

## SCHEDULE

### THE FIRST-TIER TRIBUNAL FOR SCOTLAND TAX CHAMBER RULES OF PROCEDURE 2017

## PART 3

### Procedure for cases in the First-tier Tribunal

#### **Proceedings concerning late notice of review**

**22.**—(1) A person may apply to the First-tier Tribunal to be allowed a late notice of review under section 236(2)(b) of RSTPA 2014 (late notice of review) only if—

- (a) the person has approached Revenue Scotland for agreement under section 236(2)(a); and
- (b) agreement has been refused or has been given only on limited grounds.

(2) Where permission to be allowed a late notice of review is sought under paragraph (1), the notice of review must include a request for the permission referred to in section 236(2)(b) of RSTPA 2014 and the reason why the notice of review was not provided in time.

#### **Notice of appeal to the First-tier Tribunal**

**23.**—(1) The notice of appeal referred to in section 242(1) of RSTPA 2014 (notice of appeal) must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details of the decision appealed against;
- (e) the result the appellant is seeking; and
- (f) the grounds for making the appeal.

(2) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

(3) A person may apply to the First-tier Tribunal for permission to appeal under section 243(2)(b) of RSTPA 2014 (late notice of appeal) only if—

- (a) the person has approached Revenue Scotland for agreement under section 243(2)(a); and
- (b) agreement has been refused or has been given only on limited grounds.

(4) Where permission to appeal may be sought under paragraph (3)—

- (a) the notice of appeal must include a request for the permission referred to in section 243(2)(b) of RSTPA 2014 and the reason why the notice of appeal was not provided in time; and
- (b) unless the First-tier Tribunal gives such permission, the First-tier Tribunal must not admit the appeal.

(5) When the First-tier Tribunal receives the notice of appeal, it must give notice of the proceedings to the respondent.

### **Allocation of cases to categories**

**24.**—(1) When the First-tier Tribunal receives a notice of appeal, the First-tier Tribunal must give an order allocating the case to one of the categories set out in paragraph (2).

(2) The categories referred to in paragraph (1) are—

- (a) Default Paper cases, which will usually be disposed of without a hearing;
- (b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;
- (c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and
- (d) Complex cases, in respect of which see paragraphs (4) and (5) below.

(3) The First-tier Tribunal may give a further order re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.

(4) The First-tier Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the First-tier Tribunal considers that the case—

- (a) will require lengthy or complex evidence or a lengthy hearing;
- (b) involves a complex or important principle or issue; or
- (c) involves a large financial sum.

(5) If a case is allocated as a Complex case, rule 29 (transfer of Complex cases to the Upper Tribunal) applies to the case.

### **Basic cases**

**25.**—(1) This rule applies to Basic cases.

(2) Rule 26 (respondent’s statement of case) does not apply and, subject to paragraph (3) and any direction given by the First-tier Tribunal, the case will proceed directly to a hearing.

(3) If the respondent intends to raise grounds for contesting the proceedings at the hearing which have not previously been communicated to the appellant, the respondent must notify the appellant of such grounds.

(4) If the respondent is required to notify the appellant of any grounds under paragraph (3), the respondent must do so—

- (a) as soon as reasonably practicable after becoming aware that such is the case; and
- (b) in sufficient detail to enable the appellant to respond to such grounds at the hearing.

### **Respondent’s statement of case**

**26.**—(1) A respondent must send or deliver a statement of case to the First-tier Tribunal, the appellant and any other respondent so that it is received—

- (a) in a Default Paper case, within 42 days after the day the First-tier Tribunal sent the notice of appeal;
- (b) in a Standard or Complex case, within 60 days after the day the First-tier Tribunal sent the notice of appeal.

(2) A statement of case must—

- (a) in an appeal, state the legislative provision under which the decision under appeal was made; and
- (b) set out the respondent’s position in relation to the case.

(3) A statement of case may also contain a request that the case be dealt with at a hearing or without a hearing.

(4) If a respondent provides a statement of case to the First-tier Tribunal later than the time required by paragraph (1) or by any extension allowed under rule 5(3)(a) (case management powers), the statement of case must include a request for an extension of time and the reason why the statement of case was not provided in time.

#### **Further steps in a Default Paper case**

**27.**—(1) This rule applies to Default Paper cases.

(2) The appellant may send or deliver a written reply to the First-tier Tribunal so that it is received within 30 days after the day on which the respondent sent to the appellant the statement of case to which the reply relates.

(3) The appellant's reply may—

- (a) set out the appellant's response to the respondent's statement of case;
- (b) provide any further information (including, where appropriate, copies of the documents containing such information) which has not yet been provided to the First-tier Tribunal and is relevant to the case; and
- (c) contain a request that the case be dealt with at a hearing or without a hearing.

(4) The appellant must send or deliver a copy of any reply provided under paragraph (2) to each respondent at the same time as it is provided to the First-tier Tribunal.

