



TRIBUNALS JUDICIARY

FIRST-TIER TRIBUNAL (TAX CHAMBER) COVID-19 FREQUENTLY ASKED QUESTIONS

INTRODUCTION

The following FAQ document is issued by the Chamber President to assist users of the First-tier Tribunal (Tax Chamber) to better understand the services that the Tribunal is currently providing to users and the practicalities of litigation in the Tribunal at the present time and in the coming months. Much of the future planning, in particular the return of face-to-face hearings, is contingent upon the easing of the lockdown in response to the COVID-19 pandemic and Government advice. This guidance reflects the situation at the time of publication and may be reviewed, amended or revoked at any time if that situation changes.

I would like to thank the staff and judiciary of the Tribunal for their hard work and commitment during lockdown and to thank users of the Tribunal for their understanding and patience during these unprecedented times. I would welcome constructive ideas from users as to how the service provided by the Tribunal could be improved further still. If you have any comments or suggestions for improving this guidance, please email presidentsofficetax@justice.gov.uk.

The guidance is structured under the following headings:

- Current situation
- Listing remote hearings
- The practicalities of remote hearings
- Future hearings
- Communications from the Tribunal

CURRENT SITUATION

What is the status of cases currently in the Tribunal?

On 24 March, all proceedings in the Tribunal were stayed and time limits were extended by 28 days. On 21 April, a further general direction was issued which applied to standard and complex category cases and extended the stay for any directions issued prior to 24 March up to and including 30 June.

Parties with hearings that, prior to 24 March, had been listed to be heard before the end of August should all have been contacted by the Tribunal and those hearings cancelled. A number of those hearings have been re-listed as remote hearings and remote hearings (via telephone or video) have been taking place in the Tribunal. In addition, a large number of appeals have been determined on the papers without a hearing during the lock-down period. The Tribunal is not currently holding any face-to-face hearings.

How should I communicate with the Tribunal?

In order to allow the Tribunal's administrative staff to deal with correspondence and progress proceedings, you should send all communications (including service of witness statements, documents and authorities) to the Tribunal by email to taxappeals@justice.gov.uk. If you are not able to use email for any reason, you must inform the Tribunal as soon as possible so that

alternative arrangements can be considered. When you send any communication to the Tribunal, whether by email or otherwise, you must copy it to the other party (and tell the Tribunal that you have done so). All emails and other communications will be acknowledged and replied to in due course. Please be patient, as it may take time to deal with any backlog.

How do I submit my notice of appeal?

You can submit your notice of appeal online, by email or by post. Appellants should, where possible, submit notices of appeal online at <https://www.gov.uk/tax-tribunal/appeal-to-tribunal> or by email. Except where the online appeal service is used, the parties should expect delays in receiving any acknowledgement of receipt of an appeal from the Tribunal.

When should I appeal?

Some tax disputes, eg VAT appeals, may be made straight to the Tribunal and others, eg income tax appeals, must be appealed to HMRC first and only then to the Tribunal. It is important to distinguish the two different situations when talking about time limits for appealing.

In relation to an appeal that must be made first to HMRC, general guidance on their website at <https://www.gov.uk/tax-appeals/decision> states:

“If you or your business have been affected by coronavirus (COVID-19), HMRC will give you an extra 3 months to appeal any decision dated February 2020 or later. Send your appeal as soon as you can, and explain the delay is because of coronavirus.”

The three month extension does not apply to appeals to the Tribunal. The time limit for notifying an appeal to the Tribunal is 30 days from the date of the decision being appealed. It is a matter for the Tribunal whether it will give permission for an appeal to be notified after that time limit has passed. HMRC have stated (on the same page as the passage quoted above) that, because of coronavirus, they will not object if you ask the Tribunal to accept your notice of appeal after 30 days provided the appeal is against a review decision dated February 2020 or later and you ask within three months of the normal deadline. The fact that HMRC do not object to a late appeal does not mean that the Tribunal will allow it. However, where the delay in notifying the appeal is due to COVID-19 and HMRC do not object, the Tribunal is very likely to grant permission for the appeal to be notified late.

I have sent a notice of appeal to the Tribunal and have not yet received an acknowledgement. Is it being processed?

