HMRC - TOBCSC8760 - Template For Penalty Notice

Dear Sir/Madam [This should only be used where you don’t know the name of the person/ gender of the person you are writing to or if you don’t know the name of the person you are writing to but know the gender]

Section 7B and 7C Tobacco Products Duty Act 1979 (“TPDA”)

We sent you an initial notice on [Insert date initial notice issued] (enclosed) (the “initial notice”) in relation to your duty not to facilitate smuggling of cigarettes or hand-rolling tobacco (“HRT”) into the United Kingdom (as set out in section 7A (1) of the Tobacco Products Duty Act 1979).

This letter is a formal penalty notice to inform you that we have imposed a penalty under section 7B (4) (a) of the Tobacco Products Duty Act 1979 (the “penalty notice”).

The grounds for the issue of the penalty notice is set out in Appendix A (as required by section 7C (1) (b) of the Tobacco Products Duty Act 1979).

All references to legislation below are to the TPDA unless otherwise indicated.

As required by section 7C (1) (a), the amount of the penalty that we require you to pay is [Insert penalty Amount]

The amount of the penalty has been determined according to published criteria in our Tobacco: “Anti-smuggling” or “the TPDA statutory duty” Manual which is available at:

[Link to HMRC’s online guidance]

The scoring criteria for the penalty applied to you is for failing to comply with your duty not to facilitate smuggling. This is provided in Appendix B to this penalty notice.

If you do not agree with my decision to issue a penalty, you can:

ask for my decision to be reviewed by an HMRC officer not previously involved in the matter; or

appeal to an independent tribunal.

If you opt for a review you can still appeal to the tribunal after the review has finished.

If you want a review you should write to me at the above address within 30 days of the date of this penalty notice, giving your reasons why you do not agree with my decision.

We will not take any action to collect the penalty while the review of the decision is being carried out.

If you want to appeal to the tribunal you should send them your appeal within 30 days of the date of this penalty notice.

You can find further information about appeals and reviews on our website [Insert Link] or you can phone the number on this letter. You can find out more about tribunals on the Tribunals Service website [Insert Link] or you can phone them on [Insert number]

Yours sincerely

[Insert name]

Tobacco Anti-Smuggling Compliance Manager

For, and on behalf of, HM Revenue & Customs

cc. ………………………

Appendix A

Grounds for issue of the penalty notice under section 7B (4) (a) (as required by section 7C (1) (b))

A manufacturer of cigarettes or hand-rolling tobacco (HRT) shall so far as is reasonably practicable avoid –

supplying cigarettes or hand-rolling tobacco to persons who are likely to smuggle them into the United Kingdom

avoid supplying tobacco products where the nature or circumstances of the supply make it likely that they will be re-supplied to persons who are likely to smuggle them into the UK

avoid otherwise helping smuggling of tobacco products into the UK

The legislation facilitates the sharing of information between us and TMs in relation to:

(i) supply chains both in the United Kingdom and to countries/specific places outside the United Kingdom;

(ii) seized cigarettes/HRT and

(iii) particular areas of risk for the purposes of providing a better understanding and early identification of smuggling risks in relation to cigarettes/HRT

HMRC Large Business (“HMRC LB”) is the primary interface between us and you in relation to assuring written policies. We are responsible for calculating and issuing any penalty.

The TPDA and the Tobacco Products Regulations 2001 (S.I. 2001/1712, as amended by S.I. 2006/2368 (the “TPR 2001”)) impose specific requirements on TMs. It is our opinion that you have not met these obligations and, despite the issue of the initial notice, and having no reasonable excuse, you have still failed to meet these obligations.

Section 7C requires us to consider a range of factors when deciding whether to issue a penalty notice. To help you understand our decision to issue the penalty notice, we have set out, in detail below the range of factors and evidence that we have considered in relation to your failure to meet these obligations.

