



HM Courts &
Tribunals Service

T399

Appealing to the Upper Tribunal (Tax and Chancery Chamber)

**Tax – UK
Charity – England & Wales**

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Introduction

About this leaflet

This leaflet is to help both members of the public and advisors. It describes how to appeal to the Upper Tribunal (Tax and Chancery Chamber) from a decision given by the Tax Chamber once you have asked the First-tier Tribunal judge for permission to appeal. It explains what will happen to an appeal to the Upper Tribunal (Tax and Chancery Chamber) once it has been made. It also lists the stages that take place before the judge decides an appeal. **However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.**

This leaflet does not describe any of the procedures in the First-tier Tribunal or how to apply for permission to appeal to the First-tier Tribunal judge which is an essential first step in appealing to the Upper Tribunal (Tax and Chancery Chamber). This information is provided with the First-tier Tribunal decision notice.

At the end of this leaflet is a section in which the meaning of some words used in this leaflet, or in documents which you may receive from the Upper Tribunal (Tax and Chancery Chamber) Office, is explained. We recommend that you keep this leaflet for reference throughout your dealings with our office.

About the Upper Tribunal (Tax and Chancery Chamber)

What is the Upper Tribunal (Tax and Chancery Chamber)?

The Upper Tribunal is an appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Tax and Chancery Chamber is the part of the Upper Tribunal, which hears and decides appeals from decisions of the First-tier Tribunal in tax, charity and Land Registration cases, and cases arising from the Proceeds of Crime Act 2002. In most cases appeals are on a point of law. The Tax and Chancery Chamber has taken over appellate work formerly dealt with in the High Court's Chancery Division.

The Tax and Chancery Chamber consists of specialist judges appointed by the Lord Chancellor. Some are also judges in the Courts, including the High Court. **All judges are independent of, and in no way connected to Her Majesty's Revenue and Customs (HMRC) or the Charity Commission.**

The judges sitting in the Tax and Chancery Chamber decide appeals on a point of law from First-tier Tribunal decisions on issues such as amounts of tax or duty to be paid, matters relating to National Insurance contributions, Statutory Sick Pay and Statutory Maternity Pay entitlement and recovery, and cases in relation to certain anti-avoidance provisions under the Income Tax Act. The judges also decide appeals on onward appeals formerly dealt with by the Charity Tribunal and High Court; in addition they may also hear some particularly complex References.

As the Upper Tribunal (Tax and Chancery Chamber) judges give judicial decisions neither they, nor any of the staff in the Upper Tribunal (Tax and Chancery Chamber) office, can give legal advice. If you intend to appeal you may wish to seek legal advice.

Where are the offices of the Upper Tribunal (Tax and Chancery Chamber)?

The office of the Upper Tribunal (Tax and Chancery Chamber) is based in London and deals with applications for permission to appeal (leave to appeal for cases within Northern Ireland) and appeals against decisions made by the First-tier Tribunal in the UK. The administrative staff prepare case files for judges, arrange oral hearings and deal with correspondence and queries. The address of the office is:

Upper Tribunal (Tax and Chancery Chamber)

**Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL**

DX: 160042 Strand 4

Telephone (9am to 5pm): 020 7612 9730

Email: uttc@justice.gov.uk

If your First-tier Tribunal case was heard in Scotland or you live in Scotland you may send the form to the London office or the Scottish office:

The Upper Tribunal (Tax and Chancery Chamber)

**George House
126 George Street
Edinburgh EH2 4HH**

Who can appeal to the Upper Tribunal (Tax and Chancery Chamber)?

Appeals by tax payers, businesses and public bodies in tax and charity cases

Tax payers, businesses and public bodies who are parties at the First-tier Tribunal can appeal to the Upper Tribunal (Tax and Chancery Chamber) against the decision of that tribunal.

If you lost your case at the First-tier Tribunal you will normally be required to pay or repay any amounts due as a result of the tribunal decision, but in some exceptional cases this requirement may be suspended. You should speak to HM Revenue & Customs, the Serious Organised Crime Agency or the Charity Commission in the first instance if you think you should not be required to pay.

Appeals by Her Majesty's Revenue and Customs (HMRC), the Serious Organised Crime Agency (SOCA) or the Charity Commission in tax and charity cases

If you won your case at the First-tier Tribunal, it is still possible for the respondent (HMRC, SOCA or the Charity Commission) to appeal to the Upper Tribunal.

The rules about applying for the full written statement of reasons and permission to appeal are equally applicable to the respondent as to you. These rules are explained briefly in the sections '**Before you can appeal**' and '**How to appeal**'.

