

First Tier Tribunal hearings (P1332 – 16.41 minutes)

Introduction

A consultancy client of ours appealed some VAT assessments and the matter ended up (finally) at a First Tier Tribunal hearing in June 2022. This was held by video, but I thought it might be useful to practitioners and those who work in corporates to understand how the Tribunal case progresses.

Before the hearing

A formal appeal to the First Tier Tribunal must be made within the time limits prescribed (although the Tribunal has discretion to hear an appeal if made late). If the agent is submitting the appeal they need the authority of the client which is given by the client completing and signing Form T239.

The appeal must set out the reasons why the taxpayer believes that the assessment is excessive or incorrect (in brief).

Usually, the tax in dispute has to be paid before the appeal is heard, but the taxpayer can make a hardship application to the Tribunal to permit the case to proceed without payment being made (which is what happened in our client's case) which then informs HMRC. If HMRC does not believe that payment of the tax would cause undue hardship to the taxpayer, the Tribunal can either support this view or take a contrary decision and allow the appeal to proceed. The Tribunal's decision on this is final.

Our client's case was designated as 'complex' – one implication of this is that, generally, the loser pays the winner's costs unless the taxpayer opts out of the regime and decides it will bear its own costs irrespective of the outcome.

The other implication is that HMRC then has 60 days to send the taxpayer and the Tribunal its statement of case (in simple cases, it is 30 days). The taxpayer then has 42 days from receiving HMRC's statement of case to provide a list of documents to HMRC and the Tribunal. These documents will include the taxpayer's statement of case.

These deadlines can be extended by either party with the permission of the Tribunal. Normally, the party wanting an extension sends a letter to the other explaining the reasons why and asking if the other party is agreeable.

If HMRC has an acceptable reason for the extension it is usually best to agree to it, otherwise it might appear that the taxpayer is using the strict deadlines to stop HMRC being able to properly present its case. In our case, the effects of Covid-19 meant that HMRC was struggling to access physical documents stored in one of its offices.

The first party then notifies the Tribunal that it has asked the other party and that it has agreed (if this is the case) and the Tribunal then responds to both parties.

The taxpayer can choose to represent themselves (not recommended!), ask their usual tax advisor to represent them, or appoint a barrister to advocate for them. Our client chose to appoint a barrister on my recommendation (and I would advise all my clients to do the same – a court case, even by video, can be daunting for many people and barristers have the experience and knowledge to react to developments as they arise).

Bear in mind that the advisor contracts the barrister and the barrister will invoice the advisor not the client so always ensure your client is willing and able to reimburse you when you invoice them for these fees.

The hearing

There is the Judge and a panel member. HMRC will be represented by a barrister. The relevant inspector will be present as a witness and, in our case, representatives from HMRC's solicitors and a lot of other observers.

For our client, the barrister, the client and I were 'present'.

Although it was a video hearing, we were advised to dress smartly (shirt and tie) and you must be in a room alone.

The hearing starts at 10am each day and ends around 4 – 4.30pm. We had a short break in the morning and afternoon and one hour for a lunch break.

HMRC, as the respondent, appears first. Their barrister asks the inspector if the witness statement in the Exhibits is theirs and to confirm that it is their signature and is true to the best of their belief.

The client's barrister then cross-examines the HMRC inspector. HMRC's barrister can then ask the inspector clarifying questions afterwards.

The Judge or the panel member can ask questions at any stage during this time, usually to clarify a point the barrister or inspector has made.

After this, the client is called and their barrister asks them the same questions about their witness statement. HMRC's barrister then cross-examines the client and again the Judge and panel member can ask questions at any stage.

The client's barrister then has the chance to ask them clarifying questions and that concludes the client's time as a witness.

In our case, the examination of the inspector and the client lasted more than one day. During this time (including breaks), they are not allowed to speak to anyone about the case (including their spouse, partners etc. but definitely not their barristers or advisors).

While the inspector was being questioned, the client, barrister and I used a WhatsApp group to communicate with each other. When our client was being questioned, the barrister and I communicated with each other by WhatsApp.

At the end of the hearing, both barristers are given time to sum up their respective client's cases.

Our case lasted four complete days. It can be very draining listening to all the questions, responses and looking up all the exhibits referred to by both barristers, but the advisor must stay alert at all times to pick up on things the inspector or HMRC barrister say which is not, in our opinion, correct and to advise our barrister accordingly. In addition, when our client is being questioned, listening to the responses and advising our barrister to ask clarifying questions when it is their turn.

After the hearing

In our case, the Judge asked for written submissions by both barristers with a timeline of events, which I understand is not the norm.

It is then a waiting game until the Judge issues their decision. As of the end of August, we are still waiting for the decision, over two months since the case was heard.

The Judge issues their decision to the advisor (not the client nor the barrister).

Contributed by Malcolm Greenbaum