

## Chapter 9

# Review by HMRC

### Introduction

**9.1** As part of the reform of tax appeals HMRC have introduced a new internal review process which provides a means of settling disputes at an early stage without recourse to the Tribunal. It applies to all direct tax appeals (see **Chapter 3**), and to appeals against indirect tax decisions (see **Chapter 4**), except appeals against decisions about the restoration of seized goods under *Customs and Excise Management Act 1979 (CEMA), s 152(b)* (restoration decisions) which remain subject to the compulsory review provisions in *FA 1994, s 14* (see **9.15**). Although the underlying principles are the same for direct and indirect tax, there are differences in the way the optional review process applies. These arise from the fundamentally different ways in which disputes have been dealt with in the past, when a direct tax appeal was made to HMRC and an indirect tax appeal was made to the VAT and duties Tribunal. These differences have been perpetuated in the new appeals system.

### Statutory basis for the optional review process

**9.2** The legislation relating to all these taxes and duties has been amended by the *Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, SI 2009/56* ('*Transfer Order*') made under *TCEA* and *FA 2008* to provide for the review procedure. The relevant direct tax provisions (with the amending provision shown in brackets) are:

- *TMA 1970, ss 49A–49I* (*Transfer Order, Sch 1, para 30*);
- *Oil Taxation Act 1975, Sch 2, paras 14A–14I* (*Transfer Order Sch 1, para 75*);
- *Inheritance Act 1984, ss 223A–223I* (*Transfer Order, Sch 1, para 117*);
- *Stamp Duty Reserve Tax Regulations 1986 SI 1986/1711* (*Transfer Order, Sch 2, para 19*);
- *FA 2003, Sch 10, paras 36A–36I (SDLT)* (*Transfer Order, Sch 1, para 388*);

The relevant indirect tax provisions are:

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- *FA 1994, ss 13A, 14A, 15A–15F and s 16(1)–16(1G) (duties) (Transfer Order, Sch 1, paras 198–202);*
- *FA 1994, ss 59A–59G (IPT) (Transfer Order, Sch 1, para 206);*
- *VATA 1994, ss 83A–83G (Transfer Order, Sch 1, para 220);*
- *FA 1996, ss 54A–54G (LFT) (Transfer Order, Sch 1, para 235);*
- *FA 2000, Sch 6, paras 121A–121G (CCL) (Transfer Order, Sch 1, para 289);*
- *FA 2001, ss 40A–40G (AGL) (Transfer Order, Sch 1, para 304);*
- *FA 2003, ss 33A–33F (import and export duty penalties) (Transfer Order, Sch 1, para 364);*
- *Export (Penalties) Regulations 2003 SI 2003/3102, regs 9A–9F (Transfer Order, Sch 2, para 124);*
- *Control of Cash (Penalties) Regulations 2007 SI 2007/1509, regs 4A–4F (Transfer Order, Sch 2, para 164);*
- *Money Laundering Regulations 2007 SI 2007/2157, regs 43A–43F (Transfer Order, Sch 2, para 173);*
- *Transfer of Funds (Information on the Payer) Regulations 2007 SI 2007/3298 regs 12A–12F (Transfer Order, Sch 2, para 179);*
- *Counter-Terrorism Act 2008 (Transfer Order, Sch 7, paras 26–28) (Revenue and Customs Appeals Order 2009 SI 2009/777).*

As the legislation is essentially the same for direct and indirect taxes respectively, in this chapter all references to the relevant direct tax legislation will be to the provisions of *TMA* and all references to the relevant indirect tax legislation will be to the provisions of *VATA*. For ease of reference the corresponding provisions are set out in **Appendix 6, Table A** (direct tax provisions) and **Appendix 6, Table B** (indirect tax provisions).

### Use of representatives

**9.3** It is possible for a taxpayer to use a representative in the review process and in this chapter references to a taxpayer, an appellant and a third party all include a reference to a person who is acting as their representative. Nevertheless, certain communications must be made directly to the taxpayer and copied to their representative. For example, the decision letter, the offer of a review, the letter giving HMRC's latest view of the matter, the review conclusion letter and the letter giving the conclusion that HMRC is treated as having reached if they have not completed their review within the time limit must all be sent directly to the taxpayer (HMRC Appeals, Reviews and Tribunal Guidance (ARTG) *ARTG 2150*).

