

## **TAX APPEAL STAKEHOLDER MEETING**

**4 AUGUST 2005**

<b>Attendees</b>	<b>Representing</b>
Stephen Oliver	Chairman
Pat Berry	National Association of General Commissioners
Eileen Patching	HM Revenue & Customs
Michael O'Callaghan	HM Revenue & Customs
Nuala Brice	VAT & Duties Tribunal/Judicial Training
John Avery Jones	Special Commissioners
Gordon Coutts	Scottish interests
Robert Maas	Institute of Chartered Accountants of England and Wales
William Norris	Low Incomes Tax Reform Group
Ian Menzies-Conacher	Confederation of British Industry
Ron Downhill	Law Society
Penny Hamilton	Chartered Institute of Taxation
Lord Justice Carnwath	Senior President Designate, Tribunals Service
Judith Edwards	Council on Tribunals
Simon Hill	Tribunal Groups Operations, Department for Constitutional Affairs
Jane Smeaton	Head of Senior President's Office
Steve Wade	Department for Constitutional Affairs
Andrew Digby	Department for Constitutional Affairs

### **1. Introduction**

Apologies were received from Malcolm Gammie, Jane Moore, Roger White, Henry Russell and Peter Trevett. William Norris attended in place of Jane Moore; and Pat Berry in place of Henry Russell. Michael O'Callaghan attended in place of Peter McCluskie.

### **2. Minutes of the last meeting**

The minutes were accepted as correct.

### **3. Update on the Stakeholder Case Management Working Group**

Stephen Oliver (SO) reported on the activities of the Case Management Working Group. He said that the Group had concentrated on three areas:

- Whether cases currently heard by the General Commissioners could be categorised by type
- What kind of case-management each category of case would need
- What kind of judiciary each category would need

The Group had concluded that:

- Many cases currently decided by the General Commissioners could be decided by panels composed of suitably qualified members sitting without a legal chair. Some cases - applications made by parties, for example - could be decided by

one member sitting alone. Some more complex cases would need to be decided by a panel chaired by a legally qualified member sitting with one or two other members.

- Straightforward cases would require basic directions and little in the way of case management. The administrative staff would be largely responsible for the case management of these.
- Standard directions, similar to those currently issued by the Special Commissioners, would be appropriate for cases that fell into types likely to raise complex legal issues. The judiciary would play a larger part in the case-management of these cases although the administrative team could shoulder much of the work.
- VAT & Duties Tribunal and Special Commissioners cases would be case-managed in much the same way and decided by much the same kind of panels as they are now.

The conclusions of the Group had been incorporated into the latest iteration of the preferred option for reform as outlined in paper SG05/01.

#### **4. Update on stakeholder consultation meetings in Scotland and Northern Ireland.**

Steve Wade (SW) reported on the consultation meetings held with representatives of users on the tax appeals system in Scotland and Northern Ireland. The main issues that came out of the meetings in Scotland were

- The importance of recognising the particular context given by Scots law
- Concern about the upper tier of the tribunal and whether it was a useful and proportionate tier of appeals for tax appeals
- How the costs regime would work
- Recognition of the value of non-legal panels

The main issues that were raised in Northern Ireland were:

- How the process for appointing judiciary would work
- Recognition of the value of panels with legally qualified members
- Training would enable panels to deal with cases with an appropriate degree of informality
- Northern Ireland would probably need only three of four hearing venues
- The Northern Ireland judiciary could usefully develop their expertise by hearing cases on the mainland

Feedback from these meetings had been used to refine the preferred option for reform.

#### **5. Discussion of the paper on the revised paper on the preferred option for reform and variants (SG05/01)**

##### Relationship between the project Stakeholder Group and Project Board

To give context to the paper, SW described the relationship between the Tax Appeal Modernisation Stakeholder Group and Project Board. The Stakeholder Group was an

advisory body that enabled users of the tax appeals system to have an input into reform plans. The Project Board was a decision making body. It would consider the recommendations of the Stakeholder Group and then decide which option for reform to recommend to ministers. The Project Board had met once and signed off the initial project documentation. It would next meet in September and consider the project Full Business Case.

