



THE  
CHARTERED  
INSTITUTE OF  
TAXATION

**CIOT/ATT East Midlands Branch  
& ACCA Notts, Derby & Lincoln Network**

**“The New Appeals Process”**

**Presented by Paul Lynam**

Lynam Tax: Enquiry Experts

**Date:** Thursday 3 September 2009

**Venue:**

Best Western Leicester North  
(formerly the Comfort Inn)  
A46 Fosse Way, Upper Broughton  
Leicestershire

**Timetable:**

6pm – Refreshments and registration\*  
6.30pm – Lecture begins  
7.45pm - Questions  
8pm – Close

**CPD Hours: 1.5**

\*Refreshments sponsored by:



Beeston Business Centre, Technology Drive,  
Beeston, Nottingham. NG9 2ND  
Telephone 0115 9227107  
[www.itmakessense.net](http://www.itmakessense.net)  
[sendmeinfo@itmakesense.net](mailto:sendmeinfo@itmakesense.net)

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These notes are an aide memoire for general information only. No responsibility for loss occasioned to any person who acts or refrains from acting as a result of reliance on any information in this material can be accepted by Paul Lynam, CIOT or ATT. Specific professional advice should be taken before deciding on the best course to follow in any particular case.

## The New Appeals Process: from 1<sup>st</sup> April 2009

ACCA & CIOT  
September 2009

Paul Lynam  
*Lynam Tax: Enquiry Experts*

## Lynam Tax : *Positive Tax Solutions*

- > Specialists in: managing tax enquiries; resolving tax disputes; advising on dealing with HMRC and on any thorny tax issues.
- > Partners:
  - > Paul Lynam;
  - > Gemma Lynam ACA FCCA.
- > Initial discussions with clients or advisers are on a no fee/no obligation basis.
- > Contact:
  - > [partners@lynamtax.co.uk](mailto:partners@lynamtax.co.uk)
  - > 0115 923 4485
  - > [www.lynamtax.co.uk](http://www.lynamtax.co.uk)

## Out with the Old Process

**After correspondence, discussions, negotiations with Inspector had failed to reach agreement:**

- > **Case was "listed for hearing" by:**
  - > the General Commissioners – 400 Divisions, local laymen of good standing, assisted by a Clerk, typically a local solicitor (e.g. Nottingham: Tony Priest at Rotheras); or
  - > The Special Commissioners – professional (i.e. paid) body, usually barristers, sitting mainly in London.
- > **The Appeals listing was controlled by HMRC.**
- > **Appeals from Commissioners to High Court in London.**

## In With the New Process

**If after correspondence, discussions, negotiations with Inspector you failed to reach agreement (i.e. are in "dispute"):**

- > **New Appellate Body: The Tax Tribunal:**
  - > Created by Tribunals Courts & Enforcement Act 2007;
  - > Overseen by Ministry of Justice;
  - > Wholly independent of HMRC;
  - > Professional "judges" (usually legally qualified);
  - > 130 Locations across UK.
- > **New: Internal Review process by HMRC**
  - > Statutory process;
  - > Offline from case worker;
  - > Instead of, or before, Tribunal proceedings.

## Unchanged

- **Appeal rights and time limits:**
  - Largely unchanged.
- **Alternative routes of redress in procedural and Complaint matters:**
  - Internal Complaint procedures;
  - Adjudicators Office;
  - Ombudsman;
  - Judicial Review.

## Agenda

- **Negotiate or Litigate?:**
  - How do you decide what's best for your client?;
  - How do HMRC decide? The Litigation and Settlement Strategy.
- **Internal Review?:**
  - What is it?
  - Before or instead of Tribunal, tactics;
  - How To guide and tips;
- **Tax Tribunals:**
  - Structure;
  - Process;
  - Tips for success.
- **Procedural Appeals and complaints overview.**
- **Summary/ Q&A/ Wrap Up**

## Negotiate or Litigate?

- **Options:**
  - Negotiate agreed outcome with case worker (the 99% outcome); or
  - Concede (unconvinced); or
  - Request Internal Review from off-line HMRC unit; and/or
  - Appeal and Litigate at Tax Tribunal.
- **Know when to hold 'em: know when to fold 'em**
  - Objective appraisal of case and capabilities (i.e. Is it a winning horse? Are you a winning jockey?);
  - What is your BATNA? (Best Alternative To a Negotiated Agreement?) i.e. How do you think the Tribunal will decide? i.e. Set the odds;
  - Consider the costs (and hassle) and beware litigation hazard;
  - Choose the better likely outcome (i.e. Decide on logic, not emotion).
- **Tribunal is independent and objective. Don't be afraid!**

