by the court) 12 months beginning with the day the tax and/or NICs appeal was made

Here's an example of how the transitional time limits operate.

#### **Example 2:**

##### **Transitional time limits**

A relevant judicial ruling was made on 1 February 2013.

Royal Assent to the FA 2014 was given on 17 July 2014. So 24 months after that is 16 July 2016.

HMRC received the person's 2013-2014 tax return on 1 June 2014.

The final date for HMRC to give a follower notice in this instance is 16 July 2016.

## **1.10 Content of a follower notice (section 206 FA 2014)**

### **1.10.1 Identify the judicial ruling**

The follower notice must identify the relevant judicial ruling and explain why it is relevant.

### **1.10.2 Other content**

The follower notice must also explain how to make representations, the circumstances in which a penalty may be reduced for co-operation, and the maximum penalties that HMRC may charge if corrective action is not taken. It must also explain that the penalty can be reduced by the quality of co-operation received by HMRC from the person.

### **1.10.3 Explain the consequences**

The follower notice does not require corrective action to be taken, but explains that, if the necessary corrective action is not taken, the person may be charged a penalty under section 208 FA 2014. (See 1.12 and 1.15 below.)

## **1.11 Representations**

### **1.11.1 Grounds for representations**

The person can disagree with a follower notice by making representations to HMRC. Representations must be made in writing and can only be on the basis that one or more of 3 circumstances applies. The circumstances are that:

- condition A, B or D was not met (see 1.3 of this guidance)
- the judicial ruling is not one which is relevant to the arrangements (i.e. that HMRC's opinion under Condition C is incorrect)
- the notice was not given within the time limit

To enable HMRC to fully consider the matter and come to a conclusion, any representations made should give as much information as possible about the grounds on which they are made.

There is no right of appeal to the Tribunal against a follower notice.

### **1.11.2 Time limit for representations**

Representations must be made in writing to HMRC within 90 days of the date the notice was given.

### **1.11.3 HMRC response**

HMRC must consider the representations and either confirm the follower notice (with or without amending it) or withdraw the notice. HMRC must notify the person of their decision.

The representations will be considered by an independent HMRC officer who is unconnected with the team that issued the follower notice, and with the governance panel that decided the judicial ruling relied upon was relevant. Section 1.19.2 contains more information on governance.

## **1.12 Corrective action**

### **1.12.1 Where there is a tax enquiry or a tax and/or NICs appeal**

After a follower notice is given, a person has 90 days to take corrective action in respect of the denied advantage by:

- (where there is a tax enquiry) amending their return or claim to counteract the denied advantage
- (where there is a tax and/or NICs appeal) taking all necessary action to enter into a written agreement with HMRC to relinquish the denied advantage

The person must also notify HMRC that they have taken corrective action, and tell them the amount of the denied advantage and, if different, the additional amount of tax and/or NICs due and payable.

### **1.12.2 Where there is a relevant contributions dispute in progress**

Where a relevant contributions dispute is in progress (for a definition, see section 1.4 and Annex 1 of this guidance), a person has 90 days to take corrective action in respect of the denied advantage by:

- (where the denied advantage can be counteracted by making a payment to HMRC) making a payment to HMRC and notifying them that they have done so
- (where the denied advantage cannot be counteracted by making a payment to HMRC) taking all necessary action to enter into a written agreement with HMRC for the purpose of counteracting the denied advantage

### **1.12.3 Confirmed notice**

Where representations have been made and the notice is confirmed (with or without amendment) the time limit to take corrective action is the later of:

- the date for taking corrective action that was shown in the follower notice
- 30 days after the day on which the person is notified of HMRC's decision following representations

Section 208(8)(b)(ii) FA2014 allows 30 days beginning with the date that HMRC notifies the person of their decision. In practice, HMRC also allows additional time for postage.

#### **Example 3:**

A person was given a follower notice on 1 September 2014 and makes representations to HMRC on 1 November 2014.

An independent HMRC officer considers the representations and confirms the follower notice on 10 December 2014.

The date for taking corrective action is the later of:

- 29 November 2014 (the date for taking corrective action that was shown in the follower notice)
- 8 January 2015 (30 days after HMRC notifies their decision, plus extra time for postage)

Therefore, the person has until 8 January 2015 to take the necessary corrective action.

### **1.12.4 The person can choose how to proceed**

The person has a choice about how to proceed. The decision to settle or continue the dispute is entirely theirs, but they take that decision in the light of the penalty consequences if the dispute continues. The legislation does not in any way deny the person access to their full appeal rights to the courts and tribunals about the substantive liability (i.e. whether the tax and/or NICs arrangements give the result which the person believed they did).

## **1.13 Open appeal - written agreement**

### **1.13.1 Appeal in progress**

If the person chooses to settle or concede the dispute where there is an open appeal in progress, they are required to take all necessary steps to enter into a written

agreement with HMRC to give up the advantage that their arrangements sought to obtain. A form will be issued for use in most cases and will include:

- acceptance that the judicial ruling is relevant to their arrangements
- agreement that the effect is that the tax and/or NICs advantage arising from the arrangements is denied
- agreement to withdraw the appeal in relation to the arrangements within 14 days of the agreement. If the appeal covers matters in addition to the tax and/or NICs arrangements, then it only has to be withdrawn to the extent it relates to those arrangements
- confirmation that any additional tax and/or NICs due as a result of giving up the tax and/or NICs advantage will be (or has been) paid by the required date
- signature by the person or properly authorised person who can sign on behalf of the person (e.g. a director)

## **1.14 Penalty - calculating the denied advantage (the penalty base)**

### **1.14.1 Basis of penalty**

If corrective action is not taken by the deadline for taking it (which may have been extended if representations were made), the person will incur a penalty. The legislation sets out the basis for how the penalty will be calculated (sections 208 and 209 and Schedule 30 FA 2014).

The amount of the penalty is calculated by reference to the 'denied advantage' (the penalty base). The denied advantage is defined as being the amount of the 'asserted advantage' which is denied when the principles or reasoning laid down in the relevant ruling are applied to this person's circumstances. The 'asserted advantage' is the tax and/or NICs advantage which would result from the use of the particular scheme used, if it achieved its aim.

Therefore, if the asserted advantage is £10,000, and the principles and reasoning in the relevant ruling mean that none of that advantage can be claimed by the person, then the denied advantage is £10,000. The penalty will be calculated by reference to £10,000.

It will not always be the case that the denied advantage and the asserted advantage are the same amount. The principles or reasoning laid down in the relevant ruling may only remove part of the asserted advantage; or it may be that parts of the advantage resulting from a scheme are not disputed as they rely on an accepted relief or allowance.

The 'denied advantage' may be easy to calculate in some cases, and may apply to a single period or return. However, there will be cases which are more complicated to calculate – for example, deferred losses. This could mean that the penalty base may be a different amount to the amount of tax and/or NICs which is in dispute for a specific return.

### **1.14.2 Schedule 30**

Schedule 30 to FA 2014 applies for calculating the value of the denied advantage for follower penalties.

### **1.14.3 Value of denied advantage**

The value of the denied advantage is usually the additional amount due or payable in respect of the tax and/or NICs that would be due following corrective action; i.e. the

amount due if the avoidance scheme fails. However, this can be more complex where losses are involved, or where tax would have been deferred.

#### 1.14.4 Amounts to include

The amount of the denied advantage includes any amount of tax and/or NICs that:

- the person has not yet paid
- has been repaid to the person by HMRC and is now no longer due to have been repaid
- was shown on the return or claim to be repayable and could have been repaid by HMRC, had the arrangements achieved the asserted advantage

#### 1.14.5 Ignore group relief

When the value of the denied advantage is calculated, group relief should be ignored, and also any relief under section 458 CTA 2010 (loans to participators: relief in respect of repayment), which is deferred under section 458(5).

#### 1.14.6 Losses

For direct tax, the value of the denied advantage involving losses is:

- the additional tax that would be chargeable following corrective action (as regards the part of the denied advantage used to reduce the amount of tax)
- 10% of the part of the loss not used (if any)

If the denied advantage creates or increases a loss for a group of companies, group relief may be taken into account.

#### Example 4:

##### A singleton (non-group) company

Company A has profits of £20m and a created loss for the year of £30m.

Losses to carry forward are £10m.

The denied advantage is £5.2m ((losses used to reduce the amount of tax £20m x 21% = 4.2m) + (loss not used £10m x 10% = £1m))

#### Example 5:

##### A group company

	Group companies	
	Company A	Company B
	£m	£m
Profits	20	30
Created loss	(30)	nil
Group relief	nil	(10)
PCTCT	nil	20

The denied advantage is £6.3m (£30m x 21%).

This is comprised of £20m loss utilised in the year by Company A, plus £10m loss by group relief to Company B.

#### **1.14.7 Denied advantage is a loss that will not be used**

To the extent the denied advantage results in a loss, the value of the denied advantage is nil if there is no reasonable prospect of the loss being used to reduce a tax liability. "No reasonable prospect" will have to be assessed on a case by case basis, taking all the relevant circumstances of the person into account.

#### **1.14.8 Denied advantage is a deferral of tax**

To the extent the denied advantage is a deferral of tax, the value of the denied advantage is:

- 25% of the amount of the deferred tax for each year of the deferral, or
- 25% per year of the deferred tax for each separate period of deferral of less than a year, or
- if less, 100% of the amount of the deferred tax

#### **Example 6**

A person engages in a tax avoidance scheme which defers tax of £100,000 due in 2010, so that they pay it over the following 5 years.

25% of the amount of deferred tax, multiplied by 5 for the number of years of deferral, equals 125% of the deferred tax.

As the maximum penalty base is 100%, the penalty will be charged on £100,000.

### **1.15 Penalties**

#### **1.15.1 Corrective action not taken – general**

If corrective action is not taken in respect of the denied advantage before the specified time, the person is liable to a penalty. However, it is important to note that the penalty is not due until it is assessed (section 211 FA 2014).