## The optional review process – direct taxes

**9.4** A review cannot take place unless and until an appeal has been notified to HMRC (*TMA, s 49A(1)*). Once there has been an appeal the appellant taxpayer may continue to negotiate with his caseworker with a view to settling the appeal by agreement. Most appeals are resolved in this way. If negotiations stall, or if the taxpayer does not wish to continue to negotiate with his caseworker, he has three mutually exclusive options:

- HMRC may offer him a review;
- he may require a review; or
- he may notify his appeal to the Tribunal without further delay and the Tribunal will then determine the appeal.

If a review is undertaken there will be a further opportunity to notify an appeal to the Tribunal at the end of the review period.

**9.5** When a taxpayer appeals to HMRC the officer who made the decision ('the decision maker') normally contacts the appellant taxpayer to discuss the case further and gives the appellant a further opportunity to make representations. If these discussions do not resolve the matter, or if discussions are not appropriate or possible, the decision maker may write to the appellant explaining HMRC's position and offering a review under *TMA, s 49C*. HMRC can only offer a review if they have not already made such an offer and if the appellant has not notified his appeal to the Tribunal (*TMA, s 49C(7)*). It is a matter for the decision-maker as to whether or when to offer a review and the appellant taxpayer has no control over this. HMRC's internal training material states:

'If the appeal cannot be settled by agreement and at a time that the decision maker considers is appropriate, the decision maker will write to the customer to give and explain HMRC's view of the matter and offer a review.' (Tribunals Reform Review Officer Guided Learning Unit dated 9/4/09 ('GLU') para 2.1.3, p 12).

The offer of a review must be accompanied by 'a notification of HMRC's view of the matter in question' (*TMA, s 49C(2)*) (see **9.6**). Once a review has been offered, the appellant has 30 days to accept that offer. If the appellant accepts an offer of a review within that 30-day period, HMRC are then required to carry out the review (*TMA, s 49C(3)*). If the appellant does not accept the offer and wishes to continue with the appeal he must notify the appeal to the Tribunal within 30 days of the receipt of the offer of a review (or later if the Tribunal gives permission) (*TMA, s 49H*). If the appellant neither accepts the offer of a review nor notifies the appeal to the Tribunal within the 30-day period then, unless the appellant has requested and been granted an extension of time (see **9.7** and **9.11**) the decision is deemed to be upheld and is treated as a settled appeal (*TMA, s 49C(4)*).

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**9.6** If HMRC have not already offered a review, a taxpayer who has already notified an appeal to HMRC can require a review by notifying HMRC accordingly (provided he has not already sent his appeal to the Tribunal) (*TMA, s 49B*). Once a review has been required, HMRC have 30 days in which to notify the appellant of their ‘view of the matter in question’ (*TMA, s 49B(2)*). According to HMRC’s internal training package:

‘... the request must first be considered by the decision maker who has 30 days to give HMRC’s view of the matter (which may be the same as when the appeal was initially made or may have changed). It should set out any changes since the initial appeal – for example, if some matters have been agreed – and summarise the outstanding points as we understand them. The view should in the case of an appeal against an assessment, set out the amount HMRC considers to be due, if this has changed’ (GLU para 2.1.3 page 13).

When that has been done, HMRC must then conduct the review.

**9.7** There are no specific statutory time limits for requesting a review or, if a review has neither been offered nor accepted, notifying an appeal to the Tribunal. This is because the review process forms part of the appeal process. Since it is necessary to have sent an appeal to HMRC before a review can be offered or required, the provisions and practice for late appeals to HMRC under *TMA, s 49* will apply in any case where a taxpayer disputes a decision and has not acted within 30 days of the date of the disputed decision. HMRC must allow an application under *TMA, s 49* if the taxpayer has a reasonable excuse, or, if he has ceased to have a reasonable excuse, the request is made without unreasonable delay after the excuse had ceased (*TMA, s 49(3)*).