The project itself fell into two phases. The first phase was the identification of a preferred option for reform. The second phase would focus on the design and implementation of the preferred option and is scheduled to begin in December.

#### Purpose of paper SG05/01

SW explained that section one of the paper SG05/01 was the latest iteration of the preferred option. This iteration took into account the feedback from the Scotland and Northern Ireland consultations and the conclusions of Case Management Working Group. It also clarified how the VAT & Duties Tribunal and Special Commissioners cases would be dealt with. Section two of the paper described the issues that remain to be resolved. It also identified issues that were not necessarily within the scope of the project but which the Group might want to comment on. Examples were the operation of the upper tier of the new tribunal and which costs regime would be appropriate for the unified jurisdiction.

Lord Justice Carnwath (RC) explained that work on the Courts and Tribunals Bill was still going forward. The Bill Team remained confident that the legislation would be brought in sooner rather than later. If the Bill were not to find a slot on the legislative programme in the immediate future, there might be other legislative options to enable reform of the tax appeals system.

#### Transfer of Tax Credit Appeals to a tax jurisdiction

William Norris (WN) asked whether the preferred option for reform had taken account of the Government's commitment to transfer Tax Credit appeals to a tax jurisdiction. SW said that the issue of how to treat Tax Credit appeals would be considered only after the reformed tax appeals system had settled into the new tribunals structure. The Department for Constitutional Affairs (DCA) had discussed the issue of the transfer of Tax Credit appeals with representatives from HM Revenue and Customs (HMRC). HMRC had identified this as their preferred approach. The project team had the Tax Credit appeals in mind as options for reform were developed and were confident that the current preferred option would be flexible enough to be able to accommodate Tax Credit appeals. Phase 2 of the project would see more detail added to the option. It would need detailed input from Tax Credit appeals interests to ensure that the preferred option was able to accommodate these appeals. RC said that this was area that might need early work.

#### The start of jurisdiction of the new tribunal

Penny Hamilton (PH) reported that the CIOT were disappointed that the preferred option for reform envisaged that tax appeals would continue to go to HMRC and not direct to the tribunal.

Michael O'Callaghan said that main impediment to the tribunal receiving appeals direct was the sheer number of appeals that were made. HMRC had yet to determine the exact volume. However, there were enough to constitute a significant administrative burden for the reformed tribunal should it attempt to receive them.

Moreover, many of the appeals that HMRC registered were not appeals in the true sense of the term. Rather, they were requests for review or notifications of disagreement. The overwhelming majority were resolved without the need for a formal appeal.

MO added that the Department would shortly be undertaking a pilot study to look at how tax cases are dealt with prior to them being sent to the tribunal. This would help determine the best way to identify types of appeal and to quantify their numbers. It would also allow HMRC and DCA to consider whether imposing a limit on the time for review after which cases would pass to the tribunal was a viable option.

It was generally agreed that many of the enquiries currently received by HMRC and registered as appeals were, in fact, requests for review or notices of disagreement. It was agreed that it would be inappropriate for them to be sent direct to the tribunal. There was also general agreement that as not all of the reviews could be completed within three months; there would have to be a means of allowing continue negotiation beyond this time when necessary.

SW said that the proposal would be for HMCR to continue to receive appeals with both parties being able to negotiate, as at present. There would be limit to how long the Department could spend reviewing the appeal and attempting to find a resolution. This limit could perhaps be three months from the date the appeal was first registered. If the dispute was not resolved after this time, HMRC would pass it to the tribunal. This was unless the appellant, Department and the tribunal agreed that negotiation should continue. In this way the tax-payer would have the protection of a statutory time limit and the tribunal would not suffer an unmanageably large administrative load.

Nuala Brice referred to the procedure for customs and duties appeals. Appellants had a statutory right of review. The review had to be conducted within a set time. If the review did not bring agreement, the appellant had a right of appeal direct to the VAT & Duties Tribunal. She suggested that this could serve as a model for the operation of the new tribunal.