## Negotiate or Litigate?: HMRC's Litigation and Settlement Strategy: 1

- **Settlement Terms:**
  - Do not enter into "package deals";
  - Disputes with an all-or-nothing character, involving a single point of law with no middle ground. Should be settled on all-or-nothing terms;
  - Do not seek low value settlements in cases where we are not prepared to litigate;
  - Disputes over facts or valuation –negotiated outcomes must not be materially less than would reasonably be expected from litigation, though may be at the cautious end of that range;
  - Do not pursue minor or questionable points in order to avoid a nil settlement;
  - Legal disputes: if HMRC's arguments are not strong and/or the point at issue is not an important one, drop the case.

## Negotiate or Litigate?: HMRC's Litigation and Settlement Strategy: 2

### > Litigation Factors

- > The chance of success must be the dominant factor ;
- > Litigating where the chances of success are less than 50% would need to be justified by the particular circumstances;
- > The likely cost of litigation;
- > The defence of strategically important principles;
- > Cases where very large sums of money are at stake;
- > Delivering Government policy through maintaining tax legislation.

## Agenda

- > Negotiate or Litigate?:
  - > How do you decide what's best for your client?
  - > How do HMRC decide? The Litigation and Settlement Strategy
- > Internal Review:
  - > What is it?
  - > Before or instead of Tribunal?
  - > Tactics and tips;
- > Tax Tribunals:
  - > Structure;
  - > Process;
  - > Tips for success.
- > Procedural Appeals and complaints overview.
- > Summary/ Q&A/ Wrap Up

## Internal Review

### > An alternative or precursor to litigation

- > The Internal review process became statutory from 1<sup>st</sup> April 2009;
- > May be used instead of, or before, Tribunal litigation;
- > Internal full time dedicated HMRC teams, "off-line" from case worker;
- > It must be offered when an "impasse" is reached (aka a "dispute") or when requested. So, mandatory for HMRC, optional for taxpayer.

### > Review Teams' brief: to test:

- > Has the decision maker (case worker) got a good case in fact and law?
- > Is the case in line with Litigation and Settlement Strategy?
- > Is the case suitable to be taken to Tribunal?

### > Should I use it? Why not? It's free (apart from your time).

- > Tip for success: Don't just rely on the case worker sending his file and (maybe) a summary of your case. Prepare a comprehensive, compelling and appendiced pack, summarising your case direct to the Internal Review team.

## Signpost

- > Negotiate or Litigate?
  - > How do you decide what's best for your client?
  - > How do HMRC decide? The Litigation and Settlement Strategy.
- > Internal Review?:
  - > What is it?
  - > Before or instead of Tribunal, tactics;
  - > How To guide and tips.
- > Tax Tribunals:
  - > Structure;
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## The new Tribunal Service Structure

- One unified Tribunal service consolidating all existing tribunals (e.g. from the General Commissioners of Income Tax to the Sea Fish Licence Tribunal);
- Under the auspices of the Ministry of Justice;
- There are two tiers: 1<sup>st</sup> and Upper, with each tier divided into Chambers;
- The Tax Chamber of the 1<sup>st</sup> Tier Tribunal is known as the Tax Tribunal;
- Appeals from the Tax Tribunal will go to the Finance and Tax Chamber of the Upper Tier Tribunal (and no longer to the High Court);
- Completely independent of HMRC, with its own administrative function (in Birmingham);
- More details at: [www.tribunals.gov.uk/tax](http://www.tribunals.gov.uk/tax).

## Appeals heard in the Tax Chamber

- Appeals against HMRC decisions in relation to tax heard in the Tax Chamber include:
  - Income Tax
  - Corporation Tax
  - Capital Gains Tax
  - Inheritance Tax
  - Stamp Duty Land Tax
  - PAYE coding notices
  - National Insurance Contributions
  - Statutory Payments
  - VAT or duties such as custom duties, excise duties or landfill tax, aggregates or climate change levies
  - The amounts of tax or duty to be paid, against penalties imposed upon them and against certain other decisions.
- Appeals against decisions in relation to tax credits are heard by the First-tier Tribunal (Social Security and Child Support).

