

## TAX APPEAL STAKEHOLDER MEETING

1 December 2005

<b>Attendees</b>	<b>Representing</b>
Stephen Oliver	Chairman
Roger White	s703 Tribunal
Judith Edwards	Council on Tribunals
Jan Richardson	HM Revenue & Customs
Robert Maas	Institute of Chartered Accountants of England and Wales
Ian Menzies-Conacher	CBI
Ron Downhill	Law Society
Penny Hamilton	Chartered Institute of Taxation
Jane Moore	Low Incomes Tax Reform Group
Henry Russell	National Association of General Commissioners
Jane Smeaton	Senior President Designate's Office
Gordon Coutts	Scottish interests
Nuala Brice	VAT & Duties Tribunal/Judicial Training
Steve Wade	Department for Constitutional Affairs
Andrew Digby	Department for Constitutional Affairs

### 1. Introduction

Apologies were received from John Avery Jones, Malcolm Gammie and Simon Hill.

### 2. Minutes of the last meeting

Henry Russell (HR) asked that the minutes be amended to reflect the National Association of General Commissioners preference for option 4 of the costs paper.

***Action Point: Minutes of the last meeting to be revised accordingly***

### 3. Update on the Tax Appeals Reform Project

Steve Wade (SW) gave an update to the progress of the Tax Appeals Reform Project

#### Courts and Tribunals Bill

The Department for Constitutional Affairs (DCA) still did not know whether or not the Courts and Tribunals Bill would be introduced into Parliament in the current session. The Project Team had begun to develop plans in the event that introduction was delayed.

#### Project Board

The Project Board would meet in January and would consider a paper which costs two options for taking forward the reforms that the Stakeholder Group had recommended. One option would involve a centralised administration, the other a distributed system. The Board would decide which of the two options should be taken forward

### Future direction of the modernisation project

The Board would also take a decision about the future direction of the modernisation project. If the Courts and Tribunals Bill were to be introduced in the current Parliamentary session, the project would focus on detailed plans for the implementation of reform. If there were no Courts and Tribunals Bill, the project would consider what measures might be necessary to support the GCITS through the interim period until full reform can be achieved.

The Project Team were due to meet the NAGCIT to discuss measures to support the GCITS. One subject for discussion would be the cross-appointment General Commissioners between divisions within Advisory Committee areas. Cross-appointment would go a long way to ensuring that divisions had enough Commissioners to sit regularly.

In the event of a delayed introduction to the Courts and Tribunals Bill, the Project Team had also begun to look at alternative legislative opportunities for achieving reform more quickly..

Jan Richardson (JR) said that there were a number of reasons why it was unlikely that a Finance Bill would be the most appropriate route to achieve reform.

### Low Incomes Tax Reform Group research on GCIT user experience

Jane Moore (JM) said that the Low Incomes Tax Reform Group were carrying out research on the experience of users of GCITs. An interim report is due shortly.

## **4. Costs and Expenses in First Tier Tax Tribunals – Summary of Responses to the Consultation Paper (Updated version of paper SG06/01a)**

Stephen Oliver (SO) introduced an updated version of the paper summarising responses to the Stakeholders consultation paper on costs that was presented to the last Stakeholder Group meeting as for information only.

SO said that the responses suggested that the general was that was that the tax tribunal should have a costs regime of some sort, and that small taxpayers should not be exposed to the full costs. About 50% of the responses were in favour of a regime similar to that currently in operation at the VAT & Duties Tribunal, and 50% in favour of this regime but with protection from costs for the smaller taxpayer.

SO continued that although the consultation had given a clear view of the general principles that should underlie the costs regime, consideration would need to be given as to how the principles would apply in practice. One example was how costs would operate in VAT dishonest evasion cases. HM Revenue & Customs (HMRC) usually asked for costs in cases where they were successful. However, the question as to what should happen if the taxpayer were successful was still to be decided.

JR said that HMRC officials would consider the options that the consultation paper had outlined, and other options, and would report back to the Stakeholder Group in due course.

## **5. Start of Jurisdiction at the First-tier Tax Tribunal (Paper SG07/02)**

SW said that the paper was a first look, from a DCA point of view, at different ways of starting jurisdiction at the first tier tax tribunal. HMRC had already indicated that they

would have to consider at greater length the issues the question raised before being able to come to a settled view, particularly the issue of how much a change of practice or formalisation of existing practice would cost the department.

#### How the term 'appeal' is used

Ian Menzies-Conacher (IMC) said it was important to be clear about the term 'appeal'. Currently it was used to cover both objections made by a taxpayer to HMRC, and the dispute lodged at tribunal.

#### A formalised review process

Robert Maas (RM) said that resolving direct tax disputes by informal negotiation had proved to be successful. Jane Moore replied it did not work so well for un-represented taxpayers who did not always have the kind of experience or expertise that tax practitioners had.

IMC said that in many cases it would be in the interests of both HMRC and the taxpayer to settle a dispute by negotiation. Negotiation was not always a quick process however. Start of jurisdiction would have to be set so that both parties would have sufficient time to attempt it. Allowing parties the option of breaking off negotiation to register the dispute with the tribunal might be an effective way of providing focus and impetus to the resolution process.

Penny Hamilton (PH) said that the main concern of the taxpayer in dispute with HMRC was to reach a resolution as quickly as possible and without undue cost. The problem with a formal period of review was that it added both to cost and delay. It was the perception of some tax practitioners that reviews rarely varied the original decision in any case. Whilst it was desirable for there to be a formal review, it would be helpful for the taxpayer to be able to make an appeal to the tribunal during the review period if appropriate.

