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STATUTORY INSTRUMENTS

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**2009 No. 273**

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

**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.