**P800s into SA and Late filing penalties – recent Tribunal decisions**

[**Goldsmith**](https://www.accountingweb.co.uk/tax/hmrc-policy/inappropriate-use-of-self-assessment)**(**[**TC06284**](http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j10250/TC06284.pdf)**)** put into self assessment because HMRC couldn’t code out an underpayment.

The first tier tribunal (FTT) ruled that the notice to file a tax return was invalid because it was not “*for the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year*” - as required by TMA s8(1)(a).

The practical importance of this was that HMRC couldn’t collect any late filing penalties.

**Galiara (**[**TC06431**](http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j10393/TC06431.pdf)**)** and **Lennon (**[**TC06453**](http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j10413/TC06453.pdf)**)** both overturned late filing penalties on the basis that HMRC was not entitled to drag PAYE taxpayers into SA simply for the sake of convenience in collecting underpayments.

While none of these cases has passed beyond FTT (and so do not have a binding effect on any future judgements), they provide powerful arguments in support of any appeals for PAYE clients who have been asked to file SA returns following the issue of a P800 tax calculation.

Furthermore, the judge in Lennon referred explicitly to the Goldsmith judgement and adopted its rationale wholeheartedly, despite not being bound by it. It is likely that other judges will similarly adopt this line of reasoning.

**What the judges said**

* *Counsel for HMRC “simply asserted that [issuing a notice to file an SA return] was a mechanism for collecting money that the [PAYE taxpayer] had not voluntarily paid to [HMRC]”. She “could not assist us on the issue of whether it was/is a legitimate tactic to impose a requirement that somebody submits self assessment returns, for the purpose of collecting what may or may not be an enforceable sum”.*
* *“If HMRC already knows the amounts in which a taxpayer is chargeable to income tax and CGT for a year of assessment (for example because they have issued voluntary payment letters to the taxpayer and/or a P800 showing an under-deduction and asking the taxpayer to pay the balance), is it really the case that HMRC's purpose in serving the notice to file is to establish that amount?”*
* *“A valid section 8 notice can only be given for the purposes set out in that section. In [this] case..., the notices to file were not given for that purpose. Since no valid section 8 notice was given..., there was no obligation on him to file a self-assessment tax return.”*
* *“It seems to me that the power to ensure that the correct amount of tax has been paid by a taxpayer who has underpaid tax due to an under-deduction of PAYE is still via the section 29 assessing mechanism; and not by putting that taxpayer into the self-assessment regime.”*
* *“The route which HMRC should have taken was to issue an assessment under section 29 TMA 1970 when it had become apparent that the underpayment could not have been coded out.”*
* *“HMRC’s statements in their voluntary payment letters that in such circumstances they might consider putting a taxpayer into the self assessment tax system in order to collect the underpayment may need to be reconsidered.”*

HMRC DO NOT need SA to collect PAYE underpayments.

They already have assessing powers – TMA s29 assessments and the recently-introduced simple assessment procedures.

Note: Tribunal Cases can be found in the members section of the TaxAid website