

22 October 2024



**Consultation on possible changes to the
procedure rules of all Chambers of the
First-tier Tribunal, the Employment
Tribunal and the Employment Tribunal
(Scotland) concerning the provision of
written reasons for decisions and other
case management measures**

Response from ICAS

Consultation on possible changes to the procedure rules on the provision of written reasons for decisions

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,500 of our members are based in Scotland and 10,000 in England and Wales.
2. This response has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the Tribunal Procedure Committee consultation: [TPC written reasons consultation \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/tribunal-procedure-committee-consultation)
5. Our response only deals with questions relevant to the First-tier Tribunal (Tax Chamber).

Specific questions

Proposal 1: time limits for requesting written reason (paragraph 23 to 28)

Question 1: Do you agree that the time limit for requesting discretionary written reasons should, in general, be reduced to 14 days?

6. We have concerns about the proposals relating to the First-tier Tribunal (Tax Chamber) (FTT). We believe a distinction should be made between cases allocated to the complex category (and some allocated to standard) which will include cases of significance to many other taxpayers – and basic cases only likely to be relevant to the taxpayer concerned (for example, many penalty cases).
7. We do not believe that 14 days will be sufficient time in tax cases allocated to the complex category – and those cases in the standard category where the issues being considered have significance for other taxpayers. The 28-day time limit should be retained in these cases.

Question 2: Do you agree with the proposed exceptions? Should there be any other exceptions for other classes of case, and if so, why?

8. No. See our response to Question 1 above. There should be exceptions for some tax cases.

Question 3: Do you have any other observations about this proposal?

9. No, we have no further comments.

Proposal 2: decisions and reasons in the First-tier Tribunal (Tax Chamber) (paragraphs Error! Reference source not found. to Error! Reference source not found.)

Question 4: Do you agree that rule 35(2) of the Tax Chamber rules should be amended to remove the obligation to provide the notice of decision within 28 days?

10. Yes, we agree that the complexity and length of some hearings (and hence some decisions) mean that this requirement is no longer appropriate.

Question 5: Do you agree that the consent of the parties should not be required in the Tax Chamber for an unreasoned written decision to be given provided sufficient oral reasons have been provided?

11. No, we do not agree that consent should not be required in all cases. We believe that a distinction should be made between cases allocated to the complex category (and some allocated to standard) which will include cases of significance to many other taxpayers – and basic cases that are only likely to be relevant to the taxpayer concerned (for example, many penalty cases).
12. Where the case is complex (and standard cases where the decision deals with substantive issues of wider significance and will be useful to other taxpayers), consent should be required from both parties. Otherwise, there is a risk that only HMRC will have access to decisions which have wider significance and would be useful to advisers and other taxpayers.

Question 6:

(a) Do you agree that full written reasons should be restricted to the unsuccessful party, where oral reasons have been given at a hearing?

13. No. When HMRC loses a case, it might choose not to ask for full written reasons and not to appeal the decision. It can also choose not to change its approach to the question in dispute (FTT decisions are not binding). However, advisers and other taxpayers in a similar position, should be able to see the decision, so that they are aware that the FTT has found against HMRC and the reasons why it has done so. In these circumstances it is in the public interest for the decision to be available and we do not agree that the restrictions should be applied.
14. Similarly, in cases where HMRC has been successful, the taxpayer might decide not to ask for full written reasons, for example if they have no intention of appealing (possibly for resource reasons) – but other taxpayers (and advisers) considering whether to take a case to the FTT would find it useful to see the decision and to understand why the FTT agreed with HMRC's position. This is likely to influence their own decisions on whether to appeal on a similar point.
15. As noted in our responses above, we believe that a distinction should be made between different types of tax cases. Imposing the proposed restrictions on the availability of full written reasons in cases of wider significance, beyond the taxpayer involved in the case, would be undesirable.

(b) Do you agree that such reasons should be limited to the issues upon which the party was unsuccessful?

16. No. For the same reasons as outlined above, we believe that in cases where the decision is likely to be relevant to other taxpayers, it is important not to impose these restrictions on the availability of full written decisions.

(c) Do you agree with the proposed definition of “unsuccessful party”?

17. No. We do not believe this is a feasible approach for tax cases.

Question 7:

(a) Do you agree that an “interests of justice” test will be sufficient to address any concerns raised by the TPC (and any other observations you may have)?

18. No. We do not agree that this will be sufficient to address the concerns we have raised (or some of the concerns raised by the TPC).

(b) Are the proposals consistent with the principle of open justice or nonetheless desirable to achieve greater efficiencies in the system?

19. We understand the need for efficiency in the system. However, imposing restrictions on the availability of written decisions in tax cases which deal with substantive tax issues of significance to many taxpayers, will not achieve this. It could result in more cases ending up at the FTT. It also introduces a significant imbalance into the system, with HMRC continuing to be aware of all tribunal decisions, but access for taxpayers and their advisers being subject to restrictions.

20. Unintended and undesirable consequences could include:

- Numerous different taxpayers might end up taking cases to the tribunal on the same point, simply because they were unaware that the tribunal had already considered the issue. If they (and their advisers) had access to the written decision(s) in an earlier case or cases, where the tribunal had decided that HMRC’s approach was correct and explained the reasons for reaching that conclusion, some taxpayers would choose not to appeal. The availability of the decisions saves costs for everyone (including HMRC and the tribunal).
- Other taxpayers will not know about cases where the tribunal has decided against HMRC on a substantive issue (and explained why it does not agree with HMRC’s view). While FTT decisions are not binding, this could again influence decisions about whether to pursue a case. The availability of the written decisions also enables discussions, for example with HMRC stakeholder groups, that can help to clarify difficult areas.

Proposal 3: General Regulatory Chamber tracks and reasons (paragraphs 32 to 46)

Question 8: Do you agree with the introduction of the “standard track” and the “open track” in proceedings before the General Regulatory Chamber?

21. We have no comments on this question.

Question (9): Do you agree:

(a) that the rules should make provision for the GRC to identify the “principal issues” in standard track cases; and

22. We have no comments on this question.

(b) that reasons in a standard track case may focus on its conclusions on the principal issues in the proceeding.

23. We have no comments on this question.

Proposal 4: Employment Tribunals (paragraphs 47 to 54)

Question 10: Do you agree with the introduction of short-form and full reasons in the Employment Tribunals?

24. We have no comments on this question.

Question 11: Should the time limit for requesting short form reasons be 7 or 14 days?

25. We have no comments on this question.

Question 12: Do you agree with the omission of rule 61(3) of the ET Rules?

26. We have no comments on this question.

ALL PROPOSALS

Question 13: Do you have any other observations about any aspect of the proposals?

27. We understand the importance of efficiency in the system. However, as they stand, we do not believe the proposals relating to the decisions of the First-tier Tribunal (Tax Chamber) should be implemented, for the reasons set out in our responses above. It is crucial to avoid creating an imbalance in the system, putting taxpayers and advisers at a disadvantage, compared to HMRC. It is also unlikely, for the reasons outlined earlier, that the restrictions would lead to greater efficiency – they could instead lead to additional (and unnecessary) appeals to the tribunal.
28. We note that the consultation included proposed practice directions, which the SPT considers are required to work alongside the proposed rule changes – but there were none dealing with tax. It isn't clear whether a practice direction for the First-tier Tribunal (Tax Chamber) could be introduced to deal with some of the concerns we have raised (and some of the concerns highlighted by the TPC in the consultation). This could be explored further, but no changes should be made in the meantime. The priority should be to maintain access to full written decisions of the tribunal, on substantive tax issues which have wider significance beyond the taxpayer involved in the specific case.



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