



HM Revenue  
& Customs

# Tackling marketed tax avoidance

**Summary of Responses**

March 2014

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## Foreword

This Government has made considerable progress in tackling tax avoidance. We have sent out consistent, strong messages that avoidance is unacceptable, and we have been prepared to take tough action to bear down on the behaviour of a minority who persist in promoting or seeking out ways to avoid tax, to the detriment of the vast majority of honest taxpayers.

This action is bearing fruit. HMRC has a very successful record in defeating tax avoidance schemes in Tribunals and Courts; and this is an important part of HMRC's overall compliance effort in securing more than £65 billion in compliance yield since the start of this Parliament; and forecast to reach £120 billion by the end of 2015/16.

The consultation 'Tackling Marketed Tax Avoidance', published on 24 January, set out the proposed next steps. At its heart is the proposition that there is no presumption that the taxpayer should hold the disputed tax while an avoidance dispute is being resolved, particularly in the light of increasing evidence that those disputes will be resolved against the taxpayers involved.

I am grateful to all those who took the time to respond to the consultation document or make direct representations to HMRC. I appreciate that some respondents contended that all tax should sit with the taxpayer until it is determined by a tribunal or court that they have to pay it. We do not agree with this view. It is not what, in practice, happens now in many cases; and, in the clearly defined circumstances identified in the consultation document, we believe that the case for extending the circumstances where disputed sums are held by the Exchequer is convincing.

We will, therefore, be taking forward the proposals in the consultation, which have been improved by suggestions in the responses. These new measures, allied to those on 'High Risk Promoters' represent a further step forward, and we will continue to look for new ways to prevent, deter and counteract avoidance.



**David Gauke MP**  
**Exchequer Secretary to the Treasury**

# 1. Executive Summary

1.1 The consultation “Tackling marketed tax avoidance” was published on 24 January 2014, and closed on 24 February 2014. It set out proposals, including draft legislation, to implement the Chancellor’s Autumn Statement announcement that accelerated payment of tax would be required from taxpayers involved in avoidance disputes where a ‘follower notice’ has been issued. It also included proposals to extend accelerated payment to taxpayers involved in avoidance schemes:

- that are within the Disclosure of Tax Avoidance Schemes (DOTAS) regime; or
- Where HMRC is undertaking counteraction under the General Anti-Abuse Rule (GAAR).

The Government announced in The Budget that it would introduce legislation in the Finance Bill to implement these proposals.

1.2 Over 840 responses were received, including just over 400 from a campaign website.

1.3 In addition to the specific content of the consultation, the responses also addressed points relating to the draft clauses in respect of ‘follower notices’, also published on 24 January 2014 as part of the Government’s response to the consultation ‘Raising the stakes on tax avoidance’. The Government’s responses on those points are included in this document as they relate to the proposals for accelerated payments.

1.4 The questions raised in the consultation covered a range of issues in relation to the aims and design of the proposals.

1.5 Chapter 2 summarises the responses and sets out some overarching and general comments made in response to the proposals. Chapters 3 and 4 provide more detail about the replies to the specific questions and the Government’s response.

1.6 Chapter 5 sets out next steps, and more information about HMRC’s plans to deliver these measures is set out in Annex C.

## 2. Introduction

### Tackling marketed tax avoidance

- 2.1 The Government has made clear that it will take a robust approach to tackling tax avoidance.
- 2.2 To this end, the Government has taken a number of major steps, including the introduction of the General Anti-Abuse Rule (GAAR), new rules to tackle 'disguised remuneration' and closing down a number of loopholes. All of this is expected to bring in several billion pounds worth of revenue to the Exchequer that might otherwise have been lost to tax avoidance.
- 2.3 However, as this consultation and the consultation 'Raising the stakes on tax avoidance' show, there is more to do; particularly to tackle behaviours involving marketed avoidance schemes. Promoters devise schemes, often complex and contrived, that attempt to exploit certain features of the tax system – for example by trying to generate a claim for tax relief for far more than the expenditure incurred – and, at their most extreme and abusive, look for loopholes to no other purpose than to avoid paying the tax that should be due.
- 2.4 The high level of complexity and contrivance inevitably means that these schemes are difficult to analyse and challenge, but despite this HMRC has a very successful record. Around 80% of cases that have been decided by the tax tribunals and courts in recent years have been won by HMRC, and many others settle without litigation, but this often follows several years of enquiry, investigation and litigation, during which time the majority of the taxpayers involved have been able to enjoy the use of the tax that they were trying to avoid.
- 2.5 The Government's view is that this position is unacceptable. The current system of self assessment, enquiries and appeals, and the ability to apply for postponement of tax while an appeal is resolved, was not designed to assist those who contrive complex arrangements with the purpose of avoiding tax, retaining the cash advantage in the meantime.
- 2.6 The Government's proposals therefore have the simple objective of changing the presumption of where the tax sits, so that anyone who enters into an avoidance scheme will have to pay over the tax in dispute. This already happens where the taxpayer claims a repayment – HMRC can under current legislation deny some or all of a claimed repayment

while a dispute is resolved. The new proposals put all taxpayers involved in tax avoidance on the same footing.

- 2.7 The consultation, which ran from 24 January to 24 February 2014, proposed that tax should be payable by the taxpayer in avoidance disputes whilst the dispute is being resolved where one or more of three circumstances applies:
- taxpayers in receipt of a 'follower notice';
  - taxpayers claiming a tax advantage from arrangements that fall within the DOTAS rules; and
  - taxpayers whose arrangements are being counteracted by HMRC under the GAAR.
- 2.8 The Government proposes to introduce legislation to this effect in the 2014 Finance Bill, and to apply the legislation to all disputes meeting one or more of those criteria, whether or not the dispute was in progress before or after Royal Assent.

## Overview of responses

- 2.9 HMRC received 847 responses to the consultation including written responses and also comments during meetings. A breakdown of the capacities in which respondents made their comments is below:
- 12 from representative bodies
  - 29 from consultants
  - 245 from accountancy firms
  - 5 from law firms
  - 547 from individuals
  - 9 from other businesses
- 2.10 A list of respondents to the consultation, excluding individuals, is in Annex A.
- 2.11 The Government is grateful for the responses to the consultation document.
- 2.12 A significant number of responses acknowledged the underlying policy issue and agreed with the Government that the behaviour that underpins these avoidance schemes needs to be addressed, although there was disagreement about the approach to take.

- 2.13 A number of respondents made valuable points, for which the Government is grateful. A number of firms and organisations also met with HMRC to discuss the proposals in more detail and provide further insight. Some changes have been made to the proposals as a result.
- 2.14 However, many responses did not engage with the detail of the consultation, instead contending that there was no problem to address. This was based on three principal contentions:
- All taxpayers are entitled to have their dispute considered and resolved without being forced to pay over the tax in the meantime, irrespective of the nature of the dispute, and that in effect the taxpayer would be treated as being in the wrong until they were able to prove their case;
  - Any delays are caused by HMRC's "slow and tardy response" and not by taxpayers, advisers and scheme promoters; and
  - HMRC already has adequate powers to force progress in these types of dispute and this gave more power and discretion than was necessary.
- 2.15 The Government does not accept these contentions. There is ample evidence that those who enter into these schemes do so in the expectation that they will, as a minimum, keep hold of the tax for many years, exploiting the current structure of the enquiry, appeals and postponement legislation. The Government is not prepared to let this continue.
- 2.16 HMRC can under current law deny repayments claimed while a dispute is in progress. It is also the case that many taxpayers pay their tax upfront under PAYE, or through deduction of tax at source from interest. These proposals therefore introduce no new principle – instead they extend the current circumstances where the Exchequer holds the disputed tax.
- 2.17 The Government has examined the statement that HMRC's existing powers are adequate, but has concluded that they are not sufficient to deal effectively with avoidance schemes marketed to a wide base of taxpayers.
- 2.18 HMRC currently has powers in section 28C of Taxes Management Act (TMA) 1970 to issue a determination of tax where there has been no return submitted – but that cannot be applied to these avoidance cases, where returns will have been submitted, claiming the tax advantage from the avoidance scheme.



