



Tax Appeals Stakeholder Group

Paper No. 3 Upper Tribunal Criteria

6th October 2005

SG 06/03

Foreword

Document Control

Document Reference: Tax Appeals Modernisation – SG06/03
Version No.: 0.2
Author: Stephen Oliver

Document Approver Tax Appeals Stakeholder Group

Signature _____

Date _____

Document Purpose This paper suggests possible criteria for starting tax appeals at the Upper Tribunal for discussion by the Stakeholder Group.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	27/09/2005	Stephen Oliver	Original draft
0.2	27/09/2005	Steve Wade	Added introduction and formatted for Stakeholder Group

Introduction

1. Previously, proposals for the reform of tax appeals (e.g. under the Tax Appeals Reform Project – TARP) considered that a wide range of cases would be suitable for hearing at the second tier in the first instance. Part of the motivation for this reasoning would have been that early reform proposals would not have guaranteed that sufficient expertise would be found at the first tier to deal with every tax appeal that might conceivably come its way.
2. Current proposals, however, envisage all tax cases, in principle, being heard at the first tier by flexibly constituted panels drawing on a range of professional judiciary with both legal and specialist qualifications. The range of judiciary found within the existing tax tribunals, which deal with all current first tier tax cases, would be similar to that found at the first tier in the new system.
3. In addition, a fundamental presumption is that, leaving aside the House of Lords, there should be only one appeal from a first instance decision and no more. The Upper Tier Tribunal should be able to finalise most tax litigation and the great majority of tax appeals will therefore be finally determined by the Upper Tier Tribunal.
4. However there will always be some tax disputes which are very likely to require authoritative rulings from the Court of Appeal and it seems appropriate that those cases should be considered for commencement in the Upper Tier as a Tribunal of first instance.

Suggested criteria for starting appeals in the Upper Tribunal

5. The decision as to whether a dispute starts in the Upper Tier (as a Tribunal of first instance) must lie within the jurisdiction of President. Any application for an appeal to start at the Upper Tier should normally be made direct to the Upper Tier. The following criteria will be relevant in determining whether a case is ready to go to the Upper Tier as a Tribunal of first instance:
 - where the case raises a novel and obviously difficult question of law;
 - where the outcome is likely to affect a large number of similar cases;
 - where the legal point at issue lies in an area of developing case law and where the principles need to be firmly established;
 - where there is a conflict of authorities;
 - where existing Tribunal decisions (including First Tier Tribunal decisions) are at odds with each other;
 - where an out-of-the-ordinary issue arises as to the jurisdiction of the Tribunal and
 - where the appeal is most likely to require a reference to the ECJ.

The President would regard the following as *prima facie* unsuitable cases for commencement in the Upper Tier:

- appeals requiring substantial fact-finding and
- cases where both parties want to start at the first Tier.

Discussion

6. The Stakeholder Group is asked to consider:

- Whether the criteria above are suitable for determining that a case should start at the Upper Tribunal in the first instance
- Whether the criteria for regarding cases as *prima facie* unsuitable for hearing at the Upper Tribunal in the first instance are suitable.
- Whether there are any additional criteria that ought to be considered suitable for a case to start at the Upper Tribunal. Are there cases, or classes of case, that could not adequately be dealt with at the first tier and that are not covered by the above criteria.
- By what process should cases reach the Upper Tribunal? Should cases be transferred only on the application of one of the parties or should the first tier tribunal be able to seek a transfer of their own volition? Should applications be dealt with purely on the papers or should the opportunity of offering arguments at a hearing be available?