#### **1.15.2 Corrective action not taken – open tax enquiry**

Where the penalty has arisen in the course of an open tax enquiry, HMRC will normally assess the penalty after the conclusion of the enquiry. For example, after the issue of a closure notice in Direct Tax cases. At that stage the figure of understated tax that forms the basis of the penalty will have been calculated for the purpose of the closure notice.

#### **1.15.3 Corrective action not taken – relevant contributions dispute in progress**

Where the follower notice was issued while a relevant contributions dispute was in progress (for definitions, see section 1.4 and Annex 1 of this guidance), but no corrective action has been taken, HMRC will normally assess the penalty after the relevant contributions dispute has been completed, in one of the following ways:

- HMRC issues a NICs decision(s) in relation to the person's liability for the disputed NICs
- the person accepts that NICs are due and pays the disputed contributions in full or
- HMRC and the person reach an agreement in writing as to the person's liability for the disputed contribution and amounts of those agreements are paid

The figure that forms the basis of the penalty will have been calculated for the purpose of issuing the NICs decision(s) or will be based on the contributions paid when the dispute is either conceded or settled.

#### **1.15.4 Corrective action not taken – open appeal**

In cases where the penalty has arisen when the tax and/or NICs is under appeal, the penalty will normally be assessed when the amount of tax and/or NICs is finally determined.

#### **1.15.5 Corrective action not taken – early assessment of penalty**

None of the situations in 1.15.2, 1.15.3 or 1.15.4 prevents an earlier assessment of the penalty if the circumstances require, but the important requirement is that figures of tax and/or NICs are available to form the basis of the penalty and therefore earlier assessment is likely to happen only very exceptionally.

#### **1.15.6 Rate of penalty**

The maximum penalty is 50% of the value of the denied advantage. The minimum rate, taking into account the full availability of reduction for co-operation, is 10%. The penalty rates are different for partnerships (for more information see section 1.18.7).

#### **1.15.7 Reduction of penalty for co-operation**

Providing the penalty has not yet been assessed, and the person has co-operated with HMRC, then HMRC may reduce the penalty to reflect the quality of that co-operation (timing, nature and extent).

#### **1.15.8 Co-operation considered**

A person is only considered to have co-operated with HMRC if they have co-operated in one or more of the following ways. By having:

- provided reasonable assistance to HMRC in quantifying the advantage
- counteracted the denied advantage (but at a time after the specified time for corrective action)
- provided HMRC with information enabling them to take corrective action
- provided HMRC with information enabling them to enter into an agreement with them (to counteract the denied advantage)
- allowed HMRC to access tax records to ensure the denied advantage is counteracted

The penalty must not be reduced to less than 10% of the value of the denied advantage.

#### **Example 7:**

A person has been given a follower notice and not taken the corrective action by the due date. However, before the due date, they had engaged with HMRC and provided information in relation to why they thought the notice should not apply, and made full representations.

HMRC did not agree with the representations and confirmed the notice.

After the due date, but before any penalty assessment, the person gave HMRC full calculations regarding the amount of tax and provided all documents requested within the timescales.

This is likely to constitute, in the circumstances, as much co-operation as the person could give, whilst maintaining their technical position in relation to the issue.

HMRC would anticipate a maximum reduction in the penalty.

### Example 8:

In another case, HMRC receives similar co-operation. The person, having initially decided to pursue the case, decides to take the corrective action within a very short time after the due date and provides all the details relating to the corrective action.

In these circumstances, HMRC would anticipate a maximum reduction in the penalty.

HMRC will objectively consider the timing, nature and extent of the co-operation and allocate one third of the potential reduction to each of these 3 elements. HMRC will also consider:

- what it is reasonable to expect the person to have done in the circumstances
- how quickly the person took action to fulfil their responsibilities
- the nature of the response to HMRC requests
- the extent of the person's response to HMRC requests

#### 1.15.9 Part of advantage remaining

If, before the specified time for corrective action in the follower notice, the person:

- amends a return or claim to counteract part of the denied advantage, or
- pays the tax and/or NICs that HMRC considers are due for payment, and notifies HMRC they have done so (where the denied advantage can be counteracted by making a payment to HMRC), or
- takes all necessary action to enter into an agreement with HMRC to relinquish part of the denied advantage

the penalty will only be calculated on the remainder of the denied advantage.

### Example 9:

A person has been given a follower notice in relation to a complex scheme which depends on a number of transactions to produce a cumulative tax advantage.

Having reconsidered the scheme, the person accepts that a part of it does not achieve the intended tax advantage, so amends their return only to the extent of that part.

They continue to maintain the success of the remaining parts of the scheme.

The amendment to the return was before the due date of the notice.

Any penalty is only calculated on the tax advantage which is still being claimed as at the due date. Thus the penalty base will be reduced from the original amount for the scheme to the amended amount still on the return or in any appeal.

#### 1.15.10 Assessment of the penalty

HMRC must notify the person who is liable for the penalty and state the tax period in respect of which the penalty is due.

#### 1.15.11 Penalty due date

The penalty is due and payable 30 days after the person is notified of it.

### 1.15.12 Notification

The date by which HMRC must notify the penalty, is:

- (if the follower notice was issued whilst an enquiry was open or a relevant contributions dispute was in progress) - no later than 90 days after the enquiry or relevant contributions dispute is completed (see paragraph 1.15.3), or
- (if the follower notice was issued whilst an appeal is pending) - no later than 90 days beginning with the earliest of the day on which:
  - the person takes corrective action
  - a final ruling is made on the tax and/or NICs appeal
  - the appeal, or any further appeal is abandoned or disposed of (to the extent it relates to the asserted tax and/or NICs advantage) before it is determined by the court or tribunal

### Example 10:

1. HMRC completes the compliance check into a person's use of an avoidance scheme and issues a closure notice.

If the person has been given a follower notice and not taken the corrective action by the due date, then they are liable to a penalty. Having now concluded the check and issued the closure notice, HMRC must issue any penalty assessment within 90 days. Any such penalty assessment will take into account the degree of co-operation provided by the person.

2. In a situation with an open appeal where a follower notice has been given, the person has not taken corrective actions within the time limits; there are three potential time limits.

- The person decides to take the corrective action and withdraw the appeal and accept that the relevant ruling applies. HMRC must assess any penalty within 90 days of the date that corrective action is taken.
- The case has gone to the Court of Appeal, (for example), and the person loses and does not appeal further. HMRC must assess any penalty within 90 days of the date the ruling was made.
- The person decides to abandon their appeal and concede. HMRC has 90 days from the date that the case is formally acknowledged as abandoned by the court to assess any penalty.

### 1.15.13 Enforceable penalty – tax follower notice (section 211(4) FA 2014)

The penalty due for not complying with a follower notice relating to tax (not NICs) is treated in the same way as an assessment to tax and therefore will be enforced as if it were an assessment to tax. See section 1.16.2 of this guidance, which relates to interest charged on a penalty.

### 1.15.14 Enforceable penalty – NICs follower notice (paragraph 20 Schedule 2 NICA 2015)

The penalty due for not complying with a NICs follower notice is recovered in the same way as unpaid relevant contributions (see Annex 1 for definition). It is not treated in the same way as an assessment to tax.

For the purposes of a Court determining whether civil proceedings can be adjourned; the penalty assessment is treated as if it were a NICs decision as to whether the person was liable for the penalty. The effect is that if there is an appeal against the

penalty assessment, the Court must adjourn any civil proceedings taken to recover the penalty until the appeal is finally determined.

#### **1.15.15 Supplementary penalty assessment (section 213 FA2014)**

A supplementary penalty assessment may be issued if the value of the denied advantage was understated. In a case where the advantage was overstated, and a penalty has already been paid, the excess penalty will be repaid with interest.

### **1.16 Appeal against a penalty**

#### **1.16.1 Penalty appeals (section 214 FA 2014)**

A person may appeal against a decision that a penalty is payable and against the amount of the penalty. The appeal:

- must be made within 30 days of the day the penalty was notified. The penalty is treated as notified when the penalty notice is delivered to the person
- is treated in the same way as an appeal against an assessment of the tax or NICs decision is concerned, whether the penalty was assessed on tax or NICs, but see section 1.15.14 about adjourning civil proceedings to recover the penalty where there is an appeal against a NICs decision

The grounds for an appeal can, in particular, include:

- the same grounds as for making representations, or
- that it was reasonable in all the circumstances for the person not to have taken the corrective action

If the tribunal upholds the appeal against the penalty on the grounds that Conditions A,B, C or D (see 1.3 of this guidance) were not satisfied, this would result in the follower notice being cancelled, together with any associated accelerated payment notice if that latter notice was only issued because of the follower notice. If required, HMRC will then, as appropriate, repay any amounts, plus interest, to the person.

If the Tribunal upholds the appeal against the penalty solely on the grounds that it was reasonable for the person to proceed, this outcome does not overturn the follower notice itself.

#### **1.16.2 Interest due on penalty**

A person is not required to pay a penalty before an appeal against the assessment of the penalty is determined. However, interest, where appropriate, runs from the original due and payable date of the penalty.

#### **1.16.3 Appeal against a penalty**

The legislation gives the tribunal the power to affirm or cancel HMRC's decision, or to substitute an alternative decision.

This is fairly broadly drawn. Section 214 FA 2014 sets out some grounds on which the tribunal can consider and uphold an appeal, but these grounds are not intended to be exhaustive. It means that the tribunal could, for example, discharge the penalty because the tribunal does not agree that the decision cited by HMRC as the basis for a follower notice was 'relevant', even though HMRC was ultimately successful in the substantive litigation. The relevance or otherwise may only have emerged during the tribunal's consideration of the substantive appeal.

#### **1.16.4 Person is successful in substantive litigation**

Where the person is successful in the substantive litigation, the penalty will be discharged as it is a tax-geared penalty and there will be no disputed tax to form the basis of the penalty. It should not normally be necessary for the penalty appeal to be heard by the tribunal in such instances.

Whilst the penalty does not have to be paid pending litigation, a person may pay it to prevent interest accruing on it. Any amount of penalty already paid will be repaid with interest in those circumstances. In addition, tax may be repayable, together with interest, to the person.

