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STATUTORY INSTRUMENTS

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**2009 No. 273 (L. 1)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (First-tier  
Tribunal) (Tax Chamber) Rules 2009**

*Made* - - - - *5th February 2009*  
*Laid before Parliament* *13th February 2009*  
*Coming into force* - - *1st April 2009*

After consulting in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007<sup>(1)</sup>, the Tribunal Procedure Committee has made the following Rules in exercise of the power conferred by sections 9(3), 22 and 29(3) of, and Schedule 5 to, that Act.

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

**PART 1**

**Introduction**

**Citation, commencement, application and interpretation**

1.—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and come into force on 1st April 2009.

(2) These Rules apply to proceedings before the Tribunal which have been allocated to the Tax Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008<sup>(2)</sup>.

(3) In these Rules—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appellant” means—

- (a) the person who starts proceedings (whether by bringing or notifying an appeal, by making an originating application, by a reference, or otherwise);
- (b) in proceedings started jointly by more than one person, such persons acting jointly or each such person, as the context requires;
- (c) a person substituted as an appellant under rule 9 (substitution and addition of parties);

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<sup>(1)</sup> 2007 c.15.

<sup>(2)</sup> S.I. 2008/2684. The Order is amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (S.I. 2009/196).

“Basic case” means a case allocated to the Basic category under rule 23 (allocation of cases to categories);

“Complex case” means a case allocated to the Complex category under rule 23 (allocation of cases to categories);

“Default Paper case” means a case allocated to the Default Paper category under rule 23 (allocation of cases to categories);

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“HMRC” means Her Majesty’s Revenue and Customs and includes the Serious Organised Crime Agency when carrying out functions under section 317 of the Proceeds of Crime Act 2002<sup>(3)</sup>;

“party” means a person who is (or was at the time that the Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Tribunal;

“practice direction” means a direction given under section 23 of the 2007 Act;

“respondent” means—

- (a) HMRC, where the appellant (or one of them) is not HMRC;
- (b) in proceedings brought by HMRC alone, a person against whom the proceedings are brought or to whom the proceedings relate;
- (c) a person substituted or added as a respondent under rule 9 (substitution and addition of parties);

“Standard case” means a case allocated to the Standard category under rule 23 (allocation of cases to categories);

“Tax Chamber” means the Tax Chamber of the First-tier Tribunal established by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008;

“Tribunal” means the First-tier Tribunal.

### **Overriding objective and parties’ obligation to co-operate with the Tribunal**

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

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(3) 2002 c.29.

- (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must—
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.

### **Alternative dispute resolution and arbitration**

- 3.—(1) The Tribunal should seek, where appropriate—
- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
  - (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.
- (2) Part 1 of the Arbitration Act 1996(4) does not apply to proceedings before the Tribunal.

## **PART 2**

### **General powers and provisions**

#### **Delegation to staff**

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff pursuant to an approval under paragraph (1) to a party, that party may make a written application to the Tribunal requiring that decision to be considered afresh by a judge.

#### **Case management powers**

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);
- (c) permit or require a party to amend a document;

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(4) 1996 c.23.

- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management hearing;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—
  - (i) the Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.

#### **Procedure for applying for and giving directions**

6.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reasons for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

#### **Failure to comply with rules etc.**

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case);
- (d) restricting a party's participation in proceedings; or
- (e) exercising its power under paragraph (3).

(3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act (Upper Tribunal to have powers of High Court or Court of Session) in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

### **Striking out a party's case**

**8.—**(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

- (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
  - (a) does not have jurisdiction in relation to the proceedings or that part of them; and
  - (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (3) The Tribunal may strike out the whole or a part of the proceedings if—
  - (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
  - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
  - (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.

