

Higgs case and s 34(1) time limits

Management of taxes

04 December 2015

Higgs Case HMRC revise their internal guidance on late returns

The Upper Tribunal has held that a self-assessment tax return submitted by a taxpayer more than four years after the tax year to which it related should be accepted by HMRC and that the time limit in TMA 1970 s 34(1) has no application to a self-assessment. Therefore HMRC could not rely on it to refuse to accept the return. The return in question resulted in a repayment of tax being due to the taxpayer. HMRC have not appealed against the decision in *R (oao Higgs) v HMRC* [2015] UKUT 92.

The case was covered by Keith Gordon in May 2015's Tax Adviser ('The four-year hitch', p36), where it was suggested that taxpayers should revisit 'late' returns rejected by HMRC on the basis of the four-year rule.

As a result of *Higgs*, we understand that HMRC have revised their internal guidance. The internal guidance says HMRC will now accept a 'late' self-assessment return for any year from 1996/97 if it meets the following criteria and if there is an overpayment of tax or a reduction in payments on account. These are where:

1. The return has been requested by the issue of a notice under TMA 1970 s 8;
2. No determination has been raised for the year of return;
3. It is an original return and not an amended return.

Thus, although *Higgs* does not provide authority for this view, HMRC are drawing a distinction between returns submitted pursuant to a TMA 1970 s 8 notice and unsolicited returns and amendments to returns.

We also understand that HMRC are refusing to process late returns received before the date of the *Higgs* decision (11 March 2015).

We have asked HMRC to provide a statement for our members on their interpretation of Higgs and will provide a further update in Technical Newsdesk.