

Tribunal Procedure Committee – Written Reasons Consultation¹

Response by the Chartered Institute of Taxation and Low Income Tax Reform Group

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response. The Low Incomes Tax Reform Group (LITRG) is an initiative of the CIOT to give a voice to the unrepresented.
- 1.2 Our response to this consultation is focussed only on the proposals which are relevant to the First-tier Tribunal (FtT) Tax Chamber (see para 3.1 below).
- 1.3 We consider that the proposal to reduce the time limit for requesting written reasons to 14 days is likely to be appropriate in some cases. However, we do have some concerns that shortening the time to 14 days may disproportionately disadvantage unrepresented taxpayers and those categorised as ‘vulnerable’ because of the additional time they may need to understand the issues and any delays compound this further. For that reason we suggest that the Tribunal Procedure Committee (TPC) considers retaining the 28 day time limit. 28 days also provides additional time to account for potential delays, such as postal issues and holiday periods. We also have concerns that reducing the time limit may lead to an increase in late requests which will require judicial time and resources to consider.
- 1.4 In terms of the proposal that full written reasons should be restricted to the unsuccessful party where oral reasons have been given at a hearing, we have some concerns that decisions on substantive points of law may not be written up, meaning that decisions of wider interest would be lost. We would suggest some form of practice direction would be helpful, setting out which decisions are in scope and which are not, to support a consistent approach to judicial decision making on this matter. We support the Tribunal’s desire to streamline

¹ Tribunal Procedure Committee Consultation on possible changes to the procedure rules of all Chambers of the First-tier Tribunal, the Employment Tribunals (England and Wales) and the Employment Tribunals (Scotland) concerning the provision of written reasons for decisions and other case management measures
https://assets.publishing.service.gov.uk/media/66a35cd6a3c2a28abb50d79b/TPC_written_reasons_consultation_document.pdf

and speed up the process, but articulating, by means of a practice direction, the type of case where it would not be appropriate to issue a written decision would be most helpful.

2 About the CIOT

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties.
- 2.3 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

3 About LITRG

- 3.1 LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litrg.org.uk, to help make a difference to people’s understanding of the tax system.
- 3.2 LITRG works extensively with key stakeholders such as HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.

4 Introduction

- 4.1 The consultation considers possible changes to the procedure rules of all Chambers of the FtT, including the Tax Chamber, concerning the provision of written reasons for decisions and other case management measures. The proposals which are relevant to the FtT Tax Chamber are set out at paras 23-25, 27-28 and 29-31, with the TPC’s preliminary views set out at paras 65-87. These are:
 - (a) Reduce the time for requesting a written decision to 14 days.
 - (b) Remove the obligation for the Tribunal to provide a decision notice to the parties within 28 days after making a decision which finally disposes of all issues in the proceedings.
 - (c) Dispense with the need for the consent of each party to give an unreasoned written decision where an oral decision, with reasons, has been provided at the hearing.

- (d) Restrict the ability to apply for a full written decision to a party with a right of appeal/the unsuccessful party, with a power to provide a full written decision to another party where it is in the interests of justice to do so.

4.2 The CIOT's stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

5 **Proposal 1: time limits for requesting written reasons (paras 23 to 28)**

Question (1): Do you agree that the time limit for requesting discretionary written reasons should, in general, be reduced to 14 days?

Question (2): Do you agree with the proposed exceptions? Should there be any other exceptions for other classes of case, and if so why?

Question (3): Do you have any other observations about this proposal?

- 5.1 In general, we agree with the TPC's preliminary view (at para 59) that making this change is likely to be appropriate in some cases. We also agree that prompt requests contribute to the efficiency of proceedings. However, we do have some concerns about the proposal.
- 5.2 Shortening the time to 14 days may disproportionately disadvantage unrepresented taxpayers (ie those not represented by an agent). Some of these taxpayers may also be categorised as 'vulnerable'. The wording at para 26(c) of the consultation document (which refers to the War Pensions and Armed Forces Compensation Chamber) explicitly acknowledges that a 14-day time limit would be too short for vulnerable litigants. so on balance we think the time limit should remain at 28 days to give these taxpayers more time to seek advice (including on a pro bono basis).
- 5.3 If it is decided to reduce the time limit to 14 days, in terms of its impact on unrepresented and vulnerable taxpayers, it will also depend on how the Tribunal approaches late requests. Although there is a facility to make a late request, this requires unrepresented taxpayers to take additional steps and may not provide an adequate safeguard in all cases. In our view, vulnerable taxpayers affected by a reduction to 14 days also need some explicit protection in the way late requests are handled, for example, we would suggest guidance regarding late requests which makes reference to the taxpayer's personal circumstances (vulnerability, digital capability, etc.). Changing the time limit may also lead to an increase in late requests which require judicial time and resources to consider.

5.4 We also have some concerns about the length of time it might take for a decision which disposes of proceedings to reach the taxpayer concerned. We believe that most decisions are now communicated by email, but in circumstances where a decision is sent by post, any postal delays will reduce the 14 day period. Holiday periods could also cause delays. As a result, the taxpayer may end up with significantly less than 14 days to decide whether to request written reasons or not. If the taxpayer responds in writing this also reduces the period available. The current 28 day period provides additional time to account for potential delays. We would also point out that digitally excluded taxpayers are likely to be disproportionately affected by the reduction because of the impact of things like postal delays.

6 **Proposal 2: decisions and reasons in the First-tier Tribunal (Tax Chamber) (paras 29 to 31)**

Question (4): Do you agree that rule 35(2) of the Tax Chamber rules should be amended to remove the obligation to provide the notice of decision within 28 days?