- (7) This rule applies to a respondent as it applies to an appellant except that—
  - (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and
  - (b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

### **Substitution and addition of parties**

- 9.**—(1) The Tribunal may give a direction substituting a party if—
- (a) the wrong person has been named as a party; or
  - (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.
- (2) The Tribunal may give a direction adding a person to the proceedings as a respondent.
- (3) A person who is not a party to proceedings may make an application to be added as a party under this rule.
- (4) If the Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Tribunal.
- (5) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

### **Orders for costs**

- 10.**—(1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses)—
- (a) under section 29(4) of the 2007 Act (wasted costs);
  - (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings; or
  - (c) if—
    - (i) the proceedings have been allocated as a Complex case under rule 23 (allocation of cases to categories); and
    - (ii) the taxpayer (or, where more than one party is a taxpayer, one of them) has not sent or delivered a written request to the Tribunal, within 28 days of receiving notice that the case had been allocated as a Complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph.
- (2) The Tribunal may make an order under paragraph (1) on an application or of its own initiative.
- (3) A person making an application for an order under paragraph (1) must—
- (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
  - (b) send or deliver with the application a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.
- (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice of a withdrawal under rule 17 (withdrawal) which ends the proceedings.
- (5) The Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
  - (b) if the paying person is an individual, considering that person’s financial means.
- (6) The amount of costs (or, in Scotland, expenses) to be paid under an order under paragraph (1) may be ascertained by—
- (a) summary assessment by the Tribunal;

- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (the “receiving person”); or
- (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.

(7) Following an order for assessment under paragraph (6)(c) the paying person or the receiving person may apply—

- (a) in England and Wales, to a county court, the High Court or the Costs Office of the Supreme Court (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998<sup>(5)</sup> shall apply, with necessary modifications, to that application and assessment as if the proceedings in the tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply;
- (b) in Scotland, to the Auditor of the Sheriff Court or the Court of Session (as specified in the order) for the taxation of the expenses according to the fees payable in that court; or
- (c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.

(8) In this rule “taxpayer” means a party who is liable to pay, or has paid, the tax, duty, levy or penalty to which the proceedings relate or part of such tax, duty, levy or penalty, or whose liability to do so is in issue in the proceedings;

## **Representatives**

**11.**—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative’s name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party’s case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person (other than an appointed representative) who accompanies a party in accordance with paragraph (5).

(7) In this rule “legal representative” means an authorised advocate or authorised litigator as defined by section 119(1) of the Courts and Legal Services Act 1990<sup>(6)</sup>, an advocate or solicitor in Scotland, or a barrister or solicitor in Northern Ireland.

## **Calculating time**

**12.**—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.

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(5) S.I. 1998/3132.

(6) 1990 c.41.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(7).

### **Sending and delivery of documents**

**13.**—(1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid post or document exchange, or delivered by hand, to the address specified for the proceedings; or
- (b) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

### **Use of documents and information**

**14.** The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

### **Evidence and submissions**

**15.**—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or

- (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.
- (2) The Tribunal may—
  - (a) admit evidence whether or not the evidence would be admissible in a civil trial in the United Kingdom; or
  - (b) exclude evidence that would otherwise be admissible where—
    - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
    - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
    - (iii) it would otherwise be unfair to admit the evidence.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

#### **Summoning or citation of witnesses and orders to answer questions or produce documents**

- 16.**—(1) On the application of a party or on its own initiative, the Tribunal may—
- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation;
  - (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.
- (2) A summons or citation under paragraph (1)(a) must—
- (a) give the person required to attend at least 14 days' notice of the hearing, or such shorter period as the Tribunal may direct; and
  - (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.
- (4) A person who receives a summons, citation or order may apply to the Tribunal for it to be varied or set aside if they did not have an opportunity to object to it before it was made or issued.
- (5) A person making an application under paragraph (4) must do so as soon as reasonably practicable after receiving notice of the summons, citation or order.
- (6) A summons, citation or order under this rule must—
- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they did not have an opportunity to object to it before it was made or issued; and
  - (b) state the consequences of failure to comply with the summons, citation or order.

