[2022] UKFTT ** (TC)**

TC *****A/V

Procedure – Application by Respondents for an extension of time to file and serve statement of case – Application allowed – Not disputed that closure notice should be amended to remove balancing charge - Application by Appellant for an interim amendment to do so – Whether within Tribunal's jurisdiction – No – Whether Respondent has reasonable prospects of defending its case in respect of balancing charge – No – Costs – Whether appellant acted unreasonably in opposing extension of time application – No – Directions issued for further progression of appeal

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2021/03191

BETWEEN

REDEVCO PROPERTIES UK 1 LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS

The hearing took place on 11 March 2022. With the consent of the parties, the form of the hearing was V (video) using the Tribunal's video platform. A face to face hearing was not held because of the coronavirus restrictions in place at the time the hearing was listed.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Daniel Margolin QC, of Joseph Hage Aaronson LLP, for the Appellant

Ben Elliott, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. This case management hearing was originally listed to determine an application, made by the respondents, HM Revenue and Customs ("HMRC") on 20 December 2021, for an extension of time (from 14 January 2022 to 31 January 2022) to file and serve its statement of case ("SOC"). The application was opposed by the appellant, Redevco Properties UK 1 Limited ("Redevco").

2. The SOC was filed and served on 28 January 2022 and although Redevco no longer opposes the application it nevertheless contended, when opposing an application made by HMRC on 18 February 2022 to vacate this hearing, that no reason had been given for the extension "which appeared entirely unnecessary" and, in response to HMRC's letter of 22 February 2022 maintaining the application to vacate the hearing (which crossed with a letter from the Tribunal of the same date notifying the parties the hearing would proceed) that it was for HMRC to satisfy the Tribunal that the extension of time sought was justified and that this was an appropriate matter for a case management hearing.

3. Notwithstanding HMRC's extension of time application being no longer opposed and the sole purpose of this hearing, when it was listed, was to determine that application, I directed that the hearing should nevertheless proceed. This was to consider, in the absence of agreement between the parties, the appropriate directions for the further progress of this appeal. It also provided an opportunity to consider an application, made by the appellant on 18 February 2022 and opposed by HMRC, to amend a closure notice to remove a £3,121,026.30 balancing charge. Had it not been for these matters I would have acceded to HMRC's application and vacated this hearing.

4. On 10 March 2022 HMRC made an application, foreshadowed in its skeleton argument of 25 February 2022, for its costs of preparing for and attending this hearing.

5. Daniel Margolin QC of Joseph Hage Aaronson LLP appeared for Redevco. HMRC was represented by Ben Elliott of counsel.

BACKGROUND

6. The underlying background to this matter was helpfully summarised by Judge Aleksander in his reasons for the directions issued on 13 April 2021. Having described the issues with which he had to deal as being "somewhat surreal in nature" he explained that the case:

> "2. … relates to the migration of the Appellant, Redevco, which changed its country of tax residence from the UK to the Netherlands on 15 January 2008 – some thirteen [now 14] years ago. It filed its tax return for its final accounting period on 24 November 2009 on the basis that no exit charge arose under s 185 Taxation of Chargeable Gains Act 1992 as it believed that any such charge was incompatible with EU law. An enquiry into that tax return was opened on 14 December 2010, and the enquiry has not been finally closed.
>
> 3. During the enquiry, Redevco provided information concerning its migration and HMRC and Redevco exchanged correspondence setting out their respective technical positions on the EU law question. Whilst the discussion focussed on the compatibility of s 185 TCGA 1992 with EU law, the parties were aware that Redevco's change of residence also potentially gave rise to:
>
> > (1) Charges under paragraph 10A, Schedule 9, FA 1996 by reference to the fair value of its loan relationships subsisting at the time; [and]

