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DISAGREEING WITH A HM REVENUE & CUSTOMS DECISION

Introduction

If a taxpayer is unable to agree with a decision of HM Revenue & Customs (HMRC), then there is a right of appeal under the Taxes Management Act. Both the taxpayer and HMRC will usually prefer to try and reach agreement without proceeding to a formal hearing. In a move that may help facilitate a reduction in the number of appeals to the tax tribunals, HMRC have introduced a new statutory review procedure which can be followed prior to making an appeal to the tribunal.

From 1 April 2009 the existing commissioners and tribunals have been replaced by an integrated two tier tribunal system introduced under The Tribunals, Courts and Enforcement Act 2007. The first-tier tribunal will hear nearly all tax appeals, but complex cases may be referred straight to the upper tribunal. The upper tribunal will handle appeals against first-tier decisions, taking over the role of the High Court for tax appeals.

The transfer of the functions of the tax tribunals to the new tribunals and changes to HMRC reviews and appeal processes are included in Statutory Instrument 2009/56.

HMRC have produced a factsheet entitled 'HM Revenue & Customs decisions - what to do if you disagree' which sets out in simple terms the taxpayer's options if there is a disagreement with a tax decision made by HMRC on, or after 1 April 2009 (refer to www.hmrc.gov.uk/factsheets/hmrc1.pdf).

Under the new review procedure, if the taxpayer is not satisfied with the outcome of discussions with HMRC, then the taxpayer can request that the case is reviewed by a different officer from the one who made the original decision. The request for a review has no effect on the taxpayer's right to appeal to the tax tribunal if the taxpayer disagrees with the outcome of the review.

The taxpayer can decide whether or not to have a review, although it remains to be seen how the tribunal will view cases where a review has been declined. When agreement cannot be reached, then either HMRC will offer to carry out a review, in which case the taxpayer has 30 days to decide if a review is required, or the taxpayer can request a review at any stage during discussions with HMRC about the dispute.

If the taxpayer requests a review, then HMRC will complete it within 45 days, unless an alternative timetable is agreed with the taxpayer. Reviews are carried out by HMRC staff not previously involved in the matter that is in dispute.

The taxpayer is able to provide further information about the case, but cannot ask the tribunal to hear the case until the time limit has expired and HMRC have advised the taxpayer as to the outcome of the review.

Once the review is complete, HMRC will write to the taxpayer and explain the reasons for the outcome. If HMRC is unable to complete the review within 45 days, or within the time agreed, then HMRC will inform the taxpayer in writing of that fact. The taxpayer will then have 30 days to appeal to the tribunal to hear the case.



Some commentators have expressed concerns about objectivity, but in general this new procedure must be good news for the taxpayer as it opens up another avenue for resolving disputes with HMRC without compromising the taxpayer's existing rights of appeal.

For further advice concerning any of the issues raised in this briefing, please contact one of our key individuals, or alternatively call our helpline on 0800 526262. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>.

