Ministry of Justice consults on a proposal to introduce fees in the tax tribunals

Management of taxes

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HMRC and LITRG respond to the Ministry of Justice consultation

The CIOT, LITRG and ATT have each responded, criticising the Ministry of Justice's proposals to introduce fees in the First-tier Tribunal (FTT) and Upper Tribunal (UT). Fees of between £50 and £200, depending on the complexity of the case, are being proposed for referring cases to the FTT; hearing fees will range from £200 to £1,000. Appeals to the UT would incur an initial fee of £100 and up to £2,000 for a hearing.

All our responses object to the principle of charging taxpayers to take their case to the tribunals. We are concerned that it will introduce unnecessary bureaucracy and complexity, will fail to protect vulnerable taxpayers and risks being contrary to the interests of justice. The LITRG response highlights the need to keep the tribunal system accessible to all taxpayers whatever their means. The introduction of a charging system would cut across this principle and impede access to justice for those who are unable to afford the fees.

We think that it is inappropriate to impose a fee to use a tribunal where the legal issues are between the citizen and the state (and in most cases initiated by HMRC). In this context it is particularly perverse that, in order to fight charges levied by one branch of government, an appellant would be obliged to pay another division of government. The ATT makes the additional point that the cost of running the tribunal system should be seen as part of ensuring an efficient HMRC, making it an appropriate cost to the taxpaying public.

We can understand the rationale behind wishing to discourage frivolous or vexatious cases, or to cover part of the costs of running the tribunal service. We would also

accept that there is a good case for considering charges targeted at higher value tribunal disputes. However, there are already disincentives to an appeal to the tax tribunal, not least the fact that taxpayers are unable to reclaim costs even if they are successful. The effect of introducing fees will be to deter some potential appellants, including many of modest means, and prevent them seeking access to justice when they have a perfectly good case.

Cases involving financial hardship should always be exempt, so we are pleased to note that the HM Courts and Tribunal Service (HMCTS) remission scheme will be made more generous, although LITRG notes that a 30-page form with a double means test will be burdensome for many lay appellants to complete and for the tribunal staff to administer.

Many amounts pursued in the tribunals are small, either tax or fixed penalty. The proposals indicate that a taxpayer appealing against a late tax return filing penalty of £100 would have to pay a minimum of £50 (that is, 50% of the amount at stake) if it was assigned to the paper or basic category, and more if it was assigned to the standard or complex category or a hearing was required. Costs of this scale would be disproportionate to the penalty at stake. Even a taxpayer who can readily afford £50 is going to hesitate to pay that fee to appeal against a £100 fixed penalty.

The CIOT suggests that there should be an exemption for all cases involving fixed penalties. In addition, all paper and basic cases (at least) should be exempt from the fees. This would cover most, if not all, cases involving appeals against low value fixed penalties which are usually issued automatically and where the review process is often weak. LITRG also proposes that cases allocated to a standard hearing should similarly be exempt if the circumstances of the case, including the amount at stake or the means of the appellant, indicate that to be the proper course.

The CIOT also proposes that:

- there should be an absolute de minimis in all cases in that fees should not be levied if it can be shown that the amount of tax (or penalty) at stake is less than £10,000; and/or
- total fees for any given appeal should not be greater than 5% of the amount at stake in the appeal if that would be lower than the fees proposed in the consultation document.

If a fee structure is introduced then in our view the successful party's fees should be payable by the unsuccessful party. The possibility of recouping the application fee will provide some balance and require a recognition by HMRC that taking a dispute to the tribunal has a financial consequence. We suggest that this should be a function of the tribunal service and should operate alongside the current costs rules so that fees would be recoverable in all categories of case, whereas costs would be recoverable only in complex cases (or in cases involving unreasonable conduct).

We recommend that there should be a post-implementation review of the effects of the introduction of fees after 12 months. The introduction of fees in the employment tribunal has significantly reduced the numbers of cases being taken there. The introduction of fees in the tax tribunal will undoubtedly have a similar effect given the large numbers of low value appeals now before the FTT.

In the meantime, a radical overhaul is needed of HMRC's reviewing processes to prevent cases going to the tribunal in the first place. In our view, far too many cases in the tribunal should have been settled earlier but have been hampered by imperfections in the internal statutory review process. The success of HMRC's alternative dispute resolution service testifies to the fact that tribunals should be regarded as a last resort.

The full text of the CIOT's submission can be found on the CIOT website.

The LITRG submission is on the LITRG website.

The ATT submission is on the ATT website.

The Ministry of Justice's consultation document can be found here. The proposals are contained in paragraphs 112 to 119 and 128 to 134.