

## **Tribunals Reform - HMRC Customer Factsheet Comments from the Low Incomes Tax Reform Group**

### **Format of guidance**

We have previously submitted comments to the Tribunals Reform team that what is needed is an overall change in strategy for HMRC communications, to make it clear every time that HMRC makes a decision what opportunities there are to appeal.

Without this first step in the process – to embed the principle of communicating to the taxpayer (in which term we encompass all of HMRC's customer base) his or her rights to appeal at each appropriate point of contact – a factsheet which languishes somewhere on HMRC's website or in hard copy which may be obtained via a helpline is of little use.

We believe that HMRC should not insert additional steps into the process which may act as a barrier to the taxpayer securing their rights. For example, the taxpayer should not have to telephone for a factsheet; if they require the information contained within the factsheet in order to secure their appeal rights, then it should be enclosed with the relevant communication.

Having made these comments, we turn to the content of the draft factsheet itself:

### **Distinguishing types of customer**

There is a distinction in the draft factsheet as regards direct tax and indirect tax appeals; yet there is no mention of HMRC's other customer base – for example tax credits and child benefit claimants. Although this is a factsheet designed for tax appellants, should a tax credits claimant unwittingly stumble across it, there needs to be a clear message that it does not apply to them, and a signpost should be given to the tax credits disputes or appeals process.

### **When is an appeal not an appeal?**

In our experience, people can be easily confused between disputes, reviews, appeals and complaints. Whilst this is basically a leaflet about appealing, there is another tranche of cases where people are unhappy with the way HMRC have handled things. At a minimum, that needs to be addressed in this leaflet, probably under a separate heading of "If you are unhappy with the way we have handled things" and explaining that if the taxpayer's dispute is about the conduct of the case more than the actual technical issues involved, then there is a route known as the complaints procedure (followed by routes to the Adjudicator and/or Ombudsman). That would suggest adding a brief glossary of review/appeal/complaints at the bottom of the leaflet or in another side box.

### **Wording**

Some of the wording contained within the factsheet seems to act as a tacit deterrent to the potential appellant; for example using phrases like 'in the majority of cases customer [sic] agree with the decisions we make'. This seems to discourage the potential appellant from questioning HMRC's decision, i.e. the reader could easily interpret this as "HMRC are more than likely to be right, you are more than likely to be wrong".

The wording should be reviewed in this context and changed so as to encourage the taxpayer to understand they have every right to appeal and to show that HMRC also understand that certain cases will lead to appeal, rather than make the appellant feel they are in the minority. The current wording does nothing to dispel the fear that the appellant is David taking on the HMRC Goliath.

Under the section 'Tell us now if you disagree', whilst it is good advice to tell HMRC 'straight away', as this is a factsheet should it not state the deadline? We would suggest adding 'and in any case within 30 days of the decision'. Also, will HMRC accept any intimation of dissatisfaction with their decision as an 'appeal', or are there other formalities to be observed; e.g. does an appeal have to be in writing, etc? Any such requirements should be made clear in this section.

The section 'What to do if we cannot reach agreement' needs to be made clearer, by cross-referencing both to a footnote which explains the Tribunal system and to the subsequent paragraph 'What to do if you still do not agree'. It should also make it clear at this point that the taxpayer has the right to take their case straight to the Tribunal if they prefer, without first going through internal review.

We note this same section includes the sentence '**In most cases**, whether or not you choose to have a review, you will also have the right to appeal to an independent tribunal' [emphasis added]; when does the taxpayer not have that right? The latter part of this statement is also confusing; it was our understanding that the taxpayer could not choose to take their case to Tribunal during the review process, which is not made clear here.

#### *Split of direct and indirect taxes*

Also under the 'What to do if we cannot reach agreement' heading, the split for direct tax/indirect tax looks odd, despite being in accordance with the law. In practical terms – and after all, this leaflet is all about practicality – could it not simply say 'If the decision is about a tax matter, if we haven't already offered you a review then you can ask us to carry one out'. That would cut down confusion and give a practical summary of the position.

