

Withdrawing a notice to file a self assessment return

Who is likely to be affected?

Individuals, partnerships and trustees who are within the self assessment (SA) regime.

General description of the measure

This measure will allow HM Revenue & Customs (HMRC) to withdraw a notice to file a SA tax return in certain circumstances.

Policy objective

This measure supports the Government's objective of a fairer tax system. It will increase transparency and certainty for individuals and provide safeguards for both the individual and HMRC.

Background to the measure

This measure was announced at Budget 2012. HMRC has consulted on this measure: *Withdrawing a notice to file a Self Assessment Return* was published in May 2012.

A response document was published on 11 December 2012.

Detailed proposal

Operative date

The measure will have effect on and after the date that Finance Bill 2013 receives Royal Assent.

Current law

Following the introduction of the new late filing penalties, HMRC is, where appropriate, using its discretionary powers of collection and management to withdraw the notice to file a SA return and also using 'Special Reduction' to cancel any penalty due under paragraph 16 to Schedule 55 Finance Act 2009. This approach enables HMRC to ensure that penalties are not levied where it is agreed that a SA return is not needed.

However this approach does not offer a long term solution. As the new penalties bed in the special circumstances required for 'Special Reduction' to apply will no longer exist.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to create a statutory power which will be used to improve the experience of individuals, partnerships and trustees by relieving them of the obligation of completing a SA return if HMRC agree they no longer need to be in SA for that year.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	This measure is not expected to have any significant economic impact.					
Impact on individuals and households	This measure would only impact on those individuals who meet the appropriate conditions so that they do not need to file a SA return. It would improve the individual's experience as it would release them from the administrative burden of completing a SA return for the year in question, and for later years unless their circumstances changed and they again needed to be in SA.					
Equalities impacts	Equality has been considered and there are no adverse impacts from introducing this measure on particular groups with different protected characteristics. It does not increase the incidence of taxation or place any new burdens on any particular group.					
Impact on business including civil society organisations	This measure is expected to have no impact on businesses or civil society organisations					
Operational impact (£m) (HMRC or other)	This measure will result in changes to existing HMRC processes and IT systems depending on the extent to which the process is automated. It will have a negligible operational impact and the costs will be absorbed within existing business budgets.					
Other impacts	<p><u>Small firms impact test:</u> this measure will not lead to any additional burdens or compliance costs for small businesses.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

This measure will be monitored and assessed as part of a wider evaluation of penalties.

Further advice

If you have any questions about this change, please send an email to tap@hmrc.gsi.gov.uk or contact Angela Roach on 020 7147 0002.

1 Self assessment: withdrawal of notice to file etc

- (1) Schedule 1 contains provision for, and in connection with, withdrawing a notice under section 8, 8A or 12AA of TMA 1970 and cancelling liability to a penalty under Schedule 55 to FA 2009.
- (2) The amendments made by Schedule 1 have effect—
 - (a) in relation to a return under section 8 or 8A of TMA 1970, or a return under section 12AA of that Act for a partnership which includes one or more individuals, in respect of a return for a year of assessment beginning on or after 6 April 2012, and
 - (b) in relation to a return under section 12AA of that Act for a partnership which includes one or more companies, in respect of a return for a relevant period beginning on or after 6 April 2012.
- (3) In subsection (2)(b) “relevant period” means a period in respect of which a return is required.

SCHEDULE 1

Section 1

WITHDRAWAL OF NOTICE TO FILE ETC

- 1 TMA 1970 is amended as set out in paragraphs 2 to 5.
- 2 (1) Section 7 (notice of liability to income tax and capital gains tax) is amended as follows.
- (2) In subsection (1) –
- (a) for paragraph (b) substitute –
- “(b) falls within subsection (1A) or (1B),” and
- (b) for “six months from the end of that year” substitute “the notification period”.
- (3) After subsection (1) insert –
- “(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person’s total income and chargeable gains.
- (1B) A person falls within this subsection if the person –
- (a) has received a notice under section 8 requiring a return for the year of assessment of the person’s total income and chargeable gains, and
- (b) has received a notice under section 8B withdrawing the notice under section 8.
- (1C) In subsection (1) “the notification period” –
- (a) in the case of a person who falls within subsection (1A), means the period of 6 months from the end of the year of assessment, or
- (b) in the case of a person who falls within subsection (1B), means the period of 30 days from the date on which the notice under section 8 was withdrawn.”
- (4) In subsection (2) for the words from “shall have effect” to the end substitute “and subsections (1A) to (1C) have effect as if references to a notice under section 8 were references to a notice under section 8A.”
- 3 After section 8A insert –
- “8B Withdrawal by HMRC of notice under section 8 or 8A**
- (1) This section applies to a person who is given a notice under section 8 or 8A.
- (2) Before the end of the withdrawal period, the person may request HMRC to withdraw the notice.
- (3) But no request may be made if –
- (a) the person has made a return under section 8 or 8A in pursuance of the notice under that section, or

- (b) the person has been served with notice of a determination under section 28C by virtue of the notice under section 8 or 8A having been given to the person.
- (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.
- (6) For the purposes of subsection (2) “the withdrawal period” means—
 - (a) the period of 2 years beginning with the end of the year of assessment to which the notice under section 8 or 8A relates, or
 - (b) in exceptional circumstances, such extended period as HMRC may agree with the person.
- (7) Withdrawal of a notice given to a person under section 8 or 8A in relation to a year of assessment does not prevent HMRC from giving the person a further notice under that section in relation to that year.
- (8) See paragraph 17A of Schedule 55 to FA 2009 as to the cancellation of liability to a penalty under any paragraph of that Schedule by including provision in a notice under this section.”

