

HMRC statutory review (Lecture P1280 – 12.51 minutes)

The statutory review process was introduced in 2009 and can be used where there is an appealable HMRC decision. This session considers the process to follow, and various practical issues.

What is the process?

The relevant legislation is at Tax Management Act 1970, ss 49A -49I, and HMRC's guidance can be found in the Appeals Reviews and Tribunals Guidance Manual (ARTG4000 et seq). Where there is a decision that can be subject to a statutory review, the taxpayer can request a review, or HMRC may offer one. A review must be requested within 30 days of HMRC's decision or assessment. HMRC should notify the taxpayer when a decision can be subject to a statutory review.

For indirect taxes, the decision letter will include an offer of a review. Taxpayers have 30 days from the date of the decision to accept the offer. Where there is new information, it may be possible to defer the start of the review, to see whether agreement can be reached.

The process is not suitable for dealing with issues about the handling of an enquiry, and advisers will need to consider other remedies (including HMRC's complaints' procedure).

Written representations can be submitted to the reviewing officer, giving an opportunity to submit information or documents to HMRC that have not previously been provided.

The review

The review may also be referred to as an "internal review", or an "independent review". That is one of the downsides of the review – it is undertaken by a HMRC officer. The reviews are undertaken by an officer who has not been involved in the case, but the fact remains that you have one HMRC officer reviewing the decision of another HMRC officer.

The statutory time limit for the review is 45 days, although this can be extended by agreement. Advisers should note that if the taxpayer does not agree to an extension of the 45-day statutory time limit, the original decision will be upheld. In practice, it is prudent to agree to an extension to benefit from the process.

If the decision of the reviewing officer is not accepted, in whole or in part, the taxpayer has 30 days to appeal to the tribunal. Advisers should note that the dispute is concluded in line with the outcome of the review (subject to the tribunal accepting a late appeal).

Outcome of the review

Potential outcomes of the review are that the original officer's decision is upheld, in whole or in part, or it can be overturned. Another outcome is that HMRC may not complete the review within the statutory time period. If the review is not completed, the reviewing officer will write to the taxpayer advising that the review is treated as having reached a conclusion and that an appeal may be made to the tribunal (or they can seek an extension, as noted above). The practical issue here is that if the reviewing officer is not able to complete the review within the statutory 45 days, the taxpayer has to agree to an extension for finalisation of the review, or the original decision stands.

Although the review is carried out by HMRC, it can still be worthwhile requesting one. The process can help to identify HMRC's arguments, or gain clarity on their position, which can be useful if the matter is subsequently heard at the tribunal (or Alternative Dispute Resolution). The review may also help to avoid the time and costs associated with a tribunal hearing, or to refine the issues to be discussed through the Alternative Dispute Resolution process (see below).

Financial (and other) considerations

There isn't a fee for seeking a statutory review. In practice, it is often sensible to submit representations to the reviewing officer, including new information or documents to support the client's position. The professional fees for making such representations are, generally, lower than they would be for going to the tribunal, or for going through the Alternative Dispute Resolution process. Advisers are strongly advised to ensure that suitable representations are made, and new information or documentation is submitted, as appropriate.

HMRC have commissioned a review of the process, and taxpayers' awareness of it. The results are due to be published imminently (at the time of drafting this text), and changes to the process can be expected in the future. HMRC are keen to encourage greater use of the statutory review process by taxpayers, partly because their costs are considerably lower than for taking a case to the tribunal. Advisers need to consider whether it is in their client's interest to use the process where agreement cannot be reached with the HMRC caseworker.

Is it a worthwhile process?

As noted above, the statutory review can help to avoid the costs of litigation, and the time delay likely to be encountered before a hearing can be arranged at the tax tribunal. Irrespective of whether the original decision is upheld or cancelled, the review can help to clarify the understanding of HMRC's position. That can be useful for any subsequent hearing at the tax tribunal or Alternative Dispute Resolution. Advisers should consider requesting a statutory review before appealing a HMRC decision direct to the tribunal.

Contributed by Phil Berwick, Director at Berwick Tax