#### **1.16.5 Aggregate Penalties (section 212 FA 2014)**

The penalty for failure to take corrective action after receipt of a follower notice is based on the 'denied advantage' (being the amount of the tax and/or NICs advantage that the person has tried to obtain that is actually denied by the application of the relevant judicial principle or reasoning). The person may also become liable to a penalty under other legislation, for example on the grounds that their return was incorrect because of deliberate action on their part. The follower notice penalties legislation is restricted so that the total penalties in relation to the same tax and/or NICs liability do not, in aggregate, exceed the maximum of certain of these other penalties.

If two or more penalties are determined by reference to the same amount of tax and/or NICs and:

- one is for failure to comply with a follower notice, and
- one or more are incurred under
  - Schedule 24 FA 2007 – penalties for errors
  - Schedule 41 FA 2008 – penalties for failure to notify
  - Schedule 55 FA 2009 – penalties for failure to make returns

the aggregate amounts charged must not exceed the 'relevant percentage'.

The relevant percentage will usually be the maximum percentage chargeable under the other penalty if that exceeds 100%. In other cases, the maximum aggregated penalty will be 100%.

#### **1.16.6 Aggregate penalties – NICs (section 212 FA 2014 and paragraphs 14 and 15 Schedule 2 NIC Act 2015)**

The modifications made by NICA 2015 ensure that the penalties to be taken into account for the purposes of section 212 FA 2014 include those incurred for failure to make a Class 1 NICs return under:

- Schedule 55 FA 2009, as applied by paragraph 21G of Schedule 4 to the Social Security (Contributions) Regulations 2001 with effect from 6 October 2014
- Section 98A TMA 1970, as applied by paragraph 22(7) of Schedule 4 to the Social Security (Contributions) Regulations 2001 for tax years up to and including 6 April 2013 to 5 April 2014

When considering the total of the aggregate penalties as described in section 1.16.5 of this guidance, if one or more of penalties are incurred under section 98A TMA 1970, the aggregate amounts charged must not exceed the 'relevant percentage' described in section 1.16.5 of this guidance.

## **1.17 Late appeals against a final judicial ruling (section 216 FA 2014)**

### **1.17.1 Late appeals**

It may be the case that HMRC has given follower notices based on a tribunal or court decision that had not initially been appealed within the time limit, and had therefore become 'final' for this purpose. Where a person subsequently applied for and obtained leave to make a late appeal, (section 49 TMA 1970 and regulation 9 of the Social Security Contributions (Decisions and Appeals) Regulations 1999) the process for follower notices is suspended while the late appeal into that decision is heard.

### **1.17.2 Penalty not due**

This means that any penalty assessed will not be due and payable during this time, and any accelerated payment will not be due for payment if the payment notice is based solely on the follower notice requirement of Condition C (see sections 1.3.4 and 2.2.6 of this guidance). If the late appeal is determined in favour of the person, any follower notice given on the basis of that decision will be discharged and any penalties paid or accelerated payments made as a result of that notice repaid with interest.

### **1.17.3 Leave to appeal out of time granted**

This applies where the final judicial ruling is the subject of an appeal where the court or tribunal has granted leave to appeal out of time.

If a follower notice has been given identifying the original ruling (now subject to a late appeal), HMRC must notify the recipient of the notice as soon as practicable.

### **1.17.4 Follower notice suspended**

If a follower notice has been given identifying the original ruling (now subject to a late appeal), HMRC must notify the person as soon as practicable.

The follower notice is suspended until HMRC notifies the person that either the appeal has:

- resulted in a judicial ruling which is a final ruling, or
- been abandoned or otherwise disposed of

If the new final ruling is not a judicial ruling which is relevant to the chosen arrangements then the follower notice ceases to have effect.

### **1.17.5 Notice remains effective**

In any other case where leave to appeal is not granted, and HMRC are successful and the principles and reasoning previously identified are still relevant, the follower notice continues to have effect after the end of the period of suspension. It is treated as if it were in respect of the new final ruling resulting from the appeal.

## **1.18 Partnerships (Schedules 31 and 32 FA 2014)**

### **1.18.1 Overview**

Special rules for members of partnerships can be found in Schedules 31 and 32 to FA 2014. These rules essentially reflect the general tax treatment of partnerships. In summary:

- A partnership follower notice for a partnership tax arrangement will be given to the representative partner, or their successor in that capacity, on behalf of the partnership as a whole.
- That follower notice can then apply to generate a partner payment notice to each member of the partnership individually.
- The members can also be given a follower notice and/or accelerated payment notice in respect of a scheme in their personal capacity, for example where a claim made personally relates to the tax affairs of the partnership but is not derived directly from the partnership return (for example, a personal loan interest claim).
- In those instances these will relate directly to their own tax return, which will include their share of the partnership profits and gains.

### **1.18.2 Special rules for SDLT and ATED**

Specific partnership rules apply for Stamp Duty Land Tax (SDLT) and Annual Tax on Enveloped Dwellings (ATED) to reflect the particular treatment of partnerships in relation to those taxes.

### **1.18.3 Partnership follower notice**

The follower notice for a partnership is called a partnership follower notice. It is not materially different to a follower notice in content or purpose, but is given to the representative partner rather than to all the partners. There is provision in the law to issue the partnership follower notice to a successor of the representative partner where necessary.

These rules only apply to partnerships required to deliver a partnership return under rules in section 12AA TMA 1970.

Rules applicable to SDLT and ATED are set out in sections 230 and 231 FA 2014 and guidance is at sections 3 and 4 of this guidance.

### **1.18.4 Representative partner**

The representative partner is the person who is required to deliver the partnership return under section 12AA(2) or (3)TMA 1970. It is the responsibility of the representative partner to take the corrective action, if agreed to by the partners, in response to the partnership follower notice.

### **1.18.5 Partners are responsible for penalties**

Whilst it is the representative partner's responsibility to take the corrective action on behalf of the partnership, any follower notice penalty which arises will be the responsibility of all the partners to pay.

### **1.18.6 Partnership denied advantage**

The calculation of the penalty is based on the denied advantage, which will be calculated by reference to the amount by which the partnership return would be amended to negate the effects of the relevant judicial ruling. Therefore, the denied advantage for a partnership is a profit/loss figure rather than being the tax and/or

NICs advantage figure. This is why the corresponding penalty rates for partners are different to those for non-partners.

This gives the total penalty for the partnership as a whole, which needs to be apportioned across the partners by reference to their individual share in the partnership. Normally this would be by reference to their share in the profits or losses of the partnership.

#### **1.18.7 Maximum penalty rate for partnerships**

The rate of the penalty is modified by these rules from a maximum 50% to a maximum of 20% to be shared across the partners. Similarly the minimum amount of penalty, following any reduction for co-operation, is 4%.

#### **1.18.8 Penalty aggregation applies**

Penalty aggregation rules apply to partners as they would for non-partners.

#### **1.18.9 Representations**

Representations can be made by the representative partner if they disagree with the partnership follower notice.

#### **1.18.10 Partnership appeals**

Only the representative partner can appeal against the calculation of the total penalty and the fact of the penalty. The representative partner cannot appeal against the calculation of the share of the penalty for an individual partner.

#### **1.18.11 What if an individual partner wants to withdraw**

Only the representative partner (often known as the 'nominated' partner) can take the corrective action. Therefore, individual partners who would like to withdraw from the scheme transactions may still face a share of the follower penalty if the other partners do not agree to take the corrective action and instruct the representative partner to do so.

### **1.19 Governance**

#### **1.19.1 Selection of the follower cases**

Decisions over the giving of follower notices will be taken by a senior HMRC panel. This panel will consider the principles and reasoning established by final judicial rulings and the context within which those principles arise.

The panel will be independent from the teams who investigate cases. It will consider both existing final cases which may be relevant, as well as new cases which will arise from time to time.

#### **1.19.2 Review of representations**

Representations made by a person about the giving of a notice will be considered by an independent Appeals and Reviews Team. This team will not be part of the investigating or case team, or connected to the governance panel.

## **2 Accelerated Payments**

### **2.1 Overview**

#### **2.1.1 Remove cash flow advantage**

There is no inherent presumption that tax and/or NICs in dispute should sit with the person, rather than the Exchequer. Under current rules, a person who can self-assess the claimed tax and/or NICs advantage from an avoidance scheme can hold the money in dispute while the dispute is resolved. This can take a considerable time as these schemes are often highly complex and a considerable amount of information needs to be obtained from scheme users and advisers, and litigation may be required to resolve the dispute.

#### **2.1.2 Repayments can already be retained**

In certain circumstances, the disputed tax already rests with HMRC until the dispute is resolved. For example, where a person has to claim a repayment the Exchequer can retain the money while the dispute proceeds. The accelerated payment proposals bring the vast majority of remaining tax and/or NICs avoidance cases into line with this position.

#### **2.1.3 Legislation**

Legislation was announced in the Budget 2014 and enacted in Part 4 FA 2014. The legislation was extended to NICs with effect from 12 April 2015 by the National Insurance Contributions Act 2015.

### **2.2 Conditions for an accelerated payment (section 219 FA 2014)**

#### **2.2.1 Certain conditions must be satisfied**

Accelerated payment notices may be given to a person who has used an avoidance scheme and where one or more certain conditions are satisfied. Those conditions are that they:

- have been given a follower notice (see section 1 of this guidance)
- have used a DOTAS notifiable arrangement
- are subject to a GAAR counteraction notice

The accelerated payment notice tells the person that they must pay the specified amount which equates to the tax and/or NICs in dispute as a result of their use of the avoidance scheme.

#### **2.2.2 When an accelerated payment notice may be given (section 219 FA 2014)**

HMRC may give an accelerated payment notice to a person (P) if all three conditions A to C are met

#### **2.2.3 Condition A**

For tax, a tax enquiry is in progress into a return or claim made by P in relation to a relevant tax; or P has made a tax appeal in relation to a relevant tax, but the appeal has not been determined by the tribunal or court, or abandoned/disposed of.