> (2) Balancing charges under the Capital Allowances Act 2001 ["CAA"].
>
> …
>
> 8. On 11 February 2019 HMRC issued a partial closure notice ("the Partial Closure Notice"). The Partial Closure Notice:
>
> > (1) increased Redevco's taxable profit by £130,5000,000 representing the deemed gain under s 185 on migration; and
> >
> > (2) increased the corporation tax charge by the charge on that gain in the amount of £39,150,000.
>
> 9. The Partial Closure Notice concluded:
>
> > 'For the avoidance of doubt, this partial closure notice does not close the enquiry into the company's Return for the period ended 15 January 2008 and does not constitute a final closure notice within the meaning of Paragraph 32 Schedule 18 FA 1998. The specific matters which remain open and subject to further enquiry are set out on page 16 of my separate letter dated 11 February 2019 at points 26.'
>
> 10. Redevco notified the Tribunal of its appeal against the Partial Closure Notice on 26 March 2019. In those proceedings, one of Redevco's grounds of appeal is that the Partial Closure Notice is defective.
>
> …
>
> 12. On 27 March 2020 Redevco made an application to the Tribunal under paragraph 33, Schedule 18, FA 1998 that HMRC issue a closure notice in respect of the enquiry. It made this application on the basis that one potential outcome of its appeal against the Partial Closure Notice might be that it is found to be of no effect because of its defect. The closure notice application would ensure that the issues in dispute would be resolved. On 12 May 2020 it applied for the appeal against the Partial Closure Notice and for the application for a closure notice to be joined and heard together.
>
> 13. On 20 May 2020, HMRC wrote to the Tribunal agreeing that (having considered the arguments raised in Redevco's pleadings) the Partial Closure Notice was invalid. HMRC submitted that the appeal against the Partial Closure Notice should therefore be struck-out under Rule 8(2)(a) [of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009] on the basis that HMRC had not made an appealable decision, and the Tribunal therefore had no jurisdiction. The response from Redevco was that the two proceedings should still be joined, as the consequences of the defect in the Partial Closure Notice remained to be resolved, as a potential outcome was that it took effect as a final closure notice.
>
> 14. HMRC's response, dated 5 June 2020 is to apply for the Tribunal to determine, as a preliminary issue, whether the Partial Closure Notice is valid."

7. Having considered the submissions of the parties, Judge Aleksander directed that there should be a hearing to determine:

(1) whether the Partial Closure Notice was valid, and if not,

  (a) whether the appeal should be struck out; and

  (b) whether the Tribunal should direct that HMRC issue a closure notice; and

(2) in the event that the Partial Closure Notice was held to be valid:

(a) whether the application for a closure notice should be struck out; and

(b) what directions should be given for the future conduct of the appeal.

However, following discussions between them, the parties were able to reach agreement on these issues and a hearing was not required.

8. On 29 June 2021 Judge Aleksander directed that, by consent:

(1) The appeal against the Partial Closure Notice was struck out under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on the basis that there was no appealable decision created by the document dated 11 February 2019 and therefore the Tribunal did not have jurisdiction in relation to the proceedings;

(2) In relation to Redevco's application for a closure notice, HMRC were required, by 6 August 2021, to issue a final closure notice which determined Redevco's application of 27 March 2020; and

(3) The parties were at liberty to rely upon the evidence and disclosure given in those proceedings in any appeal of the closure notice provided that such evidence and disclosures were included in the list of documents required by the Tribunal Rules, or otherwise filed in accordance with the Tribunal's directions given in connection with that appeal.

9. The quantum of the various charges were subsequently agreed and, on 2 August 2021, HMRC issued a final Closure Notice which concluded that Redevco was liable for corporation tax in the sum of £45,841,060.50 as shown in the table below:

Charge	**Profit £**	**Tax £**
Capital gain on deemed sale (under s 185 TCGA)	139,700,000	41,910,000
Loan relationship profit (arising under paragraph 10A of Schedule 9 FA 1996)	2,700,114	810,034.20
Balancing charge (arising under Part 2 CAA 2001)	10,403,421	3,121,026.30
Total	**152,803,535**	**45,841,060.50**

10. Redevco notified its appeal against the Closure Notice to the Tribunal on 31 August 2021. It also, at the same time, applied under s 55 of the Taxes Management Act 1970 ("TMA") to defer the payment of tax in dispute pending the determination of that appeal. Although HMRC agreed to that deferral, Redevco nevertheless paid the tax due to avoid a liability for interest in the event that its appeal did not succeed.