The Tribunal is processing all new appeals. It is taking slightly longer than usual to do so because of the impact of the pandemic on Tribunal staff. The allocation of the appeal to one of the four categories (Default, Basic, Standard and Complex) will be done in accordance with the Practice Statement published on 23 March 2020, available at <https://www.judiciary.uk/wp-content/uploads/2020/03/Provisional-Practice-Statement-on-Categorisation-in-Tax-Chamber.pdf>.

I have received a Decision from the Tribunal since 21 April 2020. As the appeal was in the Tribunal system at the time of the general 28-day extension to time limits ordered on 24 March, is the time to appeal extended by 28 days?

The general stay which was ordered on 24 March was extended for those cases in the standard and complex categories by a second general direction on 21 April. That direction stated that it did not extend time limits if a direction had been made by the Tribunal on or after 24 March. Every appealable Decision published by the Tribunal contains a statement that an application for permission to appeal must be received by the Tribunal not later than 56 days after the decision is sent to the parties. That constitutes a separate direction made on or after 24 March. Therefore, that time limit is not affected by the general stay and the time limit to appeal any

decision released after 21 April remains 56 days. However, if you are unable to comply with that time limit, you should submit the application for permission to appeal as soon as possible explaining why it was not provided in time. Where the delay in notifying the appeal is due to COVID-19 and HMRC do not object to the application being made late, the Tribunal is very likely to grant permission for the appeal to be notified late.

LISTING REMOTE HEARINGS

What types of appeals are being listed for remote hearings?

As a matter of principle, there is no type of tax appeal that cannot be held remotely. Whilst the judiciary and Tribunal users were familiarising themselves with the technology and procedure for remote hearings, the appeals that are being heard remotely tend to be those which are shorter and less procedurally complex (e.g. in terms of number of participants, or those involving submissions only). However, complex hearings have been held successfully by the Tribunal and the experience of judges in other courts and tribunals is that multi-day, multi-participant hearings can be conducted remotely. The parties may feel that appeals in which the credibility of a witness is a significant factor are less suitable for remote hearings, but that is not the experience of the judges of the Tribunal and hearings in which there will be cross-examination of witnesses are being listed as video hearings.

Can one of the parties object to a hearing being heard remotely?

For appeals that before lockdown were listed to be heard face-to-face up to the end of August, when vacating the face-to-face hearings the parties were asked for their views as to the appropriateness of the appeal being determined on the papers or by telephone or video. If a party does not consider that a remote hearing is appropriate, the reasons that it gives in support of that submission will be taken into account in making a decision about whether to list the appeal for a remote hearing or postpone the hearing for an face-to-face hearing at a later date. Ultimately the decision about when to list a hearing and in what format is a judicial decision, guided by the overriding objective and taking into account the views of the parties to the appeal and the resources of the Tribunal.

THE PRACTICALITIES OF REMOTE HEARINGS

What is the Tribunal's preferred technology platform for remote hearings?

For video hearings, the Tribunal has a bespoke video hearing product, the Tax Video Platform (TVP), that it has been piloting on a small scale and for more straightforward hearings since 2018. The TVP is currently limited to eight participants, however, the capacity will be increased to 23 persons by the end of June 2020. For hearings with more than 23 participants and observers, the Tribunal uses the Kinly Cloud Video Platform (CVP), which is also used in other courts and tribunals. The choice of which video platform to use will be a matter for the judge hearing the case, having taken into account the overriding objective and taking into account the views of the parties to the appeal and the resources of the Tribunal.

Telephone hearings are conducted as conference calls using BT MeetMe.

Is there a Tribunal standard for the preparation and delivery of electronic bundles?

The Tribunal will issue guidance on the format, structure and content of PDF bundles shortly.

The Tribunal staff are currently looking at the issue of how best to ensure that electronic bundles can be sent between the parties and to the judge and member hearing an appeal, given the limitation on the size of emails that can be sent and received on some email systems. For the moment, no email and attachments sent to the Tribunal should exceed 36Mb in aggregate.

For a remote hearing, do the parties need to produce a physical bundle for the judge as well as an electronic bundle?

Presently, all remote hearings are being conducted using only electronic bundles. In the future, if a judge has a preference to have access to some or all of the papers in a physical bundle, he or she will make a direction to that effect.

Do remote hearings take longer?