If the respondent is given permission to appeal you will be told by the First-tier Tribunal office. If they do, you will normally be paid or repaid amounts awarded to you by the First-tier Tribunal, but in some cases payment maybe suspended. You will be entitled to make comments in writing before the Upper Tribunal judge decides the appeal. You will also be able to ask for an oral hearing if you wish.

Before you can appeal

If you wish to challenge the decision of a First-tier Tribunal **there are various steps that you must have taken at that tribunal before you can appeal to the Upper Tribunal**. These will have been explained by the First-Tier Tribunal office in the information sent with the decision notice.

In particular you must have:

1. asked for a full written statement of the First-tier Tribunal's reasons for its decision (unless you have already received one); and
2. applied to the First-tier Tribunal judge for permission to appeal.

If you are appealing a Tax decision there is **56 day** time limit, and if you are appealing a Charity or Land Registration decision there is a **28 day** time limit in which to do so. This may be extended in certain circumstances. You should always ask for a written statement first (unless you have already received one), but if you do not, or you are refused one because you are too late, you must always ask the First-tier Tribunal judge for permission to appeal.

Please note: if you do not ask for a written statement within the time limit your chances of appealing may be lost or seriously limited.

Reasons (grounds) for appealing

In most cases you can only appeal against the decision of a First-tier Tribunal if it was **wrong in law**. Examples of where the tribunal may be wrong in law include:

- The tribunal did not apply the correct law or wrongly interpreted the law.
- The tribunal made a procedural error.
- The tribunal had no evidence, or not enough evidence, to support its decision.
- The tribunal did not give adequate reasons for its decision in the written statement of its reasons.

This list is not exhaustive and the tribunal may be wrong in law for some other reason not mentioned here.

If you are unsure whether the tribunal was wrong in law you may wish to seek legal advice.

In Land Registration cases it is also possible to appeal against the Tribunal's decision on the facts in limited circumstances.

You must always give full details of your reasons for appealing.

How to appeal

In general

Once you have applied to the First-tier Tribunal judge for permission to appeal to the Upper Tribunal:

- If the First-tier Tribunal judge **refuses you permission, or does not admit your application**, you may apply to an Upper Tribunal (Tax and Chancery Chamber) judge for permission to appeal.
- If the First-tier Tribunal judge **grants you permission to appeal**, you should send your appeal to the Upper Tribunal (Tax and Chancery Chamber).

Details of what you need to do are set out below. They are also set out in the form for applying for permission or appealing to the Upper Tribunal (Tax and Chancery Chamber) and the notes which go with the form.

You **must** always have applied to a First-tier tribunal judge first.

How to apply to a judge in the Upper Tribunal (Tax and Chancery Chamber) for permission to appeal

If the First-tier Tribunal judge **refuses your application for permission to appeal, or does not admit** your application because you were late or because you did not have a written statement of reasons, you may apply for permission to appeal direct to the Upper Tribunal judge. **You must always have applied to the First-tier Tribunal judge first.**

The **First-tier Tribunal** will send you a letter or order telling you that the judge has refused you permission to appeal or refused to admit your application. You should then send your application to the Upper Tribunal (Tax and Chancery Chamber) so that it is received **no later than one month** after the date on the letter notifying you of the First-tier Tribunal judge's ruling. You should use the form which the First-tier Tribunal office will give you or, or which can be downloaded from the website at www.gov.uk. If you cannot get a copy, you should write a letter setting out your reasons for appealing. You should enclose the necessary documents. These are:

- a copy of the decision issued by the First-tier Tribunal
- the letter or order from the First-tier Tribunal telling you that you have been granted or refused permission or that your application has not been admitted.

You may ask for an oral hearing of your application for permission to appeal. If the Upper Tribunal judge grants your request you will be told the date and place, normally at least 14 days in advance.

If you are late in applying for permission you must ask for an extension of time and explain why your application was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your application will not be admitted and **you will not be able to appeal**.

If your application for permission to the First-tier Tribunal was not admitted because you were late or because you did not have a written statement, you should explain why your application was not made in time. The Upper Tribunal judge may only admit your application if the judge considers it is in the interests of justice. If the Upper Tribunal judge does **not admit your application you will not be able to appeal**.

You may withdraw your application for permission to appeal at any time before it is decided. You just need to write a letter to the office of the Upper Tribunal (Tax and Chancery Chamber). If you later wish to ask for your application to be reinstated you should write to the Upper Tribunal (Tax and Chancery Chamber) office within one month. If you are late you may ask for an extension of time.

What happens if the Tax and Chancery Chamber judge refuses you permission to appeal?