#### **Withdrawal**

- 17.**—(1) Subject to any provision in an enactment relating to withdrawal or settlement of particular proceedings, a party may give notice to the Tribunal of the withdrawal of the case made by it in the Tribunal proceedings, or any part of that case—

- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
  - (b) orally at a hearing.
- (2) The Tribunal must notify each other party in writing of a withdrawal under this rule.
- (3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after—
- (a) the date that the Tribunal received the notice under paragraph (1)(a); or
  - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

### **Lead cases**

- 18.**—(1) This rule applies if—
- (a) two or more cases have been started before the Tribunal;
  - (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
  - (c) the cases give rise to common or related issues of fact or law.
- (2) The Tribunal may give a direction—
- (a) specifying one or more cases falling under paragraph (1) as a lead case or lead cases; and
  - (b) staying (or, in Scotland, sisting) the other cases falling under paragraph (1) (“the related cases”).
- (3) When the Tribunal makes a decision in respect of the common or related issues—
- (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and
  - (b) subject to paragraph (4), that decision shall be binding on each of those parties.
- (4) Within 28 days after the date that the Tribunal sent a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, that case.
- (5) The Tribunal must give directions in respect of cases which are stayed or sisted under paragraph (2)(b), providing for the disposal of or further steps in those cases.
- (6) If the lead case or cases are withdrawn or disposed of before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—
- (a) whether another case or other cases are to be heard as a lead case or lead cases; and
  - (b) whether any direction affecting the related cases should be set aside or amended.

## **PART 3**

### **Procedure before the Tribunal**

#### **CHAPTER 1**

##### **Starting proceedings and allocation of cases to categories**

### **Proceedings without notice to a respondent**

- 19.** If a case or matter is to be determined without notice to or the involvement of a respondent—
- (a) any provision in these Rules requiring a document to be provided by or to a respondent; and

(b) any other provision in these Rules permitting a respondent to participate in the proceedings does not apply to that case or matter.

### **Starting appeal proceedings**

**20.**—(1) Where an enactment provides for a person to make or notify an appeal to the Tribunal, the appellant must start proceedings by sending or delivering a notice of appeal to the Tribunal within any time limit imposed by that enactment.

(2) The 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.

(3) 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.

(4) If the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—

- (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
- (b) unless the Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal.

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

### **Starting proceedings by originating application or reference**

**21.**—(1) Where an enactment provides for a person or persons to make an originating application or reference to the Tribunal, the appellant must start proceedings by providing an application notice or notice of reference to the Tribunal within any time limit imposed by that enactment.

(2) The application notice or notice of reference must state—

- (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) the name and address of each respondent (if any);
- (e) the facts relevant to the originating application or reference;
- (f) the result the appellant is seeking (if any); and
- (g) the grounds for making the originating application or reference.

(3) If the appellant provides the application notice or notice of reference to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application notice or notice of reference must include a request for an extension of time and the reason why the application notice or notice of reference was not provided in time; and
  - (b) unless the Tribunal extends time for the application notice or notice of reference under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application notice or notice of reference.
- (4) When the Tribunal receives an application notice or a notice of reference it must send a copy of the notice and any accompanying document to any respondent.

### **Hardship applications**

**22.**—(1) This rule applies where an enactment provides, in any terms, that an appeal may not proceed if the liability to pay the amount in dispute is outstanding unless HMRC or the Tribunal consent to the appeal proceeding.

(2) When starting proceedings, the appellant must include or provide the following in or with the notice of appeal—

- (a) a statement as to whether the appellant has paid the amount in dispute;
- (b) if the appellant has not paid the amount in dispute, a statement as to the status or outcome of any application to HMRC for consent to the appeal proceeding; and
- (c) if HMRC have refused such an application, an application to the Tribunal for consent to the appeal proceeding.

(3) An application under paragraph (2)(c) must include the reasons for the application and a list of any documents the appellant intends to produce or rely upon in support of that application.

(4) If the appellant requires the consent of HMRC or the Tribunal before the appeal may proceed, the Tribunal must stay the proceedings until any applications to HMRC or the Tribunal in that respect have been determined.

