



## TRIBUNALS JUDICIARY

### **PROVISIONAL PRACTICE STATEMENT FIRST-TIER TRIBUNAL CATEGORISATION OF TAX CASES IN THE TAX CHAMBER**

This Practice Statement has been made by the Chamber President with the consent of the Senior President of Tribunals to give guidance to the Tax Chamber and Tribunal users in relation to the categorisation of cases during the Covid-19 pandemic. It is necessary for the Tax Chamber to change the way it allocates cases to the Default Paper cases category in order to manage the Chamber's workload appropriately. This Practice Statement is issued on a provisional basis for a period of six months, although it may be reviewed within that period should it become inappropriate or unnecessary and may be amended or revoked at any time.

#### **INTRODUCTION**

1. Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that when the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction allocating the case to one of the categories set out in that Rule, namely:

- (1) Default Paper cases (which will usually be disposed of without a hearing);
- (2) Basic cases (which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing);
- (3) Standard cases (which will usually be subject to more detailed case management and be disposed of after a hearing); and
- (4) Complex cases (to which special rules apply in relation to costs awards and eligibility for transfer to the Upper Tribunal).

2. The Tribunal may, either on the application of a party or on its own initiative, give a further direction at any time re-allocating a case to a different category.

3. This Practice Statement sets out the practice of the Tribunal with regard to the allocation of tax cases to categories. Nothing in it affects the powers or discretion of the Tribunal in relation to case categorisation generally, nor the ability of any party to an appeal to make any application regarding categorisation of that appeal. The fact that a case falls within the descriptions set out in this Practice Statement for a particular category does not mean that the case must, or will, be allocated to that category.

#### **DEFAULT PAPER CASES**

4. When the Tribunal receives a notice of appeal, application notice or notice of reference in one of the following types of cases, the Tribunal will allocate the case to the Default Paper category unless the Tribunal considers that there is a reason why it is appropriate to allocate the case to a different category.

- (1) In relation to all taxes and duties, appeals against penalties amounting to not more than £20,000 for late filing of returns, statements, accounts or documents and late submission of notices of being chargeable to tax.

- (2) Appeals against penalties amounting to not more than £20,000 for late payment of any tax or duty.

#### **BASIC CASES**

5. When the Tribunal receives a notice of appeal, application notice or notice of reference in one of the following types of cases, the Tribunal will allocate the case to the Basic category unless the case is of a type listed in paragraph 4 (Default Paper cases) or the Tribunal considers that there is a reason why it is appropriate to allocate the case to a different category.

(1) Appeals

- (a) against penalties for late filing of returns and documents and late payment of duties;
- (b) against penalties for inaccurate returns or documents, except where the penalties are for deliberate action or cases where an appeal is also brought against the assessment of the tax to which the return or document relates;
- (c) seeking the mitigation or reduction of penalties, and those in which a reasonable excuse is asserted;
- (d) against information notices and penalties for non-compliance with information notices; and
- (e) against Pay As You Earn (PAYE) coding notices.

(2) Applications

- (a) for permission to make or notify a late appeal;
- (b) for an indirect tax appeal to be entertained without payment of tax or duty on grounds of hardship (hardship applications);
- (c) for the postponement of the payment of tax pending the determination of an appeal; and
- (d) for a direction that HMRC close an enquiry into a personal, partnership or company self-assessment return.

#### **STANDARD CASES**

6. Any case that is not allocated to any of the Default Paper, Basic or Complex categories will be categorised as a Standard case.

#### **COMPLEX CASES**

7. Rule 23 provides that the Tribunal may allocate a case as a Complex case only if the Tribunal considers that the case:

- (1) will require lengthy or complex evidence or a lengthy hearing;
- (2) involves a complex or important principle or issue; or
- (3) involves a large financial sum.

8. The Tribunal will assess whether, having regard to the nature of a particular case, any one or more of these criteria are satisfied. In making this assessment the Tribunal will take into account all the circumstances, including the implications of the costs-shifting regime (subject to the right of the taxpayer to opt out) and the fact that cases allocated to the Complex category are eligible, subject to various consents, to be transferred to the Upper Tribunal.

9. If on such an assessment the Tribunal considers that a case meets the stated criteria, it will, in the absence of special factors, allocate the case to the Complex category.

Judge Greg Sinfield  
Chamber President

23 March 2020