

HMRC's Reviews and Appeals Process – 2010-11

HM Revenue & Customs (HMRC) now has the 2010-11 results for the statutory internal review process. HMRC introduced the process on 1 April 2009 and for 2010-11 there is new information about appeals.

The information includes anonymised case studies. These show a range of relatively typical review and appeal cases, including cases where HMRC's decision was upheld, changed or withdrawn.

Reviews

The statutory review system gives HMRC's customers a quick and easy way to ask HMRC to reconsider their decisions. Only a small proportion of the millions of decisions HMRC make each year are challenged. But they want to make it as easy as possible for anyone who wants to challenge a decision. The internal review procedure helps taxpayers, including taxpayers who don't have an accountant or agent.

Reviews: 1 April 2010 to 31 March 2011 (1 April 2009 to 31 March 2010)

Caseload

New review requests received	44,116 (30,530)
Total number of reviews completed	46,043 (25,348)
Agreed time limit extensions	2,008 (647) 4% (4%)

Outcomes excluding penalty cases 9,241 cases (6,863 cases)

Upheld: review complete	5,142 (4,144) 56% (60%)
Deemed upheld: time limit expired	22 (25) 0% (0%)
Varied	465 (477) 5% (7%)
Cancelled	3,612 (2,217) 39% (32%)

Outcomes of VAT penalty cases 29,199 (11,868 cases)

Upheld: review complete	7,229 (4,185) 25% (35%)
Deemed upheld: time limit expired	2 (8) 0% (0%)
Varied	1,544 (756) 5% (6%)
Cancelled	20,424 (6,919) 70% (58%)

Outcomes of other penalty cases 7,603 (6,617 cases)

Upheld: review complete	4,984 (4,247) 66% (64%)
Deemed upheld: time limit expired	5 (45) 0% (1%)
Varied	121 (86) 2% (1%)
Cancelled	2,493 (2,239) 33% (34%)

Number of reviews

HMRC received around 44,000 review requests last year and completed just over 46,000 reviews. The majority of reviews (nearly 80 per cent) were about penalties. Most penalty reviews were about VAT Default Surcharges and you can find more about these below.

Non-penalty cases

In non-penalty cases, HMRC upheld 56 per cent of decisions on review and overturned or varied 44 per cent. When an original decision is changed on review it is often because HMRC received additional information that was not available to the original case officer.

Default Surcharge Penalty cases

Default Surcharges (DS) are automatically issued when customers send in their VAT return or payment late. If customers ask for a review HMRC can consider whether there is a reasonable excuse for missing the deadline. If there is, HMRC can withdraw the penalty. In 2010-11 following reviews they cancelled or varied around 22,000 (75 per cent) of disputed DS penalties. This is around 4.5% of a total of around 480,000 DS penalties issued.

You can find [examples of review decisions](#) in case studies 1-10.

Appeals

It is to everyone's advantage if disputes can be resolved satisfactorily without the time and inconvenience of a tribunal hearing. However there will always be cases when the parties cannot agree and the tribunal will be asked to decide. Some appeals are relatively simple arguments about facts. Other appeals raise complex matters of law which go as far as the Supreme Court before they are resolved.

Nearly 8,300 tribunal appeals were received about HMRC decisions in 2010-11 and 6,000 cases were closed.

HMRC have analysed more than 80 per cent of appeals sent to the tribunal after 1 April 2009 (when the current tax tribunals were established) and closed in 2010-11. This analysis does not include figures for appeals against tribunal decisions heard by the Upper Tribunal or higher courts. There is a relatively small number of cases and all the decisions are published.

Tribunal decisions

Decided in HMRC favour	793 (74 per cent)
Decided partially in HMRC favour	56 (5 per cent)
Decided in taxpayer's favour	225 (21 per cent)

Fewer than 40 per cent of tribunal appeals resulted in a hearing. There are a variety of reasons for this. It includes:

- appeals that had been stood behind lead cases and closed when the lead case was finally decided

- cases where either party decided not to proceed, perhaps because of new information received
- cases where the parties reach agreement before the hearing date.

