



TAX MEMO 2008-09

Newsletter Issue 2

The new tax administration regime 2009

► **Contents**

► **Reviews**

► **New tribunals**

► **Appeals**

► **Costs**

► **Higher courts**

► **All newsletters**

► **Online updates**

► **Contact us**



PDF printer
friendly version

Welcome to the second newsletter for the 2008/09 edition of *Tax Memo*.

With the introduction of the new tribunal regime for tax on 1 April 2009, tax administration has arguably undergone its biggest change since the introduction of self-assessment. The abolition of the general and special commissioners and their replacement with a tax tribunal system will create new opportunities and risks for taxpayers and their advisers.

We have prepared this newsletter to provide you with a comprehensive analysis of the changes in one document. We believe you will find this particular newsletter useful and informative in advising you about the reforms, and welcome any comments you may have as to how we can improve our service. We look forward to receiving your emails at flm@flmemo.co.uk.

Headlines:

Reviews

- Asking Revenue and Customs to review their decisions
- Time limits
- Transitional provisions

New Tribunals

- Abolition of the general and special commissioners
- New track system for appeals
- New track system for appeals

Appeals

- How to make an appeal against a decision by HMRC
- Appeal applications in each track
- Transitional provisions

Costs

- Costs recovery
- Professional representation at each tribunal

Higher courts

- Further appeals

Disclaimer

This newsletter is provided on the understanding that the information contained within it is for guidance only, and that the publisher is not in business to provide legal or accounting advice or other professional services. Readers entering into transactions on the basis of, or otherwise relying on, such information should seek the services of a competent professional adviser.

Whilst every care has been taken to ensure the accuracy of the contents, the editors and the publishers cannot accept responsibility for any loss occasioned to any person acting or refraining to act as a result of any statement in this newsletter.

REVIEWS

Asking for a review

TM ¶9932

Revenue and Customs advise that they want to encourage negotiation and arbitration with taxpayers to reduce the number of cases which appear at tribunal and to encourage reaching a settlement. As part of this approach, the new regime for dealing with tax administration gives taxpayers the opportunity to ask Revenue and Customs for a review of their decisions, **prior to the commencement** of appeal proceedings. Although a similar request previously existed in cases of indirect tax, the right is now statutory and extended across all taxes and in all cases with one exception. There is an **exception** to the right to take up a review offer where the decision is in connection with the new powers for Revenue and Customs to request information about a taxpayer's affairs or to inspect records.

A review will be **carried out** by a member of Revenue and Customs unconnected with the original decision. Although the offer and review request must be made prior to an appeal to the tribunal, making a request does not prevent a subsequent appeal to the tribunal, if the taxpayer does not agree with the decision following the review.

Time limits

TM ¶9934

If a **review is offered** by Revenue and Customs, the taxpayer has 30 days to take it up or to appeal to the tribunal. If the review offer is not taken up, and no appeal is made, the original decision will stand. Revenue and Customs may accept a late application for a review if there is a reasonable excuse for the delay and the objection to the original decision is made with a reasonable time of the excuse ceasing to apply.

Once the **review offer has been accepted** by the taxpayer, Revenue and Customs have 45 days in which to conduct the review and to give their decision, although a longer review period can be agreed between the parties. If decision of the review is not notified to the taxpayer within the 45 day time limit, the original decision is deemed to be confirmed.

Following **notification of the outcome** of the review, the taxpayer has 30 days in which to consider the outcome. The taxpayer can

- accept the decision of the review; or
- make an appeal to the tribunal.

Transitional provisions

TM ¶9924

If a decision has been **notified to the taxpayer**, but **not been appealed** prior to 1 April 2009, the right to appeal is to the new tribunal and a review may be requested if the time limit for the appeal has not expired.

If a direct tax decision **has been notified** and **an appeal made** to Revenue and Customs prior to 1 April 2009, but the proceedings had not begun before then, the taxpayer can still request a review. If the review is requested on or before 31 March 2010, Revenue and Customs have 90 days in which to do the review.

▶ Contents

▶ Reviews

▶ New tribunals

▶ Appeals

▶ Costs

▶ Higher courts

▶ All newsletters

▶ Online updates

▶ Contact us



PDF printer friendly version

REVIEWS cont...

If a decision has been **notified to the taxpayer, an appeal made** to Revenue and Customs but **not notified to the tribunal** before 1 April 2009, there is a possibility of a review (with the extended deadline) and any appeal is to the new tribunal.

If a decision has been **notified to the taxpayer, appealed and notified to the tribunal** prior to 1 April 2009, there is no possibility of a review and the case continues either before the first-tier or upper-tier tribunal. In this circumstance, the tribunal can give directions to deal with the matter either under the old or new rules. In addition, costs are only available if they were available under the old rules, but the advantage for indirect tax cases is that the Sheldon doctrine continues to apply (so no costs are recovered from the taxpayer by Revenue and Customs).