- 2.19 Section 9C of TMA permits HMRC to amend a taxpayer's self assessment where tax is at risk. This power is applicable in circumstances where HMRC believes that the subsequent settlement of the liability may be in jeopardy (for example, the taxpayer may leave the UK). This is not applicable to the generality of avoidance cases.
- 2.20 Where there is an appeal, the taxpayer may make a postponement application under section 55 of TMA. If HMRC disagrees with the postponement, the matter must be resolved by the tribunal. Therefore, opposing postponement applications in many thousands of cases under the current rule would impose a substantial burden on the resources of the Tribunal Service. Furthermore this route can only be used where there is an appeal and not where an enquiry is still open.
- 2.21 In the vast majority of cases there is an open enquiry rather than an appeal. HMRC has been criticised for delaying the issue of closure notices. However, as a number of recent published tribunal and court decisions show, these cases involve complex and contrived arrangements that take a significant length of time to resolve. HMRC cannot issue a closure notice prematurely as that would risk the wrong amount of tax arising from the return.
- 2.22 Some responses pointed to HMRC's ability under section 28ZA of TMA to refer matters to the tribunal during an open enquiry. However, this would make little impact on the overall problem in that it would to a large extent require consideration of the substantive tax point at issue.
- 2.23 The Government has, therefore, concluded that further measures are necessary.
- 2.24 There was also significant criticism of what some have argued are the 'retrospective' nature of the proposals - that is, their application to disputes already in progress at the time that the legislation will pass into law, particularly in relation to schemes disclosed under DOTAS. There was also a suggestion that HMRC should offer an "amnesty for historic [tax avoidance]."
- 2.25 The Government does not agree that the proposals are retrospective. They do not change the underlying tax liability. Where an accelerated payment is made and the taxpayer subsequently wins their dispute the tax will be repaid with interest – no different to the situation where, currently, a repayment is denied whilst the dispute is resolved. Application of the proposals to existing disputes will ensure that all taxpayers in an avoidance dispute after Royal Assent will be in the same position, irrespective of when their dispute began.

- 2.26 Neither does the Government see any case for giving tax avoiders an amnesty for past schemes.
- 2.27 Similar concerns were expressed in relation to the proposals regarding 'High Risk Promoters'. It is argued that the proposals have a 'retrospective' nature because they consider whether or not the promoter's behaviour in the previous three year period triggers a threshold condition.
- 2.28 The Government does not agree. The triggering by a promoter of a threshold condition enables HMRC to issue a conduct notice designed to affect the promoter's future behaviour. It does not affect its past behaviour or its tax liability.
- 2.29 Concern was also expressed that once the tax was in the hands of the Exchequer there would be no incentive for HMRC to act with expedition to resolve the dispute. The Government agrees that these disputes should be resolved quickly and effectively. HMRC will, as part of its plan to deliver these measures, commit additional resources to progress cases to resolution more quickly. Annex C provides further detail of how HMRC will do this.
- 2.30 Some responses suggested that these measures might be more acceptable as a temporary response to a short term problem, and proposed that a 'sunset clause' should be enacted.
- 2.31 The introduction of accelerated payment is intended to apply into the future and there is no reason for it to end at a particular date. Similarly, there is no principled reason why follower notices should not continue in the future if the behaviour that they address is found to persist. Therefore, the government does not see a case for a specific 'sunset clause' now, but as with all tax policy, will keep these measures under review ascertain what effect they are having.

## 3. Responses - Accelerated Payment for 'follower cases'

### Background

- 3.1 The "Tackling marketed tax avoidance" consultation set out the detail of the proposals, together with draft legislation, to implement the Chancellor's 2013 Autumn Statement announcement that payment of the disputed tax would be required from anyone subject to a 'follower notice'.
- 3.2 The 'follower notice' proposals were first announced in Budget 2013 and were the subject of a consultation in summer 2013 as part of 'Raising the stakes on tax avoidance'. The Government's response and draft legislation were published on 24 January 2014.
- 3.3 The objective of the 'follower notice' proposals is to tackle behaviour whereby taxpayers refuse to settle their dispute when a judicial decision in another case has in effect determined the points at issue in their dispute. The proposals set out a power for HMRC to issue a notice to the effect that a relevant judicial decision applies to the taxpayer's dispute and that they should now settle their dispute or face a penalty if the dispute is finally resolved against them, whether by agreement or by litigation.
- 3.4 The 'follower notice' draft clauses were also published in 'Tackling marketed tax avoidance'. As they are closely related to the proposals for accelerated payments, this chapter also addresses some of the comments made about the draft clauses for 'follower notices'.

### Comments on the proposed legislation for 'follower notices'

- 3.5 Those responses that acknowledged that the Government was right to address this behaviour set out the following main areas of concern with the draft legislation:
  - The term 'principles' is too broad and could catch a wider range of disputes than is intended;
  - The structure of the legislation is such that in order to continue with their appeal the taxpayer must in effect deliberately decide not to comply with HMRC's notice;
  - It was not clear on what grounds a taxpayer could appeal against the penalty;

- The lack of any appeal right against a ‘follower notice’; and
- Reliance on a first tier tribunal decision (where that decision is final) to generate a ‘follower notice’.

3.6 The Government is grateful for these constructive comments.

3.7 The Government accepts some of the concerns raised about reliance solely on the term ‘principles’. Some respondents saw this approach as being capable of applying a judgement that, for example, an item of expenditure was not incurred ‘wholly and exclusively for the purposes of the trade’ to any case where that was the point in dispute. This is not the Government’s intention. The proposal aims to focus on the tribunal’s or court’s reasoning behind the decision. The Government will make changes to the proposed legislation to make this aspect clearer.

3.8 The Government also acknowledges the concerns raised about the term ‘failure notice’ and the situation where the taxpayer would have to be deliberately non-compliant with the notice in order to continue the dispute. The proposed legislation will be changed to make it clearer that the taxpayer has the right to proceed with their dispute, and that the legislation sets out the consequences arising from the taxpayer’s decision, including the possibility of a penalty if the dispute is resolved in the way anticipated by the ‘follower notice’.

3.9 The Government notes the comments about the appeal rights against the penalty. The intention is that the penalty will apply where the dispute is resolved on the same basis as the ‘relevant judgement’ cited in the ‘follower notice’. The taxpayer’s appeal against the penalty can include the contention that HMRC should not have issued the ‘follower notice’ in the first place because the judicial decision cited was not ‘relevant’. The Government does not believe that any amendment to the legislation is necessary to achieve this outcome.

3.10 The Government does not propose to introduce an appeal right against the notice itself as this would in effect require litigation of the substantive point at issue and would do nothing to accelerate those cases towards resolution. HMRC is putting in place strict internal governance and safeguards so that follower notices can only be issued following approval at senior level within the organisation, and will be scrutinised by staff other than those who have been working on the detail of the case.

3.11 The Government does not propose to alter the proposal concerning the use of a first tier tribunal decision as the basis for a ‘follower notice’.

There would be a significant risk that important decisions would be excluded from the process, and that taxpayers and promoters would adopt a deliberate behaviour of not appealing first tier tribunal decisions in order to prevent that decision giving rise to ‘follower notices’.

### **General responses on Accelerated Payment for ‘follower cases’**

- 3.12 The responses mostly fell into two main groups. The first group agreed that the Government needs to tackle the behaviours identified, but had concerns over the scope of the proposals. However, they also typically acknowledged that existing powers are not adequate and that in order to achieve its objectives the Government would have to implement further measures.
- 3.13 The second group expressed strong opposition to any proposal by the Government to collect tax from taxpayers before a tribunal or court has ruled in the matter. It was suggested that this was a fundamental and unwarranted shift away from self-assessment and from the starting point of treating the taxpayer as “innocent until proven guilty” by judicial process.
- 3.14 The second group did not generally offer any additional comments of detail on the specific questions. The responses reported below in respect of the individual questions do not include responses that restated an overall objection to the measure.
- 3.15 One response argued for a system “brought into line with VAT”, in which it is the normal position that taxpayers have to pay the tax in dispute before they can have an appeal heard. It was suggested that accelerated payments should only apply in cases where there is a “follower” notice and that the notice would be deemed to close the enquiry. Thus HMRC could require the tax to be paid at this point, if the taxpayer did not concede and would not suffer hardship.

