



HM Courts &  
Tribunals Service

## **First-tier Tribunal Tax Chamber**

### **At your hearing Explanatory leaflet**

#### **1. About this leaflet**

This leaflet is designed to provide you with useful information about your tribunal hearing once you have received the notification of hearing date letter.

This leaflet cannot deal with every set of circumstance or eventuality. Its aim is to provide you with information about what to expect at a hearing and what you need to do to prepare beforehand.

Please note that if your appeal is in the Default Paper category, the information provided in this leaflet does not apply.

For a description of the four procedural categories, please refer to our leaflet 'Making an appeal'. If you have any questions about your hearing which are not covered in this leaflet, please phone us on **0300 303 5857**.

#### **2. What documents will I need to bring with me?**

Essentially, you should bring evidence to the hearing which proves the facts of your case and also the legal grounds.

The proceedings for cases categorised as Basic are informal. You should attach the documents you intend to rely on with the Notice of Appeal form and bring them also to the hearing to make your case. HMRC will notify you in writing and in advance if they wish to raise new grounds contesting your case that they have not raised before.

In Standard and Complex categories, once you have received the statement of case from HMRC, you must supply us and them with a list of the documents you will be

producing which you will rely on at the tribunal hearing. You must remember to bring these documents to the hearing. In addition to this, any document which you intend to refer to in support of your case should be available at the hearing. Examples may include invoices, books of accounts, bank statements, contracts or export documents etc.

If you are in doubt about whether a document will be needed, your best course is to bring it with you. You should not assume that the hearing will be adjourned to another occasion to enable the documents to be produced.

You should also bring with you the statement of case from HMRC together with any response you made.

### **3. Who can be present at the tribunal hearing**

#### **The tribunal panel**

The composition of a tribunal panel depends on the complexity of your appeal. The exact composition of the panel will depend on the needs of your case.

#### **Tribunal Clerk**

When you arrive at the Tribunal venue you will be met by the clerk to the tribunal. The clerk will show you into a waiting-room and give you an indication of when your appeal will begin. The clerk will deal with any last minute enquiries about the arrangements for the hearing. The clerk will also be present from time to time in the Tribunal room during the hearing in case the Tribunal needs administrative assistance and will help ensure that special needs are met.

#### **HMRC Representative**

HMRC are also entitled to send a representative to take part in your appeal. You cannot ask for the HMRC representative to be excluded.

#### **Your Representative**

A representative is someone who helps you deal with the correspondence and represent you at any hearing. If you have appointed a representative or somebody to act on your behalf and have provided us with their details, they are also entitled to attend the hearing. You should attend the tribunal hearing. However, if you are unable to attend but have a representative the appeal may still proceed in your absence. You may also bring with you to the hearing to support you a friend or family member or a business associate.

#### **Witnesses**

If you need the evidence of a witness to prove your case, it is normally up to you to arrange for the witness to attend to give evidence. If a witness is reluctant to attend, the Tribunal has power to compel attendance by means of a witness summons. If you think the evidence of a witness is necessary but it is not likely to be disputed by HMRC, you can ask your witness to prepare a witness statement in writing and then

send it to them. A witness statement must be in writing and signed and dated by the witness themselves.

For appeals in the Basic category, the rules of giving evidence are informal. At the hearing of a Standard or Complex case, witnesses usually give evidence on oath or affirmation. After being examined (questioned) by the party calling them, the witness may be cross-examined by the other party, re-examined by you and perhaps questioned also by the Tribunal.

HMRC may also, if it chooses, bring a witness.

### **Public Hearings**

Hearings before the Tax Tribunals are normally open to the public. However, any party to the proceedings can ask for a hearing, or part of a hearing, to be held in private in certain circumstances. If you wish for your hearing to be conducted in private, you should write to us with reasons why. The fact that your financial affairs are personal is not enough; there must be a special reason such as it is in the interests of public order or national security or not do so would prejudice the interests of justice. Should you wish for your hearing to be heard in private, you should write to us as soon as possible. The Tribunal will make the final decision on this.

## **4. Burden of Proof**

In most appeals the 'burden of proof' is upon you. This means it is up to you to show why the disputed assessment, penalty or decision is wrong. In most Penalty Cases the burden of proof is on HMRC, who must satisfy the Tribunal that the penalty is due. You will need to put evidence before the Tribunal which will establish the facts, figures and dates etc. If you need to call witnesses or produce documents, it is up to you to make sure that they are all available at the hearing (see above).

## **5. What will happen at the hearing?**

Procedures differ depending on the nature and complexity of the appeal. Generally, however, hearings for cases categorised as Basic will be conducted in an informal atmosphere while appeals in the Standard and Complex categories will tend to be conducted more formally.

Normally, you or your representative will be asked to present your case first, explaining why you think HMRC's decision is wrong and support your argument with documentary evidence and/or the spoken evidence of your witnesses. You will need to explain what is already agreed, what is in dispute, what evidence you are putting forward and the basic points you are making. It is essential for each party, in the course of presenting the case, to bring out all the relevant facts.

The HMRC representative will then be asked to present HMRC's case, again explaining it in detail and offering evidence to support the original decision. While a

party is presenting their case the other party will be allowed to question the other or to respond to points raised by the other although if the Tribunal feels the questions are not relevant or if they have accepted the point they may ask you to stop or move on. The Tribunal may ask questions of you and/or your representative, HMRC representative(s) and any witnesses.

## **6. The Decision**

A Tribunal which hears appeals categorised as Basic will normally announce its decision on the day of the hearing and will later provide a written decision with brief reasons. In Standard and Complex cases, the Tribunal may announce its decision there and then but will usually reserve it to be given in writing later, normally within 28 days. If your appeal is dealt with in the Default Paper category, a decision in writing will be posted to you as soon as possible after the appeal has been considered by the Tribunal on the papers.

## **7. What can I do if I lose my appeal?**

If you are unhappy with the decision which the Tribunal reached, you will usually have a further right of appeal. When you receive the Tribunal's written decision notice it will contain information about how you can appeal to the Upper Tribunal on a point of law against a decision given by the First-tier Tribunal.

You can also ask the Tribunal to reconsider its decision on the grounds of a procedural irregularity, if you think there was one. For instance, a document relating to proceedings was not sent or received by a party or somebody related to the hearing was not present. When you write to us, you will need to identify the irregularity which you think occurred.

Full information on your further appeal rights will be provided to you with the decision notice.

If you need this leaflet in an alternative format, e.g. large font, Braille or in Welsh Language, or require hard copies of our leaflets, please telephone **0300 303 5857**.