

TAX DISPUTES: FROM ASSESSMENT TO FTT

Following the receipt of an assessment from HMRC (whether following an enquiry or as a result of a discovery), a lot has to happen before the case is heard before the Tax Chamber of the First-tier Tribunal (the “FTT”).

This guide summarises key stages and anticipated timings based on the timescales set by applicable legislation and our experience of FTT litigation. On the basis of the latter, we must also add a note of caution – this guide can, unfortunately, do no more than give a rough idea of the overall timings involved, as these can vary significantly from case to case, and depending on the workload of the FTT.



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● **HMRC assessment**

HMRC formally closes its enquiry by issuing a “Notice of Completion” (often referred to as a “Closure Notice”) or, if no enquiry is in progress, by issuing a “Notice of Assessment”. If not appealed, the assessment made by HMRC will become final.

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● **Appeal to HMRC**

The first stage of the appeal process is an appeal to HMRC and, typically, a request for postponement of the tax due. This stage is mandatory, other than for certain indirect taxes (such as VAT), where it is possible to appeal directly to the FTT. The appeal has to be filed within 30 days of the HMRC assessment.

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● **HMRC review**

If HMRC deny the initial appeal, the taxpayer has 30 days to ask for a review by a more senior (and independent) officer. Review teams are in the HMRC Legal Group.

This stage is not mandatory (and is typically unsuccessful), but it is common to still take up the offer of a review on the basis that there is little to lose other than time and a small amount of costs.

HMRC typically aims to conclude reviews within 45 days but can often take longer.

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● **Appeal to FTT**

If the review is unsuccessful, or the taxpayer declines the offer of a review, the FTT process is commenced by the taxpayer filing a Notice of Appeal with the FTT within 30 days of the review decision (or appeal decision if the taxpayer declines the review offer).

This is typically done by completing either an online form on the FTT’s website, or a PDF form (form T240) which can be emailed to the FTT or submitted by post.

The Notice of Appeal is a relatively short form and includes a high-level statement of the taxpayer’s grounds for appeal and copies of the HMRC appeals and (if applicable) review correspondence.



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● Case categorisation

After the appeal is lodged with the FTT, the FTT will allocate the appeal to one of four categories: default paper, basic, standard or complex. This typically takes up to 30 days but can take much longer depending on the workload of the FTT.

Basic category cases include applications for closure notices and appeals against most penalties and information notices – these cases typically proceed directly to a hearing. This remainder of this guide focusses on standard and complex appeals, which follow the same process subject to two exceptions (noted below).

Appeals are categorised as complex if they involve lengthy or complex evidence or a lengthy hearing, a complex or important principle or issue, or a large financial sum. In complex cases, the FTT has the power to award costs unless the taxpayer opts-out of the costs regime within 28 days of notification that the case has been categorised as complex. If the taxpayer opts-out, or the case is not categorised as complex, the FTT can only award costs for unreasonable behaviour or wasted costs. Complex appeals are also eligible for transfer to the Upper Tribunal in certain cases.

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● HMRC Statement of Case

HMRC will provide a Statement of Case setting out their case at a high level. In larger cases, timing for this stage, and subsequent stages, is typically the subject of agreement between the taxpayer and HMRC. The FTT rules set default time limits for the Statement of Case (within 60 days of HMRC receiving the notice of appeal from the FTT) and Lists of Documents which apply in the absence of agreement or other direction from the FTT.

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● Application for Directions

Typically shortly after receipt of HMRC's Statement of Case, the taxpayer and HMRC will agree a draft set of Directions, setting out deadlines for all of the subsequent stages of the case, such as the production of the statement of agreed facts and issues, and the exchange of witness statements, expert evidence, and hearing bundles. The timings in this guide reflect timings which, in our experience, are commonly included in Directions. If both sides are able to agree, a joint application to the FTT can be made for an order in the agreed terms. The application would typically be made shortly after HMRC have issued their statement of case.

