HM Revenue & Customs

Automated Decisions: Technical note October 2019

Overview and aim

1.1 HMRC uses large-scale automated processes to carry out routine tasks such as to give statutory notice, where making individual decisions on individual cases would be impractical, resource intensive, or simply unnecessary in light of published guidance or underlying legislation. HMRC has used automated processes to fulfil its functions for many years in order to manage the assessment and collection of taxes in the most efficient and cost effective way.

1.2. This long-established use of automation has been challenged in the courts on the basis that it is not supported by legislation. HMRC believes that its current practices are supported by legislation, but to provide certainty the government therefore plans to introduce legislation in the next Finance Bill to affirm that HMRC's practice of using automated processes to help fulfil certain functions has a firm legal footing.

1.3. This technical clarification will provide fairness across all taxpayer groups and provide certainty regarding the statutory basis for the existing policy and practice which have been in place for many years. The legislation will not introduce any new or additional obligations or liabilities for customers.

Automated Decisions

2.1. The policy intention is to make clear that HMRC's use of large-scale automated processes to serve certain statutory notices and to carry out certain functions is and always has been fully supported by legislation.

2.2. The proposed new legislation will provide that for certain functions [listed below] anything capable of being done by an officer may be done instead by HMRC through the use of a computer or other electronic means, whether automatically or not.

2.3. The proposed new legislation will cover the following functions:

- The provisions contained in the Taxes Management Act 1970 (TMA 1970)at s8, s8A and s12AA which provide for giving notice to file a return in relation to individuals, trustees and partnerships.
- S9ZB TMA1970, which provides for the correction of a personal or trustee's return by HMRC.
- Paragraph 3 Schedule18 Finance Act 1998, which are the provisions for the issue of a notice to file to corporate bodies.
- S100 TMA 1970, which contains the provisions for the making of a determination imposing a penalty under any provisions of the Taxes Acts.
- Schedule 14 Finance Act 2003, which contains provisions for the determination of penalties in respect of Stamp Duty Land Tax.

2.4. The government intends that the legislation will apply both retrospectively and prospectively in order to safeguard revenue charged since automated processes were introduced by HMRC. This means that both the automated processes themselves and anything done subsequent or pursuant to the automated process will be covered by this legislation prospectively and retrospectively. For example, where a notice to file an ITSA return was issued under section 8 TMA 1970 by HMRC using an automated process, anything done by HMRC related or pursuant to the issuance of that notice, such as charging a late filing penalty, or enquiring into any return received pursuant to the notice, will be covered by this legislation.

2.5. This is not a new policy and nothing will change for taxpayers. It is intended that any taxpayers who have received a settled judgement from a court or tribunal regarding the use of automation by HMRC before the date of this announcement (31 October 2019) will not be subject to the retrospective application of this legislation in respect of the issues covered by that judgment.

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