



HM Revenue
& Customs

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Gary Ashford
President
The Chartered Institute of Taxation

Dear Gary

New criminal offence for non-compliance with a Stop Notice

Thank you for the additional detail you and your colleagues set out during our meeting, which we found valuable in understanding your concerns. We continue to consider the consultation responses.

Stop Notice Governance Process

HMRC applies robust governance processes before a Stop Notice can be issued and we recognise that outlining these processes will help re-assure taxpayers and other stakeholders. With this in mind, we are looking to publish a summary of these governance processes.

External Oversight

With regard to external oversight for the Stop Notice regime, there is an existing appeal right to the Tribunal against a Stop Notice which provides a route for external scrutiny of HMRC's decision, albeit after the Stop Notice has been issued. It is therefore the judiciary who have the final say on the legitimacy of a Stop Notice where a promoter exercises their appeal right. In addition, HMRC would not be the ultimate arbiter of whether a criminal offence has been committed – this would always be a matter for the courts to decide.

Appeal Process

Turning to your comments about the Tribunal appeal process, the existing Stop Notice legislation at FA14 s.236E(5)(b) allows the Tribunal to direct that a Stop Notice ceases to have effect from an earlier date than that of its decision. This means that the tribunal can effectively provide that the Stop Notice did not have effect at any time.

FA14 s.236E(5)(b):

On an appeal that is notified to the tribunal, the tribunal may—

(a) confirm the refusal, or

(b) direct that the stop notice is to cease to have effect in relation to a person from such date as the tribunal consider appropriate (which may be earlier or later than the date on which the tribunal makes that direction).

Were the Tribunal to direct that a stop notice ceased to have effect on the day of its issue, there could be no question of the stop notice being breached and the proposed criminal offence could not be committed. No person could be charged with the proposed offence once the Tribunal had made such a direction, and any person who had been charged would not be guilty of the offence.

Offshore Promoters

The new offence has not been designed with solely offshore promoters in mind. It covers all promoters subject to a Stop Notice, both those based offshore and those based in the UK.

Consultation Process

As mentioned during our call, we were able to publish draft legislation within four weeks of the consultation closing thanks to the hard work and professionalism of the HMRC policy officials involved. The team reviewed and fully considered all responses received.

Yours sincerely



**Deputy Director
HMRC**