### **Government response**

- 3.16 The Government recognises that this is a significant step in relation to tax administration, and welcomes the acknowledgement received from many parties that there is an issue to be addressed, as well as the constructive comments. It recognises the objections that some taxpayers will have, but is resolute in driving tax avoidance out of the tax system. There is no reason why taxpayers using avoidance schemes should continue to enjoy the benefit of the doubt in those schemes in order to hold the tax in dispute while the matter is resolved.

3.17 In relation to the response set out in paragraph 3.15, the Government is grateful for the suggestion, but does not believe it will deliver the full benefits of the current proposals, particularly as it would not capture those situations where there is no ‘follower notice’.

### **Q1 – Do you agree with the proposals for the timing and issue of payment notices?**

3.18 There was general agreement that the time limits for an accelerated payment notice should be the same as those for the ‘follower notice’ on which it is based. However, a number of respondents requested a longer period. Many objections to the time period were also linked to the taxpayer’s ability to pay, and HMRC was encouraged to be “flexible”.

3.19 Some respondents restated the points made about the ‘follower notice’ itself, in particular that there should be an appeal right against the decision that a case was “similar” to another before the payment notice could be enforced, and that it was inappropriate to base a notice on a first-tier tribunal decision.

### **Government response**

3.20 There have been many comments regarding a right of appeal for taxpayers – either against the decision that a case is “similar” and therefore a relevant ruling applies, or against the payment notice generally. The Government understands the concerns, but an appeal right at this stage would in effect require consideration of the substantive point at issue, but at a different stage in the dispute. This would not therefore make any change to the current position.

3.21 Taxpayers retain their right to appeal the substantive tax issues, and any penalties which may be levied.

3.22 HMRC will use its full range of tools, including appropriately structured payment arrangements, to assist taxpayers in paying the required amounts.

3.23 The Government proposes to proceed with the time limits set out in the consultation. Separating the time limit for the ‘follower notice’ and the related accelerated payment notice would be add an unnecessary layer of administrative complexity and introduces a risk of error and misunderstanding.

## **Q2 – Do you agree with this proposed method for establishing the payment amount?**

- 3.24 A range of responses was received, some highlighting the complexity in some cases of making the calculation, one saying only the courts should make the calculation, and one that there should be a counter-factual which assumes the taxpayer may have used an alternative tax mitigation route if denied this one.
- 3.25 Further responses were broadly supportive of the proposed methods, but had reservations about whether the Government should be applying this to existing disputes as well as to new ones. This is part of a theme regarding “retrospection” which appeared in responses to a number of questions.

### **Government response**

- 3.26 The Government acknowledges that in some cases it will be more difficult to calculate the tax due for payment than in others. That will depend on a range of factors from the type of scheme to the complexity of the individual taxpayer’s affairs. The taxpayer has 90 days in which to make representations to HMRC about the amount that is being requested, which the Government believes should be adequate, particularly as the information to establish the correct amount will be in the hands of the taxpayer and their advisers and it will therefore be in their interests to act promptly and collaboratively.
- 3.27 The Government is clear that those trying to use tax avoidance schemes should not be rewarded by being allowed an alternative calculation for other tax mitigation they may have employed instead – the “counter-factual”. Taxpayers are assessed to tax on what they actually do and not on what they might have done if they had known in advance that a scheme was not going to work.

## **Q3 – Do you agree with these grounds for objection to an accelerated payment notice?**

### **Q4 – Should there be any additional grounds for objection to an accelerated payment notice?**

- 3.28 Fundamentally, many respondents objected to the discretion that HMRC would have to determine the amount and the absence of a formal appeal right at this stage. One response referred to this as appearing to make HMRC “the sole arbiters of the tax law.”

- 3.29 Most responses, where comments were made, restated the view that there should be an appeal right to the tribunal, or recommending “some more independent review”, and that the proposed objection criteria were not sufficient in themselves. Other responses suggested a modified appeal right to restrict the possibility of the appeal being simply a delaying tactic.
- 3.30 Other responses were less concerned with the lack of an appeal right, but were concerned about the ability of taxpayers to negotiate the correct amount for the accelerated payment and the time needed to do so. A number also argued that there should be explicit provision for ‘financial extremity’, in line with the rules for VAT

### Government response

- 3.31 The Government does not intend to extend an appeal right against the issue of the accelerated payment. As set out above, provision of a formal appeal right would in practice involve arguing the substantive issue of the dispute itself, which would do nothing to change the current position.
- 3.32 HMRC is committed to applying clear and strong governance to the use of this measure and only “designated” officers will be authorised to calculate the tax due for the payment notice. It is also the case that taxpayers will have 90 days in which to dispute the amount calculated with a view to getting the correct figure agreed.
- 3.33 The accelerated payment does not determine the final liability. Whilst the amount will be calculated as accurately as possible, taxpayers will still have full appeal rights against the eventual closure notice or any assessment or determination that may be issued. This measure addresses the question of where the tax is held during the dispute and the Government has decided it is, in the circumstances, more reasonable for it to be held by the Exchequer. As set out already, this is already the case in other parts of the UK tax system.
- 3.34 The Government does not believe that a specific provision for ‘financial extremity’ is necessary. HMRC will use its full range of existing tools in pursuing the collection of tax, including appropriately structured payment arrangements, to assist taxpayers in paying the required amounts.



**Q5 – Do you agree that accelerated payments for cases under appeal should be handled by way of adapting the existing rules for postponed tax in TMA 1970?**

3.35 Responses ranged from a general acceptance that this is a sensible way to proceed, going with the flow of existing legislation, to those who thought the existing rules were sufficient and should be applied rigorously.

**Government response**

3.36 The existing postponement rules require HMRC to apply to the tribunal to obtain a ruling that the taxpayer must pay the disputed amount. The application can be countered on the basis that the taxpayer has “reasonable grounds” for believing the tax is not due. In practice, this is a relatively low hurdle for a taxpayer and for HMRC to object would, in practice, often involve raising the substantive tax issues. The postponement rules exist to protect the generality of taxpayers with genuine questions that need answering. It is not intended to provide an easy “get out” for taxpayers seeking to exploit the tax system.

**Q6 – Do you agree with this proposed approach to interest on unpaid and repaid amounts in relation to accelerated payments?**

3.37 In general, respondents accepted this approach to interest as being reasonable and in line with normal practice. Some sought a removal of the differential between the interest payable to and by HMRC, by increasing repayment supplement to the same rate as statutory interest for late payment.

**Government response**

3.38 The Government acknowledges the point made. However, changing the rules for one set of taxpayers would raise the issue of making a general change for all taxpayers who have had tax deducted or withheld at source, including denial of repayments. The Government does not therefore propose to change the interest rules in the way suggested.

**Q7 – Do you agree that the accelerated payment should be subject to a late payment penalty and that the proposed amounts are reasonable and proportionate?**

- 3.39 Respondents who disagreed with the principle of the measure also disagreed with the application of a penalty. Those who broadly supported the measure understood the inclusion of a penalty to support compliance with the notice.
- 3.40 A number were concerned that the late payment penalty should not apply if the taxpayer's claim is ultimately successful or the accelerated payment proves to be too high, for whatever reason.

**Government response**

- 3.41 The Government intends this measure to bring about a significant change in the market for avoidance schemes and in the resolution of avoidance cases. It would be incompatible with those aims not to support this measure with a meaningful downside if taxpayers decide not to comply and hold back the payment as long as possible without any further consequence. The penalty to be applied is essentially the same as would apply in many other late payment situations and is consistent with the overall focus on tax compliance.
- 3.42 The Government agrees with the comments made about the late payment penalty where the accelerated payment is eventually found to be too high. Any late payment penalty in relation to the excess will be repaid, with interest, at the time that the overpayment is itself repaid.

