

Covid-19: a reasonable excuse for Late Appeals?

Jesminara Rahman explains what you need to know to submit an appeal in regard to Covid-19 as reasonable excuse

HMRC defines a reasonable excuse as something that prevents the taxpayer from meeting a tax obligation where reasonable care was undertaken, such as:

- your partner or another close relative died shortly before the tax return or payment deadline.
- you had an unexpected stay in hospital that prevented you from dealing with your tax affairs.
- you had a serious or life-threatening illness.
- your computer or software failed just before or while you were preparing your online return.
- service issues with HMRC's online services.
- a fire, flood or theft prevented you from completing your tax return.
- postal delays that you could not have predicted.
- delays related to a disability you have.

HMRC would expect to see any of the excuses outlined above evidenced in order to verify the reasonable grounds for appeal.

In early May 2020 HMRC granted an extra three months in addition to the statutory 30 days required by tax legislation to appeal any tax assessments, penalties or tax decisions dated February 2020 or later. Covid-19 will be accepted as a reasonable excuse for individuals and business impacted by it, but it will not simply be an issue of quoting Covid-19 as an excuse. HMRC will look to the Covid-19 excuse being substantiated – for example a dip in turnover, lockdown measures, social personal distancing impact, furlough claims, evidence of illness, etc..

HMRC states you would need to explain how you were affected by coronavirus in your appeal. The return, payment or appeal must still be submitted as soon as possible.

The term 'reasonable excuse' has no statutory definition in our tax legislation; therefore the definition is still being churned over in tribunal cases. The tribunal judge stated in the NA Dudley Electrical Contractors Ltd tax case (TC 01124) that the phrase 'reasonable excuse' should be given their plain, everyday usage and ordinary meaning. However, as you can see above HMRC still sees death or a serious illness as a reasonable excuse when one would consider this as an exceptional circumstance. I recall as an HMRC caseworker that we were told that unless it was something like a serious accident or death that late appeals should not be accepted. To this day, some HMRC caseworkers still work under this assumption, which needs to be challenged.

In a recent letter HMRC said: "For illness to be considered a reasonable excuse the illness must be so serious that it prevented you from controlling your business and private affairs immediately before the deadline. We would agree that coma, major heart attack stroke or any other serious mental or life-threatening illness as a reasonable excuse."

In NA Dudley Electrical Contractors Ltd (TC 01124) case, the tribunal judge ruled if Parliament had intended to say exceptional circumstances, it would have said so in those terms and would not put it forward the term 'reasonable excuse'.

How to submit an appeal

When submitting your appeal, you must outline in writing to HMRC the following:

- your name or business name.
- your tax reference number (this will be on the decision letter).
- the grounds for appeal i.e. what you disagree with and why.
- if applicable, what you think the correct figures are and how you've calculated them.

It is important to note that an appeal must state the grounds and be submitted in writing. I have seen a wide range of scenarios including:

- where the interaction was with Debt Management and the taxpayer considered HMRC had been notified of the appeal. Debt Management does not deal with any appeals. There was no written submitted appeal.
- there were phone discussions over the case and appeal, but no written appeal.
- there were three agents on the same case, but no one had actually submitted the appeal.
- the company was being liquidated therefore the agent and the director did not submit any appeals because the liquidator took responsibility for the company, who did not submit a written appeal either.

There does not need to be a full detailed appeal initially as this may take time that one does not have, but a brief appeal should be submitted to HMRC in order to safeguard the taxpayer's position. A tribunal judge will look at the reason and the length of the delay, which would have to be justified in the case of a late submission of a tax appeal.

It is of vital importance that a timely appeal is submitted in writing by email, fax or post even if one is not in possession of the full facts of the case. The grounds of the appeal must be stated in writing, but further information and documents can be provided at a later date.

For more go to <https://www.gov.uk/tax-appeals/decision>

- **Jesminara Rahman** is a tax investigation specialist and Director of Tax Resolute Ltd. She can be contacted on 0203 031 6755 or jesmin@taxresolute.com