

Tax avoidance schemes – follower notices and accelerated payments (except partnerships)

We have given you this factsheet because you have used a tax avoidance scheme, and we will soon write to tell you about:

- taking corrective action to avoid a penalty – this is explained below in the section headed ‘About follower notices and accelerated payments’
- making a payment of the amount that relates to your use of the scheme

If you are a member of a partnership that has used a tax avoidance scheme, you may also need to read factsheet CC/FS25b, which relates to follower notices and accelerated payments for partnerships and partners.

Where this factsheet refers to tax, this includes Class 4 National Insurance contributions (NICs) that are collected through Self Assessment. From the tax year 6 April 2015 to 5 April 2016 it also includes most Class 2 NICs that are collected through Self Assessment.

This factsheet is one of a series. For the full list of factsheets in the series, go to www.gov.uk and search for ‘Compliance checks factsheets’.

What is a tax avoidance scheme

A tax avoidance scheme is a set of arrangements that try to use tax law to gain a tax advantage that is not intended by the legislation. We refer to such arrangements as ‘tax arrangements’ or ‘chosen arrangements’.

About followers, follower notices and accelerated payments

Tax legislation that affects those who have used a tax avoidance scheme was introduced on 17 July 2014. It aims to:

- improve the rate at which disputes about tax avoidance schemes are settled when the matter in dispute has already, in our view, been decided by a court or tribunal in another person’s case
- ensure that the tax (which we believe is due), is held by the exchequer during the dispute – removing the cash-flow advantage from users of avoidance schemes

Followers

When we have a large number of very similar tax avoidance cases, we often investigate ‘representative cases’; taking those cases to litigation if necessary. People who have used the same, or essentially similar tax avoidance schemes to the ones in those representative cases, are known as ‘followers’.

If we are successful in the litigation for representative cases, those disputes are resolved and the tax and/or National Insurance contributions are recovered in those cases. Before the legislation was introduced on 17 July 2014, there was little incentive for ‘followers’ to accept the court’s findings, and settle their own dispute with us.

Follower notices

If a court or tribunal has made a final ruling that an avoidance scheme does not achieve the tax advantage, the legislation introduced on 17 July 2014 allows us to give ‘follower notices’ to the ‘followers’.

A follower notice tells the follower that they will be liable to pay a penalty if they do not settle their dispute with us by amending their return or claim, or settling their appeal. This is called ‘taking corrective action’.

The amount of the penalty for not taking corrective action on time is equal to 50% of the tax in dispute (referred to as the “denied advantage” in the follower notice). You can find more information about this type of penalty in the section headed ‘Penalties for not taking corrective action’ on page 2 of this factsheet.

Accelerated payments

Those who have used a tax avoidance scheme may have to make a payment of the amount that relates to their use of that scheme, before the final amount has been agreed, or determined by a tribunal or court. Such a payment is known as an accelerated payment.

If we require an accelerated payment, we will send an accelerated payment notice to the user of a scheme. If the user of the scheme is a 'follower', we may also send a follower notice.

In some circumstances we charge penalties or surcharges for not paying the accelerated payment on time. You can find more information about these on pages 5 to 7 of this factsheet.

When we may send a follower notice

If a court or tribunal has made a final ruling that a tax avoidance scheme does not achieve the tax advantage, we may send a follower notice to the followers if certain conditions are met. Those conditions are that:

- there is a current compliance check (referred to in the legislation as a 'tax enquiry') into their return or claim, or there is an open appeal (Condition A)
- their return, claim or appeal is made on the basis that there is a particular tax advantage resulting from their chosen arrangements (Condition B)
- we believe that the final judicial ruling is relevant to their chosen arrangements (because they have used the same, or a similar scheme) (Condition C)
- we have not previously sent them a follower notice for the same scheme, the same tax advantage, the same tax period, and the same final judicial ruling – unless we had previously sent one and then withdrawn it (Condition D)

If a court or tribunal made the final ruling before the legislation was introduced on 17 July 2014, we can send a follower notice at any time up to and including 16 July 2016, or 12 months after the return or claim is received, or the appeal is made, whichever is later.

If a court or tribunal made the final ruling after the legislation was introduced, we can send a follower notice up to 12 months after the later of the date on which:

- the court or tribunal made the final ruling
- we received the return or claim, or the appeal was made

Telling you that you are subject to the follower notice rules

If you are subject to the follower notice rules, we will send you a follower notice, which will tell you how to take corrective action and when. It will also tell you what to do if you disagree with it.