The office will send you a copy of the judge's ruling refusing you permission to appeal, including the reasons.

If the judge decides your application for permission without an oral hearing and refuses you permission or gives permission on limited grounds or subject to conditions you may apply in writing within 14 days for the decision to be reconsidered at an oral hearing.

A refusal of permission to appeal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing **within one month**.

There is no right of appeal to the Court of Appeal (or the Court of Session in Scotland) against a refusal of permission to appeal or refusal to admit a late application. Also you cannot appeal against the decision of an Upper Tribunal judge to grant permission to appeal to someone else.

How to appeal to the Upper Tribunal (Tax and Chancery Chamber) once you have been granted permission to appeal

If the First-tier Tribunal judge grants you permission to appeal, the First-tier Tribunal office will send you a letter or order telling you.

You should then send your appeal to the Upper Tribunal (Tax and Chancery Chamber) so that it is received **no later than one month** after the date of the letter notifying you of the First-tier Tribunal judge's ruling. You should use the form if you can. If not, just write a letter saying you wish to appeal and giving your reasons. **If you do not do this you may lose your opportunity to appeal.**

If you are late you must ask for an extension of time and should explain why your appeal was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your appeal will not be admitted and **you will not be able to appeal.**

If the Upper Tribunal judge grants you permission to appeal you will not normally have to make a separate appeal. You will be told by the office if you have to do so.

What happens once permission has been granted?

How the appeal will proceed

In general

Once you have appealed to the Upper Tribunal (Tax and Chancery Chamber), or a Tax and Chancery Chamber judge has granted you permission to appeal, the office will copy the appeal papers, including the notice of appeal to **you** and the other parties to the case (called respondents).

The Upper Tribunal judge will give reasons for granting permission to appeal (unless permission was granted by the First-tier Tribunal judge) and you will be told how the appeal is to proceed and any time limits.

You and the respondents may simply be asked whether you object to the Upper Tribunal deciding the appeal on a particular point. Otherwise the respondents will normally be asked for full comments on your appeal and you will be given the opportunity to reply.

If **HMRC, SOCA** or the **Charity Commission has appealed**, the Upper Tribunal (Tax and Chancery Chamber) office will ask you whether you have a representative and you (or your representative) will be asked if you wish to make comments on the appeal.

You should note that all comments or observations made by one party will be copied to all the other parties. At the same time the office will send out letters explaining what, if anything, needs to be done next.

Will there be an oral hearing of the appeal?

Appeals in the Upper Tribunal (Tax and Chancery Chamber) can be decided with or without an oral hearing. You may ask for an oral hearing of your appeal, giving your reasons.

If the appeal has been made by someone else and you are a respondent, and the judge decides to have an oral hearing you will be told about it and will be entitled to attend even if you did not ask for a hearing.

An Upper Tribunal judge can direct an oral hearing be held even though no one has asked for one.

Oral hearings are usually held in London, Manchester and Edinburgh. They are exceptionally held in other court centres if people are unable to travel.

If no oral hearing is held, the judge will give his or her decision on the appeal after considering the documents from the First-tier Tribunal as well as the grounds of appeal and the written comments made by all parties to the appeal to the Upper Tribunal (Tax and Chancery Chamber).

What will happen if there is an oral hearing?

Once the date for an oral hearing has been set, you will be sent a letter with details of the date, time and place.

You must normally be given at least 14 days notice of the date of a hearing unless both you and the respondent have agreed to shorter notice. However you will usually be given more notice.

Oral hearings are normally in public unless the judge directs a private hearing. However, it is unusual for members of the public to come to hearings. If you would like your hearing to be private, you should say why and the judge will decide this.

Your representative (if you have one) and any respondents to your appeal will also be entitled to attend the oral hearing and will be told about it.

The judge will not usually give a decision at the end of the hearing. It will be sent to you and all other parties after the hearing has taken place.

Where a case raises a particularly important or difficult point of law, it may be heard by three judges instead of one. However, this is very rare.

What you should do if you find you cannot attend an oral hearing

If you find that you will not be able to attend a hearing which has been fixed you should tell the Upper Tribunal (Tax and Chancery Chamber) office as soon as possible. **You should write unless the time is very short in which case you may telephone.** You should also be prepared to agree an alternative hearing date.

If you would like the hearing postponed you should say why and the judge will decide what should happen. **You should not assume a hearing will be cancelled because you have asked; a hearing once appointed remains on unless the tribunal states that it has been cancelled.** The judge may decide to go ahead with the hearing without you.

