

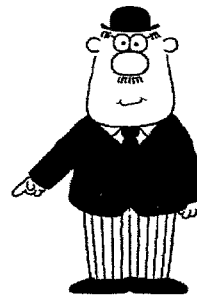
United Kingdom:
First-Tier Tribunal (Tax Chamber)
Upper Tribunal
(Tax and Chancery Chamber)

Judge Greg Sinfield (President)

Judge Christopher McNall

IATJ Cambridge 2019

UK Taxation



- Her Majesty's Revenue and Customs (HMRC)
- 2005 merger of Inland Revenue & Customs and Excise
- c30.3m Income Tax taxpayers
 - 'Pay as You Earn' (employed) = deduct at source
 - 'Self-Assessed' (self-employed) = pay following return
- c1.5m Corporation Tax taxpayers (annual returns)

F-tT Jurisdiction 1

- One 'Chamber' in First-tier Tribunal of 6 Chambers e.g. Immigration/Asylum/ Social Security / Mental Health.
- Deal with disputes between HMRC (taxes) / Director of Border Revenue (some duties) and taxpayers
- Not a superior court of record
- No common law / 'inherent' jurisdiction
- Jurisdiction entirely statutory
 - Tribunals Courts and Enforcement Act 2007
 - Various tax statutes (e.g. Taxes Management Acts and VAT Acts; annual Finance Acts ('the Budget'))

Ft-T Jurisdiction 2

- All direct and indirect UK-wide taxes except Council Tax
- All UK-wide duties except Vehicle Excise Duty ('tax disc')
- All penalties relating to taxes and duties (e.g. civil duty evasion penalties)
- Also MP's expenses (v small part)
- No jurisdiction over:
 - Interest
 - HMRC's operation of its discretionary 'Care and Management Powers'
 - HMRC's application of its 'Litigation and Settlement Strategy'
 - Judicial review, e.g. allegation that HMRC's decision is irrational, or that the taxpayer had a legitimate expectation that a particular decision would be taken (claims of that kind lie to the High Court)

Taxation – the UK, and its (four) parts



- Whole of UK (Eng, Scot, Wales, NI) for UK-wide taxes
- Not Channel Islands (Jersey, Guernsey, Sark, Alderney)
- Tax Tribunal for Scotland for devolved Scottish taxes (e.g. Scottish Income Tax)
- FtT for devolved Welsh taxes (e.g. Landfill tax) (no Welsh Tax Tribunal)
- No devolved taxes in Northern Ireland (because no Assembly)
- Isle of Man (special case)

FtT : Some Facts and Figures

- Led by a full-time President
- 8 salaried (full-time) Judges (c£110,000 pa gross)
- 52 Part-time (fee-paid) Judges (c£500 per day gross)
- 60 lay members (c£285 per day) e.g. Accountants
- Judges recruited through open competitions by Judicial Appointments Commission
- Barrister/Solicitor/Legal Executive – 7 years standing
- Other relevant experience (e.g. accountant)
- Appointed till the age of 70
- Permanent judges in London (4); Manchester (2); Birmingham (2). None in Scotland, Wales or NI.
- Sit in about 40 other towns and cities across UK

Some basic principles

- Civil - not criminal - jurisdiction
- Burden of proof
 - Assessment 'stands good': burden on the taxpayer to show that the Assessment is wrong and/or not to 'best judgment'
 - Penalty: burden on HMRC to show that the penalty due and payable
 - Allegation of connection to fraud (e.g. Kittel) – on HMRC
- Standard of proof
 - Civil – balance of probabilities / likelier than not
 - No enhanced standard even if allegation involves fraud
- Evidence – civil rules; 'strict' rules of evidence do not apply

Types of Case and Judge

- All appeals can begin with online Notice of Appeal (free of charge)
- 'Allocated' to 1 of 4 categories:
 - '**Default paper**' (Judge alone, without a hearing)
 - '**Basic**' (Hearing, very simple case management - 'turn up and talk') – up to 1 day
 - '**Standard**' (Hearing, more complex case management) – up to 4-5 days
 - '**Complex**' (Hearing) depends on value, complexity, influence on other cases etc – only category where loser risks paying winner's costs
- Some cases dealt with by videolink (Recent pilot)
- No requirement for legal representation
- Different categories of Judge (1 – highest = salaried – to 6)
- Lay members sit with Judge in some cases

Hearings

- Usually sit in public (requirement of open justice)
- Rules require adoption of flexible procedure
- No wigs and gowns!
- No gavels!
- No Latin!
- Proceedings not normally tape-recorded
- Adversarial – one party at a time. Parties required to conduct and present their case.
- Can hear evidence on oath / sworn evidence

FtT's powers

- Depends on the Decision being appealed (and sometimes dispute as to the juridical nature of the Decision made / Decision is vague)
- No 'free-range' power. Depends on the governing Statute
- Assessments:
 - Quash (set aside) assessment
 - Vary assessment
 - Uphold assessment
- Penalties:
 - Dismiss penalty
 - Uphold penalty
 - Substitute some other decision which HMRC could have made
- Decisions to seize goods:
 - Judicial-review type powers
 - Cannot remake decision but can only remit for reconsideration by HMRC