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

**23.**—(1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction 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 Tribunal may give a further direction 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 Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the 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—

- (a) rule 10(1)(c) (costs in Complex cases) applies to the case; and
- (b) rule 28 (transfer of Complex cases to the Upper Tribunal) applies to the case.

## CHAPTER 2

### Procedure after allocation of cases to categories

#### **Basic cases**

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

(2) Rule 25 (respondent's statement of case) does not apply and, subject to paragraph (3) and any direction given by the 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**

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

- (a) in a Default Paper case, within 42 days after the tribunal sent the notice of the appeal or a copy of the application notice or notice of reference; or
- (b) in a Standard or Complex case, within 60 days after the tribunal sent the notice of the appeal or a copy of the application notice or notice of reference.

(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 Tribunal later than the time required by paragraph (1) or by any extension allowed under rule 5(3)(a) (power to extend time), 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**

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

(2) The appellant may send or deliver a written reply to the Tribunal so that it is received within 30 days after the date 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 Tribunal and is relevant to the case; and
- (c) contain a request that the case be dealt with at 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 Tribunal.

(5) If the appellant provides a reply to the Tribunal later than the time required by paragraph (2) or by any extension allowed under rule 5(3)(a) (power to extend time), 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 directs otherwise and subject in any event to paragraph (7), the Tribunal must proceed to determine the case without a hearing.

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

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

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

(2) Subject to any direction to the contrary, within 42 days after the date 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 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 (except any documents which are privileged).

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

**28.**—(1) If a case has been allocated as a Complex case the Tribunal may, with the consent of the parties, refer a case to the President of the Tax Chamber with a request that the case be considered for transfer to the Upper Tribunal.

(2) If a case has been referred by the Tribunal under paragraph (1), the President of the Tax Chamber may, with the concurrence of the President of the Finance and Tax Chamber of the Upper Tribunal (if that is a different person) direct that the case be transferred to and determined by the Upper Tribunal.

### **CHAPTER 3**

#### **Hearings**

#### **Determination with or without a hearing**

**29.**—(1) Subject to rule 26(6) (determination of a Default Paper case without a hearing) and the following paragraphs in this rule, the 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 Tribunal considers that it is able to decide the matter without a hearing.

(2) This rule does not apply to decisions under Part 4 (correcting, setting aside, reviewing and appealing Tribunal decisions).

(3) The Tribunal may dispose of proceedings, or a part of proceedings, without a hearing under rule 8 (striking out a party's case).

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

**30.** Subject to rules 19 (proceedings without notice to a respondent) and 32(4) (exclusion from a hearing), each party to proceedings is entitled to attend a hearing.

### **Notice of hearings**

**31.**—(1) The 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 Tribunal may give less than 14 days' notice—

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

### **Public and private hearings**

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

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

- (a) in the interests of public order or national security;
- (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 Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the 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 eighteen years.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

(6) If the Tribunal publishes a report of a decision resulting from a hearing which was held wholly or partly in private, the 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**

- 33.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the 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.

## **CHAPTER 4**

### **Decisions**

#### **Consent orders**

**34.—**(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

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

**35.—**(1) The Tribunal may give a decision orally at a hearing.

(2) The Tribunal must provide to each party within 28 days after making a decision which finally disposes of all issues in proceedings (except a decision under Part 4), or as soon as practicable thereafter, a decision notice which—

- (a) states the 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) Unless each party agrees that it is unnecessary, the decision notice must—
- (a) include a summary of the findings of fact and reasons for the decision; or
  - (b) be accompanied by full written findings of fact and reasons for the decision.

(4) If the Tribunal provides no findings and reasons, or summary findings and reasons only, in or with the decision notice, a party to the proceedings may apply for full written findings and reasons, and must do so before making an application for permission to appeal under rule 39 (application for permission to appeal).

(5) An application under paragraph (4) must be made in writing and be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application.