Taking corrective action

The follower notice will tell you about taking the necessary corrective action to remove the tax advantage from your use of the avoidance scheme (the notice uses the terms 'counteract' or 'relinquish'). This will mean either amending your return or claim, or settling your appeal. It will also tell you that, if you do not take the necessary corrective action within 90 days of the date on which you receive the follower notice, you will be liable to pay a penalty.

If you make representations objecting to the follower notice, the date by which you need to take the corrective action may change. There is more information about making representations in the section headed 'What to do if you disagree with the follower notice' on page 4 of this factsheet.

If you do not take corrective action on time, you will be liable to a penalty equal to 50% of the tax (see the section below, headed 'Penalties for not taking corrective action').

Penalties for not taking corrective action

If you decide not to take corrective action on time, you will be liable to pay a penalty – unless we or the tribunal agree that you had reasonable grounds for not taking corrective action (see the section headed 'Appealing against the penalty if you disagree' on page 3 of this factsheet).

The penalty for not taking corrective action will be equal to 50% of the tax advantage that was the basis on which your return, claim or appeal was made.

If we charge you a penalty, we will send you a notice of penalty assessment telling you how we have worked out the amount of the penalty. We will normally do this once the amount of the tax advantage is known. In the case of an 'enquiry', this will be once the enquiry is concluded, and in the case of an appeal, this will be once the amount of tax and/or NICs is finally determined.

Reducing the penalty if you co-operate with us

We will reduce the penalty percentage rate if you co-operate with us before we send a notice of penalty assessment. In this context, co-operation includes:

- helping us work out the amount of the tax advantage
- amending your return or claim, or settling your appeal, to remove the tax advantage
- giving us the information to enable us to amend your return or claim to remove the tax advantage
- giving us the information to enable us to settle your appeal to remove the tax advantage
- giving us access to your records so that we can be satisfied that the tax advantage has been removed

We cannot reduce the penalty percentage rate to less than 10%.

Appealing against the penalty if you disagree

If we charge you a penalty for not taking corrective action, you will be able to appeal against it if you disagree.

You can appeal against the penalty if you believe that one or more of the following applies:

- Condition A, B or D has not been met in relation to the follower notice
- the final court or tribunal ruling specified in the follower notice is not relevant to the tax avoidance scheme that you used
- you received the notice after the deadline for us sending it to you (the deadline is shown in the follower notice)

If your tax liability is settled on the basis that you:

- achieve the tax advantage, then we will cancel the penalty
- do not achieve the tax advantage, then you will have to pay the penalty unless you have successfully appealed against it

You can find more information about appeals in factsheet HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree'. You can get a copy online, go to www.gov.uk and search for 'HMRC1'.

Please also read the following section headed 'The Human Rights Act and follower notice penalties'.

The Human Rights Act and follower notice penalties

Article 6 of the European Convention on Human Rights (ECHR) gives you certain rights when we are considering charging penalties that are based on a maximum of 70%, or more, of the relevant tax.

Although penalties for failing to comply with a follower notice are not covered by Article 6, we will administer these penalties in precisely the same way as penalties that are covered by Article 6.

We always welcome your co-operation in establishing your liability to a penalty. The degree to which you co-operate with us is entirely your choice. When we are considering penalties you have the right not to answer our questions. You must however provide us with documents or information that already exist, if we have a legal right to ask for them. If you do not co-operate with us, we may charge you the maximum penalty. In making a decision about how much you are going to co-operate, you have the right to get help from an adviser. If you do not already have an adviser, you may want to consider consulting one.

The amount of penalty we charge will depend on the degree to which you co-operate with us in quantifying, correcting and providing us with relevant information in respect of the tax advantage.

You have the right to have the matter of penalties dealt with, without unreasonable delay. We will tell you how much penalty is due when we have established the full extent of the tax advantage. If you disagree with the amount of the penalty you can appeal.

You can apply for publicly funded legal assistance or Legal Aid. In some circumstances, funding may be available to help you bring certain appeals before the tribunal. If you intend to appeal against the amount of the penalty, you may want to check whether your case qualifies for legal assistance and the type of help that may be available. We are not involved in decisions about whether or not your case will qualify for legal assistance. The way you can check what help is available and the qualifying conditions depend on

where you live in the United Kingdom (UK). You can find more information from Citizens Advice or you can apply for funded legal assistance or Legal Aid through a solicitor anywhere in the UK.

If there is anything you do not understand about these rights or what they mean for you, please tell the officer who gave you this factsheet straightaway.

What to do if you disagree with the follower notice

There is no right of appeal against a follower notice. However, you can make representations to us if you believe that one or more of the following applies:

- Condition A, B or D has not been met
- the final court or tribunal ruling specified in the notice is not relevant to the tax avoidance scheme that you used
- you received the notice after the deadline for us sending it to you

You can find details of these conditions and deadlines in the section headed 'When we may send a follower notice', on page 2 of this factsheet.

