

Avoidance schemes – follower notices and accelerated payments for Income Tax and National Insurance contributions through PAYE

We have given you this factsheet because you have used a scheme to avoid tax and/or National Insurance contributions (NICs), 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 followers, follower notices and accelerated payments’
- making a payment of the amount that relates to your use of the scheme

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

About ‘tax avoidance’ and avoidance schemes

Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter – but not the spirit – of the law. Most tax avoidance schemes simply do not work. Those who engage in them can find they pay more than the tax they attempted to save – once HM Revenue and Customs has successfully challenged them.

The term ‘tax avoidance’ includes NICs avoidance.

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. The scope of that legislation was extended to cover NICs with effect from 12 April 2015. The legislation aims to:

- improve the rate at which disputes about avoidance schemes are settled where a principle on which the scheme relies has been shown in another person’s litigation to be ineffective
- remove the cash flow advantage from users of avoidance schemes by requiring an upfront payment of the disputed tax and/or NICs, so that it is held by the Exchequer during the dispute

Followers

When we have a large number of very similar avoidance cases, we often investigate ‘representative cases’; taking them to litigation if necessary. If the court or tribunal finds that the scheme doesn’t achieve the tax or NICs advantage in those cases, the disputes in those cases are settled. We can then recover the tax and/or NICs due.

‘Followers’ are people who have used:

- the same scheme that was used in a representative case
- a different scheme but where a principle in that scheme is sufficiently similar to the scheme used in a representative case

Before the legislation was introduced on 17 July 2014, there was little incentive for ‘followers’ to accept that the court or tribunal’s findings in a representative case meant that their own use of the avoidance scheme didn’t achieve the tax or NICs advantage.

Follower notices

If a court or tribunal has made a final ruling that an avoidance scheme does not achieve the tax or NICs advantage, the legislation 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 don't settle their dispute with us. The amount of the penalty for not taking corrective action on time is equal to 50% of the tax or NICs 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 3 of this factsheet.

The legislation for follower notices doesn't affect your rights of appeal to the tribunals and courts in relation to your tax or NICs liability. You can find more information about this in the section headed 'What to do if you disagree with the follower notice' on page 3 of this factsheet.

Accelerated payments

Those who have used an avoidance scheme may be required 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 for not paying the accelerated payment on time. You can find more information about these on pages 6 to 7 of this factsheet.

When we may send a follower notice

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

- Condition A - there is
 - a current compliance check, referred to in the legislation as a 'tax enquiry', into their return or claim
 - a "relevant contributions dispute" about a NICs liability; read the next section of this factsheet
 - an open appeal against a tax assessment, a determination, or a decision about NICs liability
- Condition B – the return, claim or appeal is made on the basis that there is a particular tax and/or NICs advantage resulting from their chosen arrangements

In a relevant contributions dispute, Condition B is also met if a person disputes liability for NICs on the basis that a particular NICs advantage results from particular arrangements - regardless of whether the notification of dispute was given on that basis
- Condition C – we believe that the final judicial ruling is relevant to their chosen arrangements
- Condition D – we have not previously sent them a follower notice for the same scheme, the same tax or NICs advantage, the same tax period, and the same final judicial ruling - unless we had previously sent one and then withdrawn it

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

What is a relevant contributions dispute

For tax, follower notices and accelerated payment notices can only be given where there is either an open enquiry or an open appeal. As there is no direct equivalent of an enquiry for NICs, paragraph 6 of Schedule 2 to the National Insurance Contributions Act 2015 introduces the concept of a “relevant contributions dispute”. This means that, where there is a dispute about whether NICs are due in relation to an avoidance scheme, we can send follower notices and accelerated payment notices before an appealable NICs decision has been 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. The notice 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 or NICs advantage from your use of the avoidance scheme (the follower notice uses the terms ‘counteract’ or ‘relinquish’ the denied advantage). This will mean taking whichever of the following actions is relevant:

- amending your return or claim
- settling your appeal
- entering into a written agreement with HMRC
- making a payment – only if there is a relevant contributions dispute

If you make representations objecting to the follower notice, the date by which you need to take the corrective action may change. You can find more information about making representations in the next section of this factsheet.

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 isn’t relevant to the 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 don’t 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 doesn’t affect your rights of appeal to the tribunals and courts in relation to your tax or NICs liability. If you take such action and are successful – meaning that you achieve the tax or NICs advantage result that was the basis on which your return, claim, relevant contributions dispute, or appeal was made – we will cancel any penalty that we have charged you for not taking corrective action on time.