(5) If the appellant provides a reply to the First-tier Tribunal later than the time required by paragraph (2) or by any extension allowed under rule 5(3)(a) (case management powers), the reply must include a request for an extension of time and the reason why the reply was not provided in time.

(6) Following receipt of the appellant's reply, or the expiry of the time for the receipt of the appellant's reply then, unless it orders otherwise and subject in any event to paragraph (7), the First-tier Tribunal must proceed to determine the case without a hearing.

(7) If any party has made a written request to the First-tier Tribunal for a hearing, the First-tier Tribunal must hold a hearing before determining the case.

#### **Further steps in a Standard or Complex case**

**28.**—(1) This rule applies to Standard and Complex cases.

(2) Subject to any direction to the contrary, within 42 days after the day the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the First-tier Tribunal and to each other party a list of documents—

- (a) of which the party providing the list has possession, the right to possession, or the right to take copies; and
- (b) which the party providing the list intends to rely upon or produce in the proceedings.

(3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list.

#### **Transfer of Complex cases to the Upper Tribunal**

**29.**—(1) If a case has been allocated as a Complex case the First-tier Tribunal may, with the consent of the parties, refer a case or a preliminary issue to the Chamber President with a request that the case or issue be considered for transfer to the Upper Tribunal.

(2) If a case or issue has been referred by the First-tier Tribunal under paragraph (1), the Chamber President may direct that the case or issue be transferred to and determined by the Upper Tribunal.

### **Decision with or without a hearing**

**30.**—(1) Subject to rule 27(6) (determination of a Default Paper case without a hearing) and the following paragraphs in this rule, the First-tier Tribunal must hold a hearing before making a decision which disposes of proceedings, or a part of proceedings, unless—

- (a) each party has consented to the matter being decided without a hearing; and
- (b) the First-tier Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4 of these Rules (correcting, reviewing and appealing decisions of the First-tier Tribunal).

(3) The First-tier Tribunal may dispose of proceedings, or a part of proceedings, under rule 8 (dismissal of a party's case) without a hearing.

### **Entitlement to attend a hearing**

**31.** Subject to rules 11(5) (representatives), 12(6)(supporters) and 33(4) (public and private hearings and powers to exclude), each party is entitled to attend a hearing together with any legal or lay representative and supporter permitted respectively by rules 11 and 12.

### **Notice of hearings**

**32.**—(1) The First-tier Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.

(2) In relation to a hearing to consider the disposal of proceedings, the period of notice under paragraph (1) must be at least 14 days except that the First-tier Tribunal may give less than 14 days' notice—

- (a) with the parties' consent; or
- (b) in urgent or exceptional circumstances.

### **Public and private hearings**

**33.**—(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The First-tier Tribunal may give an order that a hearing, or part of it, is to be held in private if the First-tier Tribunal considers that restricting access to the hearing is justified—

- (a) in the interests of public order;
- (b) in order to protect a person's right to respect for their private and family life;
- (c) in order to maintain the confidentiality of sensitive information;
- (d) in order to avoid serious harm to the public interest; or
- (e) because not to do so would prejudice the interests of justice.

(3) Where a hearing, or part of it, is to be held in private, the First-tier Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The First-tier Tribunal may give an order excluding from any hearing, or part of it—

- (a) any person whose conduct the First-tier Tribunal considers is disrupting or is likely to disrupt the hearing;

- (b) any person whose presence the First-tier Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person where the purpose of the hearing would be defeated by the attendance of that person; or
- (d) a person under the age of sixteen years.

(5) The First-tier Tribunal may give an order excluding a witness from a hearing until that witness gives evidence.

(6) When publishing a decision notice referred to in rule 35(2) (notice of decisions and reasons) resulting from a hearing which was held wholly or partly in private, the First-tier Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private) if to do so would undermine the purpose of holding the hearing in private.

### **Hearings in a party's absence**

**34.** If a party fails to attend a hearing the First-tier Tribunal may proceed with the hearing if the First-tier Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

### **Notice of decisions and reasons**

**35.—**(1) Subject to the remainder of this rule, the First-tier Tribunal may give a decision orally at a hearing.

(2) The First-tier Tribunal must provide to each party within 30 days after the day of making a decision (other than a decision under Part 4 of these Rules) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following an order under rule 5(3)(f) (case management powers), or as soon as practicable thereafter, a decision notice which—

- (a) states the First-tier Tribunal's decision; and
- (b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) If the First-tier Tribunal does not provide written reasons for a decision, a party or an interested party may by application in writing made within 30 days after the day of the decision notice request such reasons.

(4) The First-tier Tribunal must send a full written statement of findings and reasons to each party within 30 days after the day of receiving an application for written reasons made in accordance with paragraph (3) or as soon as practicable thereafter.

(5) The First-tier Tribunal may publish any of its decisions if it considers it in the public interest so to do, with the manner of publication at the discretion of the First-tier Tribunal.