

Taxpayer Safeguards and the Rule of Law

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6. Appeals, reviews and settlements

6.1 Overview of the appellate process

6.1.1 Initial stages of an appeal

Most HMRC decisions – such as assessments, penalties, refusals of reliefs or exemptions, and certain compliance decisions – carry a right of appeal. Whenever we deal with a particular kind of decision in this book, we indicate whether or not it can be appealed, and subject to what terms and conditions.

Where there is no right of appeal, the taxpayer can either make use of an administrative remedy such as a complaint, which can culminate in a ruling by the independent Adjudicator or Parliamentary Ombudsman (see 7.7.2-7.7.3), or apply for judicial review (6.6).

When HMRC send the taxpayer notice of a decision, the notice should state whether the taxpayer can appeal, and within what time limit (normally 30 days from the date of the decision notice). The taxpayer can then appeal against the decision if he or she wishes to dispute it or some aspect of it.

An appeal must be in writing and must specify the grounds of appeal (see 6.5.1). HMRC should provide an appeal form to accompany the notice of the decision.

In *direct tax cases*, the written notice of appeal must be given to HMRC within the time limit shown on the notice of decision; then either the taxpayer can ask HMRC to carry out a review of their decision (see 6.3), or HMRC can offer such a review, or the taxpayer can notify the appeal directly to the tribunal.

In *indirect tax appeals*, the appeal must be sent straight to the tribunal unless the taxpayer accepts HMRC's offer of a review, in which case the taxpayer may not appeal to the tribunal until the review is concluded.

In many cases, some discussion will follow between HMRC and the taxpayer, and that may culminate in a formal agreement settling the appeal (see 6.2) or there may be a course of mediation (6.4).

Appeals to the tribunal will normally be dealt with in the Tax Chamber of the First-tier Tribunal by way of a hearing, although some appeals are decided simply on the papers submitted by the parties. There are different categories of appeal depending on the complexity of the matter at issue, and the tribunals deal with appeals according to a set of rules (the “Tribunal Rules”). See **6.5**.

While a direct tax appeal is in progress, the taxpayer may apply to postpone payment of some or all of the tax in dispute. For indirect tax, the disputed tax must be paid but can be postponed in certain cases of hardship. See **6.1.3**.

Law: TMA 1970, Pt. V; VATA 1994, Pt. V

Official guidance: HM Courts and Tribunals Service explanatory leaflet *Making an Appeal T242*

6.1.2 *Late notice of appeal*

HMRC have discretion to accept a late notice of appeal and must (legislative wording “shall”) do so if:

- the taxpayer has so requested in writing;
- HMRC are satisfied that there was a reasonable excuse for not giving the notice of appeal within the time limit; and
- the notice was given without unreasonable delay after the excuse had ceased.

If HMRC do not agree to accept late notice of appeal, the taxpayer may ask the tribunal to give their permission.

Needless to say, the best course is to ensure that notice of appeal is submitted on time, as acceptance of a late notice is dependent on HMRC’s or the tribunal’s discretion or on persuading HMRC of a reasonable excuse for lateness, and therefore can never be guaranteed.

There are many reported cases in which the tribunal has rejected out-of-time appeals because of the absence of a reasonable excuse. Examples of some of the cases in which late appeals have been allowed are:

- *Lupson*, in which the taxpayer had suffered brain damage following a heart attack and the tribunal decided that in

view of his medical history “it would be in the interests of justice to allow this application”.

- *Armstrong*, where the taxpayer’s evidence was that he had never received a letter that HMRC claimed to have sent him requiring him to file a return, and the First-tier Tribunal judge allowed the application because HMRC “had not seen fit to exhibit a copy” of the letter, leaving open the possibility that it had never been sent or had been lost in the post.
- *Amah (No 1)*, in which the tribunal allowed a late appeal against the rejection of a loss relief claim because the taxpayer had been misled by HMRC and his previous accountant and therefore had a reasonable excuse.
- *Mahmood*, in which there was a genuine dispute as to the basis on which the taxpayer should have drawn up his accounts, and the taxpayer was allowed a late appeal against amendments of his return issued by HMRC which would have increased his taxable income by some £75,000.
- *Rowledge*, where an appeal that was 459 days out-of-time was nevertheless allowed because of the taxpayer’s health issues, and because of the severe consequences for her if her application were refused (she would have had to pay at least £40,000 more tax than she contended was actually due).

Rowledge is worth closer investigation as the facts are complex. It involved a capital gain on a sale of a property by Ms Rowledge to her brother, in respect of which HMRC issued an assessment that took no account of certain expenditure that would have reduced the base cost. Ms Rowledge had an understanding with her brother that he would deal with tax matters arising from the sale, but he did not do so because of his health issues. Ms Rowledge herself was immobilised by an accident, and in and out of hospital, in the period during which she should have appealed against the assessment, and was also principal carer for her mother.

Drawing on the judgment of Morgan J in *Data Select*, the judge in *Rowledge* set out the factors which the court or tribunal should take into account in deciding whether to grant a late appeal. It should ask itself:

- What is the purpose of the time limit?
- How long was the delay?
- Is there a good explanation for the delay?
- What will be the consequences for the parties of an extension of time?
- What will be the consequences for the parties of a refusal to extend time?

Ultimately, the tribunal should be guided by the overriding objective of the Tribunal Rules, which is to deal with cases fairly and justly, including avoiding delay. The purpose of a statutory time limit, or even a time limit imposed by the Tribunal Rules, is “to require a party asserting a right to do so promptly, and to afford his opponent the assurance, after the time limit has expired, that no claim will be made”. The time limit is a rule to ensure that litigation is conducted efficiently and at proportionate cost. In determining whether to grant an extension, the tribunal should not be drawn into a mini-trial of the merits of the underlying appeal, but should consider whether a refusal would be likely to cause “demonstrable injustice”.

The judge concluded that while an extension would put HMRC to inconvenience in necessitating the re-opening of closed files, a refusal would “cause very serious consequences indeed for Ms Rowledge”.

To conclude, the case law shows that the courts are generally reluctant to upset time limits set by statute other than in exceptional circumstances where a refusal to do so would have grave consequences for either party, particularly considering factors such as the state of the taxpayer’s health or the amount of tax at issue in the appeal, and there is a good reason for the delay. Each case will turn on its own facts, and on how the principles discussed here should be applied to them.

Law: TMA 1970, s. 49

Cases: *Lupson v HMRC* [2011] UKFTT 100 (TC); *Armstrong v HMRC* [2011] UKFTT 799 (TC); *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC); *Amah v HMRC (No 1)* [2013] UKFTT 409 TC; *Mahmood (t/a Elite Claims) v HMRC* [2013] UKFTT 518 (TC); *Rowledge v HMRC* [2016] UKFTT 556