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

If you make representations **before** the date specified in the notice, and we do not withdraw the notice, the deadline for taking corrective action may be extended. The deadline will be the later of:

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

If the deadline for taking corrective action is extended, any penalty for not taking that action will apply from the extended deadline date.

The legislation for follower notices does not affect your rights of appeal to the tribunals and courts in relation to your tax liability. If you take such action and are successful – meaning that you achieve the tax advantage result that was the basis on which your return, claim or appeal was made – we will cancel any penalty that we have charged you for not taking corrective action on time.

When we may send an accelerated payment notice

We may send an accelerated payment notice to a person who has used an avoidance scheme if certain conditions are met. Those conditions are that:

- there is a current compliance check into their return or claim, or there is an open appeal (Condition A)
- the return or claim, or the appeal is made on the basis that there is a tax advantage from the avoidance scheme used (Condition B)
- and one or more of the following applies (Condition C)
 - we have given the person a follower notice
 - the person has used arrangements that are disclosable under the Disclosure of Tax Avoidance Schemes (DOTAS) legislation
 - the person is subject to a counteraction notice under the General Anti-Abuse Rule (GAAR)

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

Telling you about your accelerated payment

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

How we work out the amount of an accelerated payment

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

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

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

Paying what is due

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

If you make representations objecting to the accelerated payment notice, the date the payment is due may change. There is more information about this in the section headed 'What to do if you disagree with the accelerated payment notice' on page 7 of this factsheet.

If we send you a follower notice as well as an accelerated payment notice, you should pay the accelerated payment whether or not you are going to take corrective action. This is because you may be liable to late payment penalties or surcharges for late payment of the accelerated payment. The accelerated payment notice will tell you whether you will be liable to penalties or surcharges for paying late.

Problems paying

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

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

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

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

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

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

You can find more information about penalties and surcharges for not paying an accelerated payment below.

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

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

If your payment is not made in full on or before:

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

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

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

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

If your accelerated payment notice:

- relates to Income Tax or Capital Gains Tax
- is for the tax year 6 April 2009 to 5 April 2010 or earlier

and you do not pay the full amount shown in the notice, you will be liable to a surcharge. If we charge you such a surcharge, you will have to pay it as well as the accelerated payment.

If your payment is not made in full:

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

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

If your accelerated payment notice relates to:

- Income Tax or Capital Gains Tax and is for the tax year 6 April 2010 to 5 April 2011 or later
- Annual Tax on Enveloped Dwellings

and you do not pay the full amount shown in the notice, you will be liable to a penalty. If we charge you such a penalty, you will have to pay it as well as the accelerated payment.

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

If your payment is not made in full:

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

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

How we tell you about a surcharge or penalty

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

Letting us know about any special circumstances

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

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

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

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

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

What if you disagree with any surcharges or penalties that we have charged

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

Interest for paying late

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

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

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

What to do if you disagree with the accelerated payment notice

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

- the conditions for issuing the notice have not been met – these are shown in the section headed 'When we may send an accelerated payment notice' on page 4 of this factsheet
- the amount shown in the notice is not correct – if this is the case you will need to tell us what you think the correct amount is and why

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

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

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

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

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

What if you want to settle your tax affairs

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

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

About your appeal rights for your current compliance check or appeal

When you pay the accelerated payment, even though you may have decided not to take the corrective action referred to in the follower notice, this does **not** mean that your current compliance check or appeal is settled.

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

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

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

If we have sent a closure notice in respect of a compliance check or sent an assessment, determination or other type of decision and you have:

- appealed against the closure notice, assessment, determination or other decision
- asked us to postpone some or all of the tax in dispute

then the postponement of the tax in dispute is cancelled when we send you the accelerated payment notice. You will then have to pay all the tax that had previously been postponed by paying the accelerated payment. This is also the case if you decide not to take the corrective action referred to in the following notice.

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

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

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

General information

Customers with particular needs

If there is anything about your health or personal circumstances that may make it difficult for you to deal with this matter, please tell us. Telling us will mean that we can help you in the most appropriate way. For more details, go to www.gov.uk and search for 'additional needs'.

The taxes to which this factsheet relates

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

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

The Disclosure of Tax Avoidance Schemes (DOTAS) regulations and the General Anti-Abuse Rule (GAAR)

You can find more information about DOTAS online. Go to www.gov.uk and search for 'disclosure of avoidance'.

You can find more information about GAAR online. Go to www.gov.uk and search for 'GAAR arrangements'.