



Courts and Tribunals Judiciary

PRACTICE STATEMENT FIRST-TIER TRIBUNAL (TAX CHAMBER)

UPDATED GUIDANCE ON TAKING ORAL EVIDENCE FROM ABROAD

INTRODUCTION

This document updates the guidance issued on 28 July 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 a country other than the United Kingdom. The guidance follows new arrangements agreed by HM Courts and Tribunals Service and the Foreign, Commonwealth & Development Office (“FCDO”).

Subject to limited exceptions oral evidence may only be taken from witnesses (including litigants in person presenting their own cases) who are physically in the UK to give that evidence.

Where a witness is outside the UK the following matters will need to be considered and procedures followed. Please also see FCDO website (<https://www.gov.uk/guidance/taking-and-giving-evidence-by-video-link-from-abroad>)

WITNESSES WHO ARE NOT IN THE UK FOR THE PURPOSES OF GIVING EVIDENCE

Requirement for permission

1. Subject to paragraph 4-6 below, where a party wishes to rely on live oral evidence by video from abroad, the person seeking to rely on that evidence will, in all cases, need permission from the Tribunal. Permission is required even where no legal or diplomatic objection has been specifically raised by the country in question.
2. The obligation to obtain judicial permission to adduce oral evidence from abroad rests on the person wishing to rely on that evidence.
3. When considering whether to grant permission, the Tribunal will need to be satisfied that the country in question consents and that no legal or diplomatic barriers prevent the witness from giving evidence in the territory in which they are situated. Each case will be considered upon its own merits. It shall remain a matter of judicial discretion, by reference to the overriding objective in Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 whether such oral evidence should be admitted.

Where permission is not needed

4. 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, there is likely to be a risk where a litigant in person proposes to present their case from abroad as their oral submissions may stray into giving evidence. Thus where any speaking participant is abroad best practice would be for the party to notify the Tribunal making such application as is appropriate.
5. 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 the British Virgin Islands.

6. There is no need for a person who will merely observe proceedings from abroad, eg by live streaming, to obtain permission to do so.

PROCEDURE FOR SEEKING PERMISSION

7. The party seeking permission should first check the FCDO website (<https://www.gov.uk/guidance/taking-and-giving-evidence-by-video-link-from-abroad>) to check whether the country has given permission for live video evidence to be taken from within their jurisdiction for use in Tribunal hearings. This information will confirm whether the country allows evidence, has refused evidence or whether (as is the case for the majority) there has been no confirmation either way. As set out further below, parties should be aware that where there has been no confirmation of permission it is likely that permission will not be obtained.
8. If a country has expressly refused permission, then oral evidence from that country cannot be taken.
9. In all other cases, a party that wishes to rely on oral evidence from a person abroad should apply for permission from the Tribunal, and send a copy to the other party. This application should be made as soon as possible. Failure to apply in sufficient time may result in the Tribunal refusing to admit the evidence altogether. The subject line or header of any such application should include the words "Evidence from Abroad".
10. The application should include the following:
 - a. the appeal reference number and the name of the appellant;
 - b. the name of the proposed witness;
 - c. the country from which the person would be giving evidence;
 - d. the applicable time zone and time difference between the United Kingdom and the country from which the evidence would be given;
 - e. confirmation that the proposed witness has access to the facilities (computer, broadband etc) to give evidence remotely by video or telephone;
 - f. a list of the issues of disputed fact that are said to require the oral evidence of the witness;
 - g. a witness statement from the proposed witness containing their detailed written evidence relating to the issues in dispute in the proceedings.
11. The other party should respond within 14 days of the application to indicate whether any aspects of the witness evidence is in dispute and whether cross-examination is necessary.
12. If no aspect of the evidence of the witness is in dispute, and no cross-examination will be required, the witness evidence can be read and there will be no need to call the witness to give oral evidence and no formal permission is therefore required.
13. If the evidence is in dispute, then the following procedure applies.

Consenting countries

14. The Tribunal may grant permission to hear oral evidence from abroad where a country has consented.

Countries that have specified individual permission is required or countries that have not replied to the FCDO.

15. The FCDO may be able to make additional enquiries with the country in question. There is a fee for this service. The Tribunal will direct the relevant party to make an application to the Taking of Evidence from Abroad Unit (“ToEU”) at toe.enquiries@fcdo.gov.uk. The ToEU will need the relevant details of the case including the date of the hearing, whether the witness is a resident or citizen of the country in question, and the type of Tribunal. The ToEU will contact the person making the request directly if further details are required.
16. The ToEU will also send the applicant details on how to pay the Consular Fee, currently £150, for the service. Once the ToEU receive payment confirmation, they will send the applicant a holding reply to acknowledge receipt of payment and advise them of next steps.
17. The ToEU will contact the Embassy or High Commission who will check with the Ministry of Foreign Affairs (“MFA”) if the relevant Government has any objection to residents or nationals providing evidence by video link from that country to administrative tribunals in the UK. The MFA will be given a deadline of six weeks to respond. The Tribunal will consider the application as soon as possible after receipt of the ToEU information.
18. When considering the application for permission to rely on oral evidence from a person abroad, the Tribunal shall only rely on current information provided by the ToEU.

If permission is refused

19. If the ToEU advise that permission is refused, then the Tribunal must refuse to admit the proposed oral evidence.

If permission is granted in whole or in part

20. If the ToEU notify the applicant that permission has been granted then the Tribunal may give permission for that evidence to be taken. If the country in question has offered a conditional grant of permission, then the Tribunal may only admit the proposed oral evidence if satisfied that the party in question has met the conditions imposed.

If more information is required

21. If the country in question requires more information, the Tribunal will consider whether in the circumstances it is appropriate for further time to be given by reference to the Overriding Objective.

If there is no response within 6 weeks

22. If the relevant Government does not respond by the six-week deadline, then the ToEU will inform the applicant that given the lack of response, the FCDO recommends that the taking of evidence should not take place at this time. The applicant should then inform the Tribunal.
23. In such cases, the Tribunal should proceed on the basis that it cannot be satisfied that permission has been given and should refuse to admit the oral evidence.

PRACTICAL ARRANGEMENTS WHEN HEARING EVIDENCE FROM ABROAD

24. The party seeking permission should ensure the witness is available to participate in the hearing at the appointed time. The party seeking permission will be responsible

for providing the Tribunal with the witness' email address so that joining links can be sent to the witness.

25. The Tribunal shall only use approved platforms to take oral evidence from abroad by video link.

Visitors, non-residents and others abroad

26. The procedure set out above should also be followed where non- residents or non-citizens of the country in question want to give evidence. This would be where the witness is a British citizen who is in the country for some temporary reason at the time of the hearing.
27. The parties should consider whether other procedural mechanisms may be more appropriate such as listing on a date when the witness is present in the UK.

Judge Amanda Brown KC
Chamber President

2 June 2025