## The new Tribunal Service Structure (2)

- Tribunal members are known as judges but do not have to be legally qualified (but usually will be);
- Each Tax Tribunal will have 1–3 judges (depending on complexity) with the Chair having the casting vote;
- Most "major" towns will have a Tax Tribunal (more complex cases will be heard in London, Manchester or Edinburgh);
- Most appeals will firstly be heard by the Tax Tribunal, but the Upper Tier may take jurisdiction in the most complex cases (or Upper Tier judges can sit in Tax Tribunal);
- The Tax Tribunals cannot hear administrative complaints;
- Costs will not normally be awarded: but may do so:
  - In Complex cases (see below); or
  - If the Tribunal thinks a party has acted unreasonably;
- Appeals from the Tax Tribunal to the Upper Tier have to be approved by the Upper Tier, and the same with onward appeals from the Upper Tier to the Court of Appeal.

## How to Appeal

- Appeals are made against decisions of HMRC;
- They have to be made in writing, to the Tax Tribunal, within 30 days of HMRC's decision;
- HMRC should tell you when they've made an appealable decision: but if doubt appeal;
- Appeals should be made on form TS-TaxAp1, downloadable and emailable: ([www.tribunals.gov.uk/tax](http://www.tribunals.gov.uk/tax));
- Late appeals: reasons have to be given; HMRC will be given 14 days to comment;
- Indirect Tax: must be paid first or a "hardship" postponement agreed with HMRC or applied for to Tribunal;
- You can withdraw an appeal at any time (in writing);
- HMRC summary at Factsheet HMRC1.

## Case Categorisation

- On receiving the appeal the Tax tribunal will put it into 1 of 4 categories:
  - Default Paper;
  - Basic;
  - Standard;
  - Complex.
- The categorisation is very important as different categories are:
  - Subject to different degrees of formality;
  - Are subject to different time limits (although not the original 30 day limit);
  - Subject to different potential cost regimes.

## Default Paper cases

- Literally, a paper board:
  - No hearing;
  - But you can request a hearing;
  - Tribunal decides on basis of written material provided by you and HMRC.
- Process
  - After you have lodged the appeal;
  - The Tribunal notify you of the categorisation as a Default Paper case;
  - HMRC have 42 days to provide a Statement of Case to the Tribunal (and you);
  - You then have 30 days to provide your response (i.e. 72 days in all);
  - The Tribunal will send its written verdict;
  - No costs can be awarded.

## Basic Category cases

- Are dealt with at informal hearings;
- The Tribunal will not normally request a Statement of case;
- You will usually be given 30 days notice of a hearing, with a minimum of 14 (unless you and HMRC agree less);
  - Let the Tribunal know in advance of any dates to avoid;
  - Hearings will usually be at 10am or 2pm (i.e. Assuming a maximum of 3 hours).
- The appellant is expected to attend;
- The Tribunal will normally give its verdict at the hearing;
- Costs cannot be awarded.

## Standard and Complex Category cases

- Are dealt with at more formal hearings;
- After you have lodged the appeal the Tribunal notify you of the categorisation as a Standard or Complex Category case;
- HMRC have 60 days to provide a Statement of Case to the Tribunal (and you);
- You then have 42 days to provide your response (i.e. 102 days in all);
- The Tribunal may well set out Directions as to the conduct of the appeal process (e.g. Disclosure etc), each with its own deadlines;
- The Tribunal will ask both sides to estimate the time (e.g. Days) required;
- The Tribunal will normally give its verdict at the hearing but send a detailed reasoning and statement of facts later;
- Costs can be awarded in Complex cases but the Tribunal will let you know in advance if the hearing will be subject to costs.

## At the Hearing

- Bring everything you might need to prove facts or consider legal issues: you may not get an adjournment;
- For Basic cases you should have sent it all in advance: you may not be allowed to introduce more material;
- Attendees can include:
  - The Tribunal Panel and the clerk to the Tribunal;
  - The appellant, his representative and a supporter (e.g. friend, family member, business associate);
  - HMRC representatives;
  - Witnesses;
  - The public (unless special reason e.g. Public Order, National Security).
- Witnesses:
  - may be compelled to attend ;
  - At Standard and Complex cases will normally have to swear or affirm;
  - May be examined, cross examined and re-examined and questioned by the Tribunal.