For cases where no hearing was held 60 per cent were resolved wholly or partially in favour of the appellant. HMRC have found that even after a review, appellants often submit new evidence which allows resolution before the tribunal hearing.

Further information

[Tax return deadlines and penalties](#)

[Penalties for mistakes and delays with your VAT](#)

[Complaints and appeals](#)

For information on appeal cases see the [HM Courts and Tribunal Service website](#)

REVIEW CASE STUDIES

Case Study 1 – Review (non-penalty case) decision cancelled

HMRC considered that several individuals based at the same site were operating a single business. So they compulsorily registered the trader for VAT. The trader's agent asked for a review. The agent submitted significant details and evidence that had not been provided to the HMRC officer when they made their original decision. The additional evidence was sufficient to persuade the review officer to overturn the decision.

Case Study 2 – Review (non-penalty case) decision upheld

A company submitted accounts containing a previous year adjustment that suggested it had been trading in that year. The company had already submitted dormant accounts to Companies House, nil PAYE returns to HMRC and made no CT return for that period. It was not registered for VAT until after the end of that period.

The company claimed that it was the film production company for a named film and made a claim for a film tax credit. The investigating officer was satisfied that the film had not been produced by this company, so no film tax credit was due to the appellant.

The company appealed and asked for a review. During the review HMRC gathered further evidence and consulted the Department for Culture, Media & Sport about the film's certification. The HMRC review officer negotiated an extension to the review period to allow the matter to be properly considered. As a result of the investigations the company decided to withdraw the claim.

Case Study 3 – Review (non-penalty case) decision varied

An HMRC officer carrying out an income tax enquiry into a haulage company had met with poor co-operation from the taxpayer and their agent. The officer had queries about the low profit levels declared to HMRC. During the enquiry, key information and documents were either not provided or provided in a piecemeal fashion. The HMRC officer used the evidence she had received to raise assessments reflecting her estimate of likely profits and tax due on overdrawn directors' loan accounts. The taxpayer appealed and asked for a review.

During the course of the review the agent supplied the information and documents HMRC had originally asked for. The officer carrying out the check considered the new material and was satisfied that the assessments were too high. When the case was returned to the review officer, she reduced the assessments even further, in line with the new evidence.

Case Study 4 – Review (non-penalty case) decision varied

HMRC carried out a compliance check to establish how much rebated gas oil a scrap metal trader used in their commercial vehicles over a three year period. The officer issued an assessment for £55,000. The trader accepted that he should not be using rebated fuel in his vehicles but disputed the amount of the assessment.

The trader dealt in scrap metal, in particular scrap vehicles. He explained that he had to drain all fluids from the scrapped vehicles before destroying them. He then used the drained diesel in his own vehicles. The HMRC officer did not accept this and refused to take it into account.

The trader asked for a review. He provided copies of his daily scrappage lists of vehicles to show the review officer the number of vehicles scrapped. The review officer thoroughly considered the evidence available and recalculated the assessment to £36,000.

The trader accepted the new calculation and paid the assessment. The revised calculation was fed back to the officer who made the original decision.

Case Study 5 – Review (non-penalty case) decision upheld

A flat management company sold a leasehold interest in a building it owned to a property developer. The company used the proceeds to carry out repairs and maintenance on all its property.

The company paid tax on the capital gain from the new leasehold interest, but sought to offset the gain with what it described as trading losses. HMRC challenged this. It would be unusual for a flat management company to be conducting a trade. These companies usually receive service charges from their members for managing a property.

The officer concluded that there was no trade and disallowed the losses. The company asked for a review. The review officer supported the decision. She explained to the appellant company that spending money on repairs and maintenance was not evidence of carrying on a trade. She also explained that

property expenses paid for out of trust capital are not trading deductions and don't create a trading loss. Creating the new leasehold interest was not evidence of trading either. She referred the appellant to information on HMRC's website and in HMRC publications to help flat management companies meet their tax obligations.