4 After section 12AA insert—

“12AAA Withdrawal by HMRC of notice under section 12AA

- (1) This section applies to a partner who is required by a notice under section 12AA to deliver a return.
- (2) Before the end of the withdrawal period, the partner may request HMRC to withdraw the notice.
- (3) But no request may be made if the partner has delivered a return under section 12AA in pursuance of the notice.
- (4) If, on receiving a request, HMRC decide to withdraw the notice under section 12AA they must do so by giving the partner a notice under this section.
- (5) A notice under this section must specify the date on which the notice under section 12AA is withdrawn.
- (6) For the purposes of subsection (2) “the withdrawal period” means—
 - (a) in the case of a partnership which includes one or more companies, the period of 2 years beginning with the end of the period in respect of which the return under section 12AA was required by the notice under that section,
 - (b) in the case of any other partnership, the period of 2 years beginning with the end of the year of assessment to which the notice under section 12AA relates, or
 - (c) in the case of any partnership, such extended period as HMRC may agree with the partner in exceptional circumstances.

- (7) Withdrawal of a notice under section 12AA in relation to the period in respect of which the return under that section was required or year of assessment (as the case may be) does not prevent HMRC from serving a further notice under section 12AA requiring a partner to deliver a return in relation to that period or year.
- (8) References in subsections (2) to (6) to the partner include references to a successor of the partner (see section 12AA(11)).
- (9) See paragraph 17B of Schedule 55 to FA 2009 as to the cancellation of liability to a penalty under any paragraph of that Schedule by including provision in a notice under this section.”
- 5 In section 59B (payment of income and capital gains tax) after subsection (4) insert –
- “(4ZA) In a case in which the notice required by section 7 was given following the receipt of a notice under section 8B, subsections (3) and (4) apply as if –
- (a) the reference to the notice required by section 7 were a reference to the original notice required by that section, and
- (b) the references to notice under section 8 or 8A were references to the original notice under that section.
- (4ZB) In subsection (4ZA) the references to original notices are to notices given before the notice under section 8B.”
- 6 (1) Paragraph 7 of Schedule 41 to FA 2008 (potential lost revenue in respect of failure to comply with relevant obligation) is amended as follows.
- (2) After sub-paragraph (1) insert –
- “(1A) In the case of an obligation under section 7 which arises by virtue of subsection (1B) of that section, the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year in question as –
- (a) is unpaid on the relevant date, and
- (b) continues to be unpaid at the end of the period specified in subsection (1C)(b) of that section by reason of the failure to comply with the obligation.
- (1B) For the purposes of sub-paragraph (1A) the relevant date is –
- (a) 31 January following the tax year, or
- (b) if, after that date, HMRC refund a payment on account in respect of the tax year to P, the day after the refund is issued.”
- (3) In sub-paragraph (2) after “and a tax year” insert “(not falling within sub-paragraph (1A))”.
- 7 In Schedule 55 to FA 2009 (penalty for failure to make returns etc) after paragraph 17 insert –
- “Cancellation of penalty*
- 17A (1) This paragraph applies where –

- (a) P is liable for a penalty under any paragraph of this Schedule in relation to a failure to make a return falling within item 1 or 2 in the Table, and
 - (b) P makes a request under section 8B of TMA 1970 for HMRC to withdraw a notice under section 8 or 8A of that Act.
 - (2) The notice under section 8B of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.
- 17B (1) This paragraph applies where –
- (a) P is liable for a penalty under any paragraph of this Schedule in relation to a failure to make a return falling within item 3 in the Table, and
 - (b) a request is made under section 12AAA of TMA 1970 for HMRC to withdraw a notice under section 12AA of that Act.
- (2) The notice under section 12AAA of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.”