11. By letters dated 8 November 2021, to Redevco and HMRC respectively, the Tribunal acknowledged receipt and notified HMRC of the appeal. The letters also notified the parties that the appeal had been "assigned to proceed under the complex category" and directed HMRC to provide the SOC to the Tribunal and the appellant by 14 January 2022.

12. On 20 December 2020 HMRC made an application to extend the time for the provision of the SOC to 31 January 2022. As Redevco opposed the application, and given the history of this matter, I directed that this case management hearing be listed.

13. On 18 February 2022, having filed and served the SOC on 28 January 2022, HMRC made an application to vacate this case management hearing. Although this was opposed by Redevco, as I have already said (at paragraph 3, above), had this been the only issue between the parties

I would have directed that the hearing be vacated. However, having regard to the overriding objective and particularly to avoid delay, I directed that the hearing should proceed to enable directions for the further progress of the appeal to be made, to determine Redevco's interim amendment application, which Mr Margolin indicated would have been made in any event, and to consider HMRC's costs application.

EXTENSION OF TIME APPLICATION

14. The application, of 20 December 2021, for an extension of time, from 14 January 2022 to 31 January 2022, to provide the SOC to the Tribunal and Redevco was made on the grounds that HMRC:

> "… experienced unexpected difficulties in transferring the bundle of papers to their counsel. Further attempts to transfer the documents were undertaken on 16 December 2021 but, in view of the counsel's availability until the end of January, an extension of time is required for the Respondents to obtain advice and assistance from their counsel in relation to this appeal. HMRC's position is that the Appellant will not suffer any prejudice as the full case management directions have not yet been issued and a hearing date is not yet fixed."

15. Redevco opposed the application on the grounds that HMRC had provided "no valid reason" for seeking the extension of time or explained why the remaining time for doing so, to 14 January 2022, was insufficient.

16. Having regard to all the circumstances, particularly the short extension of time sought, that the SOC has now been provided and that Redevco no longer maintains its objection, I have concluded that the application should be allowed, especially as it was made in advance of the compliance date and, as is clear from *Robert v Momentum Service Limited* [2003] 1 WLR 1577 at [33], is not an application for relief from sanctions.

INTERIM AMENDMENT APPLICATION

17. By application, dated 18 February 2022, Redevco seeks a direction that:

> "(1) The closure notice issued on 2 August 2021 be amended to remove the Balancing Charges from charge, as follows:
>
> (a) total profits shall be reduced by £10,403,421 to £143,194,382,
>
> (b) profits chargeable to corporation tax shall be reduced by £10,403,421 to £142,400,114,
>
> (c) corporation tax due shall be reduced by £3,121,026.30 to £42,720,034.20.
>
> (2) The remaining issues arising from the closure notice which are the subject of this appeal remain in dispute to be determined following a hearing of the issues."

18. HMRC accept, at paragraphs 2, 22 and 39 of the SOC and also in the letter of 22 February 2022 to the Tribunal, that it:

> "… is common ground that the closure notice falls to be varied (under s 50(6) TMA 1970) to remove the amendments to the extent that they relate to the balancing charges arising under Part 2 CAA 2001"

However, HMRC opposes Redevco's application on the grounds that, as Mr Elliott puts it in his skeleton argument, "it is clear that the Tribunal does not have the power to make interim amendments to a closure notice prior to the determination of the appeal." In addition, he says, that even if it did have the jurisdiction to do so, the application, which he describes as "wholly

exceptional" and "unprecedented" should not be granted in the absence of any evidence in support.

