



## **Accelerated payments of tax associated with schemes covered by the DOTAS rules or counteracted under the GAAR**

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### **Who is likely to be affected?**

Taxpayers who have sought tax advantages through tax avoidance schemes that fall within the Disclosure of Tax Avoidance Schemes (DOTAS) rules or are counteracted under the General Anti-Abuse Rule (GAAR).

### **General description of the measure**

This measure extends requirement for taxpayers to pay disputed tax upfront to any disputed tax associated with schemes covered by the DOTAS rules or counteracted under the GAAR.

### **Policy objective**

The measure widens the circumstances where the disputed tax sits with the Exchequer during a dispute, putting all taxpayers involved in avoidance schemes on the same footing (currently, repayments can be withheld while the matter is resolved but a taxpayer can include the tax advantage in their initial self-assessment and reduce their liability). This new power will remove the cashflow advantage for the taxpayer of holding onto the disputed tax during an avoidance dispute. There is no change to the tax liability owed. This will make the tax system fairer for all compliant taxpayers and secure tax revenues for the provision of public services.

### **Background to the measure**

Budget 2013 announced the Government's intention to give HM Revenue & Customs (HMRC) the power to issue a notice to a taxpayer to the effect that a previously decided case also determines their dispute, and that they should therefore settle their own dispute. A consultation was held during August and September 2013.

At Autumn Statement 2013 the Government announced that accelerated (upfront) payments would apply to those taxpayers who did not settle in response to the notice, and, in addition, the government announced that there would be further consultation in relation to how the accelerated payments measure could be applied more widely to taxpayers who have used avoidance schemes. The consultation, carried out from 24 January to 24 February 2014, proposed the extension of accelerated payments to schemes falling within DOTAS and schemes that HMRC counteracts under the GAAR.

## **Detailed proposal**

### **Operative date**

This measure will have effect from the date that Finance Bill 2014 receives Royal Assent. They will be applicable to all cases where there is an open enquiry or open appeal on or after the day of Royal Assent.

## Current law

Most people pay their tax upfront – PAYE, VAT, interest on bank accounts, and some pay on account; for most people it is a case of pay now, dispute later. In certain circumstances, for example where a repayment is claimed, HMRC may retain the tax claimed whilst an enquiry is pursued. In addition, whilst a case is under appeal the taxpayer may postpone some or all of the tax in dispute, but HMRC may seek a tribunal decision to put some or all of that amount into charge during the dispute.

However, under the self assessment systems for income tax, Class 4 National Insurance contributions, capital gains tax, corporation tax, stamp duty land tax and the annual tax on enveloped dwellings the taxpayer can usually claim the benefit of the tax advantage as part of their self assessed liability, and retain the cash benefit whilst the dispute is resolved.

## Proposed revisions

Legislation will be introduced in Finance Bill 2014 to enable HMRC to issue a 'Notice to Pay' to any taxpayer for whom there is an open enquiry, or the matter is under appeal, and who has claimed a tax advantage by the use of arrangements that:

- fall to be disclosed under DOTAS, or
- HMRC counteracts under the GAAR following an opinion of the GAAR Advisory Panel that, in the Panel's opinion, the arrangements are not a reasonable course of action.

The notice will require the taxpayer to pay the tax in dispute within 90 days, or a further 30 days where the taxpayer requests that HMRC should reconsider the amount of the payment notice. Where the matter is under appeal, the measure will operate so as to remove any postponement of the disputed tax. Penalties will apply for late payment.

## Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	+340	+1230	+1300	+715	+385
	These figures are set out in Table 2.1 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings documents published alongside Budget 2014.				
<b>Economic impact</b>	This measure may impact the timing of saving and consumption decisions made by individuals using the affected avoidance schemes.				
<b>Impact on individuals and households</b>	It is estimated that accelerated payment notices relating to existing avoidance cases currently under dispute will be issued to approximately 33,000 individual taxpayers concerning £5.1 billion of tax under dispute under this measure and the Autumn Statement 2013 measure applying accelerated payments to follower cases.  Estimates of the distributional impacts of these measures are affected by the use of avoidance schemes that deflate the income reported on self-assessment returns. Having noted this caveat, analysis shows that the population of individuals affected: <ul style="list-style-type: none"><li>• have a mean gross income of £262,000, compared to £29,000 for the wider income tax paying population;</li></ul>				

	<ul style="list-style-type: none"> <li>around 85 per cent of individuals have multiple sources of income, with employment income (including self-employment) the predominant income source for 54 per cent and non-employment, non-pension income the predominant income source for 42 per cent of the individuals affected respectively, compared to 78 per cent and 5 per cent for the wider income tax paying population respectively.</li> </ul>
<b>Equalities impacts</b>	<p>These measures will predominantly affect individuals with above average incomes. It will therefore have greater effect on those protected equality groups who are overrepresented in more affluent populations.</p> <p>Of the protected characteristics, HMRC only hold taxpayer data on age and gender. Analysis shows that of the individuals affected by these measures:</p> <ul style="list-style-type: none"> <li>85 per cent are male and 15 per cent are female</li> <li>The majority (87 per cent) are aged between 35 and 64. 5 per cent are under 35 and 9 per cent are 65 or over.</li> </ul>
<b>Impact on business including civil society organisations</b>	<p>This measure will have no impact on business and civil society organisations who are undertaking normal commercial transactions; it will only impact on the small number of businesses that are using avoidance schemes affected by this measure.</p> <p>It is estimated that accelerated payment notices relating to existing avoidance cases currently under dispute will be issued to around 10,000 corporates for £2.1bn of tax under dispute under this measure and the Autumn Statement 2013 measure applying accelerated payments to follower cases.</p>
<b>Operational impact (£m) (HMRC or other)</b>	<p>This measure and the Autumn Statement 2013 follower measure will require Payment Notices to be issued to around 43,000 taxpayers involved in avoidance schemes currently under dispute with HMRC. The vast majority of notices are expected to be issued over the course of 2014-15 and 2015-16.</p> <p>These measures are expected to prompt a range of different legal challenges including judicial review proceedings, an increase in closure applications to the Tribunal and disputed enforcement activity. Flexible legal resource options are being considered to meet the expected demands of this work. This legal resource will be increased and adapted depending on the scale and scope of any legal challenges.</p> <p>The Government will ensure that Departments have the necessary resources to deliver this key policy successfully.</p>
<b>Other impacts</b>	<p><u>Small and micro business assessment</u>: small and micro businesses firms will only be affected if they participate in tax avoidance schemes.</p> <p>Other impacts have been considered and none have been identified.</p>

## **Monitoring and evaluation**

The measure will be kept under review through regular communication with affected taxpayer groups.

Accelerated payments will be monitored through monitoring of disclosures of new avoidance schemes to circumvent the measure, and through regular communication with affected taxpayers and practitioners.

## **Further advice**

If you have any questions on accelerated payments, please contact Brian New on 03000 536935 (email [brian.new@hmrc.gsi.gov.uk](mailto:brian.new@hmrc.gsi.gov.uk)) or contact David Edney on 03000 585985 (email [david.edney1@hmrc.gsi.gov.uk](mailto:david.edney1@hmrc.gsi.gov.uk)).