EXPLANATORY NOTE

WITHDRAWING A NOTICE TO FILE A SELF ASSESSMENT RETURN

SUMMARY

1. This Schedule provides HM Revenue & Customs (HMRC) with a power to withdraw a notice to file a Self Assessment (SA) tax return (individual, partnership and trustee), on request in certain circumstances. The Schedule also provides for a late filing penalties under Schedule 55 to the Finance Act 2009 to be cancelled where HMRC withdraw a notice using this power. The amendments have effect, in relation to individual, trustees and partnerships which include one or more individuals, in respect of returns for the tax year 2012-13 and subsequent tax years. For partnerships which include one or more companies, the amendments have effect in respect of a relevant period beginning on or after 6 April 2012.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends section 7 Taxes Management Act 1970 (TMA 1970). Section 7 TMA 1970 requires every person who is chargeable to income tax or capital gains tax for any year of assessment to notify HMRC that they are chargeable to tax if they have not received a notice under section 8 or 8A TMA 1970 within a specified time period.
3. Sub-paragraphs (2) and (4) make consequential amendments to section 7 of TMA 1970 as a result of the insertion of new subsections (1A) to (1C) by sub-paragraph (3).
4. Sub-paragraph 3 amends section 7 TMA 1970 by inserting new subsections (1A) to (1C). A person to whom new subsection (1A) or (1B) applies must notify HMRC that they are chargeable to tax within the period specified in new subsection (1C).
5. New subsection (1A) applies to a person who has not received a notice to file a SA return under section 8 TMA 1970.
6. New subsection (1B) applies to a person who has received a notice to file a SA tax return under section 8 TMA 1970 and has received a notice under new section 8B TMA 1970 (as inserted by paragraph 3) withdrawing that notice.
7. New subsection (1C) defines “the notification period” as, in the case of a person falling within new subsection (1A), 6 months from the

end of the year of assessment and, in the case of a person falling within new subsection (1B), 30 days from the date on which the notice under section 8 TMA 1970 was withdrawn.

8. Paragraph 3 inserts a new section 8B into TMA 1970 which provides that a person who receives a notice to deliver a personal or trustee SA tax return may request HMRC to withdraw the notice before the end of the withdrawal period.
9. New subsection 8B(3)(a) and (b) explains that a request to withdraw a notice cannot be made if the person or trustee has already submitted a SA tax return or they have received a notice of determination under section 28C TMA 1970.
10. New subsection 8B(4) and (5) provide that if HMRC decide to withdraw the section 8 or section 8A notice they must do so by giving the person or trustee a notice specifying the date on which the notice is withdrawn.
11. New subsection 8B(6) defines the “withdrawal period” by which a person or trustee can request to withdraw a notice to file a SA return.
12. New subsection 8B(7) provides that the withdrawal of a notice does not prevent the issue of a further notice by HMRC.
13. Paragraph 4 inserts a new section 12AAA into TMA 1970 which provides that a partner who receives a notice to file a partnership tax return may request HMRC to withdraw the notice before the end of the withdrawal period.
14. New subsection 12AAA(3) explains that a request to withdraw a notice cannot be made if the person or trustee has already submitted a partnership tax return.
15. New subsection 12AAA(4) and (5) provide that if HMRC decide to withdraw the notice to file a partnership tax return they must do so by giving the partner required to make the return a notice specifying the date on which the notice is withdrawn.
16. New subsection 12AAA(6) defines the “withdrawal period” by which a partner can request the withdrawal of a notice to file a partnership tax return.
17. New subsection 12AAA(7) provides that the withdrawal of a notice to file a partnership return does not prevent the issue of a further notice by HMRC.
18. New subsection 12AAA(8) explains that references to a partner include references to any successor of the partner.

19. Paragraph 5 inserts new subsections (4ZA) and (4ZB) into section 59B TMA 1970. Section 59B sets out the payment dates for income tax and capital gains tax. New subsections (4ZA) and (4ZB) provides that where a further notice to file is issued following withdrawal of a notice under new section 8B, it is to be treated as if it were the original notice to file issued under sections 8 or 8A TMA 1970. This means that the date for payment will be the same as it would have been if the original notice had not been withdrawn.
20. Paragraph 6 amends paragraph 7 to Schedule 41 to FA 2008 by inserting new sub-paragraphs (1A) and (1B) and making a consequential amendment to paragraph 7(2). Schedule 41 imposes penalties for failing to notify HMRC of, amongst other things, an obligation to notify chargeability to tax under section 7 TMA 1970.
21. New subsection (1A) defines the potential lost revenue where there is a failure to notify chargeability to tax or capital gains in accordance with new section 7(1B) TMA 1970 (as inserted by this Schedule). The potential lost revenue is so much of any income tax or capital gains to which the person is liable in respect of the tax year in question as is unpaid on the relevant date and continues to be unpaid at the end of the period specified in new section 7(1C) TMA 1970.
22. New subsections (1B)(a) and (b) define the “relevant date” for payment of potential lost revenue as 31 January following the tax year. For potential lost revenue through refunded payments on account the relevant date is the day after the refund was issued.
23. Paragraph 7 inserts new paragraphs 17A and 17B into Schedule 55 to FA 2009. Schedule 55 imposes penalties for the late filing of returns.
24. New paragraph 17A provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for individuals and trustees under new section 8B TMA 1970 (as inserted by this Schedule).
25. New paragraph 17B provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for partnerships under new section 12AAA.

BACKGROUND

FINANCE BILL

26. Under the Self-Assessment (SA) regime anyone sent a notice to file a SA tax return by HMRC is required to complete and file a SA return with HMRC.
27. This clause and Schedule will introduce a new power to enable HMRC to withdraw a notice to file a SA tax return (individual, partnership and trustee) when they agree a SA tax return is not required and cancel any late filing penalties.
28. If you have any questions about this change, or comments on the legislation, please contact Angela Roach on 020 7147 0002 (email: angela.roach@hmrc.gsi.gov.uk).