19. In its response to HMRC's letter of 22 February 2022 supporting its application to vacate this hearing Redevco explained that:

> "… it is very important to the Appellant that the capital allowances issue is resolved now. The Appellant currently has negative reserves for accounting purposes as a result of HMRC's assessment under the closure notice. In accordance with the internationally recognised accounting standards under which the Appellant has filed its returns, it has recognised the potential tax liability on the accounting test of a "probable liability". The Appellant has been advised by its auditors that, notwithstanding HMRC's agreement that the capital allowances charge is not due, it cannot reduce the recognised liabilities until it is "virtually certain" that those liabilities will not arise. The order sought provides this certainty. The Appellant's financial year end is 28 February and it is therefore likely that a final determination of this appeal will not be forthcoming before the Appellant is required to file its accounts for the period ending 28 February 2022."

20. It is common ground that, as a creation of statute, the jurisdiction of the Tribunal in relation to an appeal notified to it is governed by s 50 TMA which, as far as material in the present case, provides:

> **50 Procedure** …
>
> (6) If, on an appeal notified to the tribunal, the tribunal decides—
>
> (a) that, the appellant is overcharged by a self-assessment;
>
> (b) that, any amounts contained in a partnership statement are excessive; or
>
> (c) that the appellant is overcharged by an assessment other than a self-assessment,
>
> the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

21. Under rule 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (case management powers) the Tribunal may regulate its own procedure. Rule 5(2) provides:

> The Tribunal may give a direction in relation to the … disposal of proceedings **at any time**, … (emphasis added).

22. Mr Margolin contends that, as there is no time limit in s 50(6) TMA, rule 5 gives the Tribunal the power to reduce an assessment whenever it decides that an appellant has been overcharged.

23. Although initially attracted by this argument, having given the matter some further careful thought and consideration, I have come to the conclusion that Mr Elliott is correct and that, on a proper construction, the words "on appeal" (which refers to an appeal "notified to the Tribunal"), and "the tribunal decides" in s 50(6) TMA must be read together with the result that the Tribunal must make a single, final decision at the hearing in which the appeal is finally determined or decided and not on an application, such as at this case management hearing, which does not dispose of the proceedings. Further support for such a construction can be found in the concluding words of s 50(6) TMA, "otherwise the assessment or statement shall stand good". In my judgement, this also indicates that the Tribunal should make a single, final decision following a substantive hearing rather than interim one at an earlier stage of proceedings and that this accords with the intention of Parliament.

24. I should add that if, contrary to my conclusion, the Tribunal did have jurisdiction to make an interim amendment, I would have allowed Redevco's application, despite the lack of evidence in support, on the basis that it is agreed that the closure notice should be amended to remove the balancing charge.

25. Having concluded that the Tribunal does not have the jurisdiction to make an interim amendment to the closure notice it is necessary to consider Mr Margolin's alternative application, that I direct that HMRC be barred from taking any further part in that part of the proceedings in relation to the balancing charge.

26. The only basis on which such a direction could be made is under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. This provides that the Tribunal may strike out the whole or part of proceedings if:

> the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it succeeding.

Rule 8(7) provides:

> This rule applies to a respondent as it applies to an appellant except that—
>
> (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; …"

27. It is not disputed that the Tribunal has the jurisdiction to make such a direction. Although Mr Elliott contends that such a direction is not appropriate as it is clear that the issue is not in dispute and there is no evidence to support it, I agree with Mr Margolin that, as it is common ground the closure notice should be amended to remove the balancing charge, there is no reasonable prospect of HMRC being able to defend it. I have therefore directed that HMRC be barred from doing so.

DIRECTIONS

28. Although the parties had each submitted their own proposed case management directions, it was clear to me that neither would, without further amendment, be suitable to progress this matter to a hearing. Therefore, to avoid any further delay (in accordance with overriding objective) and comply with the practice and procedures adopted by the Tribunal as a result of the coronavirus pandemic, eg the use of electronic PDF rather than physical bundles, it was necessary to consider how best to progress this appeal to a hearing and the case management directions required to achieve this.

