STATUTORY INSTRUMENTS

2014 No. 885

TAX CREDITS

The Tax Credits (Late Appeals) Order 2014

Made - - - - 1st April 2014

Coming into force in accordance with article 1

The Treasury make the following Order in exercise of the powers conferred by section 124(1), (2), (6) and (7) of the Finance Act 2008(**a**).

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 124(9) of the Finance Act 2008.

Citation, commencement and extent

1.—(1) This Order may be cited as the Tax Credits (Late Appeals) Order 2014 and comes into force on the day after it is made.

(2) This Order extends to England and Wales and Scotland only.

Amendment of the Tax Credits Act 2002

2.—(1) The Tax Credits Act 2002(**b**) is amended as follows.

(2) After section 39 (exercise of right of appeal)(**c**) insert—

"**Late appeals**

39A.—(1) The Commissioners for Her Majesty's Revenue and Customs may treat a late appeal under section 38 as made in time where the conditions specified in subsections (2) to (6) are satisfied, except that the Commissioners may not do so in the case of an appeal made more than one year after the expiration of the time (original or extended) for appealing.

(2) An appeal may be treated as made in time if the Commissioners are satisfied that it is in the interests of justice to do so.

(3) For the purposes of subsection (2) it is not in the interests of justice to treat an appeal as made in time unless—

(a) the special circumstances specified in subsection (4) are relevant; or

(b) some other special circumstances exist which are wholly exceptional and relevant,

(**a**) 2008 c. 9.
(**b**) 2002 c. 21.
(**c**) Section 39 was amended by S.I. 2009/56. Part 1 to be repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5) with effect from a date to be appointed.

and as a result of those special circumstances it was not practicable for the appeal to be made in time.

(4) The special circumstances mentioned in subsection (3)(a) are—

(a) the appellant or a partner or dependant of the appellant has died or suffered serious illness;

(b) the appellant is not resident in the United Kingdom; or

(c) normal postal services were disrupted.

(5) In determining whether it is in the interests of justice to treat an appeal as made in time, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time for appealing and the submission of the notice of appeal, the more compelling should be the special circumstances.

(6) In determining whether it is in the interests of justice to treat an appeal as made in time, no account shall be taken of the following—

(a) that the appellant or any other person acting for the appellant was unaware of or misunderstood the law applicable to the appellant's case (including ignorance or misunderstanding of any time limit); or

(b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

(7) If in accordance with the preceding provisions of this section the Commissioners for Her Majesty's Revenue and Customs treat a late appeal under section 38 as made in time, it is to be treated as having been brought within any applicable time limit.".

(3) Where, in respect of a late appeal made on or after 1 April 2013 and before this Order comes into force, the Commissioners for Her Majesty's Revenue and Customs have before this Order comes into force notified the appellant that they consider the appeal should proceed even though it was not made within the period specified in section 39(1) of the Tax Credits Act 2002, that notification is to have effect after this Order comes into force as a decision under section 39A to treat the appeal as made in time.

Anne Milton
Mark Lancaster

1st April 2014 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of appeals made under section 38 of Tax Credits Act 2002 (c. 21) which are made, in Great Britain, to the First-tier Tribunal.

Article 2(2) makes provision in respect of late tax credits appeals to the First-tier Tribunal in Great Britain that corresponds in substance to that previously provided by regulation 5 (late appeals) of the Tax Credits (Appeals) (No. 2) Regulations 2002 (S.I. 2002/3196). Article 2(3) provides that the new section 39A validates any decision by HM Revenue and Customs to allow a late appeal made on or after 1 April 2013 and before this Order enters force.

An Impact Assessment has not been prepared in respect of this Order. An Impact Assessment covering the changes made by S.I. 2009/56, to which this instrument is supplementary, was published with that Order. A copy is annexed to the Explanatory Memorandum to that Order, which is available alongside the instrument on the legislation.gov.uk website.

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