HR said that allowing taxpayers to appeal to the tribunal before the review of their objection had been completed risked many appeals being made to the tribunal prematurely. The tribunal might find itself overwhelmed with appeals that would have been settled if the review had been allowed to run its course.

JM said that tax credit appellants might suffer significant financial hardship if there were undue delay in resolving their objections.

There was general agreement that it would be helpful to set a time limit for review and/or negotiation. Nuala Brice (NB) said the 45 day period of review set down by statute for excise cases worked well and might provide a model for direct tax notices of objection.

#### HMRC Review of powers

As a point of information, PH said that the HMRC was *not* considering appeals in their current review of powers, as paragraph three of the discussion paper said.

JR said, by way of clarification, that as a result of the creation of HMRC, the new department had a number of projects on powers underway at present. The first was a long term and wide ranging review looking at powers in a wider sense. The second was a review of tax management powers that would be concluded comparatively quickly.

SO suggested that a full review of powers might usefully consider how the powers were to be challenged. A unified set of powers running across both direct taxes and indirect taxes could be understood to imply a unified tribunal and unified appeal routes would be appropriate. RM added that if HMRC planned to investigate both the direct and indirect taxes sides of a taxpayers affairs, it might prove impractical to retain different direct and indirect tax appeal routes and separate starts of jurisdiction.

#### The responsibilities of the decision-making department and of the appellant

Judith Edwards said that the Council on Tribunals endeavours to send observers to all of the tribunals for which it had a remit. This included the GCITs. The feedback from such observation frequently made mention that many of the appeals the tribunals were deciding might not have reached the tribunal if the government department in question had been more thorough when making the decision being appealed. Whether this applied to the GCITs, it was difficult to say. However, it was clearly important that decision-making departments had a full and thorough process in place.

She added that whatever arrangements for start of tax tribunal jurisdiction were in place, it was also of great importance that taxpayers should understand the responsibilities the arrangement placed on them. NB agreed.

Summarising the discussion, SO said that there should be some limit to negotiation between taxpayer and HMRC. Some appellants would need quick recourse to the tribunal, for example, appellants facing undue hardship as a result of delay and appellants challenging how HMRC had used its powers. For this reason, it might be helpful to allow taxpayers to appeal to the tribunal before the period set for review was complete.

#### **6. Standard Directions at the First-tier Tax Tribunal (Paper SG07/03)**

SW introduced the paper by saying that the issue of standard directions was related to that of start of jurisdiction. The paper had taken the work of the Stakeholder Case-Management Working Party as its starting point; it suggested that three sets of directions might be appropriate for the range of cases coming to the tribunal. Basic directions would apply to basic cases, standard directions for more complex cases and special track directions – based on those currently in operation at the Special Commissioners – for the kind of cases that currently fell within the SCITs jurisdiction.

NB said that the VAT & Duties Tribunal already had an explanatory booklet which set out what the taxpayer had to do to prepare for a hearing and which were sent to every appellant. It was her experience that the HMRC were good at preparing bundles for hearings. Appellants with the kinds of cases that could be decided at the short and less complex hearings tended to bring everything they needed in any case. NB also noted that statements of fact were of little use in cases that turned on disputes about what the facts were.

RM said that letters to taxpayers should be couched in lay terms. It was also important that appellants could notify the tribunal of changes in arrangements between lodging an appeal and it being heard. Occasionally it happened that between the time the appeal was registered and it being heard, it became clear that the issue at stake in a case was not the one the appellant had first thought. And occasionally an appellant would arrange for a change of representative.

HR said that anything that helped an appellant prepare for a hearing would be welcome. There would be times when a letter setting out in clear terms how the appellant should prepare for a hearing might encourage them to attempt settling with HMRC by negotiation.

There was a general feeling that, Special Commissioner style cases aside, most direct taxation cases would not need a heavily detailed set of standard directions and that needs and abilities of all parties should be considered when framing directions.

SO said that it was important that the modernised tribunal retain the flexibility of the current system, which allowed directions to be issued to fit cases.

## **7. A.O.B.**

SW said that we were now nearing the end of Phase 1 of the project. The Stakeholder Group had given guidance on the main issues where it was required, had recommended a preferred option and given an initial steer on some of the main areas where further work was required. How phase 2 of the project would be taken forward depended on decisions to be taken at the next Project Board, on the timing of the introduction of the Courts and Tribunals Bill and, if introduction were to be delayed, whether there were other legislative options for reform.

There was general agreement that the Stakeholder Group should remain available to offer further guidance as the project unfolded. For the immediate future, it would consider issues on the papers alone, meeting only when there was a need to do so.

It was also agreed that the Project Team would inform Stakeholder Group members of the outcome of the next Project Board and that the Team should consider how best to inform the wider tax community of the current state of reform in due course.

***Action Point 1: Project Team to inform Stakeholder Group members of the outcome of the next Project Board.***

***Action Point 2: Project Team to consider, once the direction of the project was clearer, how best to communicate the current state of play more widely to tax stakeholders.***

Copied to all attendees and:

Peter McCluskie (HM Revenue & Customs)  
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)  
William Norris (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)  
Dick Lester (Department for Constitutional Affairs)  
Simon Hill (Department for Constitutional Affairs)  
John Avery Jones (Special Commissioners of Income Tax)

Malcolm Gammie (Tax Law Review Committee)  
Peter Trevett (Revenue Bar Association)