▶ Contents

▶ **Reviews**

▶ New tribunals

▶ Appeals

▶ Costs

▶ Higher courts

▶ All newsletters

▶ Online updates

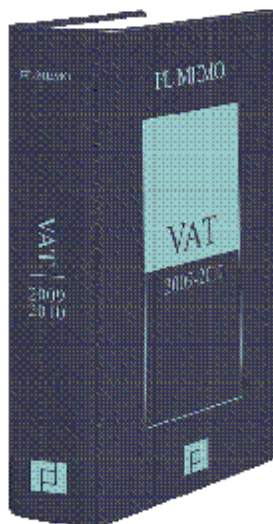
▶ Contact us



PDF printer friendly version

Reviews

New Edition
AVAILABLE IN MAY



VAT unlocked with VAT Memo 2009-2010

NEW VAT Memo 2009-2010 provides essential guidance on this constantly changing subject. It has been fully revised and updated for the 2009 Budget announcements, and includes commentary on the:

- penalty regime for VAT offences
- option to tax rules for property
- change in the VAT rate, with full calculations for retail schemes.

Pre-publication offer: Only £99
(normal price £117)

Call us on 020 7803 4666 to order or for more information

Benefits: Book and online / 100% reader-friendly / Regularly updated
Prices exclude 1.27% VAT

NEW TRIBUNALS

Abolition of the general and special commissioners

TM ¶9920

Following earlier announcements, the general and special commissioners for direct tax and the VAT and duties tribunal and the section 706 (now section 704) tribunal are abolished from 1 April 2009. The replacement is a new tax chamber which comes under the control of the Ministry of Justice and which will deal with all appeals from decisions made by Revenue and Customs. The tax chamber is split into 2 tribunals, the **first-tier** and the **upper-tier**. The first-tier tribunal will hear all cases except for those which go directly to the upper-tier.

Memo points: 1. The former special commissioner and the president of the former VAT and duties tribunal automatically become upper-tier tribunal judges.

2. Members of the upper-tier tribunal are drawn from the ranks of high court judges, former special commissioners and VAT and duties tribunal chairmen.

3. Judges and deputy judges of the first-tier tribunal are former special commissioners and VAT and duties commissioners. Appointments have also been made from open competition.

New track system for appeals

TM ¶9938

Under the new system **an appeal is made to the tribunal** rather than to Revenue and Customs. If a review has been requested, an appeal cannot be notified to the tribunal until the review has been concluded or deemed to have been concluded. If no review is carried out, an appeal can be notified to the tribunal immediately.

On making an appeal, **cases will be allocated** to one of four tracks:

- default paper;
- basic;
- standard; and
- complex.

Cases which the president of the tax chamber deem to be “substantial and complex” will be allocated to the upper-tier tribunal, but only if both parties consent. Complex cases are “substantial and complex” matters to do with issues of wide application and significance, or involve group litigation. Allocation to a particular track is very important as it may be possible to recover costs in the complex track.

Allocation of cases to tracks

TM ¶9938

The central registry for lodging appeals will be in Birmingham and, after an appeal has been filed, the registrar will make an **allocation direction** on the submission of an appeal. The allocation direction will determine in which of the four tracks the appeal will be dealt with.

The tribunal does, however, have the power to issue a further direction **re-allocating the case** either on its own initiative or on the application of any party or representative. Complex cases can be transferred by the chamber president to the upper tribunal with the consent of the parties, which allows each side to veto the transfer should they so wish.

▶ Contents

▶ Reviews

▶ **New tribunals**

▶ Appeals

▶ Costs

▶ Higher courts

▶ All newsletters

▶ Online updates

▶ Contact us



PDF printer friendly version

New tribunals

APPEALS

How to make an appeal

TM ¶9938, 9944

In all first-tier tribunal appeals, **the notice of appeal** must include:

- the name and address of the appellant and representative;
- details of the decision being appealed;
- the result that the appellant is seeking;
- the grounds for making the appeal;
- any request and reasons for an extension to the time limits; and
- a statement that the disputed tax has been paid or that Revenue and Customs have consented to hardship or a hardship application with a list of documents in support.

Appeal applications in each track

TM ¶9938

Default paper cases will generally be dealt with without a hearing and comprise:

- penalties for late income tax and corporation tax self-assessment returns, PAYE and construction industry returns and late Class 2 NIC notification; and
- fixed percentage surcharges.

Revenue and Customs must give a statement of case within 42 days of the notice of appeal and the appellant, if he wishes, should make a written reply within 30 days of that statement of case.

Basic cases will generally have a hearing and few documents will be exchanged before the hearing. The basic track cases will comprise:

- tax penalties and surcharges including VAT mitigation appeals and reasonable excuse; and
- Applications for enquiries to be closed, for late appeals to be lodged and for the postponement of payment of tax pending an appeal.

Revenue and Customs do not have to provide a statement of case, but if they wish to raise additional grounds for contesting the appeal, they must notify the appellant as soon as reasonably practicable about these grounds.

Standard cases will usually be dealt with in a hearing and will be subject to more detailed case management. Most cases dealing with substantive issues will come into this track.

Complex cases have lengthy and complex evidence, involve a long hearing, a large financial sum or are complex and involve an important principle or issue.

In both the standard and complex track, Revenue and Customs must make a statement of case within 60 days of the notice of appeal and each party has to provide a list of documents on which they intend to rely or produce at the hearing. The list of documents must be given within 42 days of the statement of case.

