

TAXREP 21/02

GENERAL AND SPECIAL COMMISSIONERS: HEARINGS IN PUBLIC AND LEAD CASES

*Memorandum submitted in July 2002 to the Lord Chancellor's Department by the
Tax Faculty of the Institute of Chartered Accountants in England and Wales
commenting on draft General and Special Commissioners of Income Tax
(Jurisdiction and Procedure) (Amendment) Regulations 2002*

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About the Tax Faculty

1. The Tax Faculty is the focus within the Institute of Chartered Accountants in England and Wales for those Chartered Accountants working in the area of tax. It is a centre of excellence and the authoritative voice for the 119,000 members of the Institute on taxation matters. The Tax Faculty makes representations to Government and other authorities, and public pronouncements on major tax issues.

Summary

2. We welcome the opportunity to comment on the draft regulations. We would have welcomed an opportunity earlier in the process to offer our views on the principles of public hearings and lead cases.
3. Hearings in public:
 - the intended default position appears to be that hearings before the General Commissioners as well as the Special Commissioners will be in public unless the taxpayer objects and the Commissioners agree: undermining the tradition of taxpayer confidentiality should not be discarded lightly;
 - the regulations as drafted will afford adequate protection to taxpayers provided that the Commissioners take the view that there is a presumption in favour of granting a request for a private hearing;
 - the new regime will preserve taxpayer confidentiality only if taxpayers are aware of their rights and are brave enough to exercise them. It is therefore essential that notices sent to taxpayers spell out what they should do if they want to retain privacy.
4. Lead cases: we support using lead cases where facts and circumstances are common to all.
5. Both sets of proposals need to be formulated and administered so as to ensure that the human rights of taxpayers, that is to say, their right to confidentiality, are not undermined.

Hearings in public

6. Whilst we acknowledge the need to modernize the procedures for General and Special Commissioners and where appropriate make them consistent with those for other tribunals, the tradition has always been that a taxpayer's affairs are confidential as between taxpayer and Revenue. We consider that this right to confidentiality should not be discarded lightly.
7. General Commissioners' hearings may be held only in private under existing rules. General Commissioners' hearings comprise local people hearing local disputes. We are concerned that the system that is being proposed will mean that

the default will be that General Commissioners' cases will be heard in public. One of the strengths of the General Commissioners is that they hear a lot of appeals by unrepresented taxpayers on an informal basis. The thought of a public hearing may well deter the more timid taxpayer from taking his case forward.

8. At present, Special Commissioners' hearings are in public, but if the taxpayer so requests (or the Revenue so requests and the Commissioners agree), the hearing is in private. This together with the selective publication of Special Commissioners decisions seems to us to strike the right balance between taxpayer privacy and the public interest.
9. The new regime will mean that hearings before both the Special and General Commissioners will be in public unless a party to the case requests a private hearing and the Commissioners agree. We consider that, if a taxpayer so requests, the Commissioners should normally adopt the presumption that the hearing should be in private and agree to the taxpayer's request unless there are public interest issues at stake. Similarly, we would hope that the Revenue will not normally object to an application by a taxpayer for a private hearing. In these circumstances, for taxpayers who exercise their right to request a private hearing, the exercise by the Commissioners of their discretion as laid down in the draft regulations is likely to afford adequate protection of taxpayer confidentiality.
10. However, unless a taxpayer or his agent is sufficiently knowledgeable or confident to ask for and put forward arguments to support a private hearing, or the Revenue does this or joins in an application by the taxpayer for a public hearing, the hearing will be in public.
11. Drawing the attention of taxpayers to the fact that their cases will be heard in public unless they object will be essential to preserve confidentiality. Any notice of hearing that is issued to taxpayers and agents should state boldly that the hearing will be in public and set out what steps the taxpayer or agent should take and by when to ensure that the case will be heard in private if the taxpayer wants to keep his tax affairs confidential. This and other publicity and explanatory leaflets describing the process whereby such hearings may be heard in private will be crucial to the fair application of the new procedure.

Lead cases

12. It is essential that the individual's right to privacy is retained in line with human rights principles. We would however support the use of more consolidated appeals as a device to promote efficiency where there is no compromising of justice. We note that the draft regulations give the right of objection to the parties before the decision is made to join their case with others and it is essential that the notices of hearing that each party receives state clearly what needs to be done and by when if the parties do not want their case to be joined with others.

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