HMRC’s voluntary returns policy

Management of taxes | OMB

01 September 2016

An update on HMRC’s policy on voluntary (unsolicited) income tax self-assessment (ITSA) returns after the case of *Revell v HMRC*.

HMRC has provided a statement of its position on voluntary ITSA returns as a result of the First-tier Tribunal case of *Revell v HMRC* [2016] UKFTT 97.

It reads:

> *‘HMRC’s long-standing policy is to accept voluntary ITSA individual and partnership returns on the same basis as returns received pursuant to a s8 TMA1970 notice, where the clear intention of the person submitting the return is that it should be treated as such. We have no plans to change our policy on voluntary returns.*
>
> *‘This policy provides a mutually beneficial administrative arrangement for customers and HMRC. The alternative would be that HMRC would have to reject returns submitted voluntarily, issue a formal s8 notice and the customer would have to resubmit the return. This would add unnecessary administrative burdens to both customers and HMRC causing unnecessary delay in HMRC processing returns, claims and repayments.*
>
> *‘Where the clear intention of the customer is that the voluntary return is to be treated as if it were a return made pursuant to a s 8 TMA1970 notice, HMRC accepts the voluntary return on the basis that the same statutory consequences will follow as if it were in fact a return made pursuant to a s 8 TMA1970 notice, including HMRC’s powers to enquire into that return under (s 9A/12AC TMA 1970).*
>
> *‘As part of our ambition to put the customer at the heart of what at we do, we have introduced Simple Assessment for 2016/17 onwards to enable HMRC to*

send customers with straight forward tax affairs a Simple Assessment notice of their liability without the need for them to submit a Self-Assessment return. We expect that this will significantly reduce the number of voluntary returns that we receive each year. PAYE customers, who are not already in Self-Assessment, do not need to complete a SA tax return in order to get a refund.

'Longer term our plans are to abolish the annual tax return as part of our Making Tax Digital strategy.

'The First Tier Tribunal (FTT) case of Revell vs HMRC considered the issue of unsolicited returns and the judgment was in favour of the taxpayer. FTT decisions do not set binding precedents in tax matters. We did not appeal this case due to the particular facts and this was not a judgment against the lawfulness of HMRC's policy at large.'

During the case, HMRC revealed (see para 35 of the judgment) that it receives 'approximately 350,000 unsolicited returns each year, largely from PAYE taxpayers who do not need to complete a self-assessment but who are seeking a repayment.' It quoted long-standing advice from its solicitors as follows:

'In my view that which is intended to be a return, whether paper or electronic and is in an appropriate form, may properly be regarded as a statutory return. I appreciate that the statutory scheme puts an obligation on the taxpayer to make a return arise [sic] only once he receives a notice which requires him to do so. But in any case in which an unsolicited return has been received, the better view, as it seems to me, is that the taxpayer has waived the formal notice step.'

The tribunal took this as meaning that HMRC's policy was to treat, for all intents and purposes, an unsolicited return as if it were submitted in response to an s 8 notice. However, the tribunal rejected HMRC's analysis of the position, finding in favour of the taxpayer, and held that an unsolicited return was not a valid return.

If this was a correct interpretation of the decision, it could mean that a refusal by HMRC to process unsolicited returns is a valid response.

However, the Revenue's statement above confirms that, since the decision in *Revell*, it has no intention of changing its policy of accepting voluntary returns on the same basis as those received pursuant to a notice under s 8 of TMA 1970 where the clear

intention of the taxpayer is that it should be treated as such.

Readers may recall that since the case of oao *Higgs v HMRC* [2015] UKUT 92 HMRC changed its internal guidance (see my article in March 2016's Technical Newsdesk). Now, following *Higgs*, it will only process late self-assessment tax returns that have been requested in response to an s 8 notice to file.

Although there seems not to be any inconsistency between HMRC's views post-*Higgs* and the tribunal's decision in Revell, there is some between the department's views post-*Higgs* and its actual practice in dealing with unsolicited returns. This was evidenced in *Revell* and HMRC has now confirmed this will continue.

In effect, cl 167 of Finance Bill 2016 negates the *Higgs* decision by introducing s 34A in TMA 1970. This sets out that the normal time limit for self-assessments contained in a return under s 8 or s 8A is four years after the end of the tax year to which it relates. However, this is phased, and taxpayers have until 5 April 2017 to submit 'late' self-assessments for years 2012-13 and earlier. Given the inconsistent approach by the department to unsolicited returns, there may be scope for taxpayers to challenge HMRC's interpretation of *Higgs* as evidenced in its internal guidance.

See also Keith Gordon's article 'The return of the taxpayer' in June's edition of *Tax Adviser*.