Higgs case and s 34(1) time limits – an update

Management of taxes

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Update

In my article on p47 of December 2015's *Tax Adviser*, I covered HMRC's interpretation of the Upper Tribunal's decision in *R (oao Higgs) v HMRC* [2015] UKUT 92 and said we had asked HMRC to provide a statement for our members. It reads:

> 'Further to the decision in *R (oao Higgs) v HMRC* [2015], HMRC have decided not to appeal the Upper Tier Tribunal decision. That means that, in certain circumstances, HMRC will process self-assessments however late that they are received.
>
> There has been a change in internal guidance which sets out the circumstances in which HMRC believe that the interpretation in Higgs relates to. These are:
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> - That the return has been requested in response to an s 8 TMA 1970 Notice to File.
> - That there has been no determination of tax for the tax year.
> - That the return is an original return is not an amendment to an earlier return under s 8 TMA 1970.
>
> 'When these are met, HMRC will accept and process the return submitted whether there is a liability due or a repayment to issue.
>
> 'However, on 25 November 2015 at Autumn Statement, the Chancellor of the Exchequer announced a new measure to clarify the time limits so that it was clear for customers when they need to submit their self-assessments to HMRC.
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> There will be four years from the end of the tax year to submit self-assessments. This will be for tax years 2013–14 onwards.

> This will be phased, and there will be up to 5 April 2017 for all self-assessments for years 2012–13 and prior. This gives customers who have outstanding returns ample time to submit them.’

Draft legislation has been issued which makes clear that:Draft clause 72 of Finance Bill 2016 in effect negates the Higgs decision by introducing clause 34A after s 34 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 it relates to. So the last date that you can submit a self-assessment return for the tax year 2020–21 will be 5 April 2025.The time limit may be longer than four years in two specific instances. They are:

1. when HMRC issues a taxpayer with a notice to file within the four-year period, the taxpayer will always have three months to make and deliver their return; and
2. time limits in relation to self-assessments made in response to determinations by HMRC will not be affected.

There are some transitional provisions. For self-assessments for 2012–13 and earlier, taxpayers will have until 5 April 2017 to submit them to HMRC. In the explanatory notes to the Finance Bill HMRC repeats its view that it will accept a ‘late’ self-assessment return for any year from 1996–97 only if it meets the following criteria and if there is an overpayment of tax or a reduction in payments on account. These are when:

- when HMRC issues a taxpayer with a notice to file within the four-year period, the taxpayer will always have three months to make and deliver their return; and
- time limits in relation to self-assessments made in response to determinations by HMRC will not be affected.