29. Following a discussion at the hearing it was possible to narrow the differences between the parties resulting in the directions in the terms appended to this Decision.

COSTS

30. Although this appeal was allocated to the complex category Redevco, by notice under rule 10(1)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 opted out of the cost shifting regime. HMRC therefore seeks its costs for preparing for and attending this hearing under rule 10(1)(b) on the basis that by its belated withdrawal of its opposition to an in-time application for an extension of time to file and serve the SOC Redevco "has acted unreasonably in bringing, defending or conducting the proceedings."

31. In *Tarafdar v HMRC* [2014] UKUT 362 (TCC) the Upper Tribunal (Judges Berner and Powell) said, at [34]:

> "34. In our view, a tribunal faced with an application for costs on the basis of unreasonable conduct where a party has withdrawn from the appeal should pose itself the following questions:

> (1) what was the reason for the withdrawal of that party from the appeal?
>
> (2) Having regard to that reason, could that party have withdrawn at an earlier stage?
>
> (3) Was it unreasonable for that party not to have withdrawn at an earlier stage?"

32. It is also clear that the power to award costs in rule 10(1)(b) should not become a "backdoor method of costs shifting" (see eg *Distinctive Care Limited v HMRC* [2018] UKUT 155 (TCC) at [44(8)]).

33. Answering the questions posed in *Tarafdar*, Mr Elliott contends that Redevco has not provided any, let alone a satisfactory reason, for withdrawing its opposition, that it could and should have withdrawn its opposition sooner and it was unreasonable of it to have opposed the application at all. In support of this final submission Mr Elliot, first emphasised that the in-time extension of time application was not an application for relief from sanctions and referred to *Denton and others v T H White Limited* [2014] 1 WLR 2926 in which the Court of Appeal, in relation to an application for relief from sanctions, said, at [41]:

> "… . In a case where (a) the failure can be seen to be neither serious nor significant, (b) where a good reason is demonstrated, or (c) where it is otherwise obvious that relief from sanctions is appropriate, parties should agree that relief from sanctions be granted without the need for further costs to be expended in satellite litigation. The parties should in any event be ready to agree limited but reasonable extensions of time up to 28 days"

34. Mr Margolin contends that having been provided with the SOC, Redevco no longer opposed the application but that it was not unreasonable for it to have done so until then. He says that the extension of time application, which was made almost a month before the due date for the provision of the SOC, failed to explain in sufficient detail why, given the previous delays, further time was required.

35. Although the Court of Appeal in *Denton* considered that parties should be "ready to agree" extensions of time up to 28 days, it does not follow that the other party should agree to, or the Tribunal grant, every application for an extension of time of up to 28 days no matter what. It is clear that the Court of Appeal intended that its remarks should only apply to applications for extensions that are "reasonable", something which can only be ascertained by reference to the reasons provided with the application.

36. Under rule 6(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules an application for a directions, such as that seeking an extension of time, "must include the reasons for making that application." HMRC, in accordance with rule 6(3), did provide reasons for making the application. These are set out at paragraph 14, above.

37. The reasons for the application were expanded, to some extent, by Mr Elliott at paragraph 17 of his skeleton argument of 25 February 2022, as follows:

> "HMRC suffered unexpected difficulties collating and electronically transferring the case documents to their solicitor and counsel. In particular, a significant proportion of the original case documents were in physical format and had to be retrieved from HMRC's central storage and then transferred into electronic format, which took a few weeks and was (to some extent) delayed by the Covid restrictions in place at the time. In addition, both of HMRC's counsel were unavailable over the Christmas period. Given the importance of the issues and the sums at stake, on 20 December 2021 HMRC therefore

applied for a relatively short extension of time (until 31 January 2021) to file their statement of case (the Extension of Time Application)."

