



Finance Act 2014

2014 CHAPTER 26

PART 5

PROMOTERS OF TAX AVOIDANCE SCHEMES

Monitoring notices: procedure and publication

242 Monitoring notices: duty to apply to tribunal

(1) If—

- (a) a conduct notice has effect in relation to a person who is carrying on a business as a promoter, and
- (b) an authorised officer determines that the person
 - [^{F1}(i) has failed to comply with one or more conditions in the notice][^{F2}, or
 - (ii) has provided false or misleading information or documents in relation to the notice,]

the authorised officer must [^{F3}, within the period of 12 months beginning with the day on which the authorised officer makes the determination,] apply to the tribunal for approval to give the person a monitoring notice.

[^{F4}(1A) Where subsection (1B) applies, an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may apply to the tribunal for approval to give a person (“P”) a monitoring notice.

(1B) This subsection applies where—

- (a) within the period of 6 years after a conduct notice ceases to have effect in relation to P, the officer mentioned in subsection (1A) determines that P—
 - (i) failed to comply with one or more conditions in the notice, or
 - (ii) provided false or misleading information or documents in relation to the notice, and
- (b) the officer could not reasonably have been expected to make the determination when the conduct notice had effect.

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- (1C) An application under subsection (1A) may not be made after the period of 12 months beginning with the day on which the officer makes the determination mentioned in subsection (1B)(a).
- (1D) Where subsection (1E) applies, an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may apply to the tribunal for approval to give a person (“D”) a monitoring notice.
- (1E) This subsection applies where—
- (a) at any time before the end of the period of 6 years after a conduct notice ceases to have effect in relation to a person (“P”), an authorised officer determines (whether before or after the notice ceases to have effect) that P—
 - (i) failed to comply with one or more conditions in the notice, or
 - (ii) provided false or misleading information or documents in relation to the notice,
 - (b) before the end of that period, the authorised officer becomes aware that P has made a relevant transfer within the meaning of paragraph 5 of Schedule 33A (promotion structures) to D (whether before or after the notice ceases to have effect), and
 - (c) the officer could not reasonably have been expected—
 - (i) to apply to the tribunal for approval to give P a monitoring notice, or
 - (ii) to give P a monitoring notice following such an application,
 before the relevant transfer took place.
- (1F) For the purposes of an application under subsection (1D), any act or omission of P by reference to which the determination mentioned in subsection (1E)(a) was made is to be treated as an act or omission of D.
- (1G) An application under subsection (1D) may not be made after the period of 12 months beginning with the day on which the officer makes the determination mentioned in subsection (1E)(a).]
- (2) An application under subsection (1) must include a draft of the monitoring notice.
- (3) Subsection (1) does not apply if—
- (a) the condition (or all the conditions) mentioned in subsection (1)(b) were imposed under subsection (3)(a), (b) or (c) of section 238, and
 - (b) the authorised officer considers that the failure to comply with the condition (or all the conditions, taken together) is such a minor matter that it should be disregarded for the purposes of this section.
- (4) Where an authorised officer makes an application to the tribunal under subsection (1), the officer must at the same time give notice to the person to whom the application relates.
- (5) The notice under subsection (4) must state which condition (or conditions) the authorised officer has determined under subsection (1)(b) that the person has failed to comply with and the reasons for that determination.
- [^{F5}(6) At a time when a notice given under section 237A is provisional, no determination is to be made under subsection (1) in respect of the notice.
- (7) If a promoter fails to comply with conditions in a conduct notice at a time when the conduct notice is provisional, nothing in subsection (6) prevents those failures from

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being taken into account under subsection (1) at any subsequent time when the conduct notice is not provisional.]

