



Tribunals Service

TAX APPEALS MODERNISATION : STAKEHOLDER GROUP

Paper 1 : Summary of issues for future Stakeholder Group work

Paper SG08/01

Foreword

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Document Purpose This paper summarises the issues for future Stakeholder Group work

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Summary of issues for future Stakeholder Group work

Introduction: Re-convening the Stakeholder Group

1. The Tax Appeals Modernisation Project has been re-launched by DCA, in the light of the introduction of the Tribunals Courts & Enforcement Bill into Parliament. The Project, on hold for some 12 months, now moves into an implementation phase.
2. At its first meeting, the reconvened Project Board noted, however, that a number of key decisions on various aspects of the design of the new tax tribunal are still outstanding. They agreed therefore that the project is likely to have a phase of around 12 months when all of the key questions are resolved and that the project will then move to implementation - a target date of April 2009 has been set.
3. The Project Board has agreed the Stakeholder Group should again take up its crucial role of providing input and recommendations to the Board on the matters outstanding. A first meeting of the reconvened Stakeholder Group is on 23 March. As a first step the Group are asked to consider the membership of the Group and the Terms of Reference and to agree these are still appropriate. The terms of reference previously agreed have been re issued to assist in this process.

Purpose of Meeting

4. Sir Stephen Oliver's note to the Stakeholder Group suggests it may be helpful for the Group to begin its work by doing a "stocktake" of matters agreed and those outstanding.
5. This paper is written to support that review. It summarises the key recommendations agreed by the Group in its last round of meetings and notes the areas where further work is still required. A paper previously considered by the Group is annexed for reference. The paper was produced for the August 2005 meeting, entitled "*Tax Appeals in the Tribunals Service*" (SG05/01). Paragraph references in this paper are to that paper.
6. Members of the Group are reminded that all previous papers and minutes of meetings are available on the General Commissioners of Income Tax website:

http://www.generalcommissioners.gov.uk/tax_appeal_mod/tax_appeal_mod.htm#sgm

A schedule of previous papers has been issued to the Group for reference

7. The Group are asked to agree that the issues discussed below should comprise the future work of the Group, on which recommendations to the Project Board should be made.

Start of Jurisdiction - Receipt of appeals

8. In paras 13 to 16 of SG5/01 the paper concludes there should be no change to the way appeals are made currently. That is with a statutory review period in VAT &

Duties cases and with appeals made to HMRC in direct taxation cases. At the meeting in August some members of the Group expressed reservations about this. HMRC set out their position and it was agreed further work was required.

9. The Group considered a paper entitled Start of Jurisdiction at its December '05 meeting. The minutes record varying views with a small consensus believing that a fixed review period for direct taxation may have some advantages. HMRC's position is further work is required to quantify costs and benefits of such a change. The Group will be asked to consider at a future meeting.

Registration and classification of appeals - case categorisation

10. Paras 17 to 22 and 39 to 41 of SG5/01 consider this issue. Para 22 notes the agreed principle that *all cases will go to the Tribunals Service and the routine work of case management and allocation of panels should be devolved to administrative staff as far as possible.*
11. However, the paper agrees further work needs to be done in Phase 2 of the Project. The Project Team will undertake further work on this and the Group will be asked to consider this at a future meeting.

Paper cases

12. Paras 23,24 and 36 record that hearings on the papers would be appropriate within the new tax tribunal but that further work is required to determine to which case types this would apply

Panel composition & allocation

13. Paras 25 to 29 and 42 to 47 consider this issue. The paper records an agreed general principle that cases will be allocated to flexibly constituted panels of tribunal judges and members sitting together as required by the needs of the case.
14. Paras 44 to 46 suggest the panel composition for Special Commissioner and VAT & Duties Cases. Para 47 notes that panel composition for cases currently heard by the General Commissioners require further work, although a principle that many of these cases could be heard by non legal members sitting alone is suggested.

Appointments

15. Paras 37 & 38 record the principle that new tribunal appointments will be recommended to the Lord Chancellor from competitions run by the JAC. The Stakeholder Group should note the proposals in the Tribunals Courts and Enforcement Bill will also enable a system of "assignment" to chambers. So that office holders appointed to one jurisdiction may be assigned to another by the Senior President (or chamber Presidents acting on his behalf) without the need for a new appointment.
16. The prior issue, however, for the new tax tribunal is to determine the numbers and qualifications of judges and members required. If any new appointments are

required the Project should allow 12 months for the competition process and a further period to allow for training. Numbers and qualifications therefore need to be settled in good time to allow for that.

Decision formats

17. Paras 30 & 48 record the agreement that all cases will receive a written decision. Further work is needed however to determine the format and the level of detail.

Onward appeals

18. Paras 31 to 33 set out the agreed principle that the majority of tax appeal decisions will have an onward right of appeal to the Upper Tribunal, to be established by the Tribunals Courts and Enforcement Bill. The principle that certain "heavyweight" cases could skip the first tier and go straight to the Upper Tribunal is also recorded, although the paper notes that further work is required to determine the criteria and mechanism for selecting such cases.
19. The general handling of tax cases in the Upper Tribunal will require consideration by the Stakeholder Group. Sir Stephen Oliver has prepared a paper on this ??

Operational and administrative structures

20. All of the administration of the new tax tribunal will be the responsibility of the Tribunals Service. It will be designed to fit with the new Delivery Model currently being established by the Tribunals Service [agenda item?]. The Group will be consulted in due course about the emerging proposals. The administrative arrangements will need to deal with the requirements for case categorisation.

Rules/directions

21. Briefly discussed at para 35 of the paper, it is now more likely than not that new "compendium" rules of procedure will be required for the new tribunal. Drafting and consulting on the new rules is likely to be a major piece of work on which the Group's input will be needed.

Further matters

22. SG5/01 did not cover two further matters which were raised at the August meeting. These are "Costs" and "Tax Credits"

Costs

23. Papers on costs were considered by the Group at the December meeting. HMRC were considering their response and this issue will now need to be discussed in detail by the Group at an early meeting.

Tax Credits

24. The Project Board has agreed that tax credits are within the scope of the tax appeals modernisation work. But that it is more practical to deal with them in a later phase, possibly after the new tax tribunal has been implemented.

Transitional Arrangements

25. Phase 1 of the Project did not consider transitional arrangements. That is how cases in progress in the old system transfer to the new system when it goes live; and any other issues arising from transition. The Group will be consulted and asked to provide input where it is appropriate.

Future Work of the Stakeholder Group

26. All of this suggests a considerable programme of work for the Stakeholder Group. The Group are asked to agree to meet every six weeks throughout 2007/08. The dates of meetings will be set for the year prior to the next meeting. The list of issues to be dealt with is set out at Annex A. The Group are asked to agree this list.

Mike Watson

18 March '07

Relevant Papers

- SG Terms of Reference
- Paper SG5/01: Tax Appeals in the Tribunals Service
- Schedule of previous SG papers

Annex A - List of issues to be considered by the SG on which recommendations should be produced for the Project Board

Start of Jurisdiction - Receipt of appeals

Registration and classification of appeals - case categorisation

Panel composition & allocation

Appointments - eligibility and criteria for appointing members

Onward appeals and questions about handling of taxation cases in the Upper Tribunal

Rules/directions

Costs regime for the new tribunal

Paper cases

Decision formats

The Group will also be consulted on:

Transitional arrangements; and

Proposed operational and administrative structures