**Q8 – Do you agree to this treatment for payment of tax for cases in litigation?**

- 3.43 There was broad support for this approach from respondents, provided it was used carefully and it was open to the taxpayer to challenge. Other respondents, who made comments, objected on the basis that HMRC should always repay in accordance with a court decision, regardless of the taxpayer's status.

## Government response

3.44 The Government does not intend to change the general requirement to pay or repay tax in line with a judicial decision. For the vast majority of taxpayers, there will be no change. HMRC's application can only be made on the basis that there is a risk that the tax due may be lost if it is not collected, and HMRC must make application to the Court for an order.

### **Q9 – Do you have any further comments on the principles or application of the proposal to issue accelerated payment notices in cases where a 'follower notice' is issued?**

3.45 Most responses to this question were restatements of objections in principle to the measure, focusing mainly on the financial implications for taxpayers, the argument that it is "unconstitutional", and that HMRC should not have an unsupervised power to require tax before the courts have shown it is due.

3.46 Other responses argued against what is seen as the "retrospective" nature of the measure, and sought assurances that HMRC will fully explain its decisions when issuing Notices and that taxpayers need to know they can continue to argue their case if they do receive a 'follower notice'.

3.47 Some respondents questioned whether HMRC would have any motivation to investigate and finalise cases once it holds the tax.

## Government response

3.48 The Government is committed to making the tax system fairer for everybody, and that includes restricting the ability of a few to take advantage of it to the detriment of all.

3.49 HMRC will put in place clear and strong governance to ensure that this measure is applied appropriately and proportionately. Decisions will be scrutinised and approved at a senior level in HMRC.

3.50 As noted already, this measure affects taxpayers who have used avoidance schemes in the past, but it is not a retrospective change to the substance of the issue. The measure creates a new and prospective obligation after Royal Assent and relates to who holds the money during the dispute, rather than whether the tax scheme is effective or not.

3.51 HMRC has no interest in “sitting on the money” and delaying cases. HMRC will be judged on its ability to significantly reduce the existing stock of avoidance cases, as well as the continuing flow of new cases. HMRC will be resourced to implement this measure and deal with cases in the most efficient manner. Annex C provides further detail of how HMRC will do this.

## 4. Responses - Proposed extensions of the accelerated payments measure

- 4.1 At Autumn Statement 2013 the Government announced that there would be a consultation on extending accelerated payment to further groups of taxpayers.
- 4.2 The Consultation set out proposals to extend accelerated payments to:
- Taxpayers who have used arrangements that fall to be disclosed under the Disclosure of Tax Avoidance Scheme rules (DOTAS); and
  - Arrangements subject to counteraction under the General Anti-Abuse Rule (GAAR).

### General responses on the proposed extensions of the accelerated payments measure

- 4.3 A wide range of responses was received covering the following principal concerns
- This is not an appropriate use of DOTAS, which was designed originally to gather information rather than drive resolution;
  - It will encourage non-compliance with DOTAS and a move into schemes which are not discloseable;
  - DOTAS is too broad for this purpose – a number of unobjectionable arrangements are disclosed and would suffer from this measure – “DOTAS was not designed to differentiate between acceptable and unacceptable planning”;
  - DOTAS only captures part of the avoidance market – how does the Government propose to address the remainder?
  - This is “retrospective” and will adversely impact on taxpayers who disclosed and used certain types of arrangements in good faith.

## Government response

- 4.3 The Government is grateful for these comments.
- 4.4 The Government is still satisfied that this is the correct way forward as DOTAS provides an objective criterion to apply the measure and, in the majority of cases, is an indicator of avoidance activity. Taxpayers will be clear about the implications of using a DOTAS arrangement in future and whether they are likely to be included in this measure for arrangements they have used in the past. There are no other legislative criteria that could provide the same level of certainty and objectivity.
- 4.5 DOTAS is designed to provide information on avoidance arrangements and it therefore appears to the Government to be the right basis for a new payment rule applying to users of avoidance structures.
- 4.6 The Government also recognises that the use of DOTAS in this way may influence future compliance with DOTAS and discourage the more cautious advisors and taxpayers from disclosing “borderline” arrangements. The Government acknowledges this point. The proposed legislation on ‘high risk promoters’ will act to deter DOTAS non-compliance for those most likely to act in this way, and the Government will consult in the summer on further strengthening of the DOTAS rules to ensure that the current high level of compliance continues.
- 4.7 The Government rejects the contention that this is retrospective legislation. Whilst it imposes a new obligation on certain taxpayers that they did not expect when they entered into these schemes, the Government is not changing the legislation that determines whether the scheme used is effective. These proposals change the circumstances where tax is held by the Exchequer during a dispute and puts all taxpayers in dispute on an avoidance scheme on an equal footing.
- 4.8 The Government notes that some taxpayers and advisers may have made disclosures on a precautionary basis. In many of those cases there is likely to be little or no additional tax liability, so an accelerated payment is unlikely to arise. HMRC will work with taxpayers and advisers to identify and agree these cases as quickly as possible.

**Q10 – Do you have any comments about how information may be provided in such a way as to provide a reasonable balance between providing early certainty for taxpayers and not opening up a route to assist the development of future avoidance schemes?**

- 4.9 A range of responses was received. Respondents were concerned about the general impact on the DOTAS regime – whether HMRC may be creating “good” and “bad” DOTAS schemes by reference to the ones that were listed. Another response was that, when HMRC opens an enquiry into a DOTAS arrangement, they give a “traffic light” indication of how likely the accelerated payment rules are to apply.
- 4.10 Other responses raised the problem of whether HMRC had the resources to respond quickly to give taxpayers certainty, and whether the increasing scope of DOTAS would make this harder to manage. For example, one comment was “it must be properly resourced, subject to adequate safeguards, and provide adequate protection for taxpayers.”
- 4.11 In general, respondents did not appear to think that the proposals would open up an implicit avoidance “clearance” process.

**Government response**

- 4.12 The Government is grateful for the responses and will consider further how best to provide the right balance between information and certainty for taxpayers whilst not offering up a means for promoters to gain clearances on avoidance schemes.
- 4.13 The Government is also very aware of the need to provide the correct resourcing for HMRC, and other agencies, so that this measure can be implemented correctly, fairly and effectively.

**Q11 – Do you agree that the proposed time limit for payment of an accelerated payment as a result of a DOTAS scheme should be the same as for accelerated payments linked to a ‘follower’ notice?**

- 4.14 For respondents who accepted the need for this measure, there was broad support for the alignment of time limits between the two parts. There were some comments that 90 days is not long enough for either, particularly in relation to the financial impacts and taxpayers being able to determine how they will pay.

## Government response

4.15 The Government believes that 90 days is an ample period in which taxpayers (together with their agents) can raise any issues about the quantum of the payment and consider its financial impact upon them. Prudent taxpayers should have considered the risks associated with entering an avoidance scheme and made financial provision. For those who have not done so, the 90 days period is an opportunity to consider how payment will be made and, if necessary, commence discussions with HMRC debt management staff.

### **Q12 – Do you have any further comments about the proposed extension of this measure to cases involving schemes disclosed under DOTAS?**

4.16 As noted above, there were many concerns that a large number of taxpayers would face an unexpected demand for money, in many cases a significant sum. There were also concerns that those who had made sure to disclose even though there was some uncertainty would be unfairly penalised.

4.17 Some specific concerns were expressed about the application of DOTAS, and therefore this measure, in relation to tax reliefs and incentives which can trigger a DOTAS disclosure whilst being in accordance with the intentions of the relief.

## Government response

4.18 Taxpayers who enter into avoidance schemes must accept the risk that their attempt to avoid tax will fail, particularly in the light of HMRC's continuing success in winning litigation cases against avoidance schemes. It is simply not acceptable for taxpayers to reach the end of the dispute and then contend that they never expected to have to pay over the money.