It was agreed that the project needed to examine the issue of the start of jurisdiction at more length as part of phase 2 and that SW would draft a new paragraph to reflect this in the preferred option.

#### **AP: Project Team to amend paper describing the preferred option accordingly**

##### Composition of panels

There was general agreement with the conclusions that the Case Management Working Group had reached on the issue of panel composition.

##### Rules; costs regime

SO asked RC whether one set of rules would apply to all of the chambers in the new tribunal structure; or whether each chamber would have their own rules. RC said that in most cases tribunals would transfer in with their own sets of rules. The tribunal would have a Rules Committee and would be looking to harmonise rules over time.

SO said that the General Commissioners, Special Commissioners and VAT & Duties Tribunal each had their own set of rules. They would need to be harmonised at an

early stage and the process of harmonisation might throw up several difficult procedural issues.

Elaine Patching noted that different costs regimes were currently in operation across different parts of the tax jurisdiction. This was an issue that would also need to be addressed. SO undertook to write a paper for the next Stakeholder Group meeting which would describe how the existing costs regimes worked. This would serve as the starting point for discussion with a view to establishing a consensus on how to take the issue forward.

#### Paper hearings; sifting and case management; format of decisions; cases starting at the upper tier

WN said that unrepresented appellants would welcome the introduction of paper hearings. This was on the grounds that voluntary agencies, such as the Citizens Advice Bureaux, often found it more convenient to provide written advice than to send an advocate to an oral hearing.

John Avery Jones said that the tribunal would need detailed and accurate information on cases at an early stage of the registration process for them to be allocated to the appropriate case-management track. Such information could come from HMRC. Nuala Brice said that HMRC sent a covering letter which outlined the issues at stake when they referred customs and duties appeals to the VAT & Duties Tribunal. This was a system that worked well and could serve as a model for the operation of the new tribunal.

SO said that there was a need to consider both the format of the decisions the reformed tribunal would give, and how many cases would require detailed decisions. Gordon Coutts said that the Appeals Service gave a brief decision in all cases. The chair of a panel would write a detailed decision when a party asked them to do so. This practice might serve as a model for the tax tribunal.

SO said that he had drafted criteria for deciding which cases should start at the upper tier. He would present the draft for discussion at the next Stakeholder Group meeting.

#### **6. Stakeholder Group work plan and dates for meeting over the coming months.**

It was agreed that the Stakeholder Group input into phase 1 of the project was largely over. Additional issues the group would be looking at prior to phase 2 could be dealt with by meeting every two months until the end of the year. Phase 2 itself would begin in December.

In October the Group would consider papers on the upper tier of the tribunal, costs regimes and paper hearings. In December the Group would consider papers on the format of decisions, standard directions and qualifications for non-legally qualified members of the judiciary. The Group would also consider a paper on rules and, in particular, whether to take a 'big bang' or, alternatively, an evolutionary approach to the harmonisation of rules across the tax jurisdiction.

SW said that as part of phase 2 of the project, the Stakeholder Group could usefully provide advice and test assumptions on some more detailed issues. These would involve such work as considering the interaction between the administrative team and judiciary, and case categorisation.

**Date of next meeting:**

6<sup>th</sup> October at Selborne House, 54 Victoria Street. Papers will be circulated one week prior to the next meeting.

Copied to all attendees and:

Peter McCluskie (HM Revenue & Customs)  
Henry Russell (General Commissioner of Income Taxation)  
Roger White (s703 Tribunal)  
Jane Moore (Low Incomes Tax Reform Group)  
Peter Trevett (Revenue Bar Association)  
Bianca Marsden (Chartered Institute of Taxation)  
Severin Alexander (Chartered Institute of Taxation)  
Louise Speke (Law Society)  
David Gibson (General Commissioner of Income Taxation)  
Marion Loudon (Finance & Taxation Tribunals)  
John Andrews (Low Incomes Tax Reform Group)  
Mervyn Woods (Confederation of British Industry)  
Paul Stockton (Department for Constitutional Affairs)  
Rhys Chesters-Lewis (Department for Constitutional Affairs)  
Louise Morris (Department for Constitutional Affairs)