

WORDING OF COURT DECISIONS IN TAX CASES

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Function and structure of decisions in tax appeals (1)

- First-tier decisions may be short-form, summary or full.
- A party may always demand a full decision.
- The Judge has considerable freedom as to how to write the decision but decisions should be addressed to the parties and have two basic functions:
 - To record the outcome, and
 - To communicate the outcome and the reasons for it in readily intelligible and clear language
- As a general rule the decision should be self-sufficient and should not require the reader to have access to other documents for it to be intelligible.
- The last two points are also true for decisions of the Upper Tribunal and above. A decision by the Upper Tribunal and above will usually describe the previous stages in the appeal and will be concerned primarily to deal with what are said to be the errors of legal reasoning in the earlier decisions.

Function and structure of decisions on tax appeals (2)

- The essential elements of every First-tier decision are:
 - A statement of the issues in dispute
 - A summary of the evidence received and a statement of the facts as agreed by the parties or as found by the Tribunal
 - A summary or outline of the relevant law and some summary of the parties' submissions on the law
 - The Tribunal's conclusions
- The extent of the Tribunal's discussion of the factual and legal issues and its explanation of the relevant legal principles will depend upon the nature of the issues and the scope of the parties' written and oral submissions to the Tribunal.
- The key function of the First-tier Tribunal is to hear and record the evidence and to find the facts to which the relevant law must then be applied. The scope to appeal the FTT's findings of fact is limited. An appeal to the Upper Tribunal (and above) is limited to cases where it is said that there has been an error in the FTT's legal reasoning.

Function and structure of decisions on tax appeals (3)

- The First-tier Tribunal will generally limit itself to the facts and issues raised by the case and which it must resolve to reach a conclusion.
- Decisions of the First-tier Tribunal are not binding on any other Tribunal or court and the extent that regard is had to its decision in any case it will usually be taken to be limited to its particular facts and issues.
- Decisions of the Upper Tribunal and above are binding on the FTT and those decisions may therefore be concerned not only to reach the right result in the case in question but to establish a legal principle that can be applied in other cases.

How deep should the Tribunal or Court go into the details? (1)

- The FTT benefits from a variety of materials produced by the parties and describing the issues in dispute. A taxpayer is entitled to an independent review before taking the dispute to the Tribunal and the review papers will be available to the Tribunal as well as Statements of Case and skeleton arguments. The FTT may draw on these in writing its decision.
- The FTT will also receive documentary and witness evidence that it must review and summarise.
 - Its most important function is to assess the evidence and state clearly its findings of facts.
 - It is against those facts that the Upper Tribunal and higher courts will assess the case and apply the relevant legal principles.
- The Upper Tribunal and higher courts on appeal will generally summarise the facts as found and outline the previous decisions and previous legal reasoning as the background to its decision on the issues under appeal.
- It is usual at all levels to refer to previous decisions of the Tribunals and Courts establishing the relevant legal principles to be applied.

How deep should the Tribunal or Court go into the details? (2)

- The FTT should usually summarise the parties' legal submissions even if it disagrees with them or considers them irrelevant.
- A detailed response need not be given to every legal argument, but
 - If the case goes further on appeal it may be important to have recorded that a legal submission was made (and e.g. not actually conceded by a party)
 - The parties will want to know that a point was not overlooked and to be given some idea as to why it was rejected.
- In the Upper Tribunal and on higher appeal the focus will be on legal grounds of appeal raised by a party and the legal reasoning in the previous decisions.
- If a case raises several legal issues but the relevance of some may depend upon the decision on a prior point, it is usual in the FTT and UT to deal with all points notwithstanding an adverse finding on the prior point, in case the case is appealed to the Court of Appeal or Supreme Court.
- Permission to appeal beyond the FTT is required in all cases and the permission may be limited to specific issues only.

Some other points

- The FTT and UT produce a single decision even though the appeal is usually heard by a panel of two or three Judges and lay members. Any disagreement on the facts or the law should usually be recorded but the panel Chairman's view will usually prevail. In the Court of Appeal and Supreme Court each Judge may choose to write their own judgment including dissenting judgements.
- There is no system for Advocates General's opinions but written and oral arguments are presented at every level for both parties
- Appeals are heard in public and decisions are published
- The FTT has a 'style guide' and each level seeks to achieve uniform headings, paragraph numbering, statutory and case references and the like but ultimately each decision writer is free to produce a decision in the manner best suited to the case, the issues and the parties.
- Perhaps the most important aspect of any decision is that it provides a clear conclusion and explains clearly and concisely to the losing party, in terms that they can understand, why they have lost.