4.19 The Government is aware of the possible impact on certain reliefs and incentives and is working to manage any impact this may have on taxpayers who use those reliefs in the way intended.

### **Q13 – Do you agree that the scheme being challenged under the GAAR should be a criterion for issuing an accelerated payment notice?**

4.20 Where respondents agreed with the overall objectives of the proposals, there was support for its extension to users of schemes which came within the GAAR. Indeed, it was commented that it would be odd not to include the most egregious of schemes, which the GAAR targets.



4.21 One respondent suggested that the GAAR should be the only criterion used in connection with accelerated payments, and another that the measure should be “confined to egregious tax avoidance.”

### **Government response**

4.22 The Government welcomes these comments and will proceed with the extension of the measure to include arrangements that HMRC proposes to counteract under the GAAR.

### **Q14 – Do you agree with the timing proposal for the issue of an accelerated payment notice in a case being challenged by the GAAR?**

4.23 Respondents were split between those who agreed this was an appropriate timing, in some cases because it engaged an independent body in the decision making, and those who thought the proposal was premature as it was not a formal decision by a tribunal that the GAAR would apply.

### **Government response**

4.24 Given the nature of schemes which may engage the GAAR, the Government is committed to taking action to restrict their use and economic benefits arising from them. The independent GAAR Advisory Panel is, in the case of the GAAR, available to add an appropriate additional layer of independent scrutiny.

### **Q15 – Do you have any further comments about the application of the policy to schemes that are challenged under the GAAR?**

4.25 A number of respondents argued that HMRC should only be able to proceed where the GAAR Advisory Panel delivers an opinion that supports HMRC’s contention that counteraction is appropriate under the GAAR.

### **Government response**

4.26 The Government agrees and will make changes to the legislation accordingly.

## 5. Next steps

- 5.1 The legislation for 'follower notices' and accelerated payments, revised in the ways described above, will be introduced as part of the 2014 Finance Bill.
- 5.2 HMRC will draw up and publish more detailed guidance about the application of the proposed new rules by the end of May 2014. The Government will welcome the engagement of taxpayers, advisers and professional bodies to ensure that the guidance is as clear and helpful as possible.
- 5.3 HMRC will scrutinise all existing DOTAS disclosures to draw up a list of which schemes will be subject to accelerated payment. The list will be published in time for Royal Assent to the Finance Bill.
- 5.4 Further information can be found in Annex C.

## Annex A: List of stakeholders consulted

HMRC does not normally identify the names of any individuals who contribute to a consultation. Where there has been any uncertainty over whether a consultation response represented personal views or those of an organisation we have assumed that it was made in a personal capacity and so the stakeholder will not be separately identified below. Please note that whether a response is deemed to be made by an individual or organisation will only have a bearing on whether the name of the stakeholder is published below.

2020 Innovations	British Bankers' Association
A P Robinson & Co	Bruton Charles
Association of Accounting Technicians	Burns Waring
Abacus Accountants	Burrow & Crowe
Abrams Ashton	Business Accounting Services
Association of Chartered Certified Accountants	Business Oxygen Limited
Acconomy	C&M Services
Accountancy 4 Growth Ltd	C3 Tax LLP
Accurate Consulting LLP	Cameron Partnership
AD2ONE	Cannock Investments Limited
Adams Root & Associates Ltd	Carpenter Box LLP
AGS Accountants and Business Advisors Limited	Carters
AKM Associates	Cassons Chartered Accountants
Alexander Marshall	CBW Tax
Alvarez and Marsal Taxand UK LLP	Chancery Accounts & Tax LLP
Andrew Price & Co	Charles Group
Anthony Russel Limited	Chartered Institute of Taxation
Antrobus	Cleaver Black
Armstrong Watson	Clifford Chance
AS Partnership Ltd	Clifford Roberts
Ascendis	Cognitor Ltd
Aspire 4 More	Contamac Ltd
Association of Accounting Technicians	Cornerstone Tax
Association of International Accountants	CP Waites
AVN Picktree	Craig Cleland
AVN Tax LLP	Crystal Clarity Consulting Ltd
AVN Venus Tax LLP	Cunningtons
B+M	Curzon Capital Ltd
Baker Tilly	Darnells
Barringtons	Dartree LLP
Bartfields Business Services LLP	David Gill & Co
Bates Weston	DB Accountancy & Taxation Services
BDO LLP	Dean Statham LLP
Blackstar (Europe) Limited	Deepblue
Blow Abbott	Delivering Choice Ltd
Blue Cube Consulting	Deloitte
Bradshaws Ltd	DKB Management (UK) Ltd
	Douglass Grange
	Downing LLP

Duffton Kellner  
 Duncan Boxwell & Company Limited  
 DWF LLP  
 Dyke Yaxley Limited  
 EDF Tax Limited  
 Egan Roberts  
 Ellacotts LLP  
 Elman Wall  
 England & Company  
 Ernst & Young  
 Exceed  
 Exchange Accountancy Services Limited  
 F L Walker & Company  
 FSPG  
 Finance Directors Ltd  
 Finnieston Berry  
 Finsbury Robinson Ltd  
 Fosters Limited Chartered Accountants  
 FR Tax Solutions  
 Francis Clark LLP  
 Freshfields Bruckhaus Deringer LLP  
 Friend & Grant Ltd  
 Glen Drummond Accountants  
 Gordons Knight Ltd  
 GPC Financial Management Ltd  
 Grant Sellers  
 Grant Thornton  
 Greenstones  
 Gregory Priestley & Stewart  
 Hamilton Morris Waugh  
 Harcourt Capital  
 Harrison's Solicitors  
 Herbert Smith Freehills LLP  
 Hewitt Warin Ltd  
 HPCA Limited  
 HR Harris & Partners  
 HSJ Accountants  
 Hubbard Lloyd  
 IMG Composites Ltd  
 Ingenious  
 Inspire  
 Institute of Chartered Accountants in  
 England and Wales  
 Institute of Chartered Accountants of  
 Scotland  
 Institute of Financial Accountants  
 ISIS Business Solutions Ltd  
 J M Price & Co  
 Jacobs Allen Ltd  
 JB Colvan & Partners  
 JCS Associates  
 John Allen & Co  
 Jones Cooper Limited  
 K & H Accountants  
 Kemsley Associates

Kevin Kearney Associates  
 Kirk Rice LLP  
 Kirkpatrick & Hopes  
 Knowles Warwick  
 KPMG  
 Kumar Strategic Business Consultants  
 Langham Walsh  
 LSD Accountants Ltd  
 Lyness Accountancy Practice  
 MA2 Limited  
 Mac Kotecha and Company  
 MacKenzie  
 Mahon & Co  
 Malcolm Piper & Company Ltd  
 Malick & Co  
 Mango  
 Marlow Proactive  
 Martin Cook Accounting Services Ltd  
 McCleary & Company Ltd  
 McEwan Wallace  
 MGC Hayles  
 Mid Yorkshire Chamber of Commerce and  
 Industry Limited  
 Midas Accountants  
 Mitten Clarke  
 Montgomery Swann Ltd  
 Montpelier  
 Mosaic Professional Tax Planning LLP  
 MoveOn Accountants Ltd  
 Murray Taylor  
 Myers Clark  
 Newsham Tax Limited  
 Nicklin LLP  
 NWN Blue Square Ltd  
 O'Donnell & Co  
 O'Hagan, McGlinchey & Co  
 Oldham Council  
 One Accounting Ltd  
 OneE Consulting Limited  
 Osbornes tax and Advisory Ltd  
 Peak Performance Tax Limited  
 Pearl Lily & Co Accountants  
 Pelham  
 Pentlands  
 Peridot Tax Limited  
 Pethericks & Gillard Ltd  
 Pinsent Masons LLP  
 PKB UK LLP  
 Plus Accounting  
 PRB Accountants LLP  
 PWC  
 Qubic Tax  
 R D Owen & Co  
 Reynolds Porter Chamberlain LLP  
 Rice Consulting