For relevant NICs, a relevant contributions dispute is in progress, (see section 2.3 and Annex 1 of this guidance); or P has made a NICs appeal in relation to a relevant contribution, but the appeal has not been determined by the tribunal or court, or abandoned/disposed of.

This is an important step in the process. HMRC cannot give an accelerated payment notice unless:

- for tax
  - an enquiry has been opened into a return, or
  - an appeal has been made against a closure notice, assessment, or determination, (for example, a determination under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003)
- for NICs
  - a relevant contributions dispute is in progress (see section 2.3 and annex 1 of this guidance), or
  - an appeal has been made against a NICs decision (see annex 1 for definition of NICs decision and NICs appeal)

The person should, therefore, already be aware that their tax and/or NICs arrangements are being challenged.

Once the:

- enquiry is opened (tax), or a relevant contributions dispute is in progress (NICs) (see section 2.3 and Annex 1 of this guidance), and not closed, or
- appeal is made and not determined by the Tribunal or Court to which it is addressed, or otherwise settled

there is no time limit within which HMRC must give an accelerated payment notice.

Where an enquiry is open or a relevant contributions dispute is in progress and the amounts of unpaid tax and/or NICs have not already been established, HMRC will take necessary steps to obtain information from the person and/or their advisers to enable an accurate figure to be established.

The amount due in the accelerated payment notice will normally be the amount included in the closure notice, determination, assessment or NICs decision.

#### **2.2.4 Condition B**

The return, claim or appeal (including an appeal against a section 8 decision, ([see DANSP12000](#))) is made on the basis that a particular tax and/or NICs advantage (the asserted advantage) results from particular arrangements (the chosen arrangements).

Condition B is also met if, in a relevant contributions dispute, a person (see section 2.3 and Annex 1 of this guidance) disputes liability for NICs on the basis that a particular NICs advantage (the asserted advantage) results from particular arrangements (the chosen arrangements), regardless of whether the person had originally notified the dispute as to the liability on that particular basis.

#### **2.2.5 Condition C**

There are three alternative requirements within Condition C, any one or more of which is sufficient to allow the giving of an accelerated payment notice, provided that Conditions A and B are also satisfied.

More than one of the following may be relevant and each must be specified in the accelerated payment notice if relevant:

### **2.2.6 Condition C, requirement 1: Follower notice**

HMRC has given a follower notice (see section 1 of this guidance) in relation to the same return, claim or appeal and by reason of the same tax and/or NICs advantage and chosen arrangements.

### **2.2.7 Condition C, requirement 2: DOTAS**

The chosen arrangements are DOTAS arrangements.

### **2.2.8 Condition C, requirement 3: GAAR**

A GAAR counteraction notice has been given in relation to the same tax and/or NICs advantage (or part of), in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel concluded that entering into the arrangements was not a reasonable course of action.

### **2.2.9 The DOTAS requirement**

The DOTAS requirement requires two conditions to be satisfied:

- the arrangements have been given a DOTAS Scheme Reference Number (SRN) under the DOTAS legislation (section 311 of FA 2004), and
- the person has made a return asserting a tax and/or NICs advantage based on those arrangements

Note that the requirement for there to be an open enquiry, relevant contributions dispute in progress (see section 2.3 and Annex 1 of this guidance) or appeal must be met. HMRC cannot give an accelerated payment notice on the basis of the DOTAS requirement when the disclosure is made, unless there is also an open enquiry, relevant contributions dispute in progress, or appeal at that point in time in relation to those disclosed arrangements.

It is also important to note that there must have been a disclosure that has given rise to an SRN. HMRC cannot give an accelerated payment notice unless there has been a disclosure or HMRC has successfully taken action under Part 7 FA 2004 or equivalent NICs legislation ([See NIM58000](#)) to enforce a disclosure.

Only those DOTAS SRNs which are published by HMRC on a list (to be updated from time to time) will be within the scope for receiving an accelerated payment notice. See section 2.2.13 of this guidance.

#### **Example 11:**

A person has gross income of £150,000 and claims a loss arising from an arrangement disclosed under DOTAS of £50,000. The person completes and submits a Self-Assessment tax return on that basis, showing taxable income of £100,000 (subject to any other reliefs and allowances available). In this case, tax on £50,000 is the tax advantage referred to in the legislation.

If part of the relief claimed under the DOTAS disclosed arrangement is not considered to arise from an avoidance scheme, the tax advantage for these purposes will exclude that part of the total amount.

### Example 12:

Of the £50,000 referred to in example 11, £30,000 is considered to arise from a claim to relief in line with the relevant legislation and £20,000 is considered to arise from tax avoidance. In this case, tax on £20,000 is the tax advantage.

#### **2.2.10 Does a DOTAS SRN have to be notified by the person**

Where a person is obliged by the law to notify HMRC of the SRN, but fails to do so, the legislation still applies providing the two criteria are satisfied (see section 2.2.9 of this guidance).

#### **2.2.11 Not in possession of a DOTAS number**

It is not open to a person to object to an accelerated payment notice simply on the grounds that they have not been given the SRN by whoever was required to do so by the DOTAS legislation. The legislation simply requires that the person's return has been made on the basis of a tax and/or NICs advantage arising from arrangements that have been given a DOTAS SRN.

#### **2.2.12 Two or all three criteria: Condition C**

It is possible for an accelerated payment notice to be given on the basis of two or all three of the criteria within condition C. See sections 2.13 and 2.14 of this guidance for more details about what happens in these circumstances, and the particular rules that apply.

#### **2.2.13 Publication of scheme reference numbers**

HMRC has published a list of DOTAS Scheme Reference Numbers (SRNs). Users of schemes on that list may receive an accelerated payment notice from HMRC requiring an accelerated payment to be made.

HMRC updates the list at quarterly intervals.

#### **2.2.14 DOTAS requirement met for tax - arrangements used to avoid tax and NICs**

If the arrangement has been used to avoid tax and NICs, the DOTAS requirement will be met for both tax and NICs where the DOTAS requirement is met for tax (see section 2.2.9). This includes where the NICs element of the arrangements were not disclosable under the corresponding NICs equivalent disclosure provisions.

However, where the asserted advantage relates to NICs only, the DOTAS requirement will only be met from the date that the DOTAS legislation took effect for NICs.

For more information about DOTAS legislation for NICs [see NIM58000](#)

#### **2.2.15 Programme of work**

The majority of accelerated payment notices based on current disclosed schemes will be given through a phased programme of work over the period from Royal Assent of the FA 2014 through to the end of March 2016. This work will be ongoing and, as and when new schemes are disclosed, accelerated payment notices will be given as appropriate where the SRNs are on the published list. Those who are going to be given an accelerated payment notice will be contacted by HMRC before it is given.

Where applicable, copies of correspondence will also be sent to the person's agent.

As noted above, an accelerated payment notice can only be given once an enquiry has been opened, a relevant contributions dispute is in progress (see section 2.3 and Annex 1 of this guidance) or there is an open appeal, and, where it is based solely on the DOTAS requirement, the DOTAS SRN appears on the published list.

### **2.3 Relevant contributions dispute (paragraph 6 of Schedule 2 to the National Insurance Contributions Act 2015)**

#### **2.3.1 Giving accelerated payment notices for NICs**

For tax, accelerated payment notices can only be given where there is either an open tax enquiry or an open appeal.

Whilst there is a NICs equivalent of an open appeal (against a NICs decision), there is no direct equivalent of a tax enquiry for NICs. Because of this, the National Insurance Contributions Act 2015 introduces the concept of a 'relevant contributions dispute' (see Annex 1 for definition). Creating this concept allows HMRC to give an accelerated payment notice in circumstances where there is a dispute about NICs but before a NICs decision has been made and can be appealed against.

#### **2.4 Giving accelerated payment notices for tax and NICs at different times**

There are time limits for issuing tax assessments and determinations but not for issuing NICs decisions. Because of this, HMRC may issue tax assessments or determinations sooner than they issue NICs decisions in relation to the same avoidance scheme used. This could mean that a tax appeal may be in place before there is a relevant contributions dispute or an appeal against a NICs decision.

Where there is an appeal against a tax assessment or determination and HMRC considers that NICs are also due, they may give a person an accelerated payment notice for tax before they give the accelerated payment notice for NICs.

### **2.5 Content of an accelerated payment notice where enquiry or relevant contributions dispute is in progress (section 220 FA 2014)**

#### **2.5.1 Notices**

An accelerated payment notice must:-

- specify the conditions that have been satisfied - including all applicable requirements under Condition C (see sections 2.2.5 to 2.2.8 of this guidance)
- tell the person the amount to pay
- (for tax) explain that the accelerated payment is to be treated as a payment on account of the tax in dispute
- (for NICs) explain that the AP is a payment of the NICs (paragraph 17(2) Schedule 2 NICA 2015)
- tell the person the deadline for paying the accelerated payment
- specify the late payment penalty terms, rates and structure
- (for tax) explain that any amounts subject to an accelerated payment notice cannot be postponed
- (for NICs) explain that, if HMRC has to take civil proceedings to recover the NICs included in the accelerated payment notice, those proceedings cannot be adjourned pending a NICs decision or appeal (paragraph 17(5) Schedule 2 NICA 2015) (see also paragraph 2.8.4 of this guidance)
- explain how representations may be made to HMRC about an accelerated payment notice - including the time limit and what HMRC must do in response

- tell the person that, in the event of their successful litigation, HMRC may apply to the court or tribunal for an order not to repay the tax and/or NICs in dispute, where HMRC pursues a further appeal, in order to protect the revenue

### **2.5.2 Designated officer**

A designated officer - a senior official in HMRC - will determine the amount of the payment required in an accelerated payment notice. The payment required is the amount of the understated tax (see Annex 1 for definition) calculated to the best of the officer's information and belief.

The information available will include that held by Customer Relationship Managers (CRM's) and case teams.

### **2.5.3 Understated tax and/or NICs**

The understated tax and/or NICs is the additional amount that would be due and payable on the basis that the tax and/or NICs advantage has been denied.

