



**Withdrawing a notice to file a Self Assessment return
HM Revenue & Customs consultation**

Response by the Low Incomes Tax Reform Group

1. Executive summary

- 1.1. We welcomed HMRC's use of collection and management powers to cancel Self Assessment ('SA') returns under a process introduced in early 2012 and agree that this should be embedded as a statutory power in future.
- 1.2. There should be three possible means of applying for cancellation of a return – in writing, by telephone or online (for those registered for SA online). In each case, the decision should be confirmed clearly in writing together with a note of the individual's future obligation to notify a liability if their circumstances change.
- 1.3. Given an adequate period of consultation, LITRG would be pleased to help in the design of processes, guidance and letters to taxpayers.
- 1.4. We recommend that taxpayers are safeguarded in this process by HMRC:
 - providing clear guidance, both to taxpayers and to HMRC staff, as to the circumstances in which such a cancellation can be requested
 - ensuring that their staff are trained and supported with robust processes to ensure that withdrawals only occur where appropriate
 - recording calls of requests for cancellations made by telephone in case of future query
 - helping callers, particularly the unrepresented, to establish whether such a request is appropriate by asking them relevant questions

- ensuring that helplines and guidance are accessible to all, with clear signposting of how people with disabilities and those who are digitally excluded can make contact or access information in alternative formats
 - ensuring that it is clear whether agents – whether friends and family helpers, paid agents or voluntary sector agents – can, with appropriate authority, make the return cancellation request on a taxpayer’s behalf
 - not raising penalties where a return has been cancelled as a result of HMRC error.
- 1.5. We think it would be not unreasonable if HMRC were to impose a deadline of 5 October after the filing date of a return is given for the taxpayer to apply for cancellation of that return, which would allow taxpayers a reasonable period of grace to act after they receive warnings of penalties for failure to file.
- 1.6. HMRC should not penalise taxpayers who made a genuine mistake in applying for cancellation of a return and any judgement of ‘reasonable excuse’ required under the penalty model should be made taking into account the individual’s capability and circumstances.
- 1.7. We recommend that if the Schedule 41 FA 2008 penalty provisions are used, these are modified to allow for a nil penalty where there was a genuine misunderstanding in cases where the taxpayer previously applied to HMRC for a return to be withdrawn. This would allow HMRC not to charge a penalty in cases where it would obviously be disproportionate to do so and avoid the need for taxpayers to appeal a penalty under the reasonable excuse provisions – thus saving both HMRC and the taxpayer time and costs in dealing with the appeal.

2. Introduction

2.1. *About us*

- 2.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2.2. **General Comments**

- 2.2.1. LITRG welcomes the opportunity to respond to this consultation. Our responses to the specific consultation questions are detailed below. Where we refer to 'individuals' we also include individual taxpayers, trustees and partnerships, although our core focus is on the affect of the provisions on low-income individuals.
- 2.2.2. We have liaised with Tax Help for Older People¹ in writing this response and, where their response makes additional points, we add our support to those rather than repeating them here.

3. **Question 1: HMRC welcomes general views on whether a power to remove a notice to file a Self Assessment ('SA') return would be beneficial and how the proposed power should work in practice.**

3.1. **General views**

- 3.1.1. We welcomed² HMRC's use of its discretionary powers from early 2012 to cancel SA tax returns and quash penalties where taxpayers made contact to advise that they should not have been in Self Assessment. This produced valuable efficiency savings in terms of time which otherwise would have been spent by individuals and their advisers (and particularly within the voluntary sector for those helping low-income, otherwise unrepresented individuals) in completing unnecessary returns. It must also have produced savings for HMRC in not having to process returns which showed no tax liability.
- 3.1.2. We agree with the consultation proposal that it would be preferable for HMRC to have statutory power to cancel a notice to file a SA return, so that HMRC is not relying upon 'collection and management' powers.
- 3.1.3. The current legislation enables penalties to be charged to an individual who was served a notice to file a SA return even if that individual should not have been required to file a return. Although HMRC can use 'special reduction'³ to cancel late filing penalties, we agree that as the late filing penalties bed in that power might no longer be appropriate and therefore welcome HMRC's intention to retain the option by way of a new statutory power to cancel penalties together with cancelling unnecessary returns.