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● List of documents

Each party must produce a List of Documents on which they intend to rely. It is common (to avoid duplication) for the taxpayer to produce their list first, and for HMRC to then provide a list of any additional documents a few weeks later.

Each party is only required to include documents on which they intend to rely – not all documents that may be relevant. This is a much narrower approach than in normal litigation, although HMRC is still able to require greater disclosure either through the use of information notices (during the enquiry phase) or by applying to the FTT for greater disclosure (less common if there has already been a detailed enquiry).

As this stage can take significantly longer than the 42 days from the Statement of Case provided for by the applicable rules, the taxpayer would usually agree an alternative, longer timescale with HMRC to allow their representatives time to gather and review all of the relevant documents.

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- **Statement of agreed facts and issues**

So that the hearing can proceed as efficiently as possible, and to aid the judge, the taxpayer and HMRC will try to agree a statement setting out those facts which are agreed between the parties and the issues in the case.

The timing for the production of the statement of agreed facts and issues varies from case to case; in each case, it would be set out in the Directions.

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- **Witness statements**

Each party provides the other with statements from any witnesses of fact who will be called to give evidence. HMRC sometimes asks the taxpayer to provide their witness statements first, although this is generally to be resisted. It is also common to include in the Directions a right to provide supplemental witness statements responding to statements made in the other party's witness statements.

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- **Expert reports**

If expert evidence is required, for example on accounting practice or foreign law, the Directions will typically provide for expert reports to be prepared. If the evidence is unlikely to be contentious, the parties may agree to jointly instruct a single expert. If not, each party may instruct their own expert.

Where separate expert reports are produced, the taxpayer's expert report will typically be provided first, to allow HMRC's expert to respond to the specific points raised. It is common for the taxpayer's expert to have a right to respond to HMRC's expert report, and for the experts to be required to produce a joint memorandum setting out the matters on which they agree and disagree.

In certain cases, HMRC may reserve the right to instruct their own expert but, having reviewed the taxpayer's expert report, decide that no additional report is required. Where separate expert reports are provided, the experts will typically be requested to produce a joint memorandum setting out the matters on which they agree and disagree.

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- **Listing information**

The parties will agree the length of time required for the hearing, and various other practical matters, and seek to book a hearing date. The hearing date is typically only requested at this stage, once it is clear what facts are agreed or not, what witnesses will be called, and the length of the hearing required. It is sensible to allow extra time for hearings taking place virtually, to allow for technical issues. Hearings of several days will typically be booked nine months or more in advance.

- **Hearing bundles**

Typically, 5 to 6 weeks before the hearing, the taxpayer prepares bundles of documents for the hearing and provides copies to HMRC. The content of these bundles is first agreed with HMRC before they are prepared. The FTT has specific requirements for the format of bundles, and the taxpayer should pay close attention to such requirements in order to ensure the bundles are accepted without issue.

- **Skeleton arguments**

Each party provides to the other a “skeleton argument” before the hearing, setting out the outline of their submissions and including details of legislation and/or case law to which they intend to refer. The taxpayer provides their skeleton argument typically either 2 or 4 weeks before the hearing, with HMRC providing their skeleton argument either 1 or 2 weeks before the hearing.

Following the exchange of skeleton arguments, the taxpayer is also required to produce a bundle of authorities (such as legislation, case law, etc.) relied on by either party.

- **Hearing preparation**

Shortly before the hearing date, final preparation takes place, including familiarisation of any witnesses with the process and finalisation of the Hearing Bundles.

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- **Hearing**

The hearing takes place before the FTT. Hearings can take place either virtually (by video or teleconference) or in person. But in complex cases, hearings typically take place in person. Cases in London are heard at Taylor House in Islington, typically from 10:30am until 1:00pm, and 2:00pm until approximately 4:15pm (with a short break roughly half-way through each session).

Judgments in significant cases can typically take several months, although they can sometimes be released in less than a month, and equally, can at times take much longer.

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