



# Penalties for enablers of defeated tax avoidance

You should read this factsheet if you have enabled abusive tax arrangements, or are considering enabling them in the future.

This factsheet tells you about the penalties we may charge you if you enable abusive tax arrangements that are later defeated. We use the term ‘enabler penalties’ to describe these penalties. This factsheet also tells you about publishing your details if we have charged you one or more enabler penalties.

We explain what we mean by ‘enabler’, ‘tax arrangements’, ‘defeated’ and ‘abusive’ later in this factsheet. Throughout this factsheet we use the term ‘taxpayer’, which means the individual, company or partnership that used the abusive tax arrangements. The legislation under which we charge enabler penalties and publish an enabler’s details is Schedule 16 to the Finance (No. 2) Act 2017.

This factsheet is one of a series. 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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## What we mean by ‘enabler’ and ‘enabled’

If a taxpayer used abusive tax arrangements that were later defeated, any person who enabled that use (and did so during the course of a business carried on by them) is an enabler.

The legislation defines an enabler as a person who:

- is a designer of the arrangements
- is a manager of the arrangements
- marketed the arrangements
- is an enabling participant in the arrangements
- is a financial enabler for the arrangements

You can find more information about each of these definitions in our technical guidance. Go to [www.gov.uk](http://www.gov.uk) and search for ‘Tax avoidance enablers’.

## Employees and employers

When an employee enables the use of abusive tax arrangements as part of the duties of their employment, they are excluded from being an enabler. This is because they are not enabling in the course of a business carried on by them. In these circumstances, the enabler is the employer.

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## When we may charge you an enabler penalty

We may charge you an enabler penalty if you enabled the use of abusive tax arrangements and all the following apply:

- you enabled the tax arrangements on or after 16 November 2017
- a taxpayer used those tax arrangements on or after 16 November 2017
- the taxpayer’s use of those arrangements has been defeated

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## What we mean by ‘tax arrangements’

Arrangements are ‘tax arrangements’ for the purposes of enabler penalties if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements. Arrangements include any agreement, understanding, scheme, transaction or series of transactions - whether they’re legally enforceable or not.

A tax advantage includes:

- relief (or increased relief) from tax

- repayment (or increased repayment) of tax
- receipt (or advancement of a receipt) of a tax credit
- avoidance or reduction of a charge to tax, an assessment of tax, or a liability to pay tax
- avoidance of a possible assessment to tax or liability to pay tax
- deferral of a payment of tax, or advancement of a repayment of tax
- avoidance of an obligation to deduct or account for tax

You can find more detailed information about what we mean by ‘tax arrangements’ relating to enabler penalties in our technical guidance. Go to [www.gov.uk](http://www.gov.uk) and search for ‘Tax avoidance enablers’

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## What we mean by ‘defeated’

Tax arrangements are defeated when the tax advantage intended from their use has been counteracted, and the counteraction has become final. Counteraction is when any of the following has happened:

- we have made adjustments to the taxpayer’s tax position
- the taxpayer has made adjustments to their own tax position
- we have entered into a contract settlement with the taxpayer to adjust their tax position
- a tribunal or court has made adjustments to the taxpayer’s tax position

A counteraction becomes final when the adjustments, and any additional tax resulting from those adjustments, can no longer be varied – either on appeal or in any other way.

Making adjustments to a taxpayer’s tax position would normally involve us doing one of the following:

- adjusting the taxpayer’s tax return or claim
- giving the taxpayer one or more tax assessments, decision notices or determinations that show the adjustments, and the additional tax that results from the adjustments

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## What we mean by ‘abusive’

Tax arrangements are abusive if they are arrangements, the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions - taking into account all the circumstances. This is often referred to as the ‘double reasonableness test’.

When taking into account all the circumstances, we consider whether the:

- results, or intended results, of the arrangements are consistent with the relevant tax provisions
- means of achieving those results involved one or more contrived or abnormal steps
- arrangements are intended to exploit any shortcomings in the relevant tax provisions

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## How we decide whether arrangements are abusive

When we’re deciding whether arrangements are abusive, we’ll consider whether they meet the definition of abusive shown above. We’ll also take into account the opinions of a committee of independent specialists. This committee is called the General Anti-Abuse Rule (GAAR) Advisory Panel. Their role includes giving independent opinions about whether or not the entering into, or carrying out of, tax arrangements is a reasonable course of action in relation to the relevant tax provisions. The panel carries out this role for both enabler penalties and cases where we consider the GAAR may apply.

The panel may have already given their opinions about either the arrangements you enabled or equivalent arrangements. If they have not, we’ll ask for their opinion. If we do, we’ll tell you more about it at the time.

Tax arrangements are ‘equivalent arrangements’ if they are substantially the same as each other. When considering if arrangements are equivalent, we’ll look at the:

- results they achieved, or intended to achieve
- means of achieving those results
- characteristics on the basis of which the arrangements could be seen as being abusive

If we decide that arrangements you enabled are equivalent to arrangements that we already have a panel opinion about, we’ll tell you. You’ll be able to make representations if you do not agree with our decision.

For more information about the GAAR Advisory Panel, go to [www.gov.uk](http://www.gov.uk) and search for ‘GAAR Advisory Panel’. To find more information about how we use the panel’s opinions to decide whether tax arrangements are abusive, go to [www.gov.uk](http://www.gov.uk) and search for ‘Tax avoidance enablers’.

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## Checking whether you're liable to an enabler penalty

If we think you're an enabler of abusive tax arrangements, we'll carry out a check to find out whether you're liable to an enabler penalty. We'll write to tell you that we're doing this. We may start our check before the arrangements have been defeated.

