



Amendment of return to take account of relevant judicial ruling: Follower Notices

Who is likely to be affected?

Taxpayers who have sought an advantage through National Insurance contributions (NICs) avoidance schemes, particularly those schemes marketed to wide numbers of users where one judicial ruling is likely to have wide application.

General description of the measure

The measure will create a new power for HM Revenue and Customs (HMRC) to issue a notice to persons using avoidance schemes that are shown to fail in the courts in another party's litigation, setting out HMRC's view that the judicial decision also determines those persons' cases and that they therefore should settle their cases. If the person decides not to settle in response to this notice they will face a penalty if they are unable to show that their case is materially different from the other party's litigation.

Where a taxpayer decides not to settle their dispute, an accelerated payment of the NICs in dispute will be required.

Policy objective

HM Revenue & Customs (HMRC) resources are finite and when an avoidance scheme is widely used HMRC's approach is sometimes to take a small number of cases to litigation. If HMRC is successful in this litigation, underpaid NICs is recovered from the litigants but there is little incentive for other scheme users, or those using essentially similar arrangements, to accept the court's findings and pay to HMRC any underpaid NICs.

This measure increases the incentive to accelerate the settlement of avoidance cases for taxpayers who would otherwise resist settling their cases promptly, reducing demands on HMRC resources and recovering underpaid NICs more quickly.

Background to the measure

The equivalent measure for taxation giving HM Revenue and Customs (HMRC) the power to issue a notice to a taxpayer to the effect that a previously decided case also settles their own dispute, and that they should therefore settle their own dispute, was announced in Budget 2013. A consultation was held during August and September 2013 and legislation was introduced in the Finance Bill 2014.

It was always intended that the measure would be extended to NICs at the earliest opportunity.

Detailed proposal

Operative date

The measure will take effect two months after the National Insurance Contributions Bill 2014 receives Royal Assent. It will be applicable to all cases where there is an NICs dispute or appeal on or after this date, and for which there has been or will be a relevant qualifying judgment.

Current law

Under current law, each individual taxpayer is entitled to have any dispute considered and resolved individually, and there is no requirement to refer to the outcome in another case, even where that other case ruling is publicly available and is to all intents and purposes resolved on the same basis.

Proposed revisions

Legislation will be introduced in National Insurance Contributions Bill 2014 to enable HMRC to issue a 'Follower Notice' to any person for whom there is a NICs dispute or appeal and who has used a NICs arrangement that the courts have found to fail. The notice will inform the person that in HMRC's opinion another judicial decision is relevant to their case and determines their dispute, and they agree to resolve the dispute in line with the courts decision. If the person has appealed against an amendment to his return, or against a formal NICs decision, and that appeal relates to a relevant judicial ruling, HMRC will be able to issue a Follower Notice requiring the person to take all reasonable steps to agree his case with HMRC.

The Follower Notice will require the person to amend the return or settle the dispute within 90 days, or up to a further 30 days where the person requests that HMRC should reconsider the notice. Where a person chooses not to amend or settle, they will be liable to a penalty of up to 50% of the disputed tax if their case is shown to fail for substantially the same reasons as in the relevant judicial ruling.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
		negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact to the Exchequer. Headline figures for the overall policy measure which include the impact on all taxes and NICs are set out in Table 2.2 (Line bf) of the Budget 2014 Document and have been certified by the Office for Budget Responsibility.				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals and households	There will only be an impact on those individuals who engage in tax avoidance schemes affected by this measure.				
Equalities impacts	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.				
Impact on business including civil society organisations	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.				

Operational impact (£m) (HMRC or other)	The new notice for avoidance scheme users to amend their return and penalty where the notice is not complied with as described above should not create significant additional operational costs but will provide additional support and focus for the current operational work. As such the impact is considered to be negligible.
Other impacts	<u>Small and micro business assessment:</u> small and micro businesses will only be affected if they participate in NICs avoidance schemes. Other impacts have been considered and none have been identified.

Monitoring and evaluation

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

Further advice

If you have any questions about the requirement to amend returns, please contact Pete Woodham on 03000 586533 (email: peter.woodham@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Financial Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.