Textual Amendments

- F1 Words in s. 242(1)(b) renumbered as s. 242(1)(b)(i) (with effect in accordance with Sch. 30 para. 27(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 27\(1\)\(a\)\(i\)](#)
- F2 S. 242(1)(b)(ii) and word inserted (with effect in accordance with Sch. 30 para. 27(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 27\(1\)\(a\)\(ii\)](#)
- F3 Words in s. 242(1) inserted (with effect in accordance with Sch. 30 para. 27(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 27\(1\)\(b\)](#)
- F4 S. 242(1A)-(1G) inserted (with effect in accordance with Sch. 30 para. 27(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 27\(2\)](#)
- F5 S. 242(6)(7) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [s. 160\(4\)](#)

243 Monitoring notices: tribunal approval

- (1) On an application under section 242, the tribunal may approve the giving of a monitoring notice only if—
 - (a) the tribunal is satisfied that, in the circumstances, the authorised officer would be justified in giving the monitoring notice, and
 - (b) the person to whom the monitoring notice is to be given (“the affected person”) has been given a reasonable opportunity to make representations to the tribunal.
- (2) The tribunal may amend the draft notice included with the application under section 242.
- (3) If the representations that the affected person makes to the tribunal include a statement that in the affected person's view it was not reasonable to include the condition mentioned in section 242(1)(b) in the conduct notice, the tribunal must refuse to approve the giving of the monitoring notice if it is satisfied that it was not reasonable to include that condition (but see subsection (4)).
- (4) If the representations made to the tribunal include the statement described in subsection (3) and the determination under section 242(1)(b) is a determination that there has been a failure to comply with more than one condition in the conduct notice—
 - (a) subsection (3) does not apply, but
 - (b) in deciding whether or not to approve the giving of the monitoring notice, the tribunal is to assume, in the case of any condition that the tribunal considers it was not reasonable to include in the conduct notice, that there has been no failure to comply with that condition.

244 Monitoring notices: content and issuing

- (1) Where the tribunal has approved the giving of a monitoring notice, the authorised officer must give the notice to the person to whom it relates.
- (2) A monitoring notice given under subsection (1) or paragraph 9 or 10 of Schedule 36 must—
 - (a) explain the effect of the monitoring notice and specify the date from which it takes effect;

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- (b) inform the recipient of the right to request the withdrawal of the monitoring notice under section 245.
- (3) In addition, a monitoring notice must—
 - (a) if given under subsection (1), state which condition (or conditions) it has been determined the person has failed to comply with and the reasons for that determination;
 - (b) if given under paragraph 9 or 10 of Schedule 36, state the date of the original monitoring notice and name the partnership to which that notice was given.
- (4) The date specified under subsection (2)(a) must not be earlier than the date on which the monitoring notice is given.
- (5) In this Part, a person in relation to whom a monitoring notice has effect is called a “monitored promoter”.

[^{F6}244A Monitoring notices: transferees

- (1) This section applies if an authorised officer becomes aware at any time that a person to whom a monitoring notice has been given (“ P ”) has made a relevant transfer within the meaning of paragraph 5 of Schedule 33A (promotion structures) to another person (“D”).
- (2) The authorised officer may give D a monitoring notice.
- (3) Where a person is given a monitoring notice under this section, but considers that they were not a person to whom a relevant transfer was made (such that this section applies), they may make representations to that effect to the authorised officer.
- (4) If (in light of those representations) the authorised officer considers that this section did not apply at the time the monitoring notice was given, the officer must withdraw the notice.
- (5) Subsections (2) to (4) of section 244 (monitoring notice: content and issuing) apply in relation to a monitoring notice given under subsection (2) of this section as they apply to a monitoring notice given under subsection (1) of that section, but as if the reference in subsection (3)(a) of that section to “the person” were a reference to P.]

Textual Amendments

F6 S. 244A inserted (with effect in accordance with Sch. 30 para. 21(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 21\(1\)](#)

245 Withdrawal of monitoring notice

- (1) A person in relation to whom a monitoring notice has effect may, at any time after the end of the period of 12 months beginning with the end of the appeal period, request that the notice should cease to have effect.
- (2) The “appeal period” means—
 - (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the monitoring notice, or

