



# Avoidance schemes - accelerated payments for Income Tax and National Insurance contributions through PAYE

We've given you this factsheet because you've used a scheme to avoid tax and/or National Insurance contributions (NICs). We'll soon ask you to make a payment of the amount that relates to your use of the scheme.

This factsheet is one of a series of compliance checks factsheets. For the full list of factsheets in the series, go to [www.gov.uk](http://www.gov.uk) and search for 'Compliance checks factsheets'.

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## About tax avoidance schemes

An avoidance scheme is a set of arrangements that try to use tax and/or NICs legislation to gain an advantage that isn't intended by the legislation.

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## About accelerated payments

Legislation that affects those who have used an 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 means that those who have used an avoidance scheme may have to make a payment of the amount that relates to their use of the scheme, before the final amount has been agreed or determined. Such a payment is known as an accelerated payment.

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## When we may issue an accelerated payment notice

We may issue an accelerated payment notice to a person who has used an avoidance scheme if 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 (see 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 or claim, or the appeal is made on the basis that there's 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 the person had originally notified the relevant contributions dispute on that particular basis.

- (Condition C) one or more of the following applies
  - we've given the person a follower notice (this is explained in factsheet CC/FS27)
  - 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)

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## About relevant contributions disputes

For tax, 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'. Creating this concept allows us to give an accelerated payment notice in circumstances where there's a dispute about NICs, but before a NICs decision has been made which can be appealed against.

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## Telling you about your accelerated payment

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

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## 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:

- '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'll 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'll normally repay any amount that you've overpaid. We'll also pay you any interest that is due to you in respect of the amount overpaid.

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## Paying what's due

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

If you make representations objecting to the accelerated payment notice, the date the payment is due may change. There's more information about this in the section headed 'What to do if you disagree with the accelerated payment notice' on page 4 of this factsheet.

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## Problems paying

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

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

If there's 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'll be liable to pay a penalty. If we charge you a penalty you'll 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'll be liable to pay a penalty equal to 5% of the amount you still owe
- 5 months of the date it is due, you'll 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'll be liable to pay 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 and NICs covered by the accelerated payment legislation.

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## **Penalties for not paying the accelerated payment on time if there's 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'll be liable to a penalty. If we charge you a penalty you'll 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'll 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'll 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'll 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

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

### **How we tell you about a penalty**

We'll send you a notice of penalty assessment to tell you how much the penalty is and how we've 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 penalty, you should tell us straightaway.

### **When we won't charge a penalty for not paying the accelerated payment on time**

We won't 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 something that has stopped a person from meeting a tax obligation on time, which they took reasonable care to meet. This might be due to circumstances outside their control, or a combination of events. Once the reasonable excuse has ended, the person must put things right without any unnecessary delay.

Whether a person has a reasonable excuse depends on the particular circumstances in which they failed to meet the tax obligation, and their particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else.

If you think you have a reasonable excuse please tell us. If we accept that you have a reasonable excuse, we won't charge you a penalty. If we've already charged you a penalty for not paying on time, we'll cancel it.

### **What if you disagree with any penalties that we've charged**

If we charge you any penalties for paying the accelerated payment late, you'll 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 you can do if you disagree'. Go to [www.gov.uk](http://www.gov.uk) and search for 'HMRC1'.

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## **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'll work out whether there's 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 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 penalties.

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## **What to do if you disagree with the accelerated payment notice**

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

- the conditions for issuing the notice have not been met – these are shown in the section headed 'When we may issue an accelerated payment notice', on page 1 of this factsheet
- the amount shown in the notice is not correct - if this is the case you'll 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'll then consider what you say and let you know our findings. When you write to us, please:

- give us as much information as possible about your representations
- send copies of any documentary evidence that supports your representations

You cannot make representations once the 90 calendar days has passed. This means that, once we've told you what our findings are, you'll not be able to make any additional representations if the 90 calendar days has already passed by then. So please make sure that you give us all relevant information when you make your representations.

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.

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## **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'll work with you to settle the compliance check, relevant contributions dispute or appeal.

It's 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.

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## **About your appeal rights in respect of 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 can't 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'll 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'll still have your full appeal rights if you don't agree with the outcome of that dispute
- you've already appealed against a tax assessment or determination or a NICs decision, you'll still have your full appeal rights

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## **If you've appealed and we had postponed the Income Tax (PAYE) that you're disputing**

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

- 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'll then have to pay all the tax that had previously been postponed by paying the accelerated payment notice.

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## **If we've 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've applied to the Court to protect the debt, civil proceedings for their 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've been included in an accelerated payment notice. So, when we give an accelerated payment notice that includes NICs for which we've 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.

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## **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've 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.

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## **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'll 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 aren't due and repay the accelerated payment, the Department for Work and Pensions won't ask for benefits already paid 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 wouldn't 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.

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## General information

### Customers with particular needs

If there's 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](http://www.gov.uk/dealing-hmrc-additional-needs)

### The taxes to which this factsheet relates

This factsheet relates to accelerated payments for Income Tax and National Insurance contributions through PAYE.

Accelerated payments also apply to Annual Tax on Enveloped Dwellings, Capital Gains Tax, Corporation Tax, Class 4 NICs, Income Tax (Self Assessment), 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 legislation (DOTAS) and the general anti-abuse rule (GAAR)

You can find more information online about:

- DOTAS, go to [www.gov.uk](http://www.gov.uk) and search for 'disclosure of avoidance'
- GAAR, go to [www.gov.uk](http://www.gov.uk) and search for 'GAAR arrangements'