If you do not turn up at the hearing, the judge will decide whether to go ahead without you. **If you are delayed on your journey to the hearing, you should make every effort to ring the office to let them know immediately.**

What you should do if you wish to withdraw your appeal

Once you have been granted permission to appeal, you need the agreement of the Upper Tribunal to withdraw, so you should explain your reasons. If you then want your appeal to be reinstated you should write to the Upper Tribunal office within one month. If you are late you may ask for an extension of time.

If HMRC, SOCA or the Charity Commission has appealed you cannot withdraw from the appeal. You do not need to take any part but a decision will be made whether or not you do take part.

The decision of the Upper Tribunal (Tax and Chancery Chamber) on the appeal

The judge's decision

If there is no oral hearing the appeal papers will be sent to the Upper Tribunal judge to be decided once all the parties have made their written comments in accordance with the directions made by the judge.

The judge will always give his or her decision in writing. The Upper Tribunal (Tax and Chancery Chamber) office will send you a copy of the judge's decision. They will also send a copy to your representative if you have one and to the other parties to the appeal.

The judge must give reasons for the appeal being allowed or dismissed unless all the parties have agreed otherwise.

If the judge has sent the case back to be re-decided by the First-tier Tribunal, you will receive a letter from the First-tier Tribunal clerk.

If the Upper Tribunal judge dismisses your appeal, or the result of the appeal is not wholly favourable to you, you have the right to appeal to the Court of Appeal, or the Court of Session if your appeal was heard in Scotland. The office will send you a letter telling you about your right to appeal. There is more detail about this in the section **'What to do if you are dissatisfied with the decision of an Upper Tribunal (Tax and Chancery Chamber) judge'**.

If the Upper Tribunal judge allows your appeal or dismisses another party's appeal, that other party may wish to appeal to those courts.

Particular issues which may arise on appeals

How much will it cost to appeal?

There is no fee payable for applying for permission to appeal or for appealing to the Upper Tribunal (Tax and Chancery Chamber).

The Upper Tribunal (Tax and Chancery Chamber) may order one party to pay another party's costs.

Representatives

It is open to you to have a representative to help you fill in the appeal form, deal with letters from the Upper Tribunal (Tax and Chancery Chamber) office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing.

If you have a representative you must send the Upper Tribunal (Tax and Chancery Chamber) office written notice of your representative's name and address. If the person stops representing you, you must notify the Upper Tribunal (Tax and Chancery Chamber) office otherwise they are entitled to assume that you are still represented and will send documents to the representative and not to you.

You may instruct a solicitor, an accountant or any other person (qualified or not) to act as your representative.

Even if you do not have a representative to help you with the initial stages of your case you can bring another person to any oral hearing and, with the judge's permission, that person can act as your representative or assist you to present your case.

What do I do if I am unsatisfied with the decision of the Upper Tribunal?

In general

You may apply to the Upper Tribunal (Tax and Chancery Chamber) for a decision on an appeal to be set-aside on certain limited procedural grounds.

You may appeal to the Court of Appeal (or Court of Session in Scotland) against the decision of Upper Tribunal. **You need permission first.**

Any other party to the proceedings before the Upper Tribunal (Tax and Chancery Chamber) has the same right to appeal to the Court of Appeal/ Court of Session as you do.

How to apply for the decision of the Upper Tribunal (Tax and Chancery Chamber) to be set aside

A refusal of permission to appeal may be set aside by the Upper Tribunal (Tax and Chancery Chamber) judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing with reasons **within one month**.

How to appeal to the Court of Appeal/ Court of Session against an Upper Tribunal (Tax and Chancery Chamber) decision

Appeals from the Upper Tribunal (Tax and Chancery Chamber) are on a point of law only. If therefore the Upper Tribunal makes a finding of fact based on the evidence submitted in the appeal (or on the basis that you have not produced all the evidence to prove your case) there is no appeal against such findings of fact. HMRC, SOCA or the Charity Commission has a similar right of appeal if the Upper Tribunal finds in your favour.

To appeal to the Court of Appeal (Court of Session in Scotland) **you must have permission** from the Upper Tribunal, or if the Upper Tribunal refuses, from the Court.

An application for permission to appeal to the Court of Appeal or Court of Session must be received by the Upper Tribunal (Tax and Chancery Chamber) **within one month of the latest of:**

- written notice of the decision being sent to you; or
- your being notified of amended reasons for, or a correction of, the decision following review (see below); or
- your being notified that an application to set aside (made in time or with an extension of time) has not been successful.

The time limit may be extended by the Upper Tribunal judge.

You must make your application in writing identifying the alleged error or errors of law and stating the result you ask for.

