

Reform of Section 703 Tribunal Appeal Routes

Consultation Paper

CP 07/05

02/03/2005

This consultation will end on 25/05/2005

A consultation produced by the Department for Constitutional Affairs.

This information is also available on the DCA website at www.dca.gov.uk

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Reform of Section 703 Tribunal Appeal Routes

Executive summary

This consultation document seeks views on proposals to reform the Section 703 Tribunal¹ appeal routes in line with the wider plans for administrative justice reform outlined in the White Paper “Transforming Public Services: Complaints Redress and Tribunals”². It seeks views particularly on how the current related jurisdictions of the Tribunal and the Special Commissioners concerning proceedings to cancel a tax advantage under Section 703 of the Income and Corporation Taxes Act 1988 can best be accommodated in a unified tax jurisdiction within the proposed tribunal structure. As taxation is not a devolved matter, these proposals would apply across the UK.

The document proposes that the following should be transferred from the Section 703 Tribunal to the first tier jurisdiction of the Tribunals Service:

- initial determination by the Tribunal that there is a prima facie case for the Inland Revenue to cancel a tax advantage;
- the substantive right of appeal after a notice cancelling an advantage has been issued.

It also proposes an onward right of appeal on a point of law, and with permission, to the appellate tier in line with the other jurisdictions transferring to the new tribunal structure.

Consultees are invited to comment on the proposals in general and to answer a number of specific questions. The deadline for responses is 25 May 2005.

¹ The Section 703 Tribunal was enacted under Section 28 of the Finance Act 1960.

² DCA Command Paper CM 6243, published on 15 July 2004, by The Stationery Office. The White Paper can be accessed via the DCA website at <http://www.dca.gov.uk/pubs/adminjust/adminjust.htm>

Introduction

This paper seeks views on proposals by the Department for Constitutional Affairs (DCA) for accommodating the Section 703 Tribunal appeal routes within the unified tax jurisdiction of the proposed tribunals structure. This consultation is aimed at accountancy and legal professionals who advise clients on the application of Section 703 ICTA 1988 in the UK.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 13, have been followed.

An initial Regulatory Impact Assessment does not indicate that any groups are likely to be particularly affected. The proposals are unlikely to lead to additional costs and savings for businesses, charities or the voluntary sector, or on the public sector. Consequently this paper does not contain a Partial Regulatory Impact Assessment. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to:

Association of Chartered Accountants

Chartered Institute of Taxation

Confederation of British Industry

Institute of Chartered Accountants of England and Wales

Institute of Chartered Accountants of Scotland

Institute of Chartered Accountants of Northern Ireland

British Venture Capital Association

Federation of Small Businesses

Investment Management Association

Institute of Directors

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Law Society of England and Wales

Law Society of Scotland

Law Society of Northern Ireland

Revenue Bar Association

Chartered Association of Certified Accountants

Council on Tribunals

Inland Revenue

Special Commissioners

Section 703 Tribunal

VAT & Duties Tribunal

National Association of General Commissioners

Senior President Designate - Tribunals Service

The Lord Chief Justice of England and Wales

The Lord Chief Justice of Northern Ireland

The Lord President of the Court of Session

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Background

Reforming Administrative Justice

The White Paper “Transforming Public Services: Complaints, Redress and Tribunals”, published in July 2004, set out the broad objectives that the Government hopes to achieve with reform of the administrative justice system. It also outlines how it intends tax appeals to fit into the new overarching structures that would be created under legislation.

Fundamental to the specific proposals for tax appeals outlined in the White Paper, is the drawing together of the four existing tax appeal bodies into a single structure. It is intended that the new, unified jurisdiction will include all those cases currently heard by the General Commissioners, the Special Commissioners, the VAT and Duties Tribunal and the Section 703 Tribunal. The structure will be capable of hearing the full range of direct and indirect tax cases, from the straightforward and quickly settled, to the highly complex and lengthy. Flexible arrangements for case-management and judicial deployment will enable each case to be dealt with in the most proportionate and effective way possible.

In line with the broader proposals for the new structure of tribunals envisaged under the White Paper the tax appeals system will consist of two tiers.

- The first tier will be responsible for hearing virtually all first instance direct and indirect taxation appeals. The composition of panels dealing with different cases may vary greatly depending upon the needs of individual cases.
- Appeals against first tier decisions will lie, with permission and on a point of law, to the appellate tier.

The new structure will also give the President of the tax jurisdiction the power to assign suitable first instance cases for hearing at the appellate tier in the first instance – for example those that raise particularly complex or novel issues. Further appeals from the appellate tier will lie to the Court of Appeal.

For the tax jurisdiction, in keeping with the other jurisdictions proposed as part of the new tribunals structure:

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- The appointment of all members will be made in line with the wider reform proposals and will ultimately fall within the remit of the proposed Judicial Appointments Commission.
- It is intended that there will be a presidential role overseeing the tax jurisdiction with responsibilities for judicial leadership, training, appraisal and professional development.