The company accepted the outcome of the review.

Case Study 6 – Review (VAT default surcharge case) decision varied

A customer who had to pay their VAT online sent their payment in late by cheque. They had missed deadlines several times before and so received a surcharge of 15 per cent. The customer asked HMRC to review the surcharge, as they felt then had sent in the return and payment on time. The review officer upheld the surcharge because the payment was received significantly late. However the review officer found that one of the earlier surcharges should be withdrawn. This meant that the appealed surcharge was reduced to 10 per cent.

Case Study 7 – Review (VAT default surcharge case) decision upheld

A customer asked for a review of HMRC's decision to impose a default surcharge. They said that they had previously arranged a time to pay agreement for an earlier return. HMRC had told them to ignore all subsequent default surcharge liability notices and demands for payment. The customer also said that they had not received earlier default surcharge liability notices or received warnings about late payments.

The review officer examined the case history but found no evidence that HMRC had advised the customer to ignore information about default surcharges. On the contrary, he found that the customer had been contacted by HMRC with a help letter, providing advice on how to avoid missing deadlines. The review officer found no record of returned mail, and the customer did not provide any evidence of mail problems. The review officer concluded that the surcharge liability notices had been correctly served by HMRC sending them by post to the usual address or place of business.

Case Study 8 – Review (VAT default surcharge) decision cancelled

The customer received a 10 per cent default surcharge and asked for a review. The review officer found that the customer had asked for time to pay before the payment was due. HMRC had agreed time to pay and should not have sent out the default surcharge. The review officer removed the default surcharge.

Case Study 9 – Review (VAT default surcharge) decision cancelled

The customer asked for time to pay. HMRC refused as they received the request on the due date for payment. The customer then submitted the return and payment late. HMRC imposed a default surcharge and the customer asked for a review. The customer explained that around the time that the return and payment were due he was called at short notice to care for his mother. She had been taken ill and lived in a different part of the country. The review officer accepted that there was a reasonable excuse and removed the surcharge.

Case Study 10 – Review (Income Tax surcharge) decision cancelled

A taxpayer appealed against a surcharge on the grounds that he had called HMRC on 24 January to say that he had not received a Self Assessment tax return for 2009-10. He had completed returns in previous years. HMRC had told the taxpayer he owed a late payment surcharge as he should have paid his Self Assessment balancing payment by the deadline of 31 January 2011.

The taxpayer asked for a review, saying that HMRC told him during the call that they would send him a return. They also told him that his new payment deadline would be 3 months and 7 days from the date the return was sent.

The transcript of the call showed that HMRC had given the taxpayer incorrect advice about the payment deadline. The review officer cancelled the surcharge.

APPEAL CASE STUDIES

Case Study 11 – Appeal (claim settled by agreement before hearing)

An unrepresented taxpayer submitted a claim for VAT they considered they had overpaid on products sold from vending machines. HMRC rejected the claim as it included invalid periods and no evidence was produced in support of the amounts claimed. The customer asked for a review but did not provide additional evidence in support of the claim. HMRC's decision to reject the claim was upheld by the review officer.

The customer appointed an agent who appealed against HMRC's decision. The agent also sent in a revised claim for a significantly lower amount, excluding the invalid periods. Following further correspondence in which sufficient evidence was provided to support the amended claim, HMRC accepted the claim. The appeal was settled by agreement without going to tribunal.

Case Study 12 – Appeal (excise duty assessment) decision upheld

HMRC sent a company director an assessment for excise duty that had not been declared or paid. The director was the signatory to the entry of premises for production of bio-diesel.

The company's assets had been transferred to a holding company more than 6 months before the notification of entry was provided to HMRC. The company was then put into voluntary liquidation. The director's view was that HMRC should have assessed the company that had failed to submit the returns and pay the duty. He also considered that the assessment breached his human rights.

The review officer upheld the original decision as both the signatory (in this case the director) and the company have a liability to pay any unpaid excise duty. The appeal was heard at tribunal and the appellant's case was dismissed.