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 it was reasonable in the circumstances for you not to have taken corrective action (read the section below headed ‘Appealing against the penalty if you disagree’).

The penalty for not taking corrective action will be equal to 50% of the tax or NICs 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 and tell you how we have worked out the amount of the penalty. We will normally do this once your tax affairs are settled. If the follower notice relates to:

- a compliance check, this will be once the compliance check is concluded
- a relevant contributions dispute, this will be once the dispute is settled
- an appeal, this will be once the amount of tax and/or NICs that is under appeal is finally determined

Reducing the penalty if you co-operate with us

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

- providing us with reasonable help in working out the amount of the tax advantage
- counteracting the denied advantage after you have become liable to a penalty (or relinquishing the denied advantage if your follower notice relates to an appeal)
- giving us information that enables us to take corrective action
- giving us information that enables us to enter into an agreement with you to counteract the denied advantage
- giving us access to tax records so that we can make sure that the denied advantage is fully counteracted

The penalty percentage rate that we charge can never be 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 amount of the penalty. You can also appeal 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 isn't relevant to the avoidance scheme that you used
- you received the follower notice after the deadline for us sending it to you (the deadline is shown in the follower notice)
- it was reasonable, in all the circumstances, for you not to have taken the necessary corrective action

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

- achieve the tax or NICs advantage, then we will cancel the penalty
- don't achieve the tax or NICs 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'.

The Human Rights Act and follower notice penalties

Article 6 of the European Convention on Human Rights 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 not taking corrective action on time in response to a follower notice are not covered by Article 6, we will administer them in precisely the same way as penalties that are covered by Article 6.

We always welcome your co-operation in taking corrective action, and in providing information about the tax advantage. If we charge you a penalty for not taking corrective action, the amount of the penalty will depend on the degree to which you co-operate with us. This is explained in the section above 'Reducing the penalty if you co-operate with us'.

We will also welcome any help that you give us when establishing the amount of any penalty that we charge you for not taking corrective action on time. When we are considering penalties you have the right not to answer our questions. The degree to which you help us is entirely your choice. In making a decision about how much you are going to help, you have the right to consult an adviser. If you do not already have an adviser, you may want to consider consulting one.

You have the right to have the matter of penalties dealt with without unreasonable delay. If we charge you a penalty, we will tell you how much penalty is due when we have established the full extent of the co-operation that you have given, and the amount of the tax advantage. If you disagree with 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 we charge you a penalty and 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.

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 set out at section 219 of the Finance Act 2014 and Schedule 2 to the National Insurance Contributions Act 2015. The conditions are that:

- Condition A – there is
 - a current compliance check (referred to as an ‘enquiry’) into their return or claim
 - a ‘relevant contributions dispute’ about a NICs liability (read the section ‘What is a relevant contributions dispute’, on page 3 of this factsheet)
 - an open appeal against a tax assessment, a determination, or a decision about NICs liability
- Condition B – the return or claim, or the appeal is made on the basis that there is a tax and/or NICs advantage from the avoidance scheme used

In a relevant contributions dispute, Condition B is also met if a person disputes liability for NICs on the basis that a particular NICs advantage results from particular arrangements - regardless of whether notification of dispute was given on that basis.

- Condition C – one or more of the following applies:
 - 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)

Telling you about your accelerated payment

If we need you to make an accelerated payment, we will send you an accelerated payment notice which will tell you:

- how much you need to pay and when
- how we have worked out the amount you need to pay
- what you can do if you disagree with it

How we work out the amount of an accelerated payment

The amount payable will be the amount relating to the tax or NICs advantage that the use of the avoidance scheme tries to achieve. The legislation refers to this as the:

- ‘understated tax’ where there is a tax enquiry
- ‘understated contributions’ where there is a relevant contributions dispute
- ‘disputed tax’ or ‘disputed contributions’ where there is an open appeal

We will calculate the amount to the best of our information and belief. If we don’t 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 or relevant contributions dispute 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 or relevant contributions dispute 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 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. You can find 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 for late payment of the accelerated payment. The accelerated payment notice will tell you whether you will be liable to penalties for paying late.

Problems paying

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

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

If there is a current compliance check or relevant contributions dispute and you don't pay the full amount shown in your accelerated payment notice by the date it is due, you will be liable to pay a penalty. If we charge you a penalty you will have to pay it as well as the accelerated payment.

If your payment isn't made in full on or before:

- the date it is due, you will be liable to pay a penalty equal to 5% of the amount you still owe
- 5 months of the date it is due, you will be liable to pay 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 pay 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 and NICs covered by the accelerated payment legislation.