In each case this will be determined by the designated HMRC officer. In follower notice and GAAR counteraction cases, the expected position would be as follows:

- Follower notices: if HMRC has given a follower notice, the amount is the same as would be required if the person were to have taken the necessary corrective action to amend the return or claim, or otherwise settle the dispute
- GAAR counteraction notice: the amount will be the same as specified in the GAAR counteraction notice

### **2.5.4 Denied advantage**

The legislation for the DOTAS criterion uses the term 'so much of the asserted advantage as is not a tax advantage which results from the chosen arrangements, or otherwise'. (The reference to 'tax' includes NICs.)

That is, it is the amount which the person has asserted as a tax and/or NICs advantage but which HMRC considers will not ultimately be a tax and/or NICs advantage when the enquiry, relevant contributions dispute or appeal is finally resolved.

In example 11 (see section 2.2.9), this would be tax on the claimed loss of £50,000 (in the example where the whole amount arises from avoidance) or tax on £20,000 in example 12 (see section 2.2.9).

### **2.5.5 Requirements in Condition C (section 227 FA 2014)**

In the event that more than one of the requirements in Condition C (see sections 2.2.5 to 2.2.8 of this guidance) is met, HMRC must specify in the accelerated payment notice which of them is being applied to determine the amount of the required accelerated payment. This may have further consequences if one or more of the original conditions changes; see sections 2.13 and 2.14 of this guidance.

### **2.5.6 Content of an accelerated payment notice given pending an appeal**

Where an appeal is pending, an accelerated payment notice must:

- specify the conditions that have been satisfied (including which Condition C requirement(s) is met)
- specify the amount of the disputed tax and/or NICs
- (for tax) explain that any tax subject to an accelerated payment notice cannot be postponed

- (for a NICs decision) explain that, if HMRC has to take civil proceedings to recover the NICs included in the accelerated payment notice, those proceedings cannot be adjourned to await the outcome of an appeal against that NICs decision (paragraph 18(3) Schedule 2 NICA 2015). If such proceedings have already been adjourned, they cease to be adjourned from the date the accelerated payment notice is given (see also section 2.8.4 of this guidance)
- tell the person the deadline for paying the accelerated payment
- explain how representations may be made to HMRC about an accelerated payment notice, including the time limit and what HMRC must do in response
- tell the person that in the event of their successful litigation, HMRC may apply to the court or tribunal for an order not to repay the tax and/or NICs in dispute, where HMRC pursues a further appeal, in order to protect the revenue

### **2.5.7 Disputed tax and/or NICs**

The disputed tax and/or NICs is the amount HMRC is asking the person to pay. It will be determined by a designated officer and, in most cases, it is expected to be the amount which is under appeal in relation to the avoidance arrangements which have led to the accelerated payment notice. Care will be taken to distinguish what is the tax and/or NICs advantage arising from the chosen arrangements and any other amounts which may be in dispute.

### **2.5.8 Payment dates for accelerated payment notices**

The time limits for making an accelerated payment depend on whether representations have been made (see section 2.6 of this guidance for information about representations). If:

- no representations have been made - payment is due no later than 90 days from the date the notice is given
- representations have been made - payment is due the later of:
  - 30 days from when HMRC issues its decision
  - 90 days from the date the original notice was given

## **2.6 Representations**

### **2.6.1 Representations can be made**

The person can object to an accelerated payment notice by making representations in writing to HMRC.

### **2.6.2 Time limit for representations**

The person has 90 days from the date the notice is given to send written representations to HMRC.

### **2.6.3 Grounds for representations**

Representations can only be made on one or more of the following grounds:

- Conditions A, B or C (see sections 2.2.3 to 2.2.8 of this guidance) are not met, or
- the amount specified in the accelerated payment notice does not accurately reflect the amount of tax and/or NICs in dispute in relation to the asserted advantage

### **2.6.4 How to make representations**

Full information about where to send a representation and what it should contain will be included on the accelerated payment notice.

The normal timing rules that apply to determine, for example, the date of the submission of tax returns and the date of their receipt, will apply to accelerated

payment notices and representations. Representations can be made by the person's authorised agent.

### **2.6.5 HMRC makes decision**

The representations will be considered by an independent HMRC officer who is unconnected with the team which issued the accelerated payment notice.

If representations are made objecting to whether requirements A, B or C (see sections 2.2.3 to 2.2.8 of this guidance) are met, HMRC must decide whether to confirm the accelerated payment notice (with or without amendment), or to withdraw it.

Section 1.18 of this guidance contains more information on governance in relation to follower notices.

### **2.6.6 Changes to the amount specified**

If representations are made objecting to the amount specified in the accelerated payment notice, HMRC must decide whether a different amount ought to have been specified, and either confirm the amount in the accelerated payment notice, or amend it to specify a different amount.

### **2.6.7 HMRC must notify outcome**

HMRC must notify the person of the outcome of their representations.

### **2.6.8 Revised payment date**

If an accelerated payment is still payable following notification of HMRC's decision, the person must pay the amount due by the later of:

- 30 days beginning with the date the decision was notified to them
- the deadline for payment that was shown in the accelerated payment notice

### **2.6.9 Accurate information essential**

It is important for the person and their adviser to take all steps to give HMRC full information at the earliest opportunity, so that an accurate figure can be established for the accelerated payment. The accelerated payment is intended to represent only the additional amount that the person would have to pay for the period if their avoidance scheme fails. This may not necessarily be the total tax and/or NICs involved in the appeal or dispute as there may be other reliefs and allowances to take into account.

### **2.6.10 Potential impact on contributory social security benefits**

The accelerated payment notice may be based on Classes 1 and 2 NICs that have not been paid. Such classes of NICs may affect entitlement to contributory social security benefits. Class 1 NICs paid only on earnings above the upper earnings limit do not count for contributory benefit.

### **2.6.11 Accelerated payment allocated to worker's National Insurance account (paragraphs 17(7) and 18(6) Schedule 2 NICA 2015)**

If:

- action was taken as set out in section 2.6.10 to amend the worker's National Insurance account
  - HMRC accept that some or all of the NICs in the accelerated payment notice were not due, for example, because of a final judicial ruling
- then, when the accelerated payment (either in part or full) is repaid, HMRC will amend the worker's National Insurance account to show the revised NICs due.

The worker will not be required to repay any benefit paid before the accelerated payment (in part or full) is repaid.

#### **2.6.12 Consequential effects**

Where denial of the disputed tax and/or NICs advantage would have a consequential effect on other areas of the person's returns, this will be taken into account. This could include consequential effects on other periods, for example where claims to capital allowances are involved.

#### **2.6.13 More than one set of arrangements**

It may be the case that a person has become involved with more than one set of arrangements that, in aggregate would, if successful, lead to their claiming more relief than their aggregate income and gains for the period. The total accelerated payment for the period would not be more than the tax and/or NICs on their total amount of income and gains for the same period, having regard to reliefs and allowances available (outside those claimed in relation to the arrangements).

#### **2.6.14 Certificates of Tax Deposit**

If a person has purchased a Certificate of Tax Deposit, they can redeem it against the accelerated payment in the normal way. A person in that position should contact HMRC as soon as possible to ensure that the amounts are allocated in the correct way.

#### **2.6.15 Tax enquiry in progress (section 223(3) FA 2014 and paragraph 17(2) Schedule 2 NICA 2015)**

An accelerated payment for understated tax is treated as if it were a payment on account of the understated tax for the period. This means that, once the final liability has been decided or agreed, the accelerated payment will be set against it.

An accelerated payment for understated NICs is treated as a payment of the understated NICs and not a payment on account of the NICs.

#### **2.6.16 Inheritance Tax**

If the accelerated payment relates to Inheritance Tax (IHT) and this tax is being paid by instalments, (as it is in special circumstances), then the due date for making an accelerated payment cannot be set before the due date for paying the instalment to which it relates.

#### **2.6.17 Part of understated tax paid**

If a person has paid any part of the understated tax before an accelerated payment notice is given, this amount will reduce the size of payment required by the accelerated payment notice.

Where amounts have been paid on account, but not yet allocated, or Certificates of Tax Deposit purchased, HMRC will discuss with the person how and if those may be used against the accelerated payment.

## 2.7 Interest

### 2.7.1 Accelerated payment does not attract late payment interest

Any late paid accelerated payment does not itself attract interest, but will normally be subject to a late payment penalty (see section 2.12 of this guidance). However, as it is paid in relation to the disputed tax and/or NICs, it will have an effect on the interest which is ultimately due and payable when the dispute is settled or agreed.

### 2.7.2 Alleviates interest on disputed tax

On receipt of the accelerated payment, interest will cease to accrue further on the disputed tax to the extent it is covered by the payment made.

#### Example 13:

A person submits a Self-Assessment tax return for the year ended 5 April 2009, with any tax due on 31 January 2010. The person self-assesses on the basis that an avoidance scheme will succeed. An accelerated payment notice is given on 1 September 2014, which the person pays on 31 October 2014.

If the person is ultimately unsuccessful and their self-assessment is amended upwards to reflect the additional tax, then interest will be due on the extra amount from 31 January 2010 (the original payable date) to 31 October 2014 (the date when the accelerated payment was paid). If the final additional amount is more or less than the accelerated payment, the interest will be adjusted accordingly.

#### Example 14:

An employer uses an avoidance arrangement to pay earnings in the 2009-10 tax year. The employer considers that Class 1 NICs and PAYE Income Tax are not due.

An accelerated payment notice is given on 16 July 2015, which the employer pays on 5 September 2015.

If the outcome is that Class 1 NICs and PAYE Income Tax are due, interest will be due from 19 April 2010 (19 April following the end of the tax year in which the NICs and PAYE Income Tax were due) to 5 September 2015. If the amount due is more or less than the accelerated payment, the interest will be adjusted accordingly.

### 2.7.3 Accelerated payment attracts repayment interest

If an accelerated payment is received by HMRC and later has to be partly or wholly repaid, then repayment interest at the prevailing rates will be paid to the person.