Richard Edwards Group LLP  
Richard Smedley  
Richardson Swift  
Ritchie Phillips  
Robinson & Co  
Robson Laidler  
Roger C Bloomer  
Royce Peeling Green Limited  
RS Partnership  
Russell & Russell  
Russell Payne & Co  
Saleos Consultancy Ltd  
Seaman Herbert & Co  
Shorts Chartered Accountants  
Simpson Wood (Financial Services)  
Limited  
Slaughter and May  
Smart Tax Solutions Ltd  
Staffords  
Stephen Rosser Chartered Accountants  
Sterling Financial  
Stewart Fletcher & Barrett  
Stirk Lambert & Co  
Strategic Tax Planning

Streets  
Sullivan's Chartered Accountants  
Sullivans Business Consultancy Ltd  
Swinton & Co  
Tax Trade Advisors Limited  
TaxAssist Accountants  
Tayabali Tomlin  
Taylor Roberts  
The Chartwell Practice  
The City of London Law Society  
The Law Society  
The Whitehouse Consultancy  
Thompsons  
THP Total Accounting  
TLP Consulting LLP  
UHY Hacker Young LLP  
WGCA Limited  
White Hart Associates (London) Ltd  
Whitefield Tax Ltd  
William Hinton  
William Ross Limited  
Winn & Co  
Xolstice Limited

## Annex B: Consultation process and statistics

HMRC received over 800 responses to the consultation document published by the Exchequer Secretary, David Gauke, on 24 January 2014.

These came from a wide range of businesses, representative bodies, trade associations, professional bodies, firms and individuals.

In addition to receiving written responses, HMRC held a number of meetings to discuss the proposals with businesses, representative bodies and professional firms.

Question	No. of responses
Q1: Do you agree with the proposals for the timing and issue of payment notices?	72
Q2: Do you agree with this proposed method for establishing the payment amount?	72
Q3: Do you agree with these grounds for objection to an accelerated payment notice?	69
Q4: Should there be any additional grounds for objection to an accelerated payment notice?	67
Q5: Do you agree that accelerated payments for cases under appeal should be handled by way of adapting the existing rules for postponed tax in TMA 1970?	64
Q6: Do you agree with this proposed approach to interest on unpaid and repaid amounts in relation to accelerated payments?	65
Q7: Do you agree that the accelerated payment should be subject to a late payment penalty and that the proposed amounts are reasonable and proportionate?	69
Q8: Do you agree to this treatment for payment of tax for cases in litigation?	67
Q9: Do you have any further comments on the principles or application of the proposal to issue accelerated payment notices in cases where a 'follower notice' is issued?	49
Q10: Do you have any comments about how information may be provided in such a way as to provide a reasonable balance between providing early certainty for taxpayers and not opening up a route to assist the development of future avoidance schemes?	51
Q11: Do you agree that the proposed time limit for payment of an accelerated payment as a result of a DOTAS scheme should be the same as for accelerated payments linked to a 'follower' notice?	61
Q12: Do you have any further comments about the proposed extension of this measure to cases involving schemes disclosed under DOTAS?	54
Q13: Do you agree that the scheme being challenged under the GAAR should be a criterion for issuing an accelerated payment notice?	53
Q14: Do you agree with the timing proposal for the issue of an accelerated payment notice in a case being challenged by the GAAR?	53
Q15: Do you have any further comments about the application of the policy to schemes that are challenged under the GAAR?	53

# Annex C: Additional information on accelerated payments

## 1. Accelerated payments

- 1.1 The consultation “Tackling marketed tax avoidance” was published on 24 January 2014, and closed on 24 February 2014. It set out proposals, including draft legislation, to implement the Chancellor’s Autumn Statement announcement that accelerated payment of tax would be required from taxpayers involved in avoidance disputes where a ‘follower notice’ has been issued. It also included proposals to extend accelerated payment to taxpayers involved in disclosed avoidance schemes. The Responses Document to ‘Tackling Marketed Tax Avoidance’, published alongside this document, sets out the government’s responses received to the consultation.
- 1.2 The Chancellor announced at Budget 2014 that legislation will be included in the Finance Bill which allows HMRC from Royal Assent to seek upfront payments from taxpayers:
  - involved in avoidance disputes where a ‘follower notice’ has been issued;
  - that are within the Disclosure of Tax Avoidance Schemes (DOTAS) disclosure regime, or
  - where HMRC is taking counteraction under the General Anti-Abuse Rule (GAAR).
- 1.3 The Government is extending a clear principle that tax should be paid up front to avoidance cases. HMRC already has the power to withhold repayments of disputed tax until the matter is resolved. This measure ensures consistency of approach. This measure will change the incentives to enter into tax avoidance schemes by requiring tax in dispute to sit with the Exchequer.
- 1.4 The measure applies to arrangements where a person has for instance:
  - set up structures to reduce the amount of income on which they pay tax but not the amount of income they actually receive; or
  - created a loss to offset against income where they don’t actually suffer the loss; or
  - lowered the value, for stamp duty purposes, of a property purchase transaction, while actually paying the full value for the property; AND



- had to notify HMRC (either themselves or through their agent) that the arrangement is a tax avoidance scheme.

1.5 This document sets out:

- a typical taxpayer “journey”;
- examples of some of the types of avoidance arrangements where an accelerated payment may be required in future; and
- information on how HMRC intends to implement the accelerated payment measure.

**People who are worried that they may be caught up in one of these schemes can speak to their adviser or call our dedicated contact point on 03000 530435.**

1.6 Those who are considering engaging in tax avoidance can visit [www.hmrc.gov.uk/avoidance](http://www.hmrc.gov.uk/avoidance) for further information and advice. They **should consider carefully not only the uncertain tax benefits, but also the costs, including potentially lengthy litigation.**

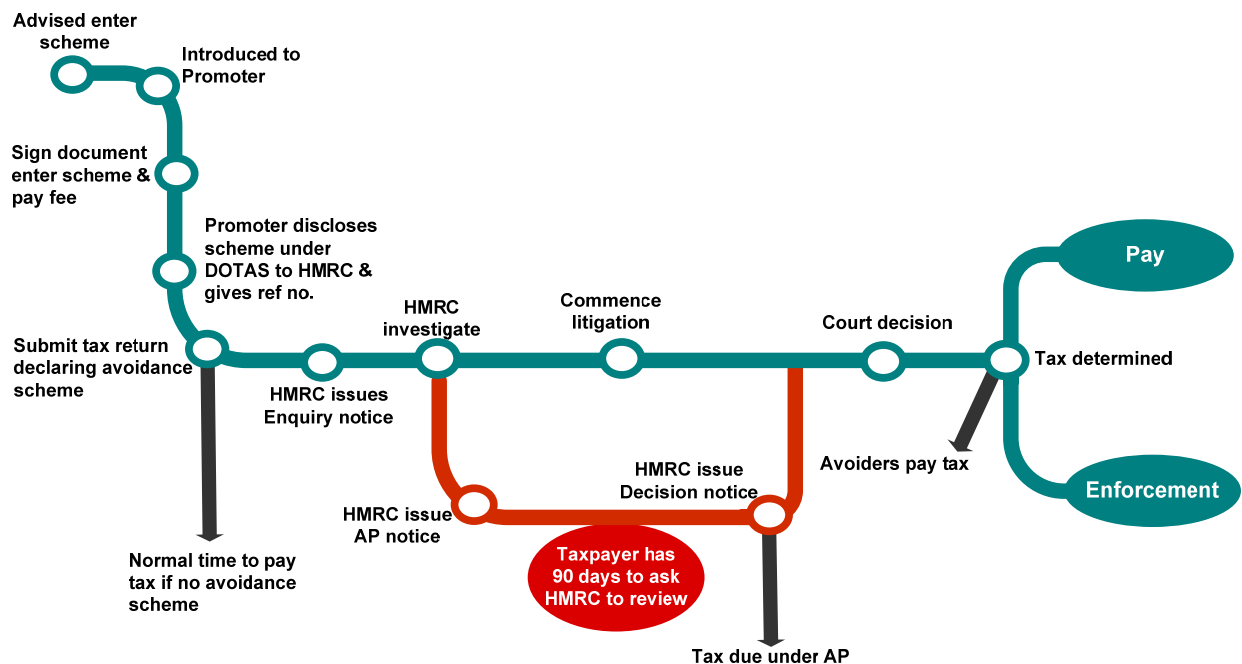
1.7 Read about some of the tax avoidance schemes that HMRC thinks you should be aware of:

