

HMRC's appeal process (Lecture P1275 – 13.07 minutes)

This article considers the process to follow when you do not agree with an HMRC decision. The session focuses on the appeal process for direct taxes. There are variations in the process for indirect taxes, but they are not considered here.

Can I submit an appeal?

You will need to check if there is the right of appeal against a particular HMRC decision. Typical examples where there is a right of appeal include certain information notices issued by HMRC, assessments and penalty notices. If you are not sure, HMRC should state the right of appeal when issuing their decision.

Where there is a right of appeal, you will need to observe the relevant time limit and any other considerations. You may need to refer to the relevant legislation, or HMRC guidance.

Where there is not a right of appeal, other remedies may be available. You can consider using HMRC's complaints procedure, or judicial review, although the latter is an expensive process and expert legal advice should be sought.

Advisers will, generally, need to ensure that they submit an appeal against an HMRC decision that the client does not agree with, to protect the client's legal position. There may also be circumstances where the client agrees with, for example, an HMRC assessment, and the adviser should still submit an appeal.

Other remedies

Where there isn't a right of appeal, you will need to consider any alternative remedies. Depending on the circumstances, HMRC's complaint's procedure may be appropriate. If you do not agree with HMRC's final decision under that process, you can refer the matter to the Adjudicator's Office. If you do not agree with the decision of the Adjudicator's Office, you can ask for the matter to be reviewed by the Parliamentary and Health Service Ombudsman, subject to a referral from the client's Member of Parliament.

Another potential remedy is judicial review, although it should be noted that this is an extremely costly process.

Making an appeal

There are certain formalities that must be observed when making an appeal to HMRC. The appeal must be made in writing, and include the following details:

- The name of the client;
- The reference number;
- The decision (or assessment) that is being appealed against;
- The grounds for appeal;
- What you consider the outcome should be (including the correct figure of tax, if known).

It is important to observe the time limit for making an appeal (usually 30 days from the date of the HMRC decision, although this period is currently being extended where the delay is due to coronavirus). Where an appeal is made outside the time limit, HMRC may accept a late appeal, depending on the circumstances. Where HMRC do not accept a late appeal, you can apply to the tribunal to determine whether the late appeal can be accepted.

When making an appeal, you should consider whether it would be helpful to submit further information to assist the officer when reviewing their decision. In addition, advisers should ensure that they submit a postponement application, where appropriate, when appealing against an assessment. If a postponement application is not made, HMRC may pursue the tax charged.

HMRC's response to an appeal

When you have submitted your appeal, and any supplementary information, documents and representations, the officer will review their decision. The outcome of that review may be that the officer upholds their original decision. Alternatively, the officer may agree with the grounds for appeal and amend their decision. There may be further negotiations or discussions with the officer before they reach a decision regarding the appeal, and that should, generally, be welcomed.

If agreement cannot be reached, the taxpayer has the option of seeking a statutory review or going to the tribunal (or both). Another option may be HMRC's Alternative Dispute Resolution process, which will be covered in a separate session. Advisers should note that Alternative Dispute Resolution is not a statutory process, and it may not be available in all cases.

Statutory review

The statutory review (also referred to as internal review) process can be used where there is an appealable HMRC decision. There is a review by an officer who has not been involved in the case. The process provides an opportunity for further representations to be made. There are time limits to be observed, for the taxpayer and HMRC. The statutory time limit for HMRC to conduct the review is 45 days, although this can be extended by agreement.

There has been negative reporting of the statutory review process since its introduction, particularly given that one HMRC officer is reviewing another HMRC officer's decision. My view is that it can be a cost-effective way of making progress. Where the reviewing officer does not overturn the original decision, the review 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. 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.

The tax tribunal

The tribunal system is independent of HMRC. Appeals are made to the First-tier Tribunal and are generally heard by that body.

Cases are categorised, with the more complex ones being heard by the Upper Tribunal. Cases allocated to a non-complex category may not necessarily have a hearing. Where a hearing is held, it will be in public, unless there are exceptional circumstances.

Advisers should note that there are usually two people sitting on the panel at the First-tier Tribunal – a legally-qualified judge and a member who has relevant experience. This creates a very different environment from that which advisers who attended hearings at the General Commissioners, prior to the introduction of the tribunal system, may have experienced. Cases at the Upper Tribunal are usually heard by two judges.

The standard position at the First-tier Tribunal is that both parties pay their own costs. The tribunal can award costs where one party has acted unreasonably in bringing, defending or conducting the proceedings. In the Upper Tribunal, the losing party will generally have to meet the costs of the other side, although it is possible to opt-out of the costs regime.

Decisions from the First-tier Tribunal can be appealed to the Upper Tribunal, if permission is granted, and where there has been an error of law. Appeals beyond the Upper Tribunal are possible, where there is a point of law (and also subject to permission being granted).

Contributed by Phil Berwick (Director, Berwick Tax)