### **Appealing to the Tribunal**

The current wording of the factsheet is confusing as it seems to imply that you must have first been through an internal review before going to the Tribunal ("If you want to appeal against a direct tax decision you must have appealed to HMRC first"). According to consultation with HMRC and the draft Statutory Instrument 'The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009' internal review is optional.

We assume therefore that this statement is attempting to refer to the provision in the new TMA section 49A(1) under which the first step in an appeal is to send a notice to HMRC. The second step (subsection(2)) is to (a) request internal review, (b) receive an offer of internal review, or (c) appeal to the Tribunal. You can only do (c) if you have not done (a), or not accepted an offer under (b). But there is nothing to stop the appellant from sending notice of appeal to HMRC then immediately thereafter to the Tribunal, provided they neither request nor accept an offer of internal review.

The wording of the factsheet needs to clearly reflect this to reinforce the independent status of the new Tribunal system; independence being a key objective of reform.

There needs to be further explanation of the time limits for appeal, as the factsheet currently merely says 'To do this you must tell the Tribunals Service within 30 days', leaving the reader to question within 30 days *of what?*

#### *Further explanation of the Tribunal process*

Under the heading 'What you can do if you still do not agree', the comment about what the Tribunals Service will do perhaps also deserves a brief comment about what HMRC will do. This will not be obvious to the unrepresented appellant and it is worth stressing in a leaflet like this that HMRC will be at the Appeal and that if it is a written submission route, then HMRC will also put in a submission but that they will not have any separate hearing, i.e. it is all decided in writing. Particularly in the case of a paper appeal, this reassures the appellant that HMRC have no advantage over them in the process.

#### **Payment of tax during reviews and appeals**

##### *Interest accruing while the appeal is in progress*

The future of certificates of tax deposit has been under discussion for some time as part of the 'debt' element of the Powers review. However, assuming they are still available at the time the factsheet is published, there should be mention of them within it, as using certificates of deposit can help taxpayers to avoid further interest accruing on a disputed liability.

##### *Hardship*

The factsheet states: 'If paying the tax would cause you hardship you may ask us not to collect it while the appeal is ongoing'. In reality, this seems to depend more upon the process by which the tax is collected than the extent of hardship. Our experience with individual cases is that it is a lot easier to get collection suspended if the taxpayer is in Self Assessment than if tax is being collected under PAYE.

#### **Equality issues**

We have previously asked if HMRC have carried out a disability equality impact assessment in terms of the reforms and have asked to see a copy of it.

HMRC need to provide adequate help to all disabled customers enabling them to secure their rights to appeal without any disadvantage as compared to customers without disabilities. The insertion of HMRC's standard wording on the factsheet is inadequate for this purpose and we refer you here to the ongoing discussions we are having with you, for example via the Disabled Customers' Consultation Group, on the need to do more for this element of your customer base. Such measures must of course encompass help for people with all kinds of disability – physical, mental and learning.

For example, telling someone who has hearing difficulties to "Please contact any of our phone helplines if you need any of these services" is clearly nonsensical if you do not provide a Textphone or Typetalk reference to assist.

The note of information being available in large print etc for those with eyesight difficulties should be itself typed in large print.

Also, it would be good to reinforce in this factsheet the availability of additional support in the Tribunals process itself for those with special needs, in order to give appellants confidence in the process. For example, the factsheet could reproduce, or cross-refer to, Tribunals guidance which states that special needs will be accommodated at hearings e.g. providing signers, hearing loops and so forth.

In addition, there is an equality issue for people who do not have English as their first language. HMRC have a duty under the law to provide information in Welsh but no mention of that is made here. In addition, HMRC have a range of services for migrants but again there is no mention of how someone can obtain help to overcome a language barrier.

### **Conclusion**

We hope that all of the above will be addressed when the final factsheet is produced and look forward to hearing your comments.

LITRG  
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