

TAX APPEAL STAKEHOLDER MEETING

6 October 2005

Attendees	Representing
Stephen Oliver	Chairman
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
Malcolm Gammie	Tax Law Review Committee
Peter Trevett	Revenue Bar Association
Jan Richardson	HM Revenue & Customs
Henry Russell	National Association of General Commissioners
Jane Moore	Low Incomes Tax Reform Group
Gary Richards	Law Society
Penny Hamilton	Chartered Institute of Taxation
Judith Edwards	Council on Tribunals
Roger White	s703 Tribunal
Dick Lester	Operations, Department for Constitutional Affairs
Steve Wade	Department for Constitutional Affairs
Andrew Digby	Department for Constitutional Affairs

1. Introduction

Apologies were received from Jane Smeaton, Ian Menzies-Conacher, and Ron Downhill. Gary Richards attended in place of Ron Downhill.

Stephen Oliver welcomed Jan Richardson (JR) to her first Stakeholder Group meeting. Jan will represent HM Revenue & Customs (HMRC) at future Stakeholder Group meetings in place of Michael O'Callaghan and Eileen Patching who have moved to other duties.

2. Minutes of the last meeting

The minutes were accepted as correct.

3. Update on the Project Board

Steve Wade (SW) reported that the Project Board had met for the second time on the 29th of September. The Board reviewed the preferred option for reform identified by the Stakeholder Group, confirmed that it met the needs of the users and approved that it should be used in the project Full Business Case.

SW said that the Board had asked for more work to be done on the issue of the start of jurisdiction. SW and JR would produce a paper on the subject for the next Stakeholder Group meeting. SW said that the Project Board had also asked for the Project team to undertake further work on costing the Stakeholder Group preferred option and also to confirm that existing hearing centres had capacity to deal with tax appeals work.

The Board had reviewed and signed off other project documentation.

The next Project Board had been provisionally set for late November or early December.

Courts and Tribunals Bill

SW said that there was no new information about when the Court and Tribunals Bill might get a Parliamentary slot. The situation should become clearer by the middle of October. However, there was nothing to suggest that the April 2007 date set for the earliest possible start for the implementation of reforms would change.

4. Costs and Expenses in First Tier Tax Tribunals (Papers SG06/01 and SG06/01a)

SO introduced the paper on costs as outlining four possible options for a tax tribunal costs regimes. The paper had been circulated both to members of the Stakeholder Group and to interested parties not directly represented in the reform process. Paper SG06/01a summarised responses to the paper received from the latter.

Views of the Stakeholder Group members on options for a costs regime

Peter Trevett (PT) had canvassed opinion amongst chambers dealing with tax. Their unanimous view was that a costs regime on an opt-in basis was desirable (option 4). A costs regime would, to an extent, merely formalise the current drift towards costs as a regular feature of tax appeals. PT said that he would ask the Revenue Bar Association to settle on an official view and that he would report back to the Stakeholder Group in due course.

Jane Moore (JM) said that the consensus view of the Low Incomes Tax Reform Group (LITRG) was also that an opt-in option for costs was preferable. However, there should also be provision for those on the lowest incomes to claim out-of-pocket expenses relating to appeals, as appellants at the Appeals Service could, even if they chose not to opt in to the costs regime.

Judith Edwards (JE) referred to the Council on Tribunals (COT) Framework of Standards. The Framework encouraged tribunals to be pro-active in offering services to users. She suggested that the tribunal could helpfully issue clear guidelines for appellants on how the costs regime worked, whichever regime was eventually adopted. This would be particularly helpful to those appellants who do not have representation.

Penny Hamilton (PH) said that the Chartered Institute of Taxation (CIOT) was in favour of option 4 - provided that it operated with an HMRC self-denying ordinance similar to that in force for VAT and duties appeals. CIOT had also suggested that the tribunal should be able to award costs even where appellants had opted to go down the no-costs route of option 4. For example, against taxpayers who had been found to be vexatious or against HMRC where it had been found to be dilatory. On the issue of test cases, the view of CIOT was that taxpayers should not bear the costs of HMRC taking them forward.

Robert Maas (RM) reported that the Institute of Indirect Taxation would like the existing regime for VAT and duties to continue as it is at present. The view of the Institute of Chartered Accountants of England and Wales was that a costs regime would be appropriate for the kind of cases that went to the Special Commissioners.

However, many would-be appellants with smaller cases, of the kind that currently went to the GCITs, would be deterred by the possibility of having to pay costs.

RM said that his view was that the costs regime issue was related to the issue of the start of jurisdiction.

View of HMRC on options for a costs regime

JR said that the HMRC position was that it was too soon after creation of the new department for it to have come to a definite view on costs. However, the initial response of HMRC to the Stakeholder Group paper was that there may be other possible options other than the four it described. For example, the costs regime could be geared towards the amount of money at stake in cases, or whether or not the appellant had legal representation.

SO said that further comments on the issue would be welcome. SW said that this discussion marked the start of an ongoing dialogue on these issues and that further submissions from stakeholders after they have canvassed their constituents and considered the other views expressed would be very welcome.

5. Paper Hearings (Paper SG06/02)

SW introduced the paper as giving a view of how paper hearings were currently used at three non-tax tribunals and to stimulate discussion of how they might be used in the tax jurisdiction.

