

TAXREP 24/05

REFORM OF THE SECTION 703 TRIBUNAL APPEAL ROUTES

Response sent on 25 May 2005 from the Tax Faculty of the Institute of Chartered Accountants in England & Wales to the Department for Constitutional Affairs, in response to a consultation document on the reform of the Section 703 Tribunal Appeal Routes

CONTENTS

	Paragraph
INTRODUCTION	1
WHO WE ARE	2-4
COMMENTS ON THE PROPOSALS	5-11

Tax Representation

REFORM OF THE SECTION 703 TRIBUNAL APPEAL ROUTES

INTRODUCTION

1. This paper is the ICAEW Tax Faculty's response to the consultation document *Reform of the Section 703 Tribunal Appeal Routes*, issued by the Department for Constitutional Affairs (DCA) in March 2005.

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members who pay an additional subscription.

COMMENTS ON THE PROPOSALS

5. In the Tax Faculty's representations on the DCA White Paper *Transforming Public Services: Complaints, Redress and Tribunals* we commented specifically on the Section 703 tribunal as follows:
 39. *The Section 703 tribunal has not been brought within the DCA. Its sponsoring department is the Treasury and no date is given for its transfer. The existence of the Section 703 tribunal seems to us anomalous and unnecessary within the proposed structure for the tax tribunals (or within the current structure, for that matter). We suggest that it could be subsumed into the second tier tax tribunal.*
6. Therefore, we welcome the proposal to bring the functions of the Section 703 tribunal within the proposed unified tribunals structure. This seems the sensible course of action, in terms of administrative simplicity and clarity for the user.

Tax Representation

7. We have considered whether issues under Section 703 Income and Corporation Taxes Act 1988 should be heard in the first tier tribunal as first instance, or whether (in view of their complexity) it would be more suitable to allocate them straight to the second tier. On balance we favour these cases going to the first tier. Frequently the main issue is whether or not the transactions were carried out for *bona fide* commercial reasons or in the ordinary course of making or managing investments. These are essentially commercial rather than legal questions, ie questions of fact, and therefore appropriate for the first tier.
8. In view of the specialist and potentially technical nature of Section 703 hearings, it is crucial that the tribunal should be suitably constituted. Under the proposed new tribunals structure, we understand that it will be the President of the tax jurisdiction who is responsible for the selection of tribunal panels, and that details of tribunal judges' areas of expertise will be on record to assist in that selection. However, in practice we assume that panel selection will be delegated to officials in the DCA. We are concerned that this should not be done at a junior level – the selection of a tribunal for Section 703 cases must be done by someone who understands what is required.
9. Following from this, we note that Section 706 ICTA 1988 provides that the Lord Chancellor must appoint the Tribunal and apart from the chairman the other members must be appointed 'as having special knowledge of and experience in financial or commercial matters'. It is clear from this that Parliament envisaged it important that a senior legal officer should decide the composition of the Tribunal. Accordingly we feel that under the new system this should be done by the President of the tax tribunals and that the appointment of the tribunal panel must be in accordance with Section 706.
10. With regard to the knowledge and expertise needed to decide Section 703 cases, clearly the panel must include members with an understanding of the legal issues, both statute and case law. As noted, business and commercial expertise is likely to be needed when establishing the facts and whether there was a bona fide commercial purpose.
11. With regard to onward appeals from the tribunals, this will presumably follow the route which is proposed for the unified tribunal system as a whole.

JMM
25 May 2005