



TRIBUNALS
JUDICIARY

FIRST-TIER TRIBUNAL (TAX CHAMBER)

UPDATED GUIDANCE ON TAKING ORAL EVIDENCE FROM ABROAD

INTRODUCTION

1. This document updates the guidance issued on 12 April 2022 in relation to the procedure to be followed when a party to a case in the Tax Chamber of the First-tier Tribunal wishes to rely on oral evidence of a person (including the party themselves) given by video or telephone from the territory of a Nation State other than the United Kingdom. The guidance follows the decision of the Upper Tribunal in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC).

WHEN PERMISSION IS NEEDED

2. The decision in *Agbabiaka* includes the following:

“There has long been an understanding among Nation States that one State should not seek to exercise the powers of its courts within the territory of another, without having the permission of that other State to do so. Any breach of that understanding by a court or tribunal in the United Kingdom risks damaging this country's diplomatic relations with other States and is, thus, contrary to the public interest.”¹

“Whenever the issue arises in a tribunal about the taking of evidence from outside the United Kingdom [...] what the Tribunal needs to know is whether it may take such evidence without damaging the United Kingdom's diplomatic relationship with the other country.² [...] it is not for this (or any other) tribunal to form its own view of what may, or may not, damage the United Kingdom's relations with a foreign State.”³

3. The decision records – and treats as determinative – the stance of the Foreign, Commonwealth and Development Office (FCDO) that only the giving of oral evidence from a Nation State requires the permission of that State⁴. Permission is not needed for written evidence, eg a witness statement by an individual who is overseas or a document obtained from overseas. Nor is permission required for a person to make submissions (whether oral or written) from another country, however, the tribunal may consider that the risk that a litigant making oral submissions will stray into giving evidence is too high and so might decide in such

¹ Paragraph 12

² Paragraph 19

³ Paragraph 23

⁴ Permission is not required where individuals wish to give video and telephone evidence from within the United Kingdom, i.e. anywhere in England, Wales, Scotland or Northern Ireland; Crown Dependencies like Jersey, Guernsey or the Isle of Man; or British Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, The Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands and Virgin Islands.

a case that permission must be sought as a precaution. There is no need for a person who will merely observe proceedings from abroad, eg by live streaming, to obtain permission to do so.

THE PROCESS FOR SEEKING PERMISSION

4. On 29 November 2021, the FCDO established a new Taking of Evidence Unit ('ToE'). The ToE checks whether overseas governments have any objection to the taking of oral evidence from an individual within their territory. The response of the ToE about the stance of a particular overseas government is treated as determinative. Any representations made prior to 29 November 2021 as to whether a particular government does or does not object to oral evidence being given from its territory should no longer be relied on.

5. Any party that wishes to rely on oral evidence from a person in a Nation State other than the UK should notify the Tax Chamber administration, and send a copy to the other party, as soon as it is aware that oral evidence from a witness abroad may be needed and at least eight weeks before the date of any hearing at which the evidence will be given. The subject line or header of any such notification should include the words "Evidence from Abroad".

6. The notification should include the following:

- (1) the name of the proposed witness;
- (2) the country the person would be giving evidence from;
- (3) the applicable time zone and time difference between the United Kingdom and the country from which the evidence would be given;
- (4) confirmation that the proposed witness has access to the facilities (computer, broadband etc) to give evidence remotely by video or telephone;
- (5) a list of the issues of disputed fact that are said to require the oral evidence of the witness; and
- (6) a witness statement from the proposed witness containing their detailed written evidence relating to the issues in dispute in the proceedings.

7. The other party should respond within 14 days of the application to indicate what (if any) aspects of the evidence of the witness remain in dispute and whether any such matters can be resolved without the need for oral evidence to be given from abroad. If no aspect of the evidence of the witness is in dispute, it will usually be appropriate for the Tribunal to refuse permission to rely on the proposed oral evidence.

8. Once the necessary information has been provided, HMCTS will contact the ToE to ascertain whether the Nation State concerned objects to oral evidence being given from its territory. If the ToE does not already hold information on the country in question, the ToE will raise an enquiry with the British Embassy or British High Commission in that country.

9. The amount of time a case has been held up at the ToE stage will be kept under review by the Tax Chamber. If permission for evidence to be given from another country is delayed, it will be a matter for judicial discretion by reference to the overriding objective whether the listing of a case should be delayed to allow such enquiries to proceed or should continue to be further delayed to allow such enquiries to be concluded. If delay becomes an issue, the Tribunal may need to consider alternatives to oral evidence being given from the foreign country. This may include probing the rationale for that evidence; and considering whether the evidence could be given in writing (including by reference to written questions put by the other party); and whether the witness can travel either to the UK or to a third country where it is known there are no diplomatic objections to the giving of oral evidence. These matters would also

need to be considered by the tribunal in the event that permission is refused by the foreign country.

Judge Greg Sinfield
Chamber President

28 July 2022