The Section 703 Tribunal

The Section 703 Tribunal has been in existence since 1960 and deals with cases relating to certain provisions of the Income and Corporation Taxes Act 1988 (ICTA) involving the cancellation of a tax advantage arising from certain transactions in securities. The Lord Chancellor appoints the Section 703 Chairman and tribunal members. The Section 703 Tribunal is the only one of the four current tax tribunals not within the remit of the DCA, it is currently funded by the Inland Revenue. Each tribunal panel consists of the chairman together with two or more other members who have special knowledge of and experience in financial and commercial matters. It currently performs two functions:

- to determine whether there is a prima facie case for the Board of the Inland Revenue to continue with proceedings to cancel a tax advantage; and
- re-hearing an appeal to the Special Commissioners on the grounds that statutory provisions relating to a cancellation of a tax advantage do not apply to the appellant.

In instances where the Inland Revenue (IR) gives notice (under Section 703(9) ICTA) that they have reason to believe that Section 703 may apply but the person(s) in question disagrees and makes a statutory declaration to that effect, or where the applicant has carried out the transaction without any prior application, the matter is referred to the Tribunal for a decision on whether a prima facie case exists for issuing a notice cancelling a tax advantage. If the tribunal decides there is a case, the Inland Revenue can issue a notice (under Section 703 (3) ICTA) and an assessment.

The right of appeal against the notice lies to the Special Commissioners usually on the grounds that Section 703 does not apply to the transaction or transactions in question, or that the adjustments directed to be made are inappropriate. If the IR or the appellant is dissatisfied with the determination of the Special Commissioners, they can require the appeal to be transmitted to the Section 703

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Tribunal to be reheard. There is no permission or point of law requirement from the Special Commissioners to the Section 703 Tribunal. Alternatively, the IR or the appellant can elect to appeal the decision of the Special Commissioners directly to the High Court under Section 56A of the Taxes Management Act 1970.

The Section 703 Tribunal will re-hear and determine the appeal. It has and exercises the same powers and authorities in relation to the appeal as the Special Commissioners.

Onward appeal from a decision of the Section 703 Tribunal following a re-hearing of an appeal to the Special Commissioners lies without permission, on a point of law by way of case stated to:

- the High Court in England and Wales;
- the Court of Appeal in Northern Ireland; and
- in Scotland to the Court of Session sitting as the Court of Exchequer.

Further appeal lies with permission from:

- the Court of Appeal and thence to the House of Lords in England and Wales;
- the Court of Appeal in Northern Ireland;
- the Court of Session in Scotland to the House of Lords.

The Proposals

1. To transfer the existing jurisdictions of the Section 703 Tribunal and the Special Commissioners, as they relate to Section 703 of the ICTA, into the unified tax jurisdiction within the new tribunal structure. This will ensure that the whole range of tax cases can be dealt with in one coherent and consistent unified jurisdiction. Bringing together the existing legal and specialist expertise dealing with Section 703 cases into one place will enable the creation of a more focussed, effective and efficient appeal process for customers.
2. To transfer to the first tier the existing role of the Section 703 Tribunal in determining whether there is a prima facie case for proceeding to cancel a tax advantage. The flexible deployment of judiciary will enable panels to be constituted of expert legal and specialist judicial members, as within the present system, under the proposed tribunals structure.
3. To transfer to the first tier of the proposed unified tribunals structure the current right of appeal against a notice issued under Section 703 (3), on the grounds that Section 703 does not apply to the transaction or transactions in question or that the adjustments directed to be made are inappropriate. Again, panels to hear these appeals will be appropriately constituted so as to provide the necessary expert legal and specialist input currently provided by the Special Commissioners and Section 703 Tribunals.
4. As with all other appeals heard by the first tier, there will be a further onward right of appeal. This will be on a point of law and with a permission requirement, to the appellate tier and thence to the Court of Appeal – again with permission and on a point of law.
5. This process will rationalise the existing complex appeal arrangements. It will create a more focussed and effective appeal process that reduces the duplication of appeal tiers while offering adequate safeguards and protection for customers wishing to appeal.

Questionnaire

We welcome comments on the proposals above and, in particular, seek responses on the following questions:

1. What is the best way of accommodating the initial consideration of whether a prima facie case exists into the proposed unified tribunal structure?
 - Where would this function most appropriately sit?
 - What type of knowledge and expertise is needed in deciding these issues?
 - How can we ensure that the relevant knowledge and expertise is brought to bear?
2. What is the best way of dealing with substantive appeals against notices issued in relation to Section 703?
 - How and where are these cases best dealt with?
 - What sort of panel is best suited to dealing with the issues at hand?
 - Are there any concerns about members who have previously made a prima facie determination hearing the substantive appeal in the same case?
3. What onward routes of appeal are needed to ensure adequate safeguards for appellants?
 - What form of onward appeal right is required for these cases?
 - To where would this onward right of appeal most sensibly lie?
 - Are there any particular skills and knowledge that the judiciary would need to hear these cases?

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 25 May 2005 to:

Vicky Molloy
Department for Constitutional Affairs
Administrative Justice Division
4th Floor, Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 2632

Fax: 020 7210 0681

Email: vicky.molloy@dca.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 12.

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