6.1 We have no objections to this proposal.

7 **Question (5): Do you agree that the consent of the parties should not be required in the Tax Chamber for an unreasoned written decision to be given provided sufficient oral reasons have been provided?**

7.1 We note that this proposal (in para 66) is 'provided it is possible for an approved transcript to be issued to the parties'. We think the proposal would offer more protection if the Tax Chamber would be *obliged to provide* that oral transcript if it wishes to provide an unreasoned written decision without the consent of the parties. Just the fact an oral transcript is possible does not seem enough.

7.2 We also believe that oral transcripts can be quite costly – so it would be a barrier to those with limited means if they had to pay for the transcript just to get access to the written reasons for a decision. Some sort of written record would be important for unrepresented taxpayers, who may find it difficult to understand (and therefore remember) the oral reasons given in the hearing. A written transcript would presumably also be necessary should the taxpayer wish to take advice or perhaps appeal the decision. Hence, the availability of an approved transcript is an important safeguard. In the event that providing a transcript is too costly or too resource intensive, then perhaps a recording of the hearing could be provided as an alternative.

7.3 In addition, decisions can sometimes be relevant to the ongoing conduct of a taxpayer's business. Say the taxpayer wins a case that is only relevant to their business and HMRC do not appeal so do not ask for reasons. It would be unfortunate if HMRC come back some years later to investigate the business again only to raise similar issues and the taxpayer is not able to point to the reasons they won in the FtT the first time around. While one would hope that HMRC have a note of the oral reasons, a taxpayer may not have them and/or there may be differences in the notetaking. Therefore, on balance it feels like there should still be a requirement for a written decision in the majority of cases, particularly since it is likely to be more of an issue when coupled with the proposal to allow only the unsuccessful party to request a full written decision where oral reasons have been given at a hearing (see Q6).

7.4 Finally, we would add - if oral reasons have been given at the hearing, it does not seem that onerous to type what was said into a summary decision, particularly with modern technology (that can turn words into text immediately) to capture and write them down.

8 Question (6): (a) Do you agree that full written reasons should be restricted to the unsuccessful party, where oral reasons have been given at a hearing?

(b) Do you agree that such reasons should be limited to the issues upon which the party was unsuccessful?

(c) Do you agree with the proposed definition of ‘unsuccessful party’?

- 8.1 We have some concerns depending on the type of case involved. In this respect we agree with the reasons given at paras 77 to 86 of the consultation document. If this proposal is adopted, we would suggest some form of practice direction by the Tribunal would be helpful, setting out which decisions are in scope and which are not, to support a consistent approach to judicial decision making on this matter. We support the Tribunal’s desire to streamline and speed up the process, but articulating, say by means of a practice direction, the type of case where it would not be appropriate to issue a written decision would be most helpful.
- 8.2 Some decisions will not be of interest to anyone but the parties themselves (for example, a straightforward case involving a penalty appeal which is similar to lots of cases that went before). We have no objection to full written reasons not being provided for cases of this type. Such cases will be unlikely to be appealed or be of wider interest. If adequate assurances can be provided that only these types of cases will not be written up, then this would help to address our concerns.
- 8.3 With regard to the question about whether reasons should be limited to the issues upon which the party was unsuccessful, sometimes it might not be so easy to identify and separate those out and it may lead to issues identifying who is the unsuccessful party. Para 86 of the consultation document alludes to this point. Any concerns we might have about this would be resolved by the judge issuing a full decision in these types of cases.
- 8.4 We understand that not all Tribunal judgements are published at present as it is. The proposal, if implemented, seems to mean that fewer decisions will be published in future. Our worry is that there may be a risk that decisions on substantive points of law may also not be written up, meaning that decisions of wider interest would be lost. There will be times, for example, when taxpayers are aware of similar cases whose advisers would need to know the reasons for the successful appeal to assist in their arguments. In those cases, HMRC (if they are the unsuccessful party) might choose not to appeal, and hence not to ask for a fully reasoned judgment, for tactical reasons. It should be remembered that HMRC’s Solicitors Office will always have a much better understanding of unpublished case decisions than taxpayers and their advisers – because HMRC are party to all tax cases. A practice direction setting out which decisions are in scope should go some way to addressing this inequality in the system.
- 8.5 The proposal does not seem to cater for lead case scenarios, where the taxpayer is successful at the FtT (although we accept it may be unlikely for the Tribunal to decide not to publish a judgment in such cases, and it is likely that HMRC would request a full judgment, if they did).
- 8.6 With the increasing use of AI tools, it is essential that some guardrails are imposed to pre-determine the sorts of cases where decisions will not be published. An AI tool needs to be ‘trained’ with information which could include Tribunal case decisions. If HMRC train their AI on unpublished decisions then the AI output will reflect things which taxpayers and their advisers will be unaware of. Over time that could result in a dichotomy of views on a matter. Whilst FtT decisions are not binding, they are persuasive and should be borne in mind by both taxpayers and HMRC.

9 Question (7): (a) Do you agree that an ‘interests of justice’ test will be sufficient to address any concerns raised by the TPC (and any other observations you may have)?

(b) Are the proposals consistent with the principle of open justice or nonetheless desirable to achieve greater efficiencies in the system?

9.1 We are not convinced that an ‘interests of justice’ test will be adequate on its own. Our preference is for the Tribunal to issue a practice direction to provide guidance and clarification about which decisions are in scope and which are not.

10 Acknowledgement of submission

10.1 We would be grateful if you could acknowledge safe receipt of this submission and ensure that the CIOT and LITRG are included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation and Low Incomes Tax Reform Group

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