## 2.8 Postponement

### 2.8.1 Restriction on postponement of tax (does not include NICs)

Tax under appeal can be subject to postponement under section 55 of TMA 1970, and the equivalents for other taxes. However, any amount that is under appeal and is also included in an accelerated payment notice cannot be postponed.

### 2.8.2 Accelerated payment notice cancels postponement of tax

If the payment of tax under appeal has already been postponed, then the accelerated payment notice has the effect of cancelling the postponement of that amount. The amount included in the accelerated payment notice that was previously postponed becomes due and payable under the normal rules for the specific tax involved.

However, the 90 day time limit for payment under the accelerated payment rules applies, rather than any shorter payment period that might otherwise apply for the specific tax.

### **2.8.3 Tax not in an avoidance dispute**

None of this affects the postponement of any amount of tax that:

- is under appeal in respect of the same tax return or claim, and
- is not included in an accelerated payment notice

#### **Example 15:**

A person has appealed in relation to a dispute over:

- an avoidance scheme involving their Income Tax liability, and
- a liability to Capital Gains Tax

and applied for, and been given, postponement of the amounts under appeal.

They have been given an accelerated payment notice in respect of their use of the avoidance scheme.

The liability to Capital Gains Tax can continue to be postponed under the existing rules, but the giving of the accelerated payment notice has the effect of cancelling the postponement of the amount relating to Income Tax.

### **2.8.4 Adjournment of civil proceedings to recover NICs accelerated payment (paragraph 17(5) and 18(3) Schedule 2 NICA 2015)**

The postponement provisions legislation in section 55 TMA 1970 does not apply to NICs.

For NICs, HMRC is normally prevented from recovering NICs where it has not issued a NICs decision and/or where there is an ongoing appeal in respect of NICs by:

- section 117A of the Social Security Administration Act 1992 (which applies to Great Britain)
- section 111A of the Social Security Administration (Northern Ireland) Act 1992 (which applies to Northern Ireland)

This effectively postpones payment of NICs, as civil proceedings for their recovery would be suspended until a formal decision is made and any appeal is either settled by agreement or finally determined by a tribunal or courts.

However, the above provisions do not apply to the recovery of accelerated payment of understated NICs (where there is a relevant contributions dispute) or disputed NICs (where there is an open NICs appeal).

The effect of the modification made in Schedule 2 of NICA 2015 is that, if HMRC has to take civil proceedings to recover the unpaid NICs accelerated payment, the Court cannot adjourn the civil proceedings:

- for HMRC to make a NICs decision, or
- to await the final outcome of any appeal against a NICs decision

If such proceedings have already been adjourned, they cease to be adjourned from the date the accelerated payment notice is given (see also section 2.8.4 of this guidance)

## **2.9 Civil proceedings for NICs**

### **2.9.1 Evidence of unpaid NICs accelerated payment (Paragraph 17(6) and 18(5) Schedule 2 NICA 2015 and section 25A of CRCA 2005)**

If it is necessary to take civil proceedings to recover any part of a NICs accelerated payment, HMRC will issue a certificate of debt. The court must accept this as conclusive evidence that the amount is unpaid. The civil recovery proceedings cannot be adjourned (see 2.8.4 above).

## **2.10 Protection of revenue pending further appeals**

### **2.10.1 Additional power for accelerated payment**

Section 56 of TMA 1970, and its equivalents for other taxes, directs that the unsuccessful party in a tribunal or court appeal must pay (in the case of the person) or repay (in the case of HMRC) the tax involved. The accelerated payments rules are not intended to override that position in the normal course of events. However, the new legislation does provide an additional, limited, power (see section 2.10.2 of this guidance).

Section 56 of TMA 1970 applies to NICs by regulation 12 of the Social Security Contributions (Decisions and Appeals) Regulations 1999 (SI 1999 No 1027).

### **2.10.2 No repayment cases**

Where a person has been successful in litigation in a case where an accelerated payment notice has been given, the tax/NICs in dispute will normally be repaid to the person unless:

- HMRC applies to the tribunal or court in order to pursue a further appeal; and
- the relevant tribunal or court considers a risk to the Exchequer will develop if a repayment is made and gives a direction

In these cases the tribunal or court may:

- grant permission to withhold all or part of the repayment; or
- rule that the person must provide adequate security before being repaid

### **2.10.3 Genuine risk of non-payment**

HMRC only expects to make application to the tribunal or court in cases where HMRC considers there is a genuine risk that tax due may not be paid on the outcome of the case.

## **2.11 Repayment of accelerated payments**

### **2.11.1 General**

The accelerated payment provisions in Part 4 FA 2014 do not make any express provision for the repayment of tax when the underlying liability dispute is determined in the persons favour, but rely on the existing administrative provisions that apply to final determinations or settled appeals, and the general binding nature of the courts decisions.

### **2.11.2 Authority for repayment of accelerated payments**

Where the repayment of an accelerated payment of tax and NICs is due, there is no requirement for the person entitled to the repayment to make an application before any part of an accelerated payment is repaid.

### **2.12 Penalty or surcharge for failure to pay an accelerated payment**

Much of Schedule 56 to FA 2009 (late payment penalties) applies to late payment of accelerated payments. This includes the rule that where an agreement for deferred payment is made, there will not be a late payment penalty provided the person keeps to the terms of the payment arrangement. (See section 2.12.7 of this guidance.)

#### **2.12.1 Late payment penalties where a partner payment notice has been given (paragraph 7 of schedule 32, section 226 FA 2014 and Schedule 56 FA 2009)**

Where a partner payment notice has been given and the accelerated partner payment remains unpaid at the end of the payment period, the person is liable to late payment penalties as follows:

- on the penalty day – an amount equal to 5% of the amount unpaid
- 5 months after the penalty day – an amount equal to 5% of any amount still unpaid at that date
- 11 months after the penalty day – an amount equal to 5% of any amount still unpaid at that date

The penalty day is the day immediately following the end of the payment period.

#### **2.12.2 Late payment penalties - tax enquiry or relevant contributions dispute in progress (section 226 FA 2014, paragraph 19 Schedule 2 NICA 2015 and Schedule 56 FA 2009) (does not include partner payment notices)**

Where an accelerated payment notice has been given in a case where there is a tax enquiry or a relevant contributions dispute and the accelerated payment remains unpaid at the end of the payment period, the person is liable to late payment penalties as follows:

- on the penalty day – an amount equal to 5% of the amount unpaid
- 5 months after the penalty day – an amount equal to 5% of any amount still unpaid at that date
- 11 months after the penalty day – an amount equal to 5% of any amount still unpaid at that date

The penalty day is the day immediately following the end of the payment period.

#### **Example 16:**

An accelerated payment notice is given to the person in the amount of £100,000 on 1 October 2014. The payment is therefore due by 29 December 2014.

The person does not pay the accelerated payment.

A 5% penalty is due on 30 December 2014 (the penalty day) of £5,000.

A further 5% penalty of £5,000 is due on 30 May 2015 (5 months after the penalty day).

If the person continues not to pay, an 11 month penalty of £5,000 is charged on 30 November 2015.

### Example 17:

An accelerated payment notice is given to the person in the amount of £100,000 on 1 October 2014. The payment is therefore due by 29 December 2014.

The person pays £50,000 on 28 December 2014 therefore £50,000 is still outstanding.

A 5% penalty is due on 30 December 2014 (the penalty day) of £2,500 (£50,000 x 5%), which is then paid.

The person pays the remaining £50,000 on 1 April 2015.

The person has now fully complied with the accelerated payment notice and no further penalties for late payment are due.

#### **2.12.3 Late payment surcharges for open appeal cases – 2009 to 2010 and earlier years (section 59C Taxes Management Act 1970) (does not include partner payment notices)**

Where an accelerated payment notice has been given in a case where there is an open appeal for the tax year 2009 to 2010 or earlier and the accelerated payment remains unpaid at the end of the payment period, the person is liable to late payment surcharges as follows:

- 28 days after end of the payment period – an amount equal to 5% of the amount unpaid
- 6 months after the end of the payment period – an amount equal to 5% of any amount still unpaid at that date

These surcharges only apply to those taxes (includes Class 4 NICs) which are already within the scope of section 59C Taxes Management Act 1970.

#### **2.12.4 Late payment penalties for open appeal cases – 2010 to 2011 and later years (schedule 56 Finance Act 2009) (does not include partner payment notices)**

Where an accelerated payment notice has been given in a case where there is an open appeal for the tax year 2010 to 2011 or later and the accelerated payment remains unpaid at the end of the payment period, the person is liable to late payment penalties as follows:

- on the penalty date – an amount equal to 5% of the amount unpaid
- 5 months after the penalty date – an amount equal to 5% of any amount still unpaid at that date
- 11 months after the penalty date – an amount equal to 5% of any amount still unpaid at that date

The penalty date will be 31 days after the due date in the accelerated payment notice.

These penalties only apply to those taxes (includes Class 4 NICs) which are already within the scope of Schedule 56 FA2009.

### **2.12.5 Appeals against late payment penalties and/or surcharges**

A person has the right to appeal to the tribunal against late payment penalties and/or surcharges.

The rules set out in paragraph 13 schedule 56 to the FA 2009 apply to late payment penalties for accelerated payment notices.

### **2.12.6 Enforceable penalty – NICs accelerated payment notice (paragraph 20 Schedule 2 NICA 2015)**

The penalty due for not complying with a NICs accelerated payment notice is recovered in the same way as unpaid relevant contributions (see Annex 1 for definitions). It is not treated in the same way as an assessment to tax.

For the purposes of a court determining whether civil proceedings can be adjourned, the penalty assessment is treated as if it were a NICs decision as to whether the person was liable for the penalty. The effect is that if there is an appeal against the penalty assessment the court must adjourn any civil proceedings taken to recover the penalty until the appeal is finally determined.