**9.8** If a review has been offered and not accepted within the 30-day time limit, the appeal will be treated as if settled under *TMA, s 54(1)*. However it is open to the taxpayer in such cases to ask HMRC to accept a late appeal under *TMA, s 49*. HMRC must allow an application under *TMA, s 49* if the taxpayer has a reasonable excuse, or, if he has ceased to have a reasonable excuse, the request is made without unreasonable delay after the excuse had ceased (*TMA, s 49(3)*). Alternatively, the taxpayer can appeal to the Tribunal under *TMA, s 49D* and ask the Tribunal to extend the time for appealing under *FTR, r 29(4)* (see **14.14** and **14.15**), in which case it is a matter for the Tribunal whether to allow such late notification.

## The optional review process – indirect taxes

**9.9** When HMRC make a VAT decision which is an appealable decision (see **Chapter 4**) they must, at the same time, offer a review of that decision (*VATA, s 83A*). Any person other than the recipient of the decision who has a right to appeal against the decision (‘a third party’) can also require a review,

provided this is done within 30 days of the date when that person became aware of the decision (*VATA, s 83B*). This could arise if, for example, a ruling about the VAT liability of a supply had been given to the VAT-registered supplier but the recipient of the supply wanted to appeal. In either case, if the 30-day period has not expired, HMRC have the power to extend the period for a further 30 days from the date of the notice of the extension, or from any other date set out in that notice or any further notice they may issue (*VATA, s 83D*).

**9.10** If the offer of a review is accepted, or a review is required, HMRC must conduct a review, unless there has already been an appeal to the Tribunal against that decision (*VATA, s 83C*). There is one exception to this rule. If a decision under *FA 1994, s 14(1)(b)* is linked to any restoration decision and HMRC are reviewing, or have reviewed, the restoration decision to which that decision is linked, the taxpayer may neither accept the offer of a review (*FA 1994, s 15C(3)*) nor require a review (*FA 1994, s 15B(3)*). If a decision is linked to a restoration decision which is being challenged, the taxpayer must follow the process for challenging restoration decisions (*FA 1994, s 14(1)(b)*), ie request a review, and if not satisfied with the conclusion, appeal to the Tribunal against the review conclusion (*FA 1994, s 16(1)*).

**9.11** If the offer of a review has not been accepted, or a review has not been required, within the 30-day period the taxpayer can request a review out of time (*VATA, s 83E*). HMRC are required to conduct the review if they are satisfied that the person requesting the review had a reasonable excuse for not accepting the offer of, or requiring, a review within the time allowed and that the request was made without unreasonable delay after the reasonable excuse had ceased to apply. In considering whether there is a reasonable excuse HMRC will take into account the taxpayer's individual circumstances in the same way as they would for a late appeal in direct tax, for example the reasonable excuse must be personal to the taxpayer and the amount involved is not relevant. Sickness or absence may be a reasonable excuse. If HMRC do not accept that there is a reasonable excuse there is no right of appeal against that decision but the taxpayer can still apply to the Tribunal for permission to appeal out of time (see **14.16** to **14.19**). HMRC are able to object to that application but it is a matter for the Tribunal whether or not to grant an extension of time.

### **HMRC's approach to the review process – all taxes except restoration decisions under *CEMA, s 152(b)***

**9.12** At the time of writing there is little or no information in the public domain as to how the process actually works in practice. It is therefore useful to consider how HMRC intend the process to work and the best indication of this is in the internal guidance that they have issued to their officers and, in particular, the GLU. According to this guidance, the review must be carried out by an officer who has not previously been involved in the dispute. It is

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clear from HMRC's internal guidance for review officers that the review is intended to be as independent as it possibly can be, given that it is being carried out within HMRC rather than by a third party:

### 'Independence of review officers

The review must be a genuine second look at the case and it is important therefore that review officers are not linked to the decision makers (for example by being their line manager). This will benefit both customers and HMRC. Customers will benefit by being assured that review arrangements are fair and transparent. HMRC will benefit because we will only maintain decisions that have a sound legal basis and are in accordance with the HMRC Litigation and Settlement Strategy.