¹ See www.taxvol.org.uk

² See <http://www.litrg.org.uk/News/2012/miss-sa-deadline>

³ Paragraph 16, Schedule 55 Finance Act 2009

- 3.1.4. Introducing a statutory power should hopefully also result in a consistent approach to all individuals who have been issued a notice to file a SA return unnecessarily provided the stated aim of 'having unambiguous rules' (para 1.7 of the consultation) is achieved.
- 3.1.5. It would be helpful for HMRC to confirm that the introduction of this new power will not detract from the Department's existing processes which seek to identify, when returns are processed, that an individual ought no longer to be in SA. HMRC then write to the taxpayer advising that future returns will not be issued unless they notify of a change in circumstances or new liability to tax. Those existing processes are essential in keeping down the number of SA filers and the onus should not be shifted altogether on to individuals to self-identify when they should be removed from the system.
- 3.1.6. The consultation proposes that the onus will be on the individual to contact HMRC if they consider that they are not required to complete a SA tax return once it has been issued. This is in line with the practice introduced in early 2012 (para 3.2 of the consultation).
- 3.1.7. When an individual contacts HMRC, we believe that HMRC must then review the application and information provided together with data already on the Department's systems in order to reach a decision about whether the notice to file should be withdrawn.
- 3.1.8. Provided that the individual has not made a deliberately false application or concealed facts in order to get out of SA, they should not be penalised if there is a genuine mistake in understanding. We comment further on this in answer to question 3 below.
- 3.1.9. When an individual makes the application, particularly if they are unrepresented, they should be helped by HMRC to understand whether or not the application is appropriate in order to minimise the incidence of genuine mistakes. HMRC have undertaken research recently into particular groups of customer which might be in need of enhanced support. If there is an indication that the taxpayer is in such need when they make contact with HMRC to request cancellation of a SA return, HMRC staff must be alert to their additional needs.

Accessibility of the process

- 3.1.10. As with all HMRC processes, taxpayers with particular needs should be helped to access the process for applying for cancellation of a return – for example, reasonable adjustments being made for people with disabilities.
- 3.1.11. When HMRC send out the notice to file a tax return together with details of how to apply for the return to be cancelled, the guidance must:
- be clear and accessible to all,
 - clearly note the availability of alternative formats (large print, Braille and so forth)

- clearly indicate how helplines can be accessed by people who find the telephone difficult or impossible, such as people with impaired hearing and speech.

Recording calls

- 3.1.12. The taxpayer will be able, as under the current practice, to contact HMRC by telephone to request cancellation of a SA return. For the avoidance of doubt and to clarify matters in the event of a dispute, all such calls should be recorded and capable of being retrieved later.

Confirming to the individual that the return has been cancelled

- 3.1.13. A notice to file a tax return is a statutory notice and one which HMRC give to taxpayers in writing. It therefore makes sense that any cancellation of such a notice is confirmed in writing, even if the decision to cancel it is given orally over the telephone.
- 3.1.14. This written confirmation should be issued shortly after the telephone conversation – within, say, two working weeks. The letter should clearly explain that the person has been taken out of SA and what their future obligations are to notify liability if there is a change of circumstances.

Means of applying for a return to be cancelled

- 3.1.15. We understand that there are currently two options - telephone helpline, or in writing (by post). The consultation does not discuss whether it is possible for an individual to use HMRC's online services to request that they should no longer be required to file a SA return. This would be a cost effective and time efficient way for individuals who are registered on SA online to make such a request HMRC - through the Government Gateway, by secure email. It would avoid postal problems such as delays and lost correspondence, for example.
- 3.1.16. Such communication could have a design similar to when taxpayers request to not pay Payments on Account (for example, multiple choice options of the reasons why it no longer applies and a further information box to complete if required).
- 3.1.17. We recommend that HMRC make an online option available. Confirmation of the cancellation, if accepted, would still need to be given in writing.

