



# OLD SQUARE TAX CHAMBERS

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in taxation and revenue law*

## THE APPEALS PROCESS

By Rebecca Sheldon

[rebeccasheldon@15oldsquare.co.uk](mailto:rebeccasheldon@15oldsquare.co.uk)

## WHAT CAN BE APPEALED?

- Amendment to self assessment
- Amendment of return
- Conclusion or amendment by closure notice
- Amendment of partnership return
- Assessment (not self assessment)
- Conclusion stated or amendment via closure notice relating to claim/ election otherwise than in a return
- Decision contained in a closure notice disallowing claim/election in return
- Note: Cost consequences for unreasonably bringing an appeal

## WHAT CANNOT BE APPEALED?

- APNs
- PPNs
- Follower notices
- Public law points- *R & J Birkett and others v HMRC* [2017] UKUT 0089 (TCC)

## OVERRIDING OBJECTIVE

- Similar to overriding objective in CPR
- Rule 2 FTT Procedure rules
- *Bassi and another v Revenue and Customs Commissioners* [2019] UKFTT 285 (TC) at 33
- *Embiricos v HMRC* [2019] UKFTT 236 (TC) at 31
- *London Luton Hotel BPRA Property Fund LLP v Revenue and Customs Commissioners* [2019] UKFTT 212 (TC) at 17

# ALTERNATIVE DISPUTE RESOLUTION

- Overriding objective
- Positives and Negatives
- Particular concern- HMRC Mediator

## HOW TO APPEAL

- Forms:  
<https://www.gov.uk/government/collections/tax-first-tier-tribunal-forms>
- Time limits

## HOW TO APPEAL

### Late appeals

- Sir Stephen Oliver in *Ogedegbe v HMRC* [2009] UK FTT 364 at [7] said: “*While this Tribunal has got the power to extend the time for making an appeal, this will only be granted exceptionally*”
- *William Martland v HMRC* [2018] UKUT 178
- *Bassi and another v Revenue and Customs Commissioners* [2019] UKFTT 285 (TC)

## HOW TO APPEAL

- Internal reviews
- Section 49A TMA 1970 onwards
- Impact on timings of appeal
- Very rarely overturn original decision- but potentially lower penalties
- 30 day time limit in post review period to notify appeal



## SETTLING BY AGREEMENT

- Section 54 TMA 1970
- *Regina (PML Accounting Ltd) v Revenue and Customs Commissioners* [2019] 1 WLR 2428-para 29

## ALLOCATION OF CASES TO CATEGORIES

- Default paper
- Basic
- Standard
- Complex

*JSM Construction Ltd v HMRC* [2015] UKFTT 474 (TC)

*Capital Air Services v HMRC* [2010] UKUT 373 (TCC) para 24

## DISCLOSURE

- Rule 27 FTT rules
- Standard and Complex
- Privilege

## TRIBUNAL'S CASE MANAGEMENT POWERS

- Overriding objective
- Simple directions
- Bespoke directions
- Regulation of own procedure

## TRIBUNAL DIRECTIONS

1. Listing appeal
2. Agreeing issue for appeal
3. Agreeing management directions
4. Agreeing dates for hearing

## NON-COMPLIANCE AND STRIKE-OUT

- Failure to comply- not void
- When will non-compliance result in strike out?
- No reasonable prospects of success: *Allan v HMRC*  
[2013] UKFTT 142 (TC)

## THE HEARING

- Attendance
- Public vs Private: *Mr A v HMRC* [2012] UKFTT 541 (TC) and *B v HMRC* [2014] UKFTT 256
- Normal procedure

## CONSENT ORDER

- Rule 34
- Before or after hearing has started
- Confidentiality/costs
- Good practice to record in writing



## COSTS

- Rule 10
  - i. Wasted costs
  - ii. “Unreasonable” in bringing, defending or conducting proceedings
  - iii. Complex case

## COSTS

- General rule where not complex: parties bear own costs
- Meaning of unreasonable:
  - i. Michael & Flora Hegarty v HMRC [2019] UKFTT 226 (TC)*
  - ii. Gekko & Co Ltd v HMRC [2017] UKFTT 0586*
  - iii. Sussex Cars Association v HMRC [2017] UKFTT 691*

## DECISION

- Basic/default- judgment likely to be oral on the day
- Standard/complex- judgment likely to be reserved, 6 week minimum but likely to be significantly longer

REBECCA SHELDON

Old Square Tax Chambers, 15 Old Square,  
Lincoln's Inn, London WC2A 3UE

020 7242 2744

rebeccasheldon@15oldsquare.co.uk

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