## At the Hearing (2)

- Burden of proof:
  - Is usually on the appellant;
  - Is on HMRC in penalty cases.
- Order of play:
  - Appellant;
  - HMRC;
  - But: Either side can interject with questions of the other side;
  - The Tribunal may ask questions throughout.
- The Decision:
  - In Basic Cases: usually given on the day with a written decision to follow;
  - In Standard and Complex cases usually a written decision within 28 days.
- Basis of Appeals against Tax Tribunal Decision to Upper Tribunal:
  - Are on a point of law; or
  - On procedural irregularity.

## Preparation and on the day

- Get the deadlines clear (especially if extra mini- deadlines are set for directions);
- Meet the deadlines!
- Consider if witnesses can add to your case - consider getting witness statements in advance;
- Keep calm and keep your place if questioned or challenged;
- Object to objections: do not automatically concede to challenges;
- Listen carefully to HMRC's case and be ready to question or challenge (judiciously);
- Raise questions at end also;
- Prepare questions for witnesses as you go along;
- Have your statement of case and "bundle" prepared and rehearsed well in advance (see next page).

## Statement of Case and "Bundle"

- Your presentation needs to be clear, logical, comprehensive but not waffly, based on facts and evidence (which you need to demonstrate), covering the appropriate legal issues, and you need to advocate your client's case;
- Prepare a detailed Statement of case (as your "speech"), and stick to it;
- Cross reference it to any documents or evidence and prepare copy bundles (numbered and clearly laid out) to the Tribunal and HMRC;
- Take individual issues point by point (e.g. Wife's wages, capital in repairs 1, capital in repairs 2...)
- Make sure you know what witnesses may say;
- Rehearse and time yourself and request sufficient time for your presentation (allowing for interruptions).

## Signpost

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## Procedural Reviews & Complaints

- There are various ways to "appeal" against HMRC officers' actions where you are not happy they have followed lawful processes, reasonable standards of public servant behaviour, departmental guidelines and practices etc, rather than "tax technical" or "questions of fact" (which are more proper to the Tribunal).
  - Internal Complaints process;
  - Revenue Adjudicator's Office;
  - Member of Parliament;
  - Parliamentary Ombudsman;
  - Judicial Review.

## Complaints to HMRC

- Try and sort issue out with caseworker;
- If you are still unhappy, make a **"COMPLAINT"**, stating: what went wrong, when; who you dealt with, how you would like it settled;
- The Complaints team should look thoroughly into the complaint and try to resolve it;
- If you are still unhappy a senior officer who has not been involved can look at the complaint again and make a final decision;
- Where HMRC accept fault they will apologise and put things right and consider refunding reasonable costs (inc professional fees) directly caused by their mistakes or unreasonable delays;
- In extreme cases, of worry or distress, they make "buggeration" or "consolatory" payments to apologise;
- If their mistakes or delays in using information caused a late bill for Income Tax or Capital Gains Tax they may not collect the full amount owed.

## Adjudicator's Office

- The Adjudicator Office is independent from HMRC;
- They investigate and resolve complaints from taxpayers who are unhappy about the handling of their affairs;
- First you need to have exhausted HMRC's own complaints procedure and have received a final response from them. But the Adjudicator may help sooner in exceptional cases, e.g. if delay could cause irreparable damage;
- The Adjudicator deals with complaints regarding HMRC administration. But not technical tax disputes (which can be dealt with by the Tax Tribunal);
- The Adjudicator will not deal with complaints that have already been investigated by the Parliamentary Ombudsman (so appeal to the Adjudicator before appealing to the Ombudsman), or matters relating to a criminal prosecution during the course of legal proceedings.

## The Parliamentary Ombudsman

- The Parliamentary Ombudsman also deals with complaints against HMRC (e.g. if there has been: avoidable delay; failure to give appropriate advice; failure to follow proper procedures);
- The Ombudsman cannot investigate complaints about tax policy or tax legislation;
- Complaints to the Parliamentary Ombudsman have to be referred by an MP.