How the Upper Tribunal (Tax and Chancery Chamber) considers your application for permission to appeal

On an application for permission to appeal, the Upper Tribunal (Tax and Chancery Chamber) may review the decision and may set it aside, amend the reasons for it or correct it if:

- when making the decision the judge overlooked a legislative provision or binding authority which could have had a material effect on the decision; or
- since the decision a higher court has made another decision binding on the Upper Tribunal which, if made before the decision, could have had a material effect on it.

The Upper Tribunal (Tax and Chancery Chamber) must notify the parties in writing of the outcome of any review.

If the Upper Tribunal takes any action on review without first giving every party an opportunity to make representations it must allow that party to apply for the action to be set aside and the decision to be reviewed again.

If the Upper Tribunal does not review, or on review decides not to alter the decision, it must decide whether to grant permission to appeal to the Court of Appeal. It must record the decision in writing and give reasons for refusing permission either completely or in respect of any grounds of appeal.

If you are refused permission to appeal by the Upper Tribunal (Tax and Chancery Chamber) you may renew your application in the Court of Appeal/ Court of Session.

If the Upper Tribunal (Tax and Chancery Chamber) grants you permission you will need to appeal to the Court of Appeal/ Court of Session.

The Court of Appeal/ Court of Session time limits are short so if you wish to renew your application or to appeal you should contact them as soon as possible.

The address for the Court of Appeal (England and Wales) is:

**The Civil Appeals Office
Room E307
The Royal Courts of Justice
Strand
London
WC2A 2LL**

Email: civilappeals.registry@HMCS.gsi.gov.uk

Further information of appealing to the Court of Appeal (Northern Ireland) can be found on their website, under 'legislation'. The address is:

<http://www.courtsni.gov.uk/en-GB/default.htm?UserPref=culture%5Een-GB>

Information on applying to the Court of Session in Scotland is available under the Rules of the Court of Session, which can be found at

<http://www.scotcourts.gov.uk/index.asp>

If you wish to appeal to the Court of Appeal/ Court of Session, you are advised to take legal advice, as you may become liable for costs.

The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Upper Tribunal (Tax and Chancery Chamber).

- An **appeal** is made by a person (or HMRC or SOCA) who has been given **permission to appeal**.
- An **appellant** is the person, or other body, who is appealing.
- The **Court of Appeal** in **London** is a higher court (for cases in England and Wales) to which you may be able to appeal against an Upper Tribunal (Tax and Chancery Chamber) decision.
- The **Court of Appeal** in **Belfast** is a higher court (for cases in Northern Ireland) to which you may be able to appeal against an Upper Tribunal (Tax and Chancery Chamber) decision.

- The **Court of Session in Edinburgh** is a higher court (for cases in Scotland) to which you may be able to appeal against an Upper Tribunal (Tax and Chancery Chamber) decision.
- A **Direction** is a written instruction by the Upper Tribunal (Tax and Chancery Chamber) judge on the procedure that must be followed. The judge will make a Direction at the beginning of an appeal as to the order in which the parties are to make their submissions and the time limits for doing so.
- **Oral hearings** are described in the section titled '**What happens once permission has been granted**'.
- **Permission to appeal** is the first essential step in the appeal process. If you do not have **permission** you will not be able to **appeal**.
- **A point of law, error of law and wrong in law**: examples are given in the section titled '**Reasons for appealing**'. You must bear in mind that there may be other points of law and if you are uncertain you may like to seek advice as described in that section.
- **A procedural error** is something that has gone wrong with the procedure in an appeal. The procedural rules in relation to appeals to the Upper Tribunal are set out in the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in rule 43 of the Rules.
- A **Response** contains the observations made by a **respondent** in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. A **response** may also be called **observations** or **submissions**.
- A **respondent** is a person who has a right to take part in or oppose an **appeal** that has been made to the Upper Tribunal (Tax and Chancery Chamber)
 - In Tax and Charity cases, respondents can be the HM Revenue & Customs (HMRC), Serious Organised Crime Agency (SOCA) or the Charity Commission.
- A **Submission** is made by any party in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. **Submissions** may also be called **observations**.

General note

The law governing the procedure on applications to the Upper Tribunal for permission to appeal and appeals is set out in the following documents:

- Tribunal Procedure (Upper Tribunal) Rules 2008
 - (SI number 2698, 2008)
 - http://www.opsi.gov.uk/si/si2008/uksi_20082698_en_1
- The Tribunal Procedure (Amendment) Rules 2009
 - (SI number 274, 2009)
 - http://www.opsi.gov.uk/si/si2009/uksi_20090274_en_1
- The Tribunal Procedure (Amendment No 2) Rules 2009 (SI number 1975,