



TRIBUNALS
JUDICIARY

**PRACTICE DIRECTION
FIRST-TIER TRIBUNAL
CATEGORISATION OF CASES IN THE TAX CHAMBER**

1. This Practice Direction applies to cases in the Tax Chamber of the First-tier Tribunal, and paragraphs 2 and 3 supplement rule 23(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 relating to the allocation of cases to categories.

2. Default Paper cases

When the Tribunal receives a notice of appeal, application notice or notice of reference in one of the following types of cases, the Tribunal must allocate the case to the Default Paper category unless the Tribunal considers that there is a reason why it is appropriate to allocate the case to a different category.

(a) Appeals against the following types of fixed penalties—

- (i) penalties for late income tax and corporation tax self assessment returns (including penalties under sections 93(2) and 93(4) of the Taxes Management Act 1970 and paragraph 17(2) and (3) of Schedule 18 to the Finance Act 1998);
- (ii) penalties for late employer end of year returns under section 98A(2)(a) of the Taxes Management Act 1970;
- (iii) penalties for late construction industry returns under section 98A(2)(a) of the Taxes Management Act 1970; and
- (iv) penalties for late Class 2 national insurance contribution notifications under section 98A(2)(a) of the Taxes Management Act 1970 and paragraph 7 of Schedule 1 to the Social Security Contributions & Benefits Act 1992.

(b) Appeals against fixed percentage surcharges for late payment of income tax under section 59C of the Taxes Management Act 1970.

(c) Applications for penalties under section 93(3) of the Taxes Management Act 1970.

3. Basic cases

When the Tribunal receives a notice of appeal, application notice or notice of reference in one of the following types of cases, the Tribunal must allocate the

case to the Basic category unless the case is of a type listed in paragraph 2, or the Tribunal considers that there is a reason why it is appropriate to allocate the case to a different category.

(a) Appeals—

- (i) against penalties for late filing and late payment, including daily penalties¹;
- (ii) against penalties under paragraph 15 of Schedule 24 to the Finance Act 2007 except;
 - a) appeals against penalties for deliberate action (whether concealed or not);
 - b) cases where an appeal is also brought against the assessment of the tax to which the penalty relates; and
 - c) indirect tax cases.
- (iii) on the basis of reasonable excuse against penalties in relation to indirect taxes²;
- (iv) against decisions in relation to Construction Industry Scheme gross payment status under regulation 25(5) of the Income Tax (Construction Industry Scheme) Regulations 2005; and
- (v) against information notices³.

(b) Applications—

- (i) for permission to make a late appeal;
- (ii) for the postponement of the payment of tax pending an appeal (including applications under sections 55(3)(b) and 55(4) of the Taxes Management Act 1970), paragraph 39(1)(b) and (4) of Schedule 10 to the Finance Act 2003 and regulation 22(1)(b) and (3) of the Stamp Duty Land Tax (Administration) Regulations 2003); and
- (iii) for a direction that HMRC close an enquiry (including applications under section 28A(4) of and paragraph 7(5) of Schedule 1A to the Taxes Management Act 1970, paragraph 33 of Schedule 18 to the Finance Act 1998 and paragraph 24 of Schedule 10 and paragraph 12 of Schedule 11A to the Finance Act 2003).

¹ This includes penalties imposed under s 93(5) of the Taxes Management Act 1970, paragraph 3 of Schedule 2 to the Oil Taxation Act 1975, section 245(2) to (4A) of the Inheritance Tax Act 1984, sections 59 and 59A of the Value Added Tax Act 1994, section 9 of and paragraph 15(1) to (3) of Schedule 7 to the Finance Act 1994, paragraph 23 of Schedule 5 to the Finance Act 1996, paragraph 18 of Schedule 18 to the Finance Act 1998, paragraphs 3 to 5 of Schedule 10 to the Finance Act 2003, section 260(1) and (2) of the Finance Act 2004, regulation 100 of the Stamp Duty Reserve Tax Regulations 1986, regulation 60 of the Climate Change Levy (General) Regulations 2001, regulation 38 of the Aggregates Levy (General) Regulations 2002 and regulation 203 of the Income Tax (Pay As You Earn) Regulations 2003.

² This includes appeals under sections 59(7), 62(3), 65(3), 66(7), 67(8), 68(4), 69(8) and 70 of the Value Added Tax Act 1994, paragraph 15 of Schedule 7 to the Finance Act 1994, paragraph 23 of Schedule 5 to the Finance Act 1996, paragraph 41 of Schedule 6 to the Finance Act 2000, section 25 of the Finance Act 2001, sections 27 and 29 of the Finance Act 2003 and regulations 4 and 5 of the Export (Penalty) Regulations 2003.

³ This includes appeals under sections 19A and 20(8B) of the Taxes Management Act 1970, section 219B of the Inheritance Tax Act 1984, paragraph 28 of Schedule 18 to the Finance Act 1998, paragraph 15 of Schedule 10 and paragraph 9 of Schedule 11A to the Finance Act 2003, section 253 of the Finance Act 2004 and paragraphs 45 and 47 of Schedule 36 to the Finance Act 2008.

4. In proceedings without notice to a respondent under the following enactments the Tribunal must consider whether to give a direction under rule 32 that a hearing, or part of it, be held in private:
 - (a) sections 20(7) and (8G) and 20B(1B) and (6) of the Taxes Management Act 1970;
 - (b) section 219(1A) of the Inheritance Tax Act 1984;
 - (c) section 187(5) and (6) of and paragraphs 3(2) and 6(2) of Schedule 21 to the Finance Act 1993;
 - (d) paragraphs 2, 4, 7, 9, 10, 11 and 24 of Schedule 13 to the Finance Act 2003; and
 - (e) paragraphs 3, 4, 5, 13 of Schedule 36 to the Finance Act 2008 (from the day those provisions come into force).
5. This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor. It is made in the exercise of powers conferred by section 23 of the Tribunals, Courts and Enforcement Act 2007.

LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS
10 March 2009