Voluntary tax returns

Management of taxes

01 December 2018

Voluntary tax returns are to be put on a statutory footing following several recent First-tier Tribunal cases which have concluded that where the taxpayer had submitted a tax return to HMRC voluntarily, the return was not a valid return.

It was announced in the Budget that legislation would be introduced in Finance Bill 2018-19 to confirm HMRC's existing policy of treating income and corporation tax self-assessment returns sent to them voluntarily as legally valid returns. The measure was duly included as clause 86 of the Finance Bill published on 7 November and is retrospective; it will apply from 1 April 1996, the year self-assessment was introduced. It will apply to individuals, partnerships, trusts and companies. See GOV.UK.

By 'voluntary' we mean that the taxpayer did not file their return in response to a statutory Notice to File from HMRC.

Given that self-assessment has been with us for more than 20 years, and during that time HMRC's acknowledged policy has been to accept voluntary individual and partnership returns on the same basis as returns received in response to a Taxes Management Act 1970 (TMA) s 8 notice to file, it is perhaps surprising that the status of voluntary returns has only recently been considered by the Tribunal.

See *Bloomsbury Verlag GmbH v HMRC* [2015] UKFTT 660, *Revell v HMRC* [2016] UKFTT 97 and most recently *Patel & Patel v HMRC* [2018] UKFTT 0185.

The conclusion reached by the Tribunal in each case was that, because a voluntary tax return had not been filed in response to a Notice to File, it was not a valid return.

This meant that none of the statutory consequences attaching to returns filed pursuant to a Notice to File would follow, such as the taxpayer's right to make amendments to their return under TMA s 9ZA, HMRC's power to enquire into the

return under TMA s9A and the power to issue a closure notice under TMA s 29A. Similarly, important taxpayer safeguards would not apply either, such as protections in respect of a discovery assessment under TMA s 29 and protections in relation to information notices under FA 2008 Sch 36. The corporation tax regime in FA 1998 Sch 18 contains similar provisions.

Interestingly, in Bloomsbury it was HMRC not the taxpayer who had successfully argued that a voluntary return was not a valid return, so as to deny the company's loss relief claim. The decision was cited with approval by the judge in Patel, where the taxpayer contended successfully that HMRC could not open an enquiry into a return that had not been filed in response to a statutory Notice to File.

The problem caused by these Tribunal decisions becomes apparent when one realises just how many voluntary returns are sent to HMRC each year. According to figures quoted in the Patel case, over 450,000 taxpayers a year submit income tax returns on a voluntary basis. These will largely be from taxpayers who have not registered for self-assessment before sending their tax return to HMRC and from PAYE taxpayers who do not need to complete a self-assessment but who are seeking a repayment. Simple Assessment is meant to take the latter category of taxpayers out of self-assessment, so the number of voluntary returns should fall significantly once Simple Assessment is fully up and running (although readers will recall that delays to its roll-out were announced earlier this year by HMRC so we do not know when it will become 'business as usual').

Although First-tier Tribunal decisions do not set binding precedents, HMRC have clearly decided in the circumstances that the risk to the tax system of doing nothing in response to these judgements is too great. Putting voluntary returns onto a statutory footing since the advent of self-assessment therefore ensures that the uncertainty these cases have created is removed, and that taxpayers can be confident that tax returns submitted voluntarily will continue to be accepted as valid returns by HMRC.