Guidance

- 3.1.18. To provide certainty and avoid ambiguity, it is important to be clear about when HMRC require a SA return to be filed.
- 3.1.19. We recommend that additional guidance about when a return is required should be included with the notice to file a tax return. We appreciate that it is not possible to cover all the scenarios in which an individual would be required to file a return but it could provide a checklist and some examples. With adequate notice, LITRG would be pleased to be involved in the development of such guidance.

Borderline cases

- 3.1.20. If the taxpayer requests cancellation of a return but there is doubt about whether a SA return is required and the individual is advised to file a return, there should be a formal process in place for HMRC to review the submitted tax return and make a decision about whether or not the individual should remain in the SA system.
- 3.1.21. This decision should then be communicated in writing to the individual; and if HMRC decline a withdrawal for future years then the reasons for this should be explained to the individual who should then be given the opportunity either to have the decision internally reviewed or to appeal.

Dealing with agents

- 3.1.22. There is no mention in the consultation about who may be able to discuss a person's tax affairs with HMRC on behalf of an individual.
- 3.1.23. We would hope that, with appropriate authority, HMRC would consider accepting requests for tax return to be cancelled from a taxpayer's representative – be that an informal helper (such as a friend or family member), a paid agent with a '64-8' authority in place, or a voluntary sector helper using an appropriate method such as the 'KANA' email service¹.

4. **Question 2: HMRC welcomes views on whether there should be a deadline by which people who think they should not be in SA must contact HMRC and what that deadline should be?**

- 4.1. We understand that HMRC wish to operate the new statutory powers within a fixed deadline. A deadline would allow a consistent approach by HMRC and for individuals to have a fixed timetable.

4.2. ***A possible deadline***

- 4.2.1. No deadline is suggested by HMRC in the consultation document. We would suggest that a deadline of 5 October after the filing date for the return would be not unreasonable, that is, for a 2012/13 tax return, the taxpayer would normally have until 31 January 2014 to file the return (if filing online) and should therefore be able to apply for it to be cancelled until 5 October 2014.

¹ <https://online.hmrc.gov.uk/shortforms/form/PTPR?dept-name=&sub-dept-name=&location=43&origin=http://www.hmrc.gov.uk>

4.2.2. The advantages of using 5 October are that:

- it resonates with HMRC proposing to incorporate the new power within the Taxes Management Act 1970 provisions for notifying of a tax liability (the deadline for which is 5 October after the end of the tax year)
- it would allow time for HMRC to give the taxpayer several warnings that a SA return is due and subsequently that it is overdue, as the individual should receive notification of late filing penalties fixed penalties after 31 January and 31 July, and warnings of daily penalties accruing in between
- it allows time for vulnerable taxpayers to seek help with their tax affairs once they realise that penalties are accruing and getting the returns and penalties cancelled once it is established that the returns were in fact unnecessary. This would maintain what we understand to have been one of the key reasons behind introducing the discretionary practice in early 2012 and protect those taxpayers from disproportionate penalty – a fine for failure to file a return which was obviously unnecessary in the first place.

4.2.3. The length of these deadlines is important, as people need time to get returns cancelled even after penalties have started to accrue. Some vulnerable and unrepresented taxpayers ignore the original notice to file if they are confused about why it has been issued in the first place – those who might have initially registered as self-employed but abandoned the attempt at an early stage, or pensioners with multiple income sources are two such examples – and only take action when the penalty notices start to arrive much later. HMRC therefore needs sufficient flexibility in this new power to cancel those penalties along with the returns.