FtT decisions and appeals from the FtT

- Decisions always in writing, usually with reasons (see bailii.org.uk) (reasons can be 'full' or 'summary').
- FtT not a superior court of record: decisions do not formally bind other panels of FtT in other cases (but can be persuasive)
- No automatic right of appeal / appeal as of right
- Must ask the FtT for permission to appeal (application for permission made on paper, within 56 days)
- Applicant must show arguable 'error of law' (s 11 Tribunals Courts Enforcement Act 2007)
- If refused by FtT, applicant can 'renew' application for permission to appeal to the UT

Upper Tribunal 1

- Tax and Chancery Chamber
 - Established by 2007 Tribunals Courts Enforcement Act
 - One of 4 Chambers of Upper Tribunal
 - Superior court of record
 - Equivalent status to High Court
 - Decisions of UT bind the FtT (if relevant)
- Main business = Appeals from FtT Tax Chamber
- Also has (first instance) jurisdiction over Financial Services and decisions of Financial Conduct Authority
- Also has jurisdiction over certain decisions of:
 - Prudential Regulation Authority
 - Pensions Regulator
 - Bank of England
 - HM Treasury
 - Ofgem

Composition of the UT 2

- Headed by a President (a High Court Judge, presently Mr Justice Zacaroli)
- 4 salaried (full-time) Judges (tax specialists, and financial services specialist) (5 including Judge Sinfeld)
- 11 fee-paid (part-time) Judges (some of whom also sit in FtT)
- Some (but not all) HC Judges (Business and Property Courts) can also and do sit in UT
- No automatic 'promotion' from FtT to UT
- All judges appointed by Judicial Appointments Commission following open competition

Upper Tribunal 3

- Generally sits at Royal Courts of Justice, but can sit elsewhere in UK if case requires
- Usually 2 person panels – both Judges (e.g. HC/UT; UT/UT) in tax cases
- No lay members in tax cases (lay members in Financial Services)
- Powers given by 2007 Act – can remake or remit for rehearing
- No financial threshold - Cases range from very small value to very large value
- Same route of appeal for all FtT decisions, even if default paper / basic cases

Upper Tribunal 4

- Will not generally hear evidence
- Strong focus on whether FtT decision was affected by an 'error of law'
- 'Error of law' not defined in statute, but includes
 - Fundamental errors of fact
 - Issues of general principle affecting the specialist tax jurisdiction
 - The interests of ensuring consistency of approach between different panels of the FtT

Appeals from the Upper Tribunal

- Possible onward appeal from UT to the Court of Appeal
- No appeal as of right
- Permission for onward appeal can be given by UT (rarely) or, if refused, renewed to Court of Appeal
- Appeal to the Court of Appeal is a 'second appeal': must have 'a real prospect of success' AND 'raise an important point of principle or practice' OR there is some other compelling reason for the CA to hear it



TRIBUNALS
JUDICIARY

**10TH IATJ ASSEMBLY, CAMBRIDGE 2019
TAX PROCEDURES IN THE UNITED KINGDOM
13 SEPTEMBER 2019**

APPEALS RECEIVED AND DISPOSED OF BY THE FIRST-TIER TRIBUNAL (TAX CHAMBER)

1. The number of appeals received and disposed of by the First-tier Tribunal (Tax Chamber) during 2018-19 are set out in the following table, together with those of the previous year for comparison.

Year	Appeals received	Appeals disposed of after hearing	Appeals disposed of without hearing	Total appeals disposed of
2018-19	8905	2342	9064	11406
2017-18	9430	3009	7179	10188

In addition, at any time there are between 18,000 and 20,000 appeals stayed pending decisions of the Upper Tribunal or higher courts in appeals from the Tax Chamber.

APPEALS RECEIVED AND DISPOSED OF BY THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

2. The figures for the last two years (1/9/2017 to 31/8/18 and 1/9/2018 to 31/08/2019) are as follows.

Applications for permission to appeal to UT (following refusal in FTT)

	1/9/2017 to 31/8/18	1/9/2018 to 31/08/2019
Received	102	119
Granted on papers	26	24
Part granted on papers	3	9
Not admitted	1	1
Refused on papers	55	75
Granted or part granted following oral renewal of application	5	9

Cases received

	1/9/2017 to 31/8/18	1/9/2018 to 31/08/2019
Appeals from FTT (TC)	117	103
Financial Services references	60	22
Appeals from FTT (GRC) (Charity)	2	
Judicial Review	3	9

Outcomes of appeals from the FTT (TC)

	1/9/2017 to 31/8/18	1/9/2018 to 31/08/2019
Allowed	21	23
Dismissed	38	37
Allowed in part	4	5
Referred to CJEU (obviously not a final outcome)		1

**Applications for permission to appeal to the Court of Appeal/Court of Session (Scotland)
on appeals from the FTT (TC). (Includes one FS case)**

	1/9/2017 to 31/8/18	1/9/2018 to 31/08/2019
Received	36	38
Allowed	6	12
Refused	28	23
Part allowed	2	3