### **2.12.7 Payment arrangements for accelerated payment notices**

If a person asks to enter into a payment arrangement with HMRC for an amount of accelerated payment, and HMRC agrees such an arrangement for a period (the deferral period), and the arrangement is fully adhered to, then:

- in respect of the amount included in the arrangement
- from the date on which the person asked to enter into the arrangement, until the end of the deferral period

the person will not become liable to the late payment penalties or surcharges that they would have become liable to if the arrangement was not in place.

This does not affect any late payment penalties or surcharges that the person had become liable to before they asked to enter into the payment arrangement. (paragraph 10 of schedule 56 to FA 2009, applied by section 226(7) of FA 2014).

## **2.13 Withdrawal, modification or suspension of accelerated payment notice (section 227 FA 2014 and paragraph 21 Schedule 2 NICA 2015)**

### **2.13.1 Conditions**

Where an accelerated payment notice has been issued, HMRC may, at any time:

- withdraw the notice
- reduce the amount of the accelerated payment when one of the requirements of Condition C (see sections 2.2.5 to 2.2.8 of this guidance) ceases to exist (this occurs when the notice remains effective as it is supported by another of the alternatives to Condition C), or
- reduce the amount specified in the notice (this includes where there are multiple arrangements in the same tax year and one or more is successful in litigation)

### **2.13.2 Excess repaid**

If the amount of an accelerated payment is reduced and a greater amount than this has already been paid, then HMRC will normally repay the excess with any applicable interest.

Similarly, if a late payment penalty or surcharge has been charged and paid, a replacement assessment for the correct penalty or surcharge will be issued and any excess repaid.

### **2.13.3 Accelerated payment notice withdrawn and specified amount repaid**

If an accelerated payment notice is withdrawn, the specified amount paid plus any penalties or surcharges paid will normally be repaid with any applicable interest.

### **2.13.4 The person wants to settle**

If, after receiving the accelerated payment notice, the person wants to settle the dispute with HMRC, there are a number of ways of dealing with this. For example, the person may:

- agree to amend their return or claim and pay the tax and/or NICs arising. They can choose to pay the tax and/or NICs either by the due date shown in the accelerated payment notice, or the normal due date(s) for paying the tax and/or NICs (if earlier)
- want to enter into a settlement agreement, accepting HMRC's view of the tax results of the scheme. And agree with HMRC a payment instalment plan because they cannot pay all the tax due at once

## **2.14 Modifications to an accelerated payment notice**

### **2.14.1 Follower notice**

If an accelerated payment notice is given because a follower notice has been given, and the follower notice is:

- withdrawn
- amended (when there has been a new relevant final judicial ruling after a late appeal)

then HMRC must amend or withdraw the accelerated payment notice.

### **2.14.2 DOTAS arrangements**

If an accelerated payment notice has been given because of DOTAS arrangements and these arrangements are no longer notifiable or applicable, then HMRC must reduce the amount (as appropriate) of the accelerated payment to the extent to which it was based on this requirement. For example, HMRC has withdrawn the obligation to notify the scheme.

### **2.14.3 Condition C requirements**

If at least one of the Condition C requirements (see sections 2.2.5 to 2.2.8 of this guidance) continues to be satisfied, then the accelerated payment notice will continue to have effect. Where more than one of the Condition C requirements was originally applicable and one or more no longer applies, HMRC must:

- withdraw the notice to the extent it is given by virtue of those requirements;
- notify the modification of the accelerated payment notice to show one of the remaining Condition C requirements; and
- reduce the amount of the accelerated payment due if the disputed tax and/or NICs determined under the substituted requirement is less than the amount initially stated on the notice

### **2.14.4 Specify condition C requirement**

Sections 220(6) and 221(5) FA 2014 require HMRC to specify which Condition C requirement is used as the basis of an accelerated payment notice, where more than one of those requirements could apply. In the majority of cases it is likely that the resulting accelerated payment will be the same, but it might not be.

Any amount found to be overpaid as a result will be repaid with any applicable interest.

## **2.15 Suspension of an accelerated payment notice**

### **2.15.1 Late appeal**

If a follower notice is suspended because of a late appeal against the relevant judicial ruling, then an accelerated payment notice will also be suspended if it is based solely on the follower notice requirement of Condition C (see sections 2.2.5 to 2.2.8 of this guidance).

### **2.15.2 Accelerated payment notice remains effective despite late appeal against relevant judicial ruling**

If another Condition C (see sections 2.2.5 to 2.2.8 of this guidance) requirement is still met (either DOTAS arrangements or a GAAR counteraction notice) then the accelerated payment notice will not be suspended and will remain effective in relation to those conditions. In this circumstance HMRC must:

- withdraw the follower notice requirement
- notify the modification of the accelerated payment notice to show the remaining Condition C requirements
- reduce the amount of accelerated payment due if the disputed tax determined under the substituted requirement is less than the amount initially stated on the notice

### **2.15.3 Effect of suspension period (section 227(9) FA 2014 and paragraph 21 Schedule 2 NICA 2015)**

If an accelerated payment notice is suspended, the period of suspension does not count towards the periods mentioned in the following provisions:

- section 223 FA 2014
- section 55(8D) of TMA 1970
- paragraph 39(11) of Schedule 10 to FA 2003
- paragraph 48(8C) of Schedule 33 to FA 2013

## **2.16 Partnerships - Summary**

### **2.16.1 Special rules**

Special rules for members of partnerships can be found in Schedules 31 and 32. These rules essentially reflect the general tax treatment of partnerships. In summary:

- A follower notice will be given to the representative partner, in that capacity, on behalf of the partnership as a whole.
- That follower notice can then apply to generate an accelerated payment notice to the members of the partnership.
- The members can also be given a follower notice or an accelerated payment notice in respect of a scheme in their personal capacity.
- In those instances these will relate directly to their own tax return, which will of course include their share of the partnership profits and gains.

These points are covered in more detail below.

### **2.16.2 Actions taken separately by partners**

All actions taken in respect of accelerated payments, including representations, payment, late payment penalties etc., are undertaken separately by the individual partners. The representative partner has no role in that capacity, but may of course be involved in their own personal capacity as a partner.

### **2.16.3 Partners' accelerated payments may vary**

It is entirely possible for different partners to receive accelerated payment notices for different amounts, depending on other reliefs and allowances that they may have available personally.

### **2.16.4 Stamp Duty Land Tax & Annual Tax on Enveloped Dwellings rules**

Specific partnership rules apply for Stamp Duty Land Tax (SDLT) and Annual Tax on Enveloped Dwellings (ATED) to reflect the particular treatment of partnerships in relation to those heads of duty.

### **2.16.5 Partnership notices**

Schedule 32 to FA 2014 sets out the additional special rules for partnerships. These rules apply to partnerships which are subject to TMA 1970 s12AA.

### **2.16.6 Partner payment notice**

An accelerated payment notice for a partner is called a partner payment notice, and each partner of the partnership will be given an individual partner payment notice. The partner is responsible for paying the amount set out in their own notice, and will be liable for a late payment penalty if the amount is not paid by the due date (see section 2.12.1 of this guidance).

### **2.16.7 Giving a partner payment notice**

The rules for giving a partner payment notice are adapted to refer to partnership returns as appropriate. Apart from this they are fundamentally the same as the rules for giving an accelerated payment notice.

### **2.16.8 Calculation of tax and/ or NICs advantage**

The contents of a partner payment notice and the calculation of the payment are very similar to an accelerated payment, with modifications for partners. The denied advantage is calculated by reference to the amount of tax and/or NICs that becomes due and payable by counteracting the tax and/ or NICs advantage in the relevant claim or return of the partner.

### **2.16.9 Partner representations**

There is no direct right to appeal against a partner payment notice, but each partner has the right to make written representations to HMRC on the basis that either:

- any of the conditions A-C (see sections 2.2.3 to 2.2.8 of this guidance) are not met, or
- the amount specified in the partner payment notice is not correct

### **2.16.10 Notification of decision**

HMRC must consider the representations and notify the partner in writing of their decision – which will normally be to confirm, withdraw or modify the partner payment notice.

### **2.16.11 Time limits**

Time limits for payment of the amount due on a partner payment notice are the same as for accelerated payment notices. Payment is due:

- 90 days from the date the partner payment notice was given, or
- if representations have been made, the later of the original 90 day payment period or the end of a 30 day period beginning on the date HMRC confirms their decision to issue the partner payment notice

### **2.16.12 Late-payment penalties**

A late payment penalty applies to partners who do not pay by the due date. (See section 2.12.1 of this guidance).

### **2.16.13 Changes to partner payment notices**

The rules for withdrawing, suspending and amending partner payment notices are the same as for accelerated payment notices.

## **3 Annual Tax on Enveloped Dwellings (ATED)**

### **3.1 Amendments for ATED (section 231 FA 2014)**

The guidance for follower notices and accelerated payments applies to ATED with the following amendments. They reflect the specific treatment of partnerships and other forms of joint ownership for ATED

### **3.2 Partners**

Where the relevant tax is ATED, and the chargeable person is:

- a partnership, or
  - two or more persons jointly and severally liable to pay the relevant tax
- anything required or authorised (by the follower notice and accelerated payments legislation) to be done in relation to a person, must be done in relation to all the responsible partners and persons jointly and severally liable to pay the relevant tax.

This in particular means that each person must be given a separate notice.

### **3.3 Liability**

Any liability to:

- an accelerated payment
  - a penalty for failure to pay an accelerated payment, or
  - a penalty for failure to take corrective action in response to a follower notice
- is the joint and several liability of all responsible partners, or all persons jointly and severally liable to pay the relevant tax.

### **3.4 Responsible partners**

The responsible partners are all persons who are members of the partnership on the first day of the period of ownership of the dwelling in the chargeable period.

### **3.5 Representations**

Where a follower notice or an accelerated payment notice is given to more than one person, then representations against either may be made by each of those persons separately, or by two or more of them jointly.

## **4 Stamp Duty Land Tax (SDLT)**

### **4.1 Amendments for SDLT (Section 230 FA 2014)**

The guidance for follower notices and accelerated payments applies to SDLT with the following amendments. They reflect the specific treatment of partnerships and other forms of joint ownership for SDLT.