<http://www.hmrc.gov.uk/avoidance/tempted.htm>

<http://www.hmrc.gov.uk/avoidance/spotlights.htm>

## 2. Typical taxpayer journey

### For self-assessed income tax and capital gains tax



- 2.1 The diagram shows the typical experience for a tax avoider. The teal line shows the journey before accelerated payments was introduced. It starts (on the left) when a tax payer decides to use an avoidance scheme and ends with payment or enforcement. This means the payment of tax is deferred to the end of the journey as avoiders pass the point when other tax payers would normally pay their tax. The red line shows how accelerated payments will fit in with the existing customer journey and require payment sooner in the process. The journey can halt at any point when the taxpayer decides to drop their claim and settle, or where HMRC decides that the scheme works and repays the tax.
- 2.2 When a person is advised how to reduce their tax liability, the specific detail will be individual, but the customer journey is very similar for everyone. For avoidance cases, the journey will now include an accelerated payment notice.
- 2.3 When a person is advised to reduce their tax liability, they are often introduced to a promoter who explains the scheme to them, then the person signs documents to enter into the scheme and pays a fee. The promoter tells the taxpayer that the scheme is a Disclosed Tax Avoidance Scheme and gives them a **reference number which needs to be included in their tax return in the tax avoidance section.**

- 2.4 The taxpayer then submits their tax return with the scheme reference number or their adviser submits it for them. In either case, the taxpayer is responsible for the form being correct and a declaration is made to that effect. **This is the stage at which a person would normally pay the tax due.** The avoidance scheme has reduced that amount but not the income that the person has.
- 2.5 HMRC considers the self-assessment tax return and considers more tax may be due than has been paid as a result of the avoidance scheme. An enquiry notice is issued. The taxpayer is now in the driving seat. They can co-operate with HMRC to progress the matter to resolution quickly or they (and their advisers) can choose not to co-operate.
- 2.6 Even where taxpayers and promoters co-operate in full, the investigation and litigation process inevitably takes a considerable time and some take full advantage of that to hold onto the tax. From now on, tax in dispute in suspected avoidance cases will sit with the Exchequer. The Government is extending a clear principle that tax should be paid up front in avoidance cases. HMRC already has the power to withhold repayments of disputed tax until the matter is resolved. This measure ensures consistency of approach.
- 2.7 HMRC will only be able to issue an Accelerated Payment notice where they have sent the taxpayer an enquiry notice or where they have issued a notice of assessment for the disputed tax. So, as a minimum, everyone who receives an AP notice will have been notified by HMRC that their tax affairs are under consideration.
- 2.8 Once an accelerated payment notice is issued the tax payer will have 90 days to pay. If they cannot pay, they can contact HMRC in that time to agree arrangements for payment. If they think the tax due is incorrect they can also raise that with HMRC who will review the facts. HMRC will then issue a decision notice confirming the amount of tax due to be paid up front at which point the taxpayer has a further 30 days to pay.
- 2.9 This measure in no way alters the underlying tax liability. A person will still have full access to the courts to determine their tax liability. HMRC wins around 80% of avoidance cases in the courts. If HMRC loses, they will repay the tax with interest.

2.10 An accelerated payment will step up the pressure on tax avoidance, particularly the type of scheme that is marketed widely and exploits the enquiry and appeals process to hold on to the disputed tax for as long as possible.

## 3. Case studies

3.1 This chapter set out some examples of avoidance schemes which would now be captured by accelerated payments. If something looks too good to be true, it probably is.

3.2 The accelerated payments measure applies to

- income tax
- capital gains tax
- corporation tax
- inheritance tax
- stamp duty land tax and the
- annual tax on enveloped dwellings

and will, when a suitable legislative vehicle is available, be applied to NICS.

3.3 It will require the user of an avoidance scheme within its scope to pay the disputed tax now, rather than wait for the outcome of any enquiry or appeal. This may apply when HMRC issues a follower notice as a result of a final judicial ruling, where the arrangements are notifiable under the Disclosure Of Tax Avoidance Schemes legislation (DOTAS), or where action is taken under the General Anti-Abuse Rule (GAAR).

3.4 Existing disputes falling within the scope of the measure include 6 broad categories. Examples of the types of arrangement under each of the following categories are set out below:

- **sideways loss schemes**, which are characterised by generating allowable losses far in excess of the individual's initial investment into the vehicle;
- **stamp duty land tax (SDLT) schemes**, which seek to reduce the amount of stamp duty due on purchasing a property by inserting additional unnecessary transactions which it is purported results in the SDLT being eliminated or substantially reduced;
- **self-employment schemes**, which seek to avoid tax on income from self-employment, sometimes by splitting the income into two parts, one of

which is paid to an offshore company;

- **artificial loss** deduction schemes;
- **capital gains schemes** that may seek to turn income profits into capital gains or create losses;
- **employment schemes**, which seek to pay employment income free of PAYE and NICS, sometimes using employee benefit trusts which pay the employment income disguised as loans.

3.5 Many of these avoidance schemes are marketed by small firms which specialise in devising new, speculative arrangements which contain wholly artificial, un-commercial arrangements and may differ very little in material respects from avoidance schemes that have already been found by the courts not to work. They tempt potential clients with tales of rich rewards but do not properly inform them about the risks involved. In some cases they even claim that there is no risk and the scheme is a sure-fire winner.

3.6 Some promoters sell schemes that simply do not work. In a recent case named “Working Wheels”, the three taxpayers named claimed losses of £20m, worth £8m tax at the then 40% tax rate. That’s £8m the Exchequer has been waiting for since January 2009 – 5 years ago. And that’s just 3 out of the 450 people who used this scheme. The judge commented that in this scheme, in which scheme users claimed to be trading as used car salesmen:

*“It was determined pursuant to a plan. A realistic view of the facts shows that the aim was that appellants, “as though by magic”, should appear to have incurred vast fees as a condition of borrowing modest amounts of money they did not need in order to invest it in a “trade” they had no desire to pursue. The supposed fee for the loan bore no relation to the size of the loan, but was merely the amount of the artificial loss the user wished to generate.”*

### 3.7 Example of sideways loss scheme

**B** has had an income of around £1m a year over the last 10 years. He should pay tax, on average, of around £400,000 on this annual income. He has a significant investment portfolio and considerable personal assets and properties.

Back in 2004, he decided he wanted to reduce his tax bill and was sold a scheme by **A** (a scheme promoter). The scheme turned an investment of £160,000 into a loss of £1m B could claim tax relief on.

The scheme involved B buying £1m worth of shares in a company owned by a film producer, funded by £160,000 of his own money and £840,000 loan from the bank. The loan was secured against the value of the shares so, if they became worthless, B wouldn't have to repay the loan. The bank loan was, in reality, secured by the film producer putting money into the bank.

The film producer took the money received for the shares (after paying a fee to the scheme promoter) and put it towards making the film. The company then sold the film to the producer for a right to share in future income from the film, but only when profits exceed an impossibly high threshold.

B received confirmation that the shares were worthless and made a loss claim for £1m, which he set against his other income. So, for an outlay of £160,000, he has losses of £1m.

A, the promoter, notified this scheme under the "Disclosure of Tax Avoidance Schemes (DOTAS)" rules. He gave B an avoidance scheme reference number which B had to enter on his tax return.