(6) The Tribunal must send a full written statement of findings and reasons to each party within 28 days after receiving an application for full written reasons made in accordance with paragraphs (4) and (5), or as soon as practicable thereafter.

## PART 4

### Correcting, setting aside, reviewing and appealing Tribunal decisions

#### Interpretation

**36.** In this Part—

“appeal” means the exercise of a right of appeal against a decision of the Tribunal; and

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

#### Clerical mistakes and accidental slips or omissions

**37.** The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

#### Setting aside a decision which disposes of proceedings

**38.**—(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) is satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;
- (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
- (c) there has been some other procedural irregularity in the proceedings; or
- (d) a party, or a party’s representative, was not present at a hearing related to the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.

(4) If the Tribunal sets aside a decision or part of a decision under this rule, the Tribunal must notify the parties in writing as soon as practicable.

#### Application for permission to appeal

**39.**—(1) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.

(2) An application under paragraph (1) must be sent or delivered to the Tribunal so that it is received no later than 56 days after the latest of the dates that the Tribunal sends to the person making the application—

- (a) full written reasons for the decision;
- (b) notification of amended reasons for, or correction of, the decision following a review; or
- (c) notification that an application for the decision to be set aside has been unsuccessful.

(3) The date in paragraph (2)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 38 (setting aside a decision which disposes of proceedings), or any extension of that time granted by the Tribunal.

(4) If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 5(3)(a) (power to extend time)—

- (a) the application must include a request for an extension of time and the reason why the application notice was not provided in time; and
- (b) unless the Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Tribunal must not admit the application.

(5) An application under paragraph (1) must—

- (a) identify the decision of the Tribunal to which it relates;
- (b) identify the alleged error or errors in the decision; and
- (c) state the result the party making the application is seeking.

### **Tribunal's consideration of application for permission to appeal**

**40.**—(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 2, whether to review the decision in accordance with rule 41 (review of a decision).

(2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or a part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Tribunal refuses permission to appeal it must send with the record of its decision—

- (a) a statement of its reasons for such refusal; and
- (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Tribunal may give permission to appeal against part only of the decision or on limited grounds, but must comply with paragraph (4) in relation to any part of the decision or grounds on which it has refused permission.

### **Review of a decision**

**41.**—(1) The Tribunal may only undertake a review of a decision—

- (a) pursuant to rule 40(1) (review on an application for permission to appeal); and
- (b) if it is satisfied that there was an error of law in the decision.

(2) The Tribunal must notify the parties in writing of the outcome of any review, unless the Tribunal decides to take no action following the review.

(3) The Tribunal may not take any action in relation to a decision following a review without first giving every party an opportunity to make representations in relation to the proposed action.

### **Power to treat an application as a different type of application**

**42.** The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

*Patrick Elias*  
*Philip Brook Smith Q.C.*  
*Carolyn Kirby*  
*Nicholas Warren*  
*Douglas J May*  
*Newton of Braintree*  
*Nuala Brice*  
*Mark Rowland*  
*M J Reed*

I allow these Rules  
Signed by authority of the Lord Chancellor

5th February 2009

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c.15) establishes a new tribunal structure comprising a First-tier Tribunal and an Upper Tribunal. Appeal functions of existing tribunals are being transferred to this structure and assigned to chambers within the new tribunals. These Rules govern the practice and procedure to be followed in the First-tier Tribunal in proceedings which have been allocated to the Tax Chamber by the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008(8).

Part 1 contains provisions for interpreting and applying the Rules and sets out the overriding objective of the Rules.

Part 2 contains general powers and provisions including the Tribunal's general case management powers, the giving of directions, the power to strike out a party's case, the service of documents and rules about evidence, submissions and witnesses.

Part 3 contains provisions relating to starting proceedings and procedure up to and including the making and notification of Tribunal decisions.

Part 4 deals with correcting, setting aside, reviewing and appealing against Tribunal decisions.

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(8) S.I. 2008/2684. The Order is amended by the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2009 (S.I. 2009/196).