



TRIBUNALS
JUDICIARY

PRACTICE STATEMENT
FIRST-TIER TRIBUNAL and UPPER TRIBUNAL
APPLICATIONS FOR PERMISSION TO APPEAL IN THE TAX CHAMBER AND THE
TAX AND CHANCERY CHAMBER

This Practice Statement has been made by the Presidents of the Tax and Chancery Chamber and the Tax Chamber to give guidance to the tribunal and to tribunal users on the practice adopted in relation to the handling of applications for permission to appeal from the Tax Chamber to the Tax and Chancery Chamber, and from the Tax and Chancery Chamber to the relevant Court of Appeal or the Court of Session.

The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “F-tT Rules”) and the Tribunal Procedure (Upper Tribunal) Rules 2008 (the “UT Rules”) provide for the making of applications for permission to appeal from the First-tier Tribunal to the Upper Tribunal, and set out a number of requirements which an applicant and the tribunals must meet. The rules are, however, silent on some other points.

In particular, the rules do not make it clear whether, and if so by whom and when, the other party to an appeal (in this Practice Statement referred to as the respondent) is to be notified that an application for permission to appeal has been filed, and they make no provision for the respondent to participate in the process, save in the event that the judge dealing with the matter decides to review the decision (see F-tT Rules 40 and 41, UT Rules 45 and 46). There is potential unfairness to a respondent who does not learn that a decision he thought had become final is the subject of an onward appeal until he receives a copy of the decision allowing an application for permission (see F-tT Rule 40(3), UT Rule 45(3)).

The practice which the Tax Chamber and the Tax and Chancery Chamber will apply (and which so far as possible reflects the practice in the civil courts), is as follows:

Applications to the First-tier Tribunal for permission to appeal

- 1 Every application to the First-tier Tribunal for permission to appeal which is in proper form will be copied to the respondent on receipt. An application in proper form is one which complies with all of the applicable requirements of F-tT Rule 39. An application not in proper form will be rejected. In particular, an applicant **MUST** first have received full reasons for the First-tier Tribunal’s decision, **MUST** send a copy of the reasons with his application and **MUST** identify an error of law in that decision.
- 2 If the application is in time (see F-tT Rule 39(2) for the time limit) the application will at the same time be passed to a First-tier Tribunal judge for determination.

The respondent will not be required, or invited, to make representations but will be assumed to support the decision which the applicant is seeking to appeal.

- 3 If the application is made out of time, but with an application in proper form for an extension of time (see F-tT Rule 39(4)), the respondent will be asked for observations in respect of the application for an extension. The Tribunal will send the applicant a copy of any observations it receives, to which the applicant may reply. If the application is opposed, the tribunal may decide to deal with it at an oral hearing.
- 4 If an extension of time is refused and the application for permission to appeal is not admitted, the applicant may apply to the Upper Tribunal for permission to appeal against that refusal: see UT Rule 21(2) and paragraph 8 below.
5. Paragraphs 5, 6 and 7 below apply to applications which are in time, or where an extension of time has been granted.
- 6 If the judge decides to review the decision, the procedure spelt out in F-tT Rule 41 will be followed.
- 7 If the judge decides not to review the decision he will proceed immediately to deal with the application for permission to appeal. The application will normally be dealt with on the basis of the written application alone. Exceptionally the judge may arrange a hearing, which both parties will be invited (but not required) to attend. Neither an applicant nor a respondent has the right to an oral hearing of the application.
- 8 If permission to appeal is granted, a decision notice to that effect will be sent to the applicant and to the respondent. It is then for the applicant to file notice of appeal at the Upper Tribunal office within the time limit of one month from the date of the First-tier Tribunal's decision notice giving permission, and it **MUST** be include the information, and be accompanied by the prescribed documents (UT Rule 23(2)(a), (3) and (4)). The Upper Tribunal will send copies to the respondent.

Applications to the Upper Tribunal to appeal against a F-tT decision

- 9 If permission to appeal has been refused by the First-tier Tribunal or granted only on limited grounds, or the application to the First-tier Tribunal has not been admitted because it is out of time, the applicant may make a further application for permission to appeal to the Upper Tribunal. The application must be made within one month of the date of the First-tier Tribunal's decision notice refusing permission or refusing to admit the application (UT Rule 21(3)(b)). The application **MUST** include the information, and be accompanied by the documents, prescribed by UT Rule 21(4) and (5) and if the application to the First-tier Tribunal was not admitted because it was out of time **MUST** also comply with UT Rule 21(7). An incomplete application will be rejected.
- 10 Every application to the Upper Tribunal for permission to appeal which is in proper form will be copied to the respondent on receipt.
- 11 If the application is in time it will at the same time be passed to an Upper Tribunal judge for determination. The respondent will not be required, or invited, to make representations but will be assumed to support the decision which the applicant is seeking to appeal. The application will normally be dealt with on the basis of the written application alone. Exceptionally the judge may arrange a hearing, which both parties will be invited (but not required) to attend.
- 12 If the application is made out of time, but with an application in proper form for an extension of time (see UT Rule 21(6)), the respondent will be asked for observations in respect of the application for an extension. The Upper Tribunal will send the applicant a copy of any observations it receives, to which the

applicant may reply. If the application is opposed, the tribunal may decide to deal with it at an oral hearing

- 13 If permission to appeal is granted the application stands as the notice of appeal unless otherwise directed (see UT Rule 22(2)(b)) and the procedure spelt out by the UT Rules must thereafter be followed.
- 14 If permission to appeal is refused, in whole or in part, or if, without a hearing, the Upper Tribunal has refused to admit a late application for permission, the applicant may ask for a hearing at which the application is reconsidered. The hearing will be arranged as soon as practicable. The respondent will be invited, but not required, to attend and make representations.
15. If permission to appeal is refused by the Upper Tribunal after a hearing, there are limited circumstances in which an applicant may bring judicial review proceedings in the High Court against that decision under Rule 54.7A of the Civil Procedure Rules. Permission to bring judicial review proceedings will only be granted by the High Court in exceptional circumstances.

Applications to appeal against a decision of the Upper Tribunal

- 16 Where the Upper Tribunal has made a decision on an appeal from the First-tier Tribunal or has itself dealt with a case as a first-instance tribunal, the procedure for making an application for permission to appeal will be similar to that in paragraphs 1 and 2 above. Any application to the Upper Tribunal for permission to appeal from a decision of the Upper Tribunal which is in proper form will be copied to the respondent on receipt. The application will be passed to an Upper Tribunal judge for determination without the respondent being required, or invited, to make representations.
- 17 The judge may decide to review the decision but only on the limited grounds set out in Rule 45 of the UT Rules. If the judge is unable, or decides not, to review the decision, a procedure similar to that in paragraph 6 above will be applied. If permission to appeal is granted, the appellant must then comply (in England and Wales) with the requirements of Part 52 of the Civil Procedure Rules applicable to appeals to the Court of Appeal (and in Scotland or Northern Ireland with the equivalent requirements of the Court of Session or Court of Appeal of Northern Ireland). If permission to appeal is refused, the appellant may make a further application to the Court of Appeal in accordance with Part 52 or, in Scotland, to the Court of Session and in Northern Ireland to the Court of Appeal of Northern Ireland.
- 18 In any case in which a professionally represented respondent wishes to attend an oral hearing and make submissions, a written outline of those submissions should be provided to the applicant and to the tribunal not less than 7 days before the hearing.

20 May 2015

Mrs Justice Rose

President

Upper Tribunal
Tax and Chancery Chamber

Judge Colin Bishopp

President

First-tier Tribunal
Tax Chamber