



## **Accelerated payments of NIC associated with schemes subject to a Follower Notice or covered by the DOTAS rules or counteracted under the GAAR**

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

Persons who have sought an advantage through National Insurance contributions (NICs) avoidance schemes that are subject to a Follower Notice, or 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 requires persons to make an accelerated payment of disputed NICs where that disputed NICs liability is associated with schemes subject to a Follower Notice or covered by the DOTAS rules or counteracted under the GAAR. Separate TIINs covering the accelerated payment of tax associated with avoidance schemes were published on 19 March 2014.

### **Policy objective**

The measure requires the disputed NICs to sit with the Exchequer during a dispute, with the aim of putting persons involved in avoidance schemes on the same footing as far as possible. This new power will remove the cash flow advantage for the person holding onto the disputed NICs during an avoidance dispute. There is no change to the liability owed. This will make the contribution system fairer for all persons who pay NICs and secure 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 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. Legislation for tax was introduced in the Finance Bill 2014.

The Government's intention has been to extend these measures to NICs at the earliest opportunity.

## Detailed proposal

### Operative date

This measure will have effect two months after the National Insurance Contributions Bill 2014 receives Royal Assent. It will be applicable to all cases where there is an open NICs dispute or an open appeal on or after this date.

### Current law

Most of those who are liable self-assess their National Insurance Contributions. The self-employed self-assess their taxable profits on which Class 4 NIC is based, and employers self-assess the amount of Class 1, Class 1A and Class 1B National Insurance on earnings and assess the liability of their employees. In the event of HMRC disputing that liability, a person may choose to make a payment on account of the disputed NIC to HMRC in order to minimise any interest arising. Where in a dispute, determinations are issued in relation to higher amounts of Class 4 NIC or decisions issued in relation to higher amounts of Class 1, 1A or 1B, and those are then appealed by the taxpayer, the disputed amounts of NICs can be held over until the resolution of the matter by the tribunal. The person is required to pay the NICs to HMRC if the tribunal finds against them. This process gives an unfair advantage and incentive to those using avoidance schemes, who are then able to defer payment until they lose in the tribunal.

### Proposed revisions

Legislation will be introduced in the National Insurance Contributions Bill 2014 to enable HMRC to issue an Accelerated Payment Notice to any person for whom there is an open NICs dispute, or the matter is under appeal, and who has claimed a NICs advantage by the use of arrangements that:

- are subject to a Follower Notice
- 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 person to pay the NICs 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 NICs. Penalties will apply for late payment.

### Summary of impacts

<b>Exchequer impact (£m)</b>	2014-15	2015-16	2016-17	2017-18	2018-19
	0	165	140	80	45
	Headline figures for the overall policy measure which include the impact on all taxes and NICs are set out in Tables 2.1 (line 52) and 2.2 (Line r) of the Budget 2014 Document and have been certified by the Office for Budget Responsibility.				
<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>	<p>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 and NICs under dispute.</p> <p>There is currently no further analysis available specifically for those taxpayers using NICs avoidance schemes.</p>
<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>
<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 companies for £2.1bn of tax and NICs under dispute under this measure.</p> <p>NIC is chiefly expected to arise from primary and secondary Class 1 contributions related to employment income disputes, and from Class 4 contributions related to business profits within income tax self assessment.</p>
<b>Operational impact (£m) (HMRC or other)</b>	<p>This Accelerated Payments 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>This measure is 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 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, 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)).

**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.