JE reported that a COT consultation on oral hearings had just closed. There had been enormous interest in the subject. COT would be highlighting the issue in their November conference and offering a response to the consultation in due course. JE quoted from two responses to the consultation. The first made the point that oral hearings allowed the judiciary to get a sense of the individual personality of the appellant in the way that paper hearings could not. The second response argued that oral hearings had the benefit of allowing the judiciary to get a feel for the impact that their practice and decisions had on appellants.

JM said that the view of the LITRG was that the tax tribunal should offer oral hearings as the default, with paper hearings as an option for those who wanted them. Paper hearings allowed voluntary agencies to write written representations for appellants who would otherwise go un-represented. The appellant should, however, have an opportunity to switch from a paper to oral hearing at any time before the hearing itself.

HR said that the tribunal should offer oral hearings as the default. This was because oral hearings allowed the judiciary to elicit the evidence they needed for a decision. Moreover, evidence from the Appeals Service could be taken to suggest that paper hearings may disadvantage the appellant.

HR and JM agreed that the good case management and tribunal administration was key to a successful paper hearings process.

Nuala Brice said that oral hearings allowed useful dialogue between parties and the judiciary at the hearing. They also encouraged parties to be focussed on the real issues in the case. John Avery Jones (JAJ) noted that the Special Commissioners and GCITs could decide cases on the papers at present. However, few appellants asked for a paper hearing and so there was no evidence of a wide demand for them.

RM said that few appellants knew they could request a paper hearing. There would be a demand for paper hearings from small businesses and smaller firms of advisors who were sometimes apprehensive about appearing at a hearing in person or who did not want to take time off from work to attend a hearing.

SO said that the issue of paper hearings could be raised, in due course, with the Tribunal Service Rules Committee. In the meantime, it would be helpful to publicise the fact that tax appellants could ask for a paper hearing at present.

6. Upper Tier Criteria (Paper SG06/03)

SW introduced the paper by saying that the paper assumed that there would be an upper tier tribunal and that there would be the flexibility for some cases to be decided there in the first instance.

Composition of the Upper Tribunal; costs

SO said that the Upper Tribunal (UT) would, for the purposes of tax appeals, replace the High Court in all material aspects and the judiciary would have to be of a similar calibre to those currently eligible to sit in the High Court. The UT would have the benefit of allowing specialist expertise to be brought to bear whenever it was needed. Gordon Coutts (GC) and PT stressed the need for tax cases to be heard at the Upper Tier by members of the judiciary with the appropriate expertise and experience.

MG noted that if the upper tribunal were to decide the tax appeals that currently went to the High Court then there would be an issue of which kind of costs regimes would be appropriate for the upper tier.

Criteria determining which cases would start at the Upper Tier

PT said that appellants who suspected their cases would eventually reach the House of Lords would want to start their cases at the upper tier. Many commercial appellants with more complex cases would want to do likewise. PT also said that many of the cases that met the criteria for starting at the upper tier - complex cases and those raising novel points of law amongst them - would also involve substantial fact-finding. For this reason, the need for fact-finding may not be a useful *prima facie* indication that cases were not suitable to start at the upper tier.

JAJ suggested that cases involving group litigation orders should also start at the upper tier.

SO said that there was a choice as to how cases could be directed to the upper tier.

- As a choice for appellants on the Notice of Appeal form
- At the discretion of the President
- Compulsory for certain types of case

JAJ said that the process would be self-policing if starting at the upper tier were to be agreement of both parties.

JAJ also raised the issue of judicial review. As presently envisaged, any case raising a judicial review issue will start in the UT.

Appeals in Scotland; stamp-duty and inheritance cases

Current proposals are that onward appeals in Scotland and Northern Ireland would be the same as for onward appeals in England and Wales whereas, at present, SO noted that the current situation in Scotland and Northern Ireland differed from that in England and Wales. GC said a useful analogous appeal route to consider might be that of Civil Appellants from the Sheriff Court in Scotland who had the right to appeal from the Sheriff to the Sheriff Principal in the same Sheriffdom or, at their choice to the Inner House of the Court of Session. Some views in Scotland remain that separate arrangements for Scotland would be desirable so as to avoid introducing a tier of appeal extra to that which already existed.

SO noted that stamp-duty and inheritance tax cases at present start at the High Court. This was an issue that would also need to be addressed.

7. A.O.B.

Papers for the December Stakeholder Group meeting

SW said that at its next meeting the Stakeholder Group would consider a paper on the start of jurisdiction, one on standard directions and, time allowing, a paper on rules and how the various sets of rules across the tax tribunals should be harmonised.

It was possible that the Courts and Tribunal Bill would have been introduced by the time the Group next met. The Group may have to consider papers if tax issues came up during its passage through Parliament. Some time next year, the Group would be presented a paper on qualifications for non-legal members and one on the format of decisions.

Phase 2 of the project

During phase 2 of the project, the implementation phase, the project team would be settling issues of how many judiciary the tribunal would need and where tribunal administrative staff would be best accommodated. The project team would ask for input from the Stakeholder Group on more detailed issues like these during the implementation phase.

Date of next meeting:

1st December 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)
Jane Smeaton (Senior President Designate's Office)
Ian Menzies-Conacher (CBI)
Ron Downhill (Law Society)
Louise Speke (Law Society)
Bianca Marsden (Chartered Institute of Taxation)
Severin Alexander (Chartered Institute of Taxation)
David Gibson (General Commissioner of Income Taxation)

Pat Berry (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)