We may ask you to give us information and documents to help with our check. If you do not give us everything we need, we may send you an 'information notice' that requires you to give it. You can find more about information notices in the section 'Our information and inspection powers'.

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## How we charge enabler penalties

If we're going to charge you an enabler penalty, we'll send you a notice of penalty assessment. It will tell you how much you need to pay and how we have worked out the amount. You'll then have 30 days to pay the penalty. However, if you appeal against the penalty, you will not have to pay until the appeal is settled.

### How we work out the amount of an enabler penalty

The penalty will be equal to the total amount, or value, of your 'relevant consideration' for enabling the arrangements. There will be no deduction for any costs you incurred in enabling the arrangements.

'Consideration' includes, for example, fees or commission. Consideration is 'relevant' if it's:

- received or receivable by you for anything you have done which enabled the arrangements - even if it's not paid directly to you
- not been taken into account when we have already charged you an enabler penalty

Any VAT that you have charged is not consideration for these purposes. This means we will not include it when we're working out the amount of penalty.

If we do not have everything we need to work out the amount of the relevant consideration, we'll make a reasonable estimate of it.

### The time limit for giving a notice of penalty assessment

There's a time limit for us to give a notice of penalty assessment for an enabler penalty. The time limit will depend on your particular circumstances.

The normal time limit is 12 months after the latest of the following 3 dates:

- the date on which the arrangements you enabled were defeated
- the date on which the GAAR Advisory Panel gave their opinion about the arrangements you enabled
- where the GAAR Advisory Panel has given one or more opinions about equivalent arrangements - the end of the time allowed for you to make representations that the arrangements you enabled are not equivalent to those arrangements

Special rules apply where a proposal for arrangements is implemented more than once by a number of arrangements that are substantially the same as each other ('related arrangements'). In those circumstances, we cannot usually give a notice of penalty assessment to any enabler of the arrangements until we have defeated more than 50% of the related arrangements that we know about. If a taxpayer has used the arrangements more than once, we'll count each use separately.

The time limit to give a notice of penalty assessment in those circumstances is the later of:

- the normal time limit (explained above)
- 12 months from the date on which more than 50% of the related arrangements that we know about have been defeated

However, we can give you a notice of penalty assessment sooner than this if you ask us to. For example, if you want to finalise the penalties for your involvement with the arrangements. In which case, the time limit is the later of:

- the normal time limit (explained above)
- 12 months from the date on which you ask us to give you a notice of penalty assessment

You can find more detailed information about the time limits in our technical guidance. Go to [www.gov.uk](http://www.gov.uk) and search for 'Tax avoidance enablers'.

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## Your rights when we're considering penalties

If we're considering charging you an enabler penalty, you'll have the right to make representations to us in certain circumstances. We'll tell you more about this at the time.

The European Convention on Human Rights gives you certain rights when we're considering penalties. You can find details about these rights in factsheet CC/FS45, 'The Human Rights Act and penalties for enablers of defeated tax avoidance'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS45'.

If we give you a notice of penalty assessment, you can appeal if you disagree with our decision to charge a penalty, or the amount of the penalty. The notice will tell you what to do if you disagree.

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## Publishing your details

If we have charged you 50 or more enabler penalties, or one or more enabler penalties totalling more than £25,000, we may publish your details to identify you as an enabler of abusive tax arrangements.

The details we can publish include:

- your name and address (including any trading name or other name you use, or have used in the past)
- the nature of your business
- the total number and amount of enabler penalties we have charged you
- any other details we think are necessary to clearly identify you

We'll tell you if we're considering publishing your details to identify you as an enabler of abusive tax arrangements. We'll give you the opportunity to make representations to us about whether we should publish your details. If we decide to publish, you will not have any right to appeal against that decision. You can find more information about when we may publish your details in our technical guidance. Go to [www.gov.uk](http://www.gov.uk) and search for 'Tax avoidance enablers'.

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## Our information and inspection powers

The enabler penalty legislation amends our information and inspection powers in Schedule 36 to the Finance Act 2008. Those amendments mean that, to help us decide whether to charge you a penalty, and to work out the amount of any penalty, we may give you or another person:

- an information notice, which will require you, or them, to give us information and documents
- an inspection notice, which will allow us to
  - enter and inspect your, or their, business premises
  - inspect business assets or documents that are on those premises

We may charge penalties for failure to comply with information or inspection notices.

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## General information

### Use of open source material during a compliance check

We may observe, monitor, record and retain internet data which is available to anyone. This is known as 'open source' material and includes news reports, internet sites, Companies House and Land Registry records, blogs and social networking sites where no privacy settings have been applied.

Our personal information charter sets out the standards you can expect from us when we request or hold information about you. Go to [www.gov.uk/hmrc/information-charter](http://www.gov.uk/hmrc/information-charter)

### Customers with particular needs

If there's anything about your health or personal circumstances that may make it difficult for you to deal with us, please tell us so that we can help you in the most appropriate way. For more information go to [www.gov.uk/dealing-hmrc-additional-needs](http://www.gov.uk/dealing-hmrc-additional-needs)

### Taxes, levies and contributions to which enabler penalties relate

In this factsheet, reference to 'tax' includes: Annual Tax on Enveloped Dwellings; Apprenticeship Levy; Capital Gains Tax; Corporation Tax (including any amount chargeable as if it were Corporation Tax, or treated as if it were Corporation Tax); Diverted Profits Tax; Income Tax; Inheritance Tax; National Insurance contributions; Petroleum Revenue Tax; Stamp Duty Land Tax.