

**Withdrawing a notice to file a Self Assessment return
HM Revenue and Customs consultation response document and draft legislation
for inclusion in Finance Bill 2013**

Comments by the Low Incomes Tax Reform Group

Who we are

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. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
2. LITRG works extensively with HM Revenue & Customs and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
3. 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.

Our comments

4. We welcome the decision to introduce a statutory power allowing HMRC to withdraw a previously issued notice to file a personal, trustee or partnership Self Assessment (SA) return. The existing concessionary treatment has proved a most welcome easement in the last year.

Deadline

5. We welcome a long deadline for a taxpayer to contact HMRC to request cancellation of a return if they think they should not be in SA. But this deadline must **not** be by reference to the end of the tax year to which the return applies – it must be from the date of issue of the return. If a return is issued in the ordinary SA process, two years from the end of the tax year would have some logic; but if instead a return is issued late, it could be that the two year deadline has passed before the return has even been issued, which cannot be right. Furthermore, it must not be left to the ‘exceptional circumstances’ provision, particularly given that HMRC envisage this will only apply in ‘very rare situations’ (per para 2.19 of the consultation response document).
6. We would therefore suggest that the above is rectified by amendment to the draft legislation as follows:

In the draft Section 8B, substitute subsection (6)(a) with:

- “(6) For the purposes of subsection (2) the withdrawal period means –
- (a) the period of 2 years beginning with the date of issue of the notice given under section 8 or 8A in relation to a year of assessment”

7. Similar changes would need to be made to the trustee and partnership provisions.

Exceptional circumstances

8. On the question of HMRC being able to accept ‘exceptional circumstances’ to extend this deadline, we note as above that this is only envisaged in ‘very rare situations’. Whilst it is welcome that HMRC will have some flexibility over the deadline, we are concerned at the wording of draft Section 8B(6)(2) referring to ‘exceptional circumstances’ rather than to the person having a ‘reasonable excuse’ for not having made the application within the deadline. We feel that ‘exceptional circumstances’ is too restrictive a definition and HMRC have gone to some lengths to remove this wording from reasonable excuse guidance in recent times. It would therefore seem far more sensible to align with the existing reasonable excuse provisions and guidance than to revert to a wording which has been agreed in a similar context to be unnecessarily narrow.

Penalties

9. We were disappointed to note that penalties will be implemented in the case of an incorrect withdrawal of a notice to file when there has been a genuine misunderstanding. We still consider a nil penalty would be the most appropriate course of action in such circumstances, but in the absence of such provision we hope that HMRC will take a sensible approach to 'reasonable excuse' claims under FA2008 Schedule 41(20)(1).
10. Our reading of the draft legislation is that the taxpayer will have 30 days from the date HMRC withdraw a notice to file a return to *re-notify* HMRC of a liability if a mistake has been made. If they fail to do so, the taxpayer potentially becomes liable to a penalty under Schedule 41 FA 2008. HMRC must send a notice to the taxpayer confirming the withdrawal – see for example draft Section 8B(4) and (5):
 - “(4) If, on receiving a request, HMRC decide to withdraw the notice under section 8 or 8A they must do so by giving the person a notice under this section.
 - (5) A notice under this section must specify the date on which the notice under section 8 or 8A is withdrawn.”
11. The issue of such a written notice must be done at the time of the decision and it must stress the importance of the taxpayer notifying HMRC within 30 days if it is incorrect.
12. We are also concerned that HMRC say in their consultation response document (para 2.21):

“The “exit” letter HMRC currently sends to individuals when we agree to a request to take someone out of the SA regime, sets out the main reasons for needing to complete a return and advised the individual to tell HMRC straight away if their circumstances change or there is something they forgot to tell HMRC. HMRC will look to build on this under a statutory regime.”
13. It is important that this process is indeed built upon – ideally, the notice should not be a standard letter, but instead tailored to the individual. That is, it should set out that the person made contact with HMRC on XX date, what information was provided on which the decision to withdraw the notice to file the return has been based and what they should do if that information is incorrect or incomplete. Such a tailored approach, complemented with standard guidance on SA criteria, should allow the individual to spot more easily if a mistake has been made and to take remedial action.

14. We reiterate our offer¹ to assist in developing these processes and we look forward to hearing from HMRC to take this forward.

LITRG

5 February 2013

¹ In our consultation response dated 16 August (see <http://www.litrg.org.uk/submissions/2012/withdrawing-a-notice-to-file-a-self-assessment-tax-return%E2%80%93HMRC-consultation>) we offered, with adequate notice, to help HMRC with the design of guidance and letters to taxpayers.