B knows that HMRC opened an enquiry into his tax returns for these years, but also, from what A has told him, considers that it will take some time before the issue is resolved. Until there is a decision, he's happy to reinvest the money into his investment portfolio and keep his appeal open.

From Royal Assent, HMRC will be able to serve B a notice requiring him to pay the tax now, pending the outcome of litigation on his case. This is because he used a DOTAS scheme.

### 3.8 Example of Stamp Duty Land Tax avoidance scheme

**C** earns £125,000 a year. In 2010 she bought her first house. It is in London and cost her £885,000. The Stamp Duty Land Tax (SDLT) on this would be £35,400.

On advice from her estate agent, C paid a fee to A for one of his avoidance schemes. She signed some papers that purported to put in place an avoidance scheme which would leave her with only around £17,700 SDLT to pay. A did tell her that, if the scheme was found not to work, she might have to pay the rest of the SDLT, but he said it was highly unlikely that the scheme would fail so she decided to take the risk and go ahead with the scheme.

C returned the avoidance scheme reference number the promoter gave her on the “Disclosure of a Tax Avoidance Scheme” form. HMRC later contacted C to tell her that they had been successful in the Tribunal in a case very similar to hers, and that she should now pay the tax. She hasn’t paid it yet nor has she done anything to bring her case to a conclusion.

From Royal Assent, HMRC will be able to serve C a notice telling her she should settle the dispute now or face a penalty and requiring her to pay the tax now, pending the outcome of any appeal she has made in relation to the stamp duty liability.



### 3.9 Example of artificial loss deduction scheme

**D** earns around £3m a year. She should pay around £1.2m tax on that. She is one of A's existing clients, and asks him to suggest ways to reduce her liability. A sells her a scheme which has a complex series of transactions but, essentially, involves her realising a very large tax-allowable loss for very little actual outlay.

Under the scheme, D is set up in business as a dealer in antiquarian second-hand books by the scheme arrangers. She deposited a few thousand pounds in a bank, but took no interest in actually carrying on the trade. She then borrowed a few thousand pounds from the bank to "buy stock", but because of the complex arrangements, claimed relief for a fee of £15m to borrow that money. The money went through a series of very complex transactions but, in a very short space of time, ended up back in the bank's account. A typical arrangement operates over a 2 to 3 week period in total, by which time everything is wound up.

These financial transactions generated a very large, artificial, loss of £15m. D claimed tax relief on this in her self-assessment form. Because A had notified this scheme under DOTAS, she also had to enter the DOTAS number he provided to her on that form.

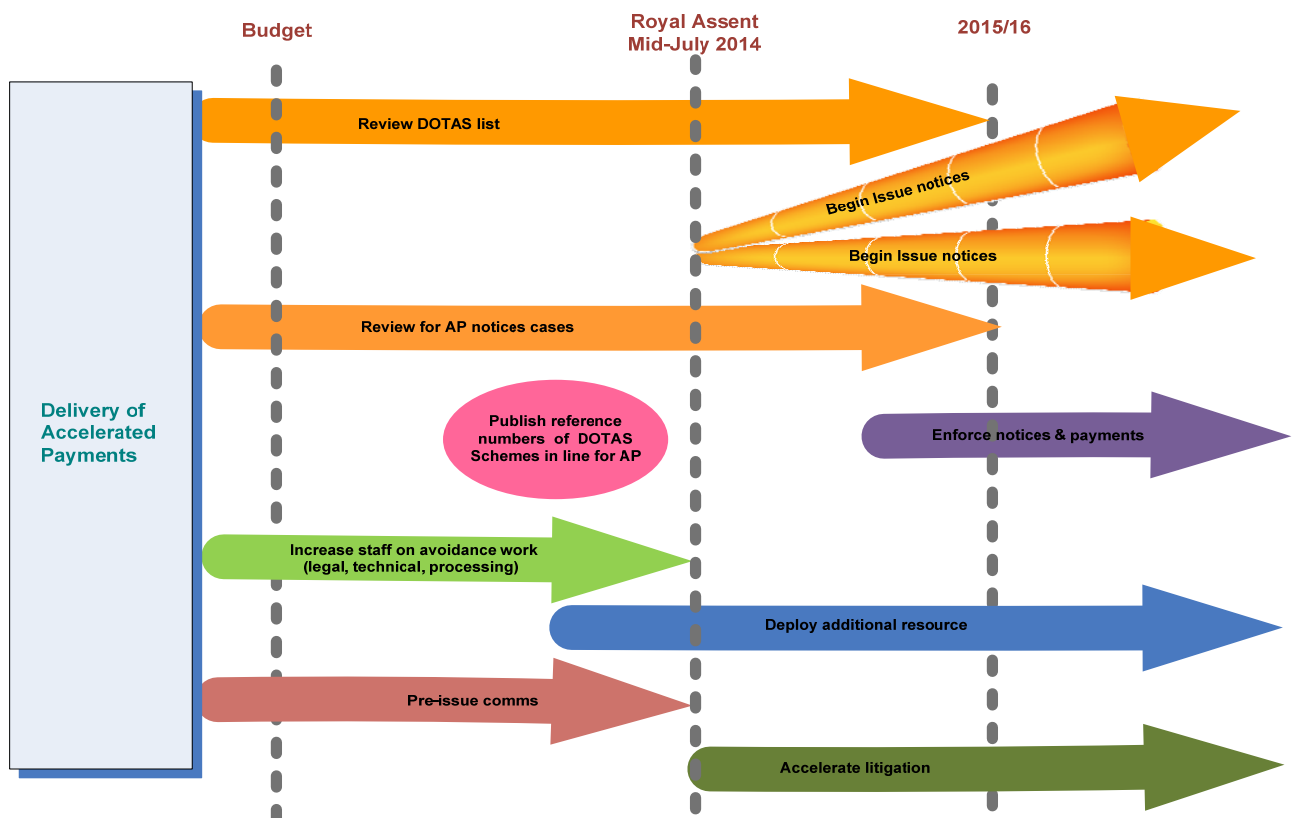
HMRC opened an enquiry into D's tax return. From Royal Assent, HMRC could ask D to pay the tax due up front.

## 4. Delivery of Accelerated Payment notices

4.1 Initially, HMRC plan to use the Accelerated Payment measure to increase the rate at which HMRC settle outstanding avoidance cases by a combination of:

- requiring taxpayers to pay what they owe;
- litigating more cases quickly;
- encouraging customers to contact us and settle up;
- ramping up our taskforce with more tax, law and debt collection specialists; and
- using our powers where people are dragging their feet and not providing the information we need to resolve cases.

How taxpayers and their advisers respond to what HMRC does will speed up or slow down the settling of each case. The public will be able to track our progress by checking out the HMRC website for annual results of settled cases.



#### 4.2 In more detail, HMRC plan to do this by:

- issuing accelerated payment notices and collecting the accelerated payments due - this will mean that some taxpayers decide to not to pursue their case further, rather than waiting for litigation;
- rapid identification of cases where the avoidance scheme being used has been defeated in another party's litigation through the courts and swift delivery of follower and accelerated payment notices to these cases;
- providing early information about which DOTAS schemes may expect to receive an accelerated payments notice;
- issuing guidance during May to set out how the accelerated payments regime will be applied to give clarity for promoters and taxpayers;
- a dedicated helpline for those receiving follower and accelerated payment notices, to advise them on the options for finalising their cases and the consequences if they don't;
- early warning letters in selected cases that an accelerated payment notice may follow, coupled with continued use of techniques to inform people of the potential consequences of not settling their disputes and the benefits of settling now;
- intensifying and transforming our operational response to countering tax avoidance, so that cases are settled or litigated as quickly as possible;
- working with HM courts and Tribunals Service to manage the increased flow of cases;
- earlier, more targeted use of information powers in key cases to secure information more quickly so that the evidence necessary to move cases to the Tribunal is provided more quickly; and
- harder, increasingly more targeted communications around HMRC successes in litigation and the consequences of holding out.