

# Loss carry back

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*A client had a tax liability for 2007/08, but a loss for 2008/09. A carry-back claim was made and the repayment was set against the 2007/08 liability. However, interest and penalties were charged. It appears that HMRC have misinterpreted the provisions of TMA 1970, Sch 1B*

A residential property developer client has a 30 September year end. In the year ended 30 September 2007 the client made a large profit with a resulting tax liability of £52,718, less payments on account £1,360 and the balancing payment of £50,818 was due 31 January 2009.

The accounts to 30 September 2008 were prepared on a timely basis in November 2008, which showed a trading loss. A claim to carry back the loss was made in November 2008 and a free-standing credit of £30,192 was allowed to set off against the tax liability due on 31 January 2009, and the net amount of tax was paid on 14 January 2009.

The payments on account for 2008/09 were reduced to nil.

The client has since received surcharge and interest penalties totalling £4,083.36 payable on the amount of the tax credit of £30,192 which has been given the date of 31 January 2010, as the carry-back claim is a claim of the later tax year 2008/09.

Our initial reaction was that this was totally unfair. Are there any grounds for challenging this? Readers' views would be appreciated.

*Query 17,477 – Hurt*

## Reply from Hold Fast

Hurt is right. This is totally unfair. And also, according to HMRC's own instructions, wrong. The claim for the 2008 loss was made outside a return in November 2008 while the return for the year ended 5 April 2008 seems to have been submitted around 14 January 2009.

TMA 1970, Sch 1B deals with claims for relief involving two or more years.

Schedule 1B para 2 applies where a person makes a claim requiring relief for a loss incurred in a later year to be given in an earlier year and says the claim shall relate to the later year.

The HMRC view is that the relief is for the later year and the earlier year's self assessment is not amended. HMRC's interpretation was approved in the case of *Norton v Thompson* [2004] SSCD 163 (SpC399).

Schedule 1B para 2(6) sets out how effect is to be given to the claim. It states that 'effect shall be given to the claim in relation to the later year, whether:

- by repayment;
- or set-off;
- or by an increase in the aggregate amount given by TMA 1970, s59B(1)(b);
- or otherwise.'

HMRC's *Self Assessment Claims Manual* at SACM11040 says that for set-offs the effective date of payment (EDP) of the freestanding credit will be the later of:

- the date the taxpayer made the valid claim to the relief – in this case November 2008; or
- the relevant due date of the charge against which the relief is to be set – in this case 31 January 2009.

HMRC's *Self Assessment Manual* at SAM110070 says that 'the EDP of a payment or credit is the date on which it is deemed to have been made'.

It continues: 'It is important that the correct EDP is given to a payment or credit as this allows the calculation of late payment interest and/or repayment supplement as appropriate on the self assessment record.'

Quite so. Following the HMRC guidance, the EDP of the set-off in Hurt's case was 31 January 2009. The tax due on 31 January 2009 is deemed to have been paid on that day and so no surcharge or interest can arise.