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- (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (3) A request under this section is to be made in writing to an authorised officer.
- (4) Where a request is made under this section, an authorised officer must within 30 days beginning with the day on which the request is received determine either—
 - (a) that the monitoring notice is to cease to have effect, or
 - (b) that the request is to be refused.
- (5) The matters to be taken into account by an authorised officer in making a determination under subsection (4) include—
 - (a) whether or not the person subject to the monitoring notice has, since the time when the notice took effect, engaged in behaviour of a sort that conditions included in a conduct notice in accordance with section 238(3) could be used to regulate;
 - (b) whether or not it appears likely that the person will in the future engage in such behaviour;
 - (c) the person's record of compliance, or failure to comply, with obligations imposed on it under this Part [^{F7}(including any obligations connected with any stop notice the person is subject to)], since the time when the monitoring notice took effect.
- (6) An authorised officer—
 - (a) may withdraw a monitoring notice if the officer thinks it is not necessary for it to continue to have effect, and
 - (b) in considering whether or not that is necessary, the officer must take into account the matters in paragraphs (a) to (c) of subsection (5).
- (7) If the authorised officer makes a determination under subsection (4)(a), or decides to withdraw a monitoring notice under subsection (6), the officer must also determine that the person is, or is not, to be given a follow-on conduct notice.
- (8) “Follow-on conduct notice” means a conduct notice taking effect immediately after the monitoring notice ceases to have effect.
- [^{F8}(8A) For the purposes of determining whether a person should be given a follow-on conduct notice, the meeting of the condition in paragraph 12 of Schedule 34 (stop notices) by the person at a time when they are subject to a monitoring notice is to be regarded as significant by the authorised officer making the determination (see section 237(5)).]
- (9) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice—
 - (a) in subsection (1) the reference to the end of the appeal period is to be read as a reference to whichever is the later of the end of the appeal period for the original monitoring notice and the date the replacement monitoring notice takes effect, and
 - (b) in subsection (5)(a) and (c) the time referred to is to be read as the time when the original monitoring notice (see paragraph 11(2) of Schedule 36) took effect.

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Textual Amendments

- F7** Words in s. 245(5)(c) inserted (with effect in accordance with s. 121(6) of the amending Act) by Finance Act 2021 (c. 26), **Sch. 30 para. 2(2)**
- F8** S. 245(8A) inserted (with effect in accordance with s. 121(6) of the amending Act) by Finance Act 2021 (c. 26), **Sch. 30 para. 2(3)**

246 Notification of determination under section 245

- (1) Where an authorised officer makes a determination under section 245(4), that officer, or an officer of Revenue and Customs with that officer's approval, must notify the person who made the request of the determination.
- (2) If the determination is that the monitoring notice is to cease to have effect, the notice must—
 - (a) specify the date from which the monitoring notice is to cease to have effect, and
 - (b) inform the person of the determination made under section 245(7).
- (3) If the determination is that the request is to be refused, the notice must inform the person who made the request—
 - (a) of the reasons for the refusal, and
 - (b) of the right to appeal under section 247.

247 Appeal against refusal to withdraw monitoring notice

- (1) A person may appeal against a refusal by an authorised officer of a request that a monitoring notice should cease to have effect.
- (2) Notice of appeal must be given—
 - (a) in writing to the officer who gave the notice of the refusal under section 245, and
 - (b) within the period of 30 days beginning with the day on which notice of the refusal was given.
- (3) The notice of appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may—
 - (a) confirm the refusal, or
 - (b) direct that the monitoring notice is to cease to have effect.
- (5) Subject to this section, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this section.

248 Publication by HMRC

- (1) An authorised officer may publish the fact that a person is a monitored promoter.
- (2) Publication under subsection (1) may also include the following information about the monitored promoter—
 - (a) its name;
 - (b) its business address or registered office;

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- (c) the nature of the business [^{F9}as a promoter which the monitored promoter is carrying on];
 - (d) any other information that the authorised officer considers it appropriate to publish in order to make clear the monitored promoter's identity.
- (3) The reference in subsection (2)(a) to the monitored promoter's name includes any name under which it carries on a business as a promoter and any previous name or pseudonym.
- (4) Publication under subsection (1) may also include a statement of which of the conditions in a conduct notice it has been determined that the person (or, in the case of a replacement monitoring notice, the person to whom the original monitoring notice was given) has failed to comply with.
- (5) Publication may not take place before the end of the appeal period (or, in the case of a replacement monitoring notice, the appeal period for the original monitoring notice).
- (6) The “appeal period”, in relation to a monitoring notice, means—
- (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the notice, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (7) Publication under this section is to be in such manner as the authorised officer thinks fit; but see subsection (8).
- (8) If an authorised officer publishes the fact that a person is a monitored promoter and the monitoring notice is withdrawn, the officer must publish the fact of the withdrawal in the same way as the officer published the fact that the person was a monitored promoter.