In order to help maintain a detached approach review officers should discuss cases with decision makers only as far as is needed to clarify a particular point or issue. Likewise the review officer should make sure they properly understand the customer's position and offer equivalent telephone or face to face contact to the customer and agent, as necessary' (GLU para 3.1.3)

In conducting the review HMRC are required by statute to

'Have regard to steps taken before the beginning of the review –

- (a) by HMRC in deciding the matter in question, and
- (b) by any person in seeking to resolve disagreement about the matter in question'

and to

'Take account of any representations made by the appellant at a stage which gives HMRC a reasonable opportunity to consider them' (*TMA, s 49E, VATA, s 23F(4)*).

According to HMRC's internal training package, the powers and duties of the review officer are as follows:

### 'Principles of review

... Review officers will not have any additional powers to those available to decision makers but will be able to overturn decisions and vary them under the normal statutory rules. Although there is no legal obligation to write to customers during the review, review officers should ensure that they keep the customer informed of progress, have a clear understanding of the customer's point of view and that they have requested any information needed to complete the review. Customers have a right to make representations to us and we must take those representations into account as long as they are made at a stage in the review period which gives us a reasonable opportunity to consider them.

Review officers have a key role in helping resolve disputes by providing a clear statement of the law and issues to help resolve a case.

A review officer's role when reviewing a case is to make sure a decision

- has been properly made
- is legally correct (in HMRC's view)
- is one which we would want to defend at tribunal in accordance with the Litigation and Settlement Strategy.

The nature and extent of the review will vary depending on

- how HMRC reached the initial decision, and
- steps taken to try to resolve the dispute.

For example, if before a decision was made, or (in direct tax) following an appeal, it was subject to extensive internal checking, perhaps including two or more layers of informal review separate from the decision maker, and/or requiring input from specialist technical advisers or counsel, the review officer is not expected to challenge the technical advice unless there is a reason to do so. They should instead confirm that all appropriate procedures were followed and that the decision reflects the approved process' (GLU para 3.1.4)

The review officer is not to do the work of the decision maker. The GLU states:

'The important principle to remember is that the role of the review officer is to review the basis of the decision made by the decision maker' (GLU para 3.1.3)

and

'It is not the review officer's role to carry out case work as such but rather, to review the work that has already been done' (GLU para 3.17).

The guidance envisages that the review officer can seek specialist advice within HMRC, subject to certain limitations:

'If the caseworker has already sought advice the review officer should accept it unless they have particular reason not to. If this is the case, they must go back to the subject specialist and explain why they think the advice is wrong and seek further advice. If further advice is needed the customer should be asked to agree to an extension to the review time limit if appropriate' (GLU para 3.1.6)

The taxpayer (or third party) has the opportunity to put his case to the officer who is conducting the review. It is envisaged that the review officer will have

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some contact with the taxpayer (or third party) which could be in writing, on the telephone, face to face or, subject to security considerations, electronically. The GLU sets out the following guidance:

#### **‘Contact with the customer**

When a review officer is allocated a case for review they should tell the customer that they are going to review it and give contact details. Sometimes customers may want to contact the review officer to put their side of the case. HMRC is statutorily required to consider such representations. Further representations or direct contact with the customer might give additional clarity about the facts of the case. And a meeting might also help to settle the case quickly because a face to face or telephone explanation may be more helpful to the customer than a written reply. However review officers should ensure that any contact does not amount to case working and that full written notes of all such telephone calls and meetings should be kept as potential evidence in any subsequent tribunal hearing.

Review officers need to handle unrepresented customers sensitively. Sometimes they might not have been able to put over their point of view clearly in the review request, and review officers should try to get to the bottom of why the unrepresented taxpayer is not content with the decision. This might, for example include asking the customer for clarification either by telephone or face to face’ (GLU para 5.1.9)

#### **Time in which the optional review process must be concluded – all taxes**

**9.13** The review must be concluded within 45 days (*TMA, s 49E(6)*, *VATA, s 83F(6)*). In direct tax cases, the 45-day period starts on the ‘relevant day’ (*TMA, s 49E(7)*) which is the day when:

- HMRC notified the appellant of their view of the matter in question when a review had been required under *TMA, s 49B*; or
- HMRC received notification of the appellant’s acceptance of the offer of a review under *TMA, s 49C*.