## 4.2 Partners

Where the relevant tax is SDLT, and

- a partnership
- two or more persons acting jointly are the purchasers in respect of the land transaction

then anything required or authorised (by the follower notice and accelerated payments legislation) to be done in relation to P must be done in relation to all the responsible partners and persons acting jointly.

This means, in particular, that each person involved must be given a separate notice.

## 4.3 Liability

Any liability to:

- an accelerated payment
  - a penalty for failure to pay an accelerated payment
  - a penalty for failure to take corrective action in response to a follower notice
- is the joint and several liability of all responsible partners, or all persons acting jointly as purchasers in respect of the land transaction.

## 4.4 Effective date of transaction

Neither the accelerated payment nor the penalties can be recovered from a person who became a responsible partner after the effective date of the transaction in respect of which the accelerated payment relates.

## 4.5 Responsible partners

The responsible partners in relation to a transaction are the persons who are partners at the effective date of the transaction.

## 4.6 Trustees

Where the trustees of a settlement are liable to pay an accelerated payment or a penalty relating to SDLT, the payment or penalty may be recovered (but only once) from any one or more of the trustees.

However the penalty may not be recovered from any person who became a trustee after the time when the omission occurred that caused the penalty to become payable.

## 4.7 Representations

Where a follower notice or an accelerated payment notice is given to more than one person, representations may be made by each of those persons separately or by two or more of them jointly.

## 5 Annex 1: Definitions

Item	Definition
Asserted advantage	The 'asserted advantage' is the tax and/or NICs advantage which would result from the use of the particular scheme used, if it achieved its aim.
Denied advantage	The denied advantage is defined as being the amount of the 'asserted advantage' which is denied when the principles or reasoning laid down in the

	relevant ruling are applied to this person's circumstances.
DOTAS arrangements	DOTAS arrangements are notifiable arrangements to which HMRC has issued a Scheme Reference Number (SRN) under section 311 of FA 2004. In order to do so, HMRC must have received a disclosure of notifiable arrangements or a notifiable proposal under Part 7 of FA 2004, or must have successfully taken proceedings under Part 7 of FA 2004 to require such a disclosure.
'Enquiry in progress' for Inheritance Tax	For Inheritance Tax, an enquiry is deemed to be in progress during the period which: <ul style="list-style-type: none"> <li>• begins with the time the account is delivered or the statement, declaration, information or document is produced, and</li> <li>• ends when the person is issued with a certificate or discharge under section 239 of that Act, or is discharged by virtue of section 256(1)(b) of that Act, in respect of the return (at which point the enquiry is to be treated as completed)</li> </ul>
GAAR counteraction notice	A GAAR counteraction notice means a notice under paragraph 12 of Schedule 43 to FA 2013. A GAAR counteraction notice is a written notice given if a designated officer considers: <ul style="list-style-type: none"> <li>• that a tax and/or NICs advantage has arisen to a person from arrangements that are abusive; and</li> <li>• that the advantage ought to be counteracted</li> </ul>
Inheritance Tax returns	For Inheritance Tax, each of the following is treated as a return: <ul style="list-style-type: none"> <li>• an account delivered by a person under s216 or 217 of IHTA 1984 including an account delivered in accordance with regulations under section 256 of that Act</li> <li>• a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account</li> <li>• information or a document provided by a person in accordance with</li> </ul>

	<p>regulations under section 256 of that Act</p> <p>And such a return is to be treated as made by the person in question.</p>
NICs advantage	The term 'NICs advantage' includes avoidance or reduction of a liability to pay relevant contributions.
NICs appeal	<p>A NICs appeal is an appeal, under:</p> <ul style="list-style-type: none"> <li>• section 11 of the Social Security Contributions (Transfer of Functions) Act 1999, or</li> <li>• Article 10 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (SI 1999 No 671), against a NICs decision relating to relevant contributions</li> </ul> <p>Or an appeal against a determination of an appeal listed above.</p>
NICs arrangements	Arrangements are NICs arrangements if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a NICs advantage was the main purpose, or one of the main purposes of the arrangements.
NICs decision	<p>A NICs decision is a decision under:</p> <ul style="list-style-type: none"> <li>• section 8 of the Social Security Contributions (Transfer of Functions) Act 1999 (applies to Great Britain), or</li> <li>• Article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (SI 1999 No 671) (applies to Northern Ireland)</li> </ul>
Period for which an tax enquiry is in progress	<p>Begins with the day on which the notice of compliance check or enquiry is given, and ends on the day on which the compliance check or enquiry is completed.</p> <p>For Inheritance Tax, see above.</p>
Person	A 'person' (P) is as defined in Schedule 1 of the Interpretation Act 1978, and includes "a body of persons corporate or unincorporated", as well as individuals.

Relevant contributions	<p>'Relevant contributions' means the following contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (applies to Great Britain) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (applies to Northern Ireland):</p> <ul style="list-style-type: none"> <li>• Class 1 contributions</li> <li>• Class 1A contributions</li> <li>• Class 1B contributions</li> <li>• Class 2 contributions which a person is, or is alleged to be, liable to pay but which are not or would not be payable through the Self-Assessment system</li> </ul>
Relevant contributions dispute	<p>A 'relevant contributions dispute' arises if:</p> <ul style="list-style-type: none"> <li>• without making a NICs decision, HMRC notifies a person in writing that HMRC considers the person to be liable to pay an amount of relevant contributions, and</li> <li>• the person notifies HMRC in writing (a 'notification of dispute') that the person disputes liability for some or all of the contributions ('the disputed contributions')</li> </ul>
Relevant contributions dispute in progress	<p>A relevant contributions dispute is in progress in relation to the notification of dispute, during the period which:</p> <ul style="list-style-type: none"> <li>• begins with the day on which the person gives the notification of dispute, and</li> <li>• ends (at which point it is to be treated as completed) with the day on which: <ul style="list-style-type: none"> <li>- the disputed contributions are paid in full, or</li> <li>- HMRC and the person enter into an agreement in writing as to the person's liability for the disputed contributions and any amount of those contributions that the person is to pay under that agreement is paid, or</li> <li>- an officer of Revenue and Customs makes a NICs decision in relation to the person's liability for the disputed contributions, or</li> <li>- without making a NICs decision, HMRC notifies the person in writing that HMRC no longer</li> </ul> </li> </ul>

	considers the person to be liable to pay the disputed contributions
Relevant tax	<p>The term 'relevant tax' includes:</p> <ul style="list-style-type: none"> <li>• Income Tax</li> <li>• Capital Gains Tax</li> <li>• Corporation Tax, including any amount chargeable or treated as if it were Corporation Tax</li> <li>• Inheritance Tax</li> <li>• Stamp Duty Land Tax</li> <li>• Annual Tax on Enveloped Dwellings</li> </ul> <p>References to relevant tax, other than references to particular taxes, include relevant contributions (see above).</p>
Tax advantage	<p>The term 'tax advantage' includes:</p> <ul style="list-style-type: none"> <li>• relief or increased relief from tax</li> <li>• repayment or increase in repayment of tax</li> <li>• avoidance or reduction of a charge or assessment to tax</li> <li>• avoidance of a possible assessment to tax</li> <li>• deferral of a payment of tax or advancement of a repayment of tax</li> <li>• avoidance of an obligation to deduct or account for tax</li> </ul>
Tax appeal	<p>A tax appeal means an appeal under:</p> <ul style="list-style-type: none"> <li>• section 31 TMA 1970 (Income Tax appeals against amendments of Self-Assessment, amendments made by closure notices under section 28A or 28B of that Act) including an appeal under that section by virtue of regulations under Part 11 of IEPA 2003 (PAYE)</li> <li>• paragraph 9 of Schedule 1A to TMA 1970 (Income Tax: appeals against amendments made by closure notices under paragraph 7(2) of that Schedule etc)</li> <li>• section 705 of ITA 2007 (Income Tax: appeals against counteraction notices)</li> <li>• paragraph 34(3) or 48 of Schedule 18 to FA 1998 (corporation tax: appeals against amendment of a company's return made by closure notice, assessments other than Self-Assessments etc)</li> </ul>

	<ul style="list-style-type: none"> <li>• section 750 of CTA 2010 (Corporation Tax: appeals against counteraction notices)</li> <li>• section 222 of IHTA 1984 (appeals against HMRC determinations) other than an appeal made by a person against a determination in respect of a transfer of value at a time when a tax enquiry is in progress in respect of a return made by that person in respect of that transfer</li> <li>• paragraph 35 of Schedule 10 to FA 2003 (Stamp Duty Land Tax: appeals against amendment of Self-Assessment, discovery assessments etc)</li> <li>• paragraph 35 of Schedule 22 to FA 2013 (Annual Tax on Enveloped Dwellings: appeals against amendment of Self-Assessment, discovery assessments etc)</li> </ul> <p>Or an appeal against a determination of any appeal listed above.</p>
Tax arrangements	<p>Arrangements are tax arrangements if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes of the arrangements.</p>
Tax enquiry	<p>The term 'tax enquiry' includes a compliance check or an enquiry into a return or claim into:</p> <ul style="list-style-type: none"> <li>• Self-Assessment returns for Income Tax and Capital Gains Tax (section 9A or 12AC TMA 1970). This includes 'deemed' checks or enquiries by virtue of section 12 AC (6) TMA 1970</li> <li>• a claim made otherwise than by being included in a return (paragraph 5 Schedule 1A TMA 1970)</li> <li>• company tax returns for Corporation Tax (paragraph 24 of Schedule 18 to FA 1988). This includes 'deemed' checks or enquiries by virtue of section 12 AC (6) TMA 1970</li> <li>• SDLT returns (para 12 Schedule 10 FA 2003)</li> <li>• Annual Tax on Enveloped Dwellings returns (para 8 Sch 22 FA 2013)</li> <li>• Inheritance Tax returns (see above)</li> </ul>

Tax period	Tax period means a tax year, accounting period or other period in respect of which tax is charged.