Textual Amendments

- F9** Words in s. 248(2)(c) substituted (with effect in accordance with Sch. 30 para. 21(3) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), **Sch. 30 para. 21(2)**

249 Publication by monitored promoter

- (1) A person who is given a monitoring notice (“the monitored promoter”) must give the persons mentioned in subsection (6) a notice stating—
- (a) that it is a monitored promoter, and
 - (b) which of the conditions in a conduct notice it has been determined that it (or, if the monitoring notice is a replacement monitoring notice, the person to whom that notice was given) has failed to comply with.
- (2) If the monitoring notice is a replacement monitoring notice, the notice under subsection (1) must also identify the original monitoring notice.
- (3) If regulations made by the Commissioners so require, the monitored promoter must publish on the internet—
- (a) the information mentioned in paragraph (a) and (b) of subsection (1), and
 - (b) its promoter reference number (see section 250).

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- (4) Subsection (1) and any duty imposed under subsection (3) or (10) do not apply until the end of the period of 10 days beginning with the end of the appeal period (and also see subsection (9)).
- (5) The “appeal period” means—
- (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the monitoring notice, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (6) The notice under subsection (1) must be given—
- (a) to any person who becomes a client of the monitored promoter while the monitoring notice has effect, and
 - (b) (except in a case where the monitoring notice is a replacement monitoring notice) any person who is a client of the monitored promoter at the time the monitoring notice takes effect.
- (7) A person (“C”) is a client of a monitored promoter at the time a monitoring notice takes effect if during the period beginning with the date the conduct notice mentioned in subsection (1)(b) takes effect and ending with that time the promoter—
- (a) made a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) made a relevant proposal available for implementation by C;
 - (c) took part in the organisation or management of relevant arrangements entered into by C.
- (8) A person becomes a client of a monitored promoter if the promoter does any of the things mentioned in paragraph (a) to (c) of subsection (7) in relation to that person.
- (9) In the case of a person falling within subsection (6)(a), notice under subsection (1) may be given within the period of 10 days beginning with the day on which the person first became a client of the monitored promoter if that period would expire at a later date than the date on which notification would otherwise be required by virtue of subsection (4).
- (10) A monitored promoter must also include in any prescribed publication or prescribed correspondence—
- (a) the information mentioned in paragraph (a) and (b) of subsection (1), and
 - (b) its promoter reference number (see section 250).
- (11) Notification under subsection (1), publication under subsection (3) or inclusion of the information required by subsection (10) is to be in such form and manner as is prescribed.
- (12) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice, the reference in subsection (4) to the end of the appeal period is to be read as a reference to whichever is the later of the end of the appeal period for the original monitoring notice and the date the replacement monitoring notice takes effect.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212(4)(f) and word inserted by [2021 c. 26 Sch. 27 para. 43\(b\)\(ii\)](#)
- s. 212(5)(a)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(ii\)](#)
- s. 212(5)(b)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(iv\)](#)
- s. 212(5)(c)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(v\)](#)
- Sch. 31 para. 2(3)(b) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(iii\)](#)
- Sch. 31 para. 2(4A) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(c\)](#)
- Sch. 31 para. 3(1A) inserted by [2017 c. 32 Sch. 14 para. 45\(3\)\(b\)](#)
- Sch. 31 para. 5(b) inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(c\)](#)
- Sch. 31 para. 2(3)(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(ii\)](#)
- Sch. 31 para. 5(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(b\)](#)
- Sch. 31 para. 2(3)(a) words renumbered as Sch. 31 para. 2(3)(a) by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(i\)](#)
- Sch. 31 para. 5(a) words renumbered as Sch. 31 para. 5(a) by [2017 c. 32 Sch. 14 para. 45\(4\)\(a\)](#)
- Sch. 32 para. 1(2)(b) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(iii\)](#)
- Sch. 32 para. 1(3A) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(c\)](#)
- Sch. 32 para. 1(2)(a) words inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(ii\)](#)
- Sch. 32 para. 1(2)(a) words renumbered as Sch. 32 para. 1(2)(a) by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(i\)](#)