In indirect tax cases, the 45-day period starts with the ‘relevant date’ (*VATA, s 83F(7)*) which is the date when:

- HMRC received the taxpayer’s acceptance of the offer of a review under *VATA, s 83A*;
- HMRC received a third party’s notification requiring a review under *VATA, s 83B*; or
- HMRC decided to conduct a review out of time under *VATA, s 83E*.

The 45-day period can be extended if HMRC and the taxpayer or third party agree (*TMA, s 49E(6)(b)* or *VATA, s 83F(6)(b)*).

## Conclusion of the optional review – all taxes

**9.14** When the review has been completed, usually within 45 days but longer if agreed, the review officer must notify the taxpayer (or third party) of the result of the review. The original decision may be upheld, varied or cancelled (*TMA, s 49E(5), VATA, s 83F(5)*). If the review is not completed within the statutory or agreed time limit HMRC's decision is deemed to be upheld (*TMA, s 49E(8), VATA, s 83F(8)*). There is a statutory requirement (*TMA, s 49E(9), VATA, s 83E(9)*) for HMRC to give notice of that deemed conclusion but it appears that, as a matter of law, any failure to give such notice will not affect the deemed result of the review (see **9.23, 9.24** and **9.26** for the rules on notifying an appeal to the Tribunal in cases where HMRC have not notified a review conclusion within the required time).

If the taxpayer agrees with, or accepts, the conclusion of the review he need do nothing more and the decision will be treated as final and enforced accordingly (*TMA, s 49F(2)*). There is no similar specific provision for indirect tax cases, because in indirect tax the review process is not part of an appeal. Any decision subject to a review remains enforceable and its effect is merely suspended administratively by HMRC while the review is in progress.

## The compulsory review process for restoration appeals under *CEMA, s 152(b)*

**9.15** There is no direct right of appeal to the Tribunal against:

- any decision under *CEMA, s 152(b)* as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;
- any relevant decision which is linked by its subject matter to such a decision under *CEMA, s 152(b)*.

Instead, it is necessary for a would-be appellant to require HMRC to review the decision under *FA 1994, s 14* and there is then a right of appeal under *FA 1994, s 16* against the decision, or deemed decision, on that review.

**9.16** The right to require a review is confined to any person who is:

- a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which *FA 1994, s 14* applies;
- a person in relation to whom, or on whose application, such a decision has been made; or
- a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied

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but, if the decision falls within *FA 1994, s 14 (1)(b)* a person may require HMRC to review the decision only if HMRC are also required to review the decision within *FA 1994, s 14 (1)(a)* to which it is linked (*FA 1994, s 14(2A)*).

**9.17** To ensure that anyone who is entitled to request a review is not excluded because he had not received notification of the original decision, *FA 1994, s 14(4)* provides that HMRC are under a duty to give written notification of any decision to which this section applies to any person who:

- requests such a notification;
- has not previously been given written notification of that decision; and
- if given such a notification, will be entitled to require a review of the decision under *FA 1994, s 14*.

**9.18** The request for a review must be in writing to HMRC within 45 days of the date when HMRC gave written notice to the person requiring the review of their decision, or of the assessment containing their decision (*FA 1994, s 14(3)*). Notwithstanding these time limits, *FA 1994, s 14A* provides that, if written notice requiring a review is given after the end of the 45-day period, HMRC are still required to review a decision if they are satisfied that there was a reasonable excuse for the delay and notice was given without unreasonable delay after that excuse ceased. Even if HMRC are not so satisfied, the person requiring the review can apply to the Tribunal which can then order them to carry out a review (*FA 1994, s 14A(4)*).