4.2.4. If HMRC issue a late notice to file a return, the taxpayer generally has three months to comply (if filing electronically)¹. The same penalty regime for non-compliance then applies – an immediate, fixed penalty, escalating to daily penalties after three months. If we apply the same rationale above that there should be some time for taxpayers to be notified of potential penalties accruing and to take action, we would think it not unreasonable to have a deadline of, say, three months after the online filing date for cancellation of a return. There would then be a very simple rule – a deadline of 5 October after the longest possible (ie online) filing date, or – if later – three months after that date.

¹ This depends on the exact date of issue of the return and how the issue date interacts with the usual filing dates of 31 October (paper) and 31 January (electronic). Section 8, subsections (1D) to (1G) TMA 1970 refer.

5. **Question 3: HMRC welcomes views on applying failure to notify penalties under Schedule 41 Finance Act 2008 where a notice to file has been withdrawn on the basis of incorrect, misleading or partial information.**
- 5.1. We understand that HMRC want to discourage individuals from incorrectly informing them that they no longer meet the criteria to file a SA tax return.
- 5.2. Following other recently-introduced penalty models, there should be no penalty when the taxpayer has made an innocent mistake – that is, that they have taken reasonable care in requesting cancellation of a return. Such reasonable care should be judged according to the individual's capability¹.
- 5.3. As there is no concept of reasonable care in the Schedule 41 FA 2008 model which the consultation proposes should be followed, an alternative would be to follow the Schedule 24 FA 2007 penalties model. This would mean that the request for cancellation of a return would be treated as a submission of information to HMRC and there would then be penalties for inaccuracy of that disclosure. In turn, the taxpayer could be judged to have made a mistake despite taking reasonable care, in which case no penalty would apply.
- 5.4. That said, we are inclined to agree that it would be simpler to follow the Schedule 41 provisions as proposed in the consultation (para 3.10), but with one modification. Although there is provision within Schedule 41 for an individual to appeal against penalties on the grounds of reasonable excuse, we recommend that that a taxpayer (especially one judged to be 'in need of enhanced support') should incur a nil penalty where there was mistake due to misunderstanding in previously requesting cancellation of a return.
- 5.5. We are also concerned that there is no mention in the consultation about what will happen when there is an error made by HMRC. What safeguards will HMRC put in place to ensure that individuals will not face penalties as a consequence of HMRC errors? Following on from the above, we would like confirmation that when a notice to file a SA return has been withdrawn because of a mistake made by HMRC the individual will not be subject to the proposed penalties. Again, a taxpayer in need of enhanced support is unlikely to be able to spot the mistake and point it out to HMRC, so the Schedule 41 model should be modified to allow for a nil penalty in such cases.
- 5.6. The modification we propose would promote efficiency. That is, it would allow HMRC not to charge a penalty in cases where it would obviously be disproportionate to do so and avoid

¹ See for example Compliance Handbook 81120

<http://www.hmrc.gov.uk/manuals/chmanual/CH81120.htm>

"... Every person must take reasonable care, but 'reasonable care' cannot be identified without consideration of the particular person's abilities and circumstances. HMRC recognises the wide range of abilities and circumstances of those persons completing returns or claims. ..."

the need for taxpayers to appeal a penalty under the reasonable excuse provisions – thus saving both HMRC and the taxpayer time and costs in dealing with the appeal.

5.7. If penalties are to be charged when individuals provide incorrect, misleading or partial information then we reiterate our recommendations above that:

- detailed guidance must be available as to what information is required in making their application to have a return cancelled
- such guidance must be accessible to all, and not just available online (posing a problem for the many who remain digitally excluded¹)
- if people make telephone requests to cancel a return, HMRC frontline staff must have sufficient training to assist the caller and to make appropriate decisions based on the information provided by the individual.

LITRG

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¹ See '*Digital Exclusion – a LITRG Report*', May 2012
<http://www.litrg.org.uk/reports/2012/dig-excl>