38. Had this further explanation, particularly in relation to the documents being in physical format requiring not only their retrieval from HMRC's central storage but also their transferral into electronic format, been included as reasons for the application at the time it was made, rather than after the provision of the SOC, the withdrawal by Redevco of its opposition to the application and this case management having been listed, I might well have considered Redevco to have been unreasonable in opposing the application.

39. However, it was not. While I accept that the period between the application and original compliance date did include the Christmas and New Year holiday period, I agree with Mr Margolin that HMRC could and should, in the reasons for the application, have provided more details of the "unexpected difficulties" that had been encountered in transferring the papers to counsel and the "further attempts" that had been made to do so on 16 December 2021, almost six weeks after the direction for the provision of the SOC had been made and, in the circumstances, do not consider that it was unreasonable of Redevco to have opposed the application until it had ben provided with the SOC.

40. As such, HMRC's application for its costs for of preparing for and attending this hearing is dismissed.

41. Also, having made it clear that, but for the need to make directions and consider the interim amendment application, I would have vacated this hearing, I should add that had I concluded otherwise and decided to award costs to HMRC, I would have restricted these to the costs incurred in relation to the preparation for the extension of time application and not for the hearing itself.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

42. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 17 March 2022

APPENDIX

DIRECTIONS

IT IS DIRECTED that:

PLEADINGS

(1) The Respondents' application for an extension of time to 28 January 2022 to file its statement of case is allowed.

(2) The Appellants shall file and serve a Reply by 11 March 2022.

BARRING ORDER

(3) The Respondents be barred from defending that part of the appeal that relates to the balancing charges arising under Part 2 of the Capital Allowances Act 2001

LISTS OF DOCUMENTS

(4) Not later than 14 days from the date hereof, each party shall send or deliver to the other party:

(a) a list of documents of which the party providing the list has possession, the right to possession, or the right to take copies and which the party providing the list intends to rely upon or produce in the proceedings.

(b) copies of any documents on their list of documents which are not in the possession of the other party.

STATEMENT OF AGREED FACTS AND ISSUES

(5) Not later than 14 days after compliance with direction (4), the Appellant shall send or deliver to the Respondents a draft Statement of Agreed Facts and Issues for consideration by the Respondents.

(6) Not later than 21 days after compliance with direction (5), the Respondents shall send or deliver to the Appellant the Respondents' comments on the Appellant's draft Statement of Agreed Facts and Issues indicating what is agreed and what is not agreed and as to what matters the Respondents require proof.

(7) The parties shall seek to agree and file with the Tribunal the Statement of Agreed Facts and Issues within 14 days of compliance with direction (6). In the event that the parties are unable to agree a Statement of Facts and Issues in respect of the Appeal by that date, then by that date the Appellants and Respondents shall each file and serve a Statement of Issues including alternative formulations where required.

WITNESS EVIDENCE

(8) The Appellant is entitled to rely upon the following witness statements and exhibited documents:

(a) Witness Statement of John David Drury dated 12 June 2020 and Exhibit JDD1,

(b) Witness Statement of Gemma Carolyn Laurie dated 19 June 2020 and Exhibits GCL1 and GCL2,

(c) Witness Statement of Herman Jan Faber dated 19 June 2020,

(d) Second Witness Statement of John David Drury dated 03 July 2020, and

(e) Witness Statement of Simon Whitehead dated 21 May 2021 and Exhibit SCW1

(9) Not later than 14 days after compliance with direction (6) the Respondents shall send or deliver to the Appellant's solicitor written statements containing the evidence of each witness of fact which the party intends to call to give oral evidence at the hearing of the appeals, with exhibits thereto.

(10) The written statement of any witness shall stand as the evidence in chief of that witness subject to such further questions as the Tribunal shall allow.

