

TRIBUNAL PROCEDURE COMMITTEE

Draft First-tier Tribunal (Tax Chamber) Rules 2009

Introduction

The response to the consultation paper “Transforming Tribunals: Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007” was published on 19 May. The aim of Part 1 of the 2007 Act is to replace the current random patchwork of tribunals with a more cohesive structure. The response confirmed that the Government will proceed with the establishment of the First-tier Tribunal and the Upper Tribunal into which a large number of existing tribunal jurisdictions will transfer. Two chambers of the First-tier Tribunal and one chamber of the Upper Tribunal will be established on 3 November 2008, subject to Parliamentary approval. Other chambers will follow later. The Tax Chamber of the First-tier Tribunal is expected to be established on 1 April 2009, at the same time as a Finance and Tax Chamber of the Upper Tribunal. You can find out more information about tax tribunal reform at the following website:

<http://www.financeandtaxtribunals.gov.uk/taxAppealsModernisation.htm>

The Tribunal Procedure Committee has been established under the 2007 Act. Its function is to make and amend rules for tribunals, including the new tribunals. The initial task of the Committee is to create rules for the new tribunals to replace the existing rules of tribunals being abolished, but thereafter it will have a continuing role of review, amending rules where experience shows this to be desirable.

The Tax Chamber Rules

This consultation is on proposed new procedure rules for the First-tier Tax Chamber being established on 1 April 2009. It is proposed that these rules will, from that date, replace the current existing three sets of procedure rules

governing the work of four tax appeals Tribunals. These are the rules of the General Commissioners of Income Tax, the Special Commissioners of Income Tax and the VAT & Duties Tribunal. The Section 702/06 Tribunal does not operate with rules of procedure.

The transfer of tribunals into the First-tier Tribunal and Upper Tribunal will require Parliamentary approval, through an Order made under the 2007 Act. Such an Order would transfer into the new system the jurisdictions of the General Commissioners, Special Commissioners, VAT & Duties Tribunal and the Section 702/06 Tribunal. This consultation is on the assumption the Government's proposals will be given Parliamentary approval.

The Intention of the Tax Chamber Rules

The creation of a new First-tier Tribunal Tax Chamber, bringing together the existing tax tribunal jurisdictions, has been a distinct project within the broader work of the Government's tribunal reform programme, "Transforming Tribunals". The Tax Appeals Modernisation Project has worked for some time with external stakeholders and HMRC on the design of a new system of tax tribunals. In addition to the First-tier Tribunal Tax Chamber, there will be a Finance and Tax Chamber in the Upper Tribunal, to which a small number of cases will be referred from the First-tier Tribunal Tax Chamber (rule **25**) and which will hear appeals from the First-tier Tribunal Tax Chamber.

These rules support and enable unification of existing tax tribunal processes and deal with issues such as a single costs regime and how the wide spectrum of tax appeals (from the very simple to the complex) might best be managed. We are aware these are issues that have been of great interest to stakeholders and into which they have made substantial input, over a long period.

The rules have been drafted in the same style and with the same broad structure as rules already produced for the proposed Social Entitlement Chamber and Health, Education and Social Care Chamber. They do,

however, take account of features of tax cases, such as their wide variety, which is reflected in the categorisation of cases and the four procedural tracks individual cases may go down depending on their nature and level of complexity.

Structure of the Rules

The Rules are divided into four parts as follows:

- Part 1: Introduction
- Part 2: General Powers and Provisions
- Part 3: Proceedings before the Tribunal
 - Before the hearing
 - Hearings
 - Decisions
- Part 4: Correcting, setting aside, reviewing and appealing Tribunal decisions

Consultation Questions

We want to receive views on the rules as a whole as well as on any individual rules. The aim is to achieve rules which are flexible and practical and are also appropriate to the range of matters heard in the tax jurisdiction. In particular, we want to ensure that cases that may appropriately be dealt with in the informal manner customary before the General Commissioners will continue to be dealt with in this way in the new system.

The new Tax Chamber will consider matters that range from the simple to the complex, and which affect both individual taxpayers and large multinational companies. The types of case to be heard will range from issues relating to Income Tax Self Assessment through to Petroleum Revenue Tax and Stamp Duty; and from VAT default surcharges through to Insurance Premium Tax

and Climate Change Levy. The matters to be heard will include appeals and *ex parte* applications.

The rules seek to accommodate the diversity and complexity of these matters by allocating cases to four procedural tracks. This is a distinctive feature of the draft rules for the new Tax Chamber [rules **21** to **24**]. The allocation of cases is initially to either the Paper, Basic or Standard track, as provided in a practice direction issued by the Chamber President. Upon application of either of the parties or of the Tribunal's own initiative, cases may also be allocated to the Complex track.

Matters to be heard within each procedural track

Practice directions would be a matter for the Chamber President, and the work of the Tax Appeals Modernization Project with its Stakeholder Group has suggested a categorization of cases as follows.

The Paper track would be for quite simple appeals, such as late filing penalties for small amounts. The following types of cases would start in the Paper track, and the list in the relevant practice direction would be updated to reflect changes to the legislation.

Appeals and applications in relation to –

- Self-assessment late return fixed penalties;
- Employer end of year return penalties;
- Construction Industry late return penalties;
- Class 2 national insurance contribution notification penalties;
- Income tax surcharges;
- Section 93(3) applications under the Taxes Management Act 1975.

The Basic track would include all standard tax penalties and surcharges other than those which are in the Paper track, covering the whole range of tax regimes, from income tax, corporation tax and VAT through to remote gaming

duty. These would include current VAT “mitigation appeals” and “reasonable excuse appeals”.

Any types of case which are not to be started in the Paper track or the Basic track would start in the Standard track.

We would particularly welcome views on the approach of setting the categorization of cases in practice directions and also of the categories suggested above.

Whether significant rules are omitted

In view of the case management powers in rule 5, some existing provisions in the General Commissioners’, Special Commissioners’ and VAT & Duties Tribunal Rules have not been reproduced in the proposed new rules. We welcome stakeholders’ views as to whether there are any particular omissions that need to be reflected in the rules (though some may be better reflected in practice directions).

Whether any rules are unnecessary

The Tax Appeals Modernisation Project has, with its stakeholders, worked hard to develop a set of rules that reflect the needs of tax appeals, and are appropriate to the new, unified Tax Chamber. We welcome consultee’s views on whether there are provisions in these rules that are not appropriate or suitable for tax appeals.

Responding to consultation

The consultation closes on Wednesday, 12 November. Responses to the consultation should be sent to Charmaine Collyer at:

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12 Farringdon Road EC1 M 3BA

Or by e-mail to Charmaine.collyer@tribunals.gsi.gov.uk

Issued by Mark Rowland on behalf of the Honourable Mr Justice Elias