

New tax tribunals will help contractors appealing against HMRC

Contractors could benefit from the new [tax tribunal](#) rules when they come into force on 1 April 2009, with potential benefits including reduced time and costs, a more hands-off approach by [HMRC](#), and even the ability to claim costs when contractors win their cases.

From next April, contractors appealing HMRC judgements will be undertaking their defence in a new Tax Chamber, formed as a result of a modernisation programme that is merging the existing tax tribunals.

Independence from HMRC

A key feature of the new tribunals will be their independence from HMRC, which in the current system controls key parts of the process, such as case listing and other elements of case management.

Plus, in a major break with existing practice, contractors will be able to send appeal notices direct to the Tribunal Service, without having to rely on HMRC to do so.

With the abolition of the General Commissioners of Income Tax and their clerks, a new judiciary will also be appointed who are to be selected to reflect the increasingly diverse and complex community they will be judging.

Four new procedural tracks

The existing tribunals are being streamlined into a two-tier structure that will include a First-tier Tribunal and an Upper Tribunal. The proposed new rules for the First-tier will allocate contractors' appeals into one of four procedural tracks:

- o Paper
- o Basic
- o Standard
- o Complex.

Simple appeals by contractors, such as late filing penalties for small sums, would be dealt with on the paper and basic tracks. The standard track would consider appeals across the whole range of tax regimes.

The track most likely to be of interest to contractors is the complex track where, according to the Tribunals Service's proposal, the appeal would:

- o Require lengthy or complex evidence or proceedings;
- o Involve a point of law or complex issue; or
- o Include an unusually large financial sum.

Contractors' appeals on the complex track, and which involve a point of law, can be referred to the Upper Tribunal. Some cases that start in the Upper Tribunal will also have recourse to the Court of Appeal.

Fewer court cases?

With the new Upper Tier designed to be the route of recourse for contractors not happy with the decisions made by the First-tier Tribunal, will this mean that there will be fewer cases going to the courts?

That is the intention, according to the draft rules consultation documents, which could mean any number of things to contractors depending on how the Upper Tier works in practice.

One potential benefit, if the Tribunals Service gets it right – and this won't be known until after the rules and Tribunals become law in April 2009 – could be reduced time and costs for contractors going through the appeals process.

Breakthrough on costs

The draft rules for both the First-tier and Upper Tier Tribunals include a mechanism for awarding costs under certain circumstances, which is a major step forward from the current system.

Contractors can make an application to the tribunal for costs to be awarded, or the tribunal can make the decision itself, but there are

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still a range of conditions which must be satisfied before the contractor would see a penny.

Although it is not possible to tell at this time how the new system compares to existing tribunals, the draft rules suggest that the Tax Chamber will be a very different animal from the tax courts of the past, and may for the first time start to work in the contractor's favour.

Background to the changes

The Tribunals Services, part of the Ministry of Justice, launched a consultation on the new rules for tax, which has just come to a close.

There are currently four tax tribunals, the General Commissioners, the Special Commissioners, the VAT and Duties Tribunal and the Section 702/706 Tribunal.

As part of the implementation of Part 1 of the Tribunals, Courts and Enforcement Act 2007, the existing tribunals are being streamlined into a two-tier structure that will include a First-tier Tribunal and an Upper Tribunal.

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