**9.19** It is not normally possible for there to be a second or subsequent review of the same decision and *FA 1994, s 14(5)* provides that this is only permissible if:

- (a) the grounds on which [a person] requires the further review are that HMRC did not, on any previous review, have the opportunity to consider certain facts or other matters; and
- (b) he does not, on the further review, require HMRC to consider any facts or matters which were considered on a previous review except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

**9.20** Once a review has been required HMRC must carry out a review. They may either:

- confirm the decision; or
- withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate (*FA 1994, s 15(1)*).

**9.21** If HMRC do not give notice of the determination of their review within 45 days from the date when the review was requested, *FA 1994, s 15(2)* provides that they shall be assumed to have confirmed their decision.

### Appeal to the Tribunal after an optional review – direct taxes

**9.22** Although *TMA, s 49D* provides an immediate right to notify the appeal to the Tribunal once a taxpayer has given notice of appeal to HMRC, this right cannot be exercised if the appellant has already required a review under *TMA, s 49B* and HMRC have notified their view of the matter, or the appellant has accepted the offer of a review under *TMA, s 49C*. In these circumstances there is no right to notify the appeal to the Tribunal unless and until that review has been concluded, or is deemed to have been concluded, within the required period (*TMA, s 49A(3)*).

**9.23** Once the review has been concluded, or deemed, to be concluded, and the appellant does not accept the result, or deemed result, he can then notify the appeal to the Tribunal. An appeal must be notified within 30 days of the date of the document notifying the conclusions of the review (*TMA, s 49G(2)*). If HMRC have not given notice of the conclusions of the review within the relevant period, so that their view is deemed to be upheld under *TMA, s 49E(8)*, an appellant may notify the appeal to the Tribunal at any time after the date that the review should have been completed. In those circumstances the time limit for notifying an appeal expires 30 days after the date of the document in which HMRC do eventually give notice of the deemed conclusions (*TMA, s 49G(5)(b)*).

### Appeal to the Tribunal after an optional review – indirect taxes

**9.24** If the taxpayer (or third party) does not accept the result, or deemed result, of the review, he can then appeal to the Tribunal. This must be done within 30 days of the 'conclusion date' (*VATA, s 83G((3), (4))*). The conclusion date is the date of the document notifying the conclusions (or deemed conclusions) of the review (*VATA, s 83G(7)*). If HMRC have failed to complete their review in time, so that the decision is deemed by *VATA, s 83F(8)* to be upheld, an appellant may appeal to the Tribunal at any time after the date that the review should have been completed until the expiry of 30 days after HMRC give notification under *VATA, s 83F(9)* of the deemed review conclusion (the conclusion in such cases may be that the review was not completed due to lack of time and that the decision is accordingly upheld) (*VATA, s 83G(5)*).

**9.25** If a taxpayer or a third party has requested a review out of time under *VATA, s 83E* but HMRC have decided not to undertake the review, the 30-day period to notify the appeal to the Tribunal runs from the date on which HMRC decide not to undertake a review (*VATA, s 83G(4)(b)*).

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### **Appeal to the Tribunal after a compulsory review in restoration decisions under CEMA, s 152(b)**

**9.26** There is a right of appeal to the Tribunal, either against their decision on a review or, if appropriate, the deemed confirmation of, the decision which was the subject of the review. The appeal must be notified to the Tribunal within 30 days of the review decision (*FA 1994, s 16(1)*), or, if there is a deemed decision under *FA 1994, s 15(2)*, within 75 days from the date on which the review was required (*FA 1994, s 16(2)*).

### **Extension of time limits to notify an appeal to the Tribunal – all taxes**

**9.27** If these time limits, or any time limit extended by HMRC (in respect of indirect tax), have expired, HMRC have no power to extend them and the taxpayer (or third party) must apply to the Tribunal for an extension of time in which to appeal (*TMA, 49G(3)*) (see **14.14** to **14.19**).