▶ Contents

▶ Reviews

▶ New tribunals

▶ Appeals

▶ Costs

▶ Higher courts

▶ All newsletters

▶ Online updates

▶ Contact us



PDF printer
friendly version

Appeals



APPEALS cont...

Transitional provisions

TM ¶¶9924, 9928

If a tribunal has given **directions** in a case prior to 1 April 2009, those directions remain in force as a tribunal hearing a case before 1 April 2009 could not direct transfer to the upper-tier tribunal.

If a **decision** was made prior to 1 April 2009, but had not been appealed by the taxpayer, the appeal must be made to the upper-tier tribunal, as if it were from the first-tier tribunal and so permission must be obtained from the first-tier tribunal to lodge the appeal.

If a decision has been given by a tribunal and **appeal already lodged** prior to 1 April 2009, the appeal continues to the High Court or Court of Appeal or Court of Session in Scotland.

- ▶ [Contents](#)
- ▶ [Reviews](#)
- ▶ [New tribunals](#)
- ▶ [Appeals](#)
- ▶ [Costs](#)
- ▶ [Higher courts](#)

- ▶ [All newsletters](#)
- ▶ [Online updates](#)
- ▶ [Contact us](#)



PDF printer
friendly version

Appeals



- ▶ [Contents](#)
- ▶ [Reviews](#)
- ▶ [New tribunals](#)
- ▶ [Appeals](#)
- ▶ [Costs](#)
- ▶ [Higher courts](#)
- ▶ [All newsletters](#)
- ▶ [Online updates](#)
- ▶ [Contact us](#)



PDF printer
friendly version

COSTS

Costs

TM ¶¶9938, 9948

Generally neither tribunal can make an order for costs without first giving the paying person an opportunity to make representations and, where the person is an individual, also considering his financial means.

The rules of the **first-tier tribunal** allow for costs to be recovered where:

- a party or representative has behaved unreasonably in bringing, defending or conducting proceedings; and
- in appeals allocated to the complex track, unless an appellant opts out within 28 days of notice of allocation as a complex case.

The rules of the **upper-tier tribunal** allow for costs to be recovered where:

- there is an appeal from the first-tier tribunal (this is likely to allow Revenue and Customs to recover their costs, since they are likely to be the appellants in the upper-tier on appeal from the first-tier);
- in judicial review proceedings;
- in proceedings transferred from the first-tier (likely to be where the first-tier decides that the case should be heard by the upper-tier);
- where the tribunal makes a wasted costs order; or
- where a party or representative has behaved unreasonably in bringing, defending or conducting proceedings.

An application for costs can be made at any time during the proceedings or up to 1 month after the decision notice or withdrawal of an appeal. The amount of the award is assessed by the tribunal.

Representation in the first-tier and upper-tier tribunals

TM ¶¶9938

The new system enshrines the principle of “open door” access to justice. Consequently, there is no requirement for an appellant to appoint someone who is either **legally or professionally qualified**. Nevertheless, if the appellant decides to appoint a professional, there is often a professional requirement to be competent in dealing with a particular matter. This professional requirement could, in practice, mean that representing an appellant at a tribunal hearing would be outside the competency of an adviser.

Costs



- ▶ Contents
- ▶ Reviews
- ▶ New tribunals
- ▶ Appeals
- ▶ Costs
- ▶ Higher courts
- ▶ All newsletters
- ▶ Online updates
- ▶ Contact us



PDF printer
friendly version

Higher courts

HIGHER COURTS

Further appeals

TM ¶9942

An appeal can be made **from the first-tier tribunal** to the upper-tier tribunal only on a point of law and with permission from the first-tier tribunal. If permission is refused, it is possible to apply to the upper-tier for permission to appeal. The upper-tier tribunal replaces the High Court in this circumstance.

An appeal is made **from the upper-tier tribunal** to the Court of Appeal or the Court of Session in Scotland. Permission must be granted by the upper-tier tribunal to make an appeal to the higher court. Permission is granted if there is an important point of principle or practice or for some other compelling reason.

The final appeal **from the Court of Appeal** is to the House of Lords, for which leave to appeal has to be obtained from the Court of Appeal.

Judicial review in the upper-tier tribunal

TM ¶9942

The upper-tier tribunal has judicial review powers and but these can **only be used** if a judge hears the application and in the following circumstances:

- only standard remedies are sought (including damages, interest and costs);
- the application does not call into question anything done by the crown court; and
- the application for judicial review is within a specified class (in practice this means that the upper-tier tribunal will be able to give a judicial review of decisions in the first-tier tribunal).

Any other judicial review application has to be transferred to the High Court and, similarly, any judicial review started in the High Court may be transferred to the upper-tier tribunal if a judge hears the application and the first two conditions are fulfilled.

An application for judicial review has to be made promptly and, if arising from a decision of the first-tier tribunal, no later than 1 month from the date of the written decision or refusal of application to set aside, although the time limit can be extended. Otherwise, the application has to be made within 3 months of the date of the decision being challenged. Costs for judicial review may be available.