Anecdotally, the experience in the Tribunal is that remote hearings can take up to 50% longer than face-to-face hearings. This takes account of potential technical difficulties, as well as the practice, which it is sensible to adopt, of having a break mid-way through the morning and afternoon sessions. Listing of appeals should take this into account. The Tribunal may allocate more time than it otherwise would for pre-reading because well-structured pre-reading can make the hearing more efficient. The case management of a hearing is ultimately a matter for the judge hearing the appeal.

How can I get an understanding of what a remote hearing will be like before I attend one?

A video presentation is being prepared by some of the judges of the Tribunal. It will explain to appellants how a remote hearing works and common issues that are likely to be encountered (e.g. what to do when a connection fails). When the presentation is finalised, it will be published to Tribunal users.

As a member of the public, how can I observe or have access to a remote hearing?

The Tribunal publishes a list of forthcoming hearings online, which is available at <https://www.gov.uk/government/publications/first-tier-tribunal-tax-hearing-list>. That hearing list contains details for how members of the media and the general public can access remote hearings. On request, the Tribunal is able to provide dial-in or log-in details to join a telephone or video hearing. If it is not possible to provide access, eg because there is insufficient capacity to accommodate the number of parties and observers on a video hearing using TVP, the judge will have to give a direction that the hearing is in private.

All hearings using the TVP and BT MeetMe are automatically recorded (audio only). It is possible for members of the media and the general public to obtain a transcript of a recording, at a charge. Hearings using the CVP are not currently recorded but this is under development.

FUTURE HEARINGS

When will face-to-face hearings be held in the Tribunal?

The ability of the Tribunal to hold face-to-face hearings is dependent upon the easing of the lockdown and guidance from the Government. The safety of Tribunal staff and users is our top priority. At the time of publication of this document, the Tribunal is considering whether it will be possible to hold some face-to-face hearings from July 2020 onwards. In any event, face-to-face hearings are already being listed from September onwards. However, they are generally being dual-listed, as both face-to-face and remote hearings, such that if it is not practicable to hold the hearing face-to-face it will be held remotely. Some hearings are also being listed as ‘partially remote’, whereby the judge and representatives will attend a face-to-face hearing but evidence of any witnesses will be given via video link. The Tribunal asks parties to give their views as the appropriate form of hearing before listing an appeal.

Will face-to-face hearings be held at all hearing centres?

It is expected that face to face hearings of tax appeals will resume at Taylor House, London from the beginning of September, if not earlier, but this is dependent on Government advice at the time. The situation in relation to other venues used by the Tribunal is not known at the present time.

I have a hearing which is currently listed for a date after the start of September. Should I assume that it will go ahead and, if so, will it be held in person?

For any hearing that is listed to take place from 1 September onwards, the parties should plan on the basis that it will go ahead on the dates currently listed either as a face to face hearing or as a remote hearing. The Tribunal will contact the parties in advance to obtain their views about the most appropriate format for the hearing, bearing in mind that circumstances can change quite quickly.

What safety measures will be put in place when face-to-face hearings are held?

HM Courts and Tribunals Service information on the arrangements put in place to ensure that hearing venues are safe for Tribunal staff and users can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888414/HMCTS_COVID-19_additional_safety_guidance_28_May_2020.pdf

All safety measures will be maintained in accordance with Government guidance at the relevant time.

Will remote hearings become the ‘new normal’?

Much of the feedback from judicial colleagues and users regarding remote hearings has been positive. They will remain an option for listing a hearing even when the lockdown restrictions are removed and indeed will probably become the default option for shorter hearings where the cost of travel to attend a physical hearing is disproportionate. They are a positive development in improving access to justice, particularly for those in more remote locations or unable or unwilling to travel to a physical hearing, or those who may find the Tribunal room intimidating. However, there will always be a place for face-to-face hearings.

COMMUNICATION OF PRACTICE STATEMENTS

How can I ensure that I hear from the Tribunal when a new practice statement is published?

Practice Statements and other guidance issued by the Tribunal are published on the Tax Chamber’s website and/or the judiciary.gov.uk website. Please check those websites for the latest updates. Some communications are also published by professional and tax publications.

Certain practice statements and other communications are also sent to the Tax Tribunals’ Users’ Group, which includes a number of representative and professional bodies for dissemination to their members. If you are a member of such a body, please check that your organisation is circulating the Tribunal’s communications. If you wish to be added to the User Group distribution list during this time, please email presidentsofficestax@justice.gov.uk.

Judge Greg Sinfield
Chamber President
5 June 2020