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information. Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Do not add any other matters not originally included in the initial notice. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information. Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

3. Section 7C (2) (c) and (d) – the content of, and the compliance with, [insert company name] policy under section 7A (2) (b)

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

4. Section 7C(2)(e) – action taken by [insert company name] following notifications from us of high smuggling risks in relation to products: (i) marketed under a specified brand name; (ii) supplied to persons carrying on business in or in relation to a specified country or place as set out in section 7A(4)

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

5. Section 7C (2) (f) – compliance by [insert company name] in relation to supplying to us specified information about: (i) the supply of products marketed under a specified brand name; (ii) supply to persons carrying on business in or in relation to a specified country or place; (iii) demand for cigarettes or HRT in a specified country or place as set out in section 7A (5)

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

6. Section 7C (2) (g) – the number, size and nature of seizures of which [insert company name] has been given notice by HMRC under section 7A (7) (a)

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

7. Section 7C (2) (h) – the loss of revenue by way of duty under section 2, or VAT, in respect of products seized

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

8. Section 7C (2) (i) - any other matter HMRC thinks relevant

[Drafting Note: there are two alternatives here:

[There are currently no additional matters we consider relevant. If other matters do arise, we will write to you and set these out in detail and, if necessary, issue another initial notice under section 7B (1)]; or

[Drafting Note: set out specific information supplied by us to the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information Highlight how there is no reasonable excuse for not taking the appropriate action].

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

Appendix B

Scoring criteria for the issue of the penalty and basis of calculation

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states:Score1 – 25where there is no breach of duty, no points should be applied and a penalty should not be issued. A score of 25 would indicate a gross and blatant breach of duty).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states: Some action, but not comprehensive, score up to 5. Little or no action, score up to 10).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the Initial Notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states: A score of 0 would be appropriate if we are satisfied that the manufacturer has taken all reasonably practicable steps to comply with his duty and we would not issue a penalty. A maximum score of 15 would indicate a policy not fit for purpose and / or not being followed).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states: Where all reasonable controls are already in place, or a manufacturer takes positive action to ensure that they are implemented in the future score 0, fails to respond to the additional risks, score up to 5).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states: manufacturer has made every reasonable effort to comply with the information requirements score 0, manufacturer has not provided the information without reasonable excuse, or has failed to take steps to ensure its future availability, score up to 5).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

(Our guidance states: In the 6-month period since the issuing of an initial notice, there have been \* between 1 and 50 notified seizures score up to 5, \* There have been over 50 notified seizures, score up to 10).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading [ ] in Appendix A to this penalty notice.

((HMRC Guidance states: £1 to £3 million score up to 5, over £3 million to £6 million score up to 10, over £6 million score up to 20).

See TOBCSC8200 for guidance on the factors to be considered and how a final score should be reached.

[Drafting Note: Cross refer to the relevant section in Annex A. Use terminology and language that relates directly to Annex A and the initial notice. Provide a brief explanation of how the evidence detailed in Annex A has resulted in the score given.

Score: [Insert score]

See Heading 8 in Appendix A to this penalty notice.

This ninth factor is effectively under our discretion. Under this factor we may take into account anything not covered by the first eight factors. We may use this to re-assess the importance we have attached to the first eight factors, so long as we can show good reason for doing so.

Drafting Note: there are two alternatives here:

[There are currently no additional matters we consider relevant. If other matters do arise, we will write to you and set these out in detail and, if necessary, issue another initial notice under section 7B(1)]; or

[Drafting Note: set out specific information supplied by us by the TM and highlight where there has been no action or the appropriate action taken by the TM in relation to that information].

The full penalty calculation may then be expressed as:

[Drafting Note: Use terminology and language that relates directly to previous discussions with the TM and the initial notice issued. Provide evidence to support whether the TM’s actions during the warning period have/have not addressed your concerns. Detail your conclusions and footnote the source of the evidence where appropriate].

[Drafting Note: Confirm whether this issue has been resolved or included in the penalty calculation. If item remains unresolved also provide recommended course of action for the TM going forward and what we require].

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