### **Postponement of payment of tax pending an internal review – direct taxes**

**9.28** *TMA, s 55(3)* permits a taxpayer who has appealed to HMRC to apply to postpone payment of all or part of any disputed IT, CT or CGT tax pending settlement of the appeal. An application must be made in writing to HMRC within 30 days of the decision appealed against. The postponement application must state the reasons why postponement is requested and the amount of tax the appellant believes he has been overcharged. HMRC may accept postponement applications made after 30 days if there is a reasonable excuse (per *TMA, s 118(2)*) or they accept a late appeal. If HMRC do not agree to the application for postponement, or the amount to be postponed, they will write to the taxpayer giving their reasons and, if appropriate, proposing a revised amount to be postponed. If the taxpayer still does not agree, he has 30 days to apply to the Tribunal to decide what amount should be postponed (see **10.4** to **10.9** (IT, CT and CGT), **10.22** to **10.21** (other direct taxes)).

### **Payment of tax pending a review – indirect taxes**

**9.29** Although there is no statutory provision for postponement of the payment of tax during the review process, HMRC have made the following statement in Factsheet HMRC1: ‘HM Revenue and Customs decisions – what to do if you disagree’:

‘If the decision relates to an indirect tax matter (except for customs matters), we will not collect the tax while we carry out a review of the decision.’

## Transitional provisions

### *Direct taxes*

**9.30** An appellant who appealed to HMRC before 1 April 2009, when the internal review process was introduced, may still be offered, or can require, an internal review of the decision appealed against, provided that neither the taxpayer nor HMRC had served notice to begin appeal proceedings before one of the previous tribunals before 1 April 2009 (*Transfer Order Sch 3, para 5(1)*). That review will be conducted in the same way, and subject to the same provisions, as a review offered or required after 1 April 2009, except that if a review was offered or required before 31 March 2010 HMRC had an extended period of 90 days to conduct that review rather than the usual 45 days (*Transfer Order, Sch 3, para 5(2)*).

### VAT

**9.31** The statutory provisions in *VATA* which were in force up to 1 April 2009 will continue to apply unamended, subject to *FTR* and *UTR*, to any disputed VAT decision to which *VATA, s 83* applies which was notified to the taxpayer by HMRC before 1 April 2009 which had not been appealed (*Transfer Order, Sch 3, para 4(2)(a), (3)*). This means that it was not possible for an internal review of that decision to be offered or required under the amended *VATA, ss 83A–83G*. Nevertheless, it was still possible to request a non-statutory review ('reconsideration'), provided it was made within 30 days of the notification the decision. To protect those reconsiderations which were already in progress on 1 April 2009, and to allow a request for a reconsideration to be made after 1 April 2009, *Transfer Order, Sch 3, para 4(2)(b)* continues to apply *VAT Tribunal Rules, r 4(2)* which provides:

'If, during the period of 30 days after the date of the document containing the disputed decision, the Commissioners shall have notified the appellant by letter that his time to appeal against the disputed decision is extended until the expiration of 21 days after a date set out in that letter, or to be set out in a further letter to him, a notice of appeal against that disputed decision may be served at the appropriate Tribunal centre at any time before the expiration of the period of 21 days set out in such a letter or further letter.'

### *Other indirect taxes and duties*

**9.32** The provisions relating to compulsory review in all indirect tax appeals, apart from VAT appeals, which were in force up to 1 April 2009 continued to apply to any decision notified by HMRC before 1 April 2009 where no review had been required, and the 45-day time limit for review had not expired, before that date. The taxpayer therefore had to require a review before the expiry of that time limit if he wished to dispute the decision

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(*Transfer Order, Sch 3, para 2(1)(a)*). The review and appeal provisions also continued to apply to any decision on a compulsory review made before 1 April 2009 where the 30-day time limit to appeal had not expired, or an appeal had not been served on the VAT and duties Tribunal, so that a taxpayer wishing to appeal to the Tribunal would have had to do so before the expiry of that time limit or apply to the Tribunal for an extension of time to appeal (*Transfer Order, para 2(1)(b)*). If a compulsory review had been started by 1 April 2009 (whether or not HMRC had notified their decision on the review), the unamended provisions relating to a compulsory review and a subsequent appeal would continue to apply until the conclusion of that review, so that the taxpayer has the same right to appeal to the Tribunal, subject to the same time limits, as he would have had before 1 April 2009 (*Transfer Order, Sch 3, para 3*).

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