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

If your accelerated payment notice is for the tax year 6 April 2010 to 5 April 2011 or later and you don't pay the full amount shown in the notice on time, 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.

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 isn't made in full:

- by the penalty date, you will be liable to pay a penalty equal to 5% of the amount you still owe
- on or before 5 months from the penalty date, you will be liable to pay a penalty 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 pay a penalty equal to 5% of the amount that you still owe – this is as well as the 2 previous 5% penalties

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

How we tell you about a penalty

We will send you a notice of penalty assessment to tell you how much the 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 working out the penalty, you should tell us straightaway.

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

We will not charge you any 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 isn't, 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 penalty. If we have already charged you a penalty for not paying on time, we will cancel it.

What if you disagree with any penalties that we have charged

If we charge you any 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 don't charge interest for late payment of the accelerated payment itself. However, we do charge interest for late payment of tax and NICs – from the date the amount was originally due, until the date it is paid.

When your tax and/or NICs position is settled, we will work out whether there is any interest for you to pay.

For interest purposes, where the accelerated payment relates to:

- Income Tax, any amount you pay in respect of the accelerated payment notice is treated as if it were payment of tax
- NICs, any amount paid is payment of NICs

This means that interest will stop accruing on the amount of tax and/or NICs that is equal to the amount of accelerated payment you pay, from the date you pay it.

We may also charge interest on the late payment of any 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 5 of this factsheet
- the amount shown in the notice isn't correct – if this is the case you will need to tell us what you think the correct amount is and why

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

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

However, if you make representations **before** the date the payment is due, and we don't 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

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

It is entirely up to you whether you settle your affairs. If you don't want to settle, then the compliance check, relevant contributions dispute or appeal will remain open.

About your appeal rights for your current compliance check, relevant contributions dispute or appeal

When you pay the accelerated payment notice, this doesn't mean that the compliance check, relevant contributions dispute or appeal is settled.

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

- there is a current compliance check for tax, you will still have your full appeal rights if you don't agree with the outcome of that check
- there is a current 'relevant contributions dispute', you will still have your full appeal rights if you don't agree with the outcome of that dispute
- you have already appealed against a tax assessment or determination or a NICs decision, you will still have your full appeal rights

What if you have appealed and we had postponed the Income Tax (PAYE) 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 notice.

What if we have applied to the court to recover NICs due and the court has adjourned proceedings

If we believe that NICs are due but you disagree, we may have applied to the court to start proceedings to recover those NICs. We call this 'protecting the debt'.

If we have applied to the court to protect the debt, civil proceedings for the recovery would have been suspended until a formal decision is made and any appeal is either settled by agreement, or finally determined by a tribunal or court.

The accelerated payments legislation doesn't allow the court to adjourn proceedings to recover NICs if they have been included in an accelerated payment notice. So, when we give an accelerated payment notice that includes NICs for which we have protected the debt, any adjourned proceedings cease to be adjourned from the date that the accelerated payment is due to be paid. This means that the NICs are then due and payable.

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

If a tribunal or court decides that the scheme does produce the 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 that 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.

Accelerated payments for disputed NICs and the effect on claims to social security benefits

If the amount of accelerated payment you pay includes NICs for employees who earned up to the upper earnings limit, we will allocate the amounts to their National Insurance accounts so that they can be taken into account for any claims to social security benefits.

We don't allocate any amounts paid which are above the upper earnings limit as they are not used to work out whether a person is entitled to benefits.

If the amounts allocated increase the amount of a benefit or give entitlement to a benefit, and at a later date we accept that NICs are not due and repay the accelerated payment, the Department for Work and Pensions will not ask for benefits already paid to you to be repaid. However, they will work out what should be payable as though the accelerated payment amounts had not been allocated to the employee's National Insurance account. If the benefit would not have been payable, they will stop paying the benefit. If a smaller amount of benefit would be payable they will start paying the smaller amount.

General information

Customers with additional needs

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

The taxes to which this factsheet relates

This factsheet relates to accelerated payments for Income Tax and NICs through PAYE.

Accelerated payments also apply to Annual Tax on Enveloped Dwellings, Capital Gains Tax, Corporation Tax, Class 4 NICs, Income Tax (Self Assessment including Class 4 and most Class 2 NICs), Inheritance Tax and Stamp Duty Land Tax. 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 online about:

- DOTAS, go to **www.gov.uk** and search for 'disclosure of avoidance'
- GAAR, go to **www.gov.uk** and search for 'GAAR arrangements'