LISTING INFORMATION

(11) Not later than 14 days after compliance with direction (9), both parties shall endeavour to agree:

(a) the anticipated duration of the hearing

(b) the dates on which both parties **are available** for the hearing of the appeal, and shall communicate those dates to the Tribunal holding them open until the Tribunal confirms the case has been listed which it will endeavour to do as soon as reasonably practicable.

(12) At the same time, each party shall send or deliver to the Tribunal and each other a statement detailing:

(a) the expected number of persons attending the hearing for each party, to assist the Tribunal in identifying an appropriate venue;

(b) the approximate expected number of folders comprising the documents and authorities bundles;

(c) whether transcript writers will attend the hearing (parties should note that transcript writers are only permitted where the transcripts will be provided to all parties and the panel);

(d) the names of all the witnesses who will give evidence on the party's behalf;

(e) whether reading time should be allocated to the panel and, if so, what allowance the time estimate makes for this.

(f) The preferred location for the hearing (eg London, Manchester)

Shortly after the date for compliance with this direction the Tribunal may fix the date of the hearing despite any non-compliance with direction 11(b) above. A request for postponement on the grounds that the date of the hearing is inconvenient is unlikely to succeed if the applicant did not comply with direction 11(b) above or if, having provided dates for the hearing, the applicant then failed to keep the dates clear of other commitments.

INDEX FOR HEARING BUNDLES FOR HEARING

(13) Not later than 42 days before the commencement of the hearing, the Appellant shall serve on the Respondents a draft index to the bundle of documents for its appeal. The index shall include:

(a) the notice of appeal and statements of case;

(b) documents on the lists of documents which are to be referred to in the hearing;

(c) the witness statements provided as directed above;

(d) all directions issued by the Tribunal in the appeal; and

(e) correspondence with the Tribunal which is to be referred to in the hearing.

10. ADDITIONS TO INDEX

(14) Not later than 35 days before the commencement of the hearing the Respondents shall serve on the Appellant (and notify the Tribunal that they have done so) any additions to the draft index to the bundle of documents.

HEARING BUNDLE

(15) Not later than 28 days before the hearing the Appellant shall provide to the Respondents by email or electronic transfer a PDF indexed, paginated and bound bundle of documents in accordance with the draft index and the additions to it, which complies with the Tribunal's guidance at Tax Chamber PDF bundles guidance (June 2021) ("the PDF Bundle").

The Appellant shall ensure that the copy in the documents bundle of the witnesses' statements shall, where there is a reference to an exhibit in the text, include a hyperlink to the exhibit in the documents bundle

OUTLINE OF CASE

(16) Not later than 21 days prior to the start of the hearing, the Appellants shall serve on the Respondents and file with the Tribunal an outline of the case that they will put to the Tribunal (a skeleton argument) including the details of any legislation and case law authorities to which they intend to refer at the hearing.

(17) Not later than 14 days prior to the hearing, the Respondents shall serve on the Appellants and file with the Tribunal an outline of the case that they will put to the Tribunal (a skeleton argument) including the details of any legislation and case law authorities to which they intend to refer at the hearing.

(18) The parties shall, when filing their skeleton arguments, file with the Tribunal an electronic copy of their skeleton argument together with electronic copies of the witness statements (without exhibits) on which they rely and any additional pre-reading material.

AUTHORITIES BUNDLE

(19) Not later than 7 days before the hearing the Appellant shall provide to the Respondents by email or electronic transfer one copy of a bundle of authorities (comprising the authorities mentioned in both parties' skeleton arguments arranged in chronological order) which complies with the Tax Chamber PDF bundles guidance (June 2021)

DELIVERY OF BUNDLES TO TRIBUNAL

(20) Not later than 7 days before the hearing the Appellant shall provide to the Tribunal by email or electronic transfer copies of the hearing bundle and bundle of authorities unless the Tribunal notifies the Appellant to deliver them at an earlier date.

RIGHT TO REQUEST NEW DIRECTIONS

(21) Either party may apply at any time for these Directions to be amended, suspended or set aside, or for further directions.