## Judicial Review

- Judicial Review is a type of court proceeding where a judge reviews the lawfulness of a decision or action made by a public body;
- Most lawyers see Judicial Review as an expensive option;
- Judicial Reviews are a challenge to the way in which a decision has been made, rather than the correctness of the decision;
- If the right procedures have been followed the court will not substitute what it thinks should have been the 'correct' decision;
- Judicial Review may only be used where there is no right of appeal or where all avenues of appeal have been exhausted;
- The courts see Judicial Review as a last resort and expect parties to use Alternative Dispute Resolutions first (e.g. discussion, Adjudicator, Ombudsman);
- However, a claim for Judicial Review '*must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose*'.

## Q&A

## Lynam Tax : *Positive Tax Solutions*

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**EAST MIDLANDS CIOT & ATT – Events for 2009/2010**

<b>Date</b>	<b>Details</b>	<b>Timetable</b>	<b>Venue</b>
Wednesday 23 September 2009 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Advising the Self-Employed</b> Dean Wooten FCA CTA Principal Tutor at Tolley Tax Training <b>Branch AGM 4.15pm to 4.30pm</b>	4.00pm - Registration & refreshments <b>4.15pm – Branch AGM</b> 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Premier Travel Inn, Braunstone Lane East Leicester LE3 2FW
Wednesday 7 October 2009 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Employment Status &amp; IR35 Update</b> David Smith LL.B (Hons) CTA (Fellow) Accountax Consulting	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Best Western Leicester North (formerly the Comfort Inn) A46 Fosse Way Upper Broughton Leicestershire. LE14 3BH
Wednesday 4 November 2009 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Tax Investigations</b> Mark Morton BA ATII ATT Senior Tax Lecturer for Mercia	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	The Carriage Hall Nr Perkins Restaurant Station Road, Plumtree Nottingham. NG12 5NA
Tuesday 24 November 2009 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Practical Aspects of Employment Related Securities &amp; Share Options</b> Paul Giles CTA Solicitor	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Ramada Jarvis Nottingham Junction 25 M1 Bostock Lane Long Eaton Nottingham NG10 4EP
Wednesday 10 February 2010 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>The Tax Aspects of Marriage Separation &amp; Divorce</b> Rebecca Benneyworth BSc FCA	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Ramada Jarvis Nottingham Junction 25 M1 Bostock Lane Long Eaton Nottingham. NG10 4EP
Tuesday 30 March 2010 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Corporation Tax Update</b> Giles Mooney BSc ACA CTA Partner at PTP Group	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Best Western Leicester North( (formerly the Comfort Inn) A46 Fosse Way Upper Broughton Leicestershire. LE14 3BH
Wednesday 21 April 2010 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>IHT &amp; CGT Update</b> Francesca Lagerberg FCA CTA (Fellow) Head of the National Tax at Grant Thornton UK LLP	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	Premier Travel Inn, Braunstone Lane East Leicester LE3 2FW
Tuesday 25 May 2010 4.00pm – 8.00pm <b>Cost: £40.00</b> CPD Hours: 3	<b>Finance Bill 2010</b> Robert Jamieson MA FCA CTA (Fellow) Mercer Hole Past President of the Chartered Institute of Taxation	4.00pm - Registration & refreshments 4.30pm - Lecture starts 6.00pm - Break for refreshments 6.30pm - Lecture resumes 8.00pm – Close	The Carriage Hall Nr Perkins Restaurant Station Road, Plumtree Nottingham. NG12 5NA
<b>June 2010</b> 6.00pm – 8.00pm <b>Cost: £15.00</b> CPD Hours: 1.5	<b>Topical Tax Issues</b> Andrew Hubbard BMus PhD ATT CTA (Fellow) Tax Director, Tenon Group PLC	6.00pm - Registration & refreshments 6.30pm - Lecture starts 7.45pm - Questions 8.00pm – Close	PricewaterhouseCoopers Offices Donington Court, Pegasus Business Park, Castle Donington, Derbyshire. DE74 2UZ

**The Branch Committee reserves the right to alter the above programme without prior notice.**

For more details of any of the above events or to book a place please contact the Programme Secretary, Ken Curran at The Cottage, Donkey Lane,  
Bradmore, Nottingham. NG11 6PG.

Telephone: 0115 921 5590or E-mail: [ken@curranandco.co.uk](mailto:ken@curranandco.co.uk)