



**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

<b>Applicants: The Commissioners for Her Majesty's Revenue &amp; Customs</b>	<b>Tribunal Ref: UT/2022/000052</b>
<b>Respondent: Pub Stuff Limited</b>	

**APPLICATION FOR PERMISSION TO APPEAL**

**DECISION NOTICE**

**JUDGE JONATHAN RICHARDS**

1. The applicants (“HMRC”) seek permission to appeal against a decision (the “Decision”) of the First-tier Tribunal (Tax Chamber) released on 7 February 2022 with reference number TC/2019/08937. The FTT refused permission to appeal in a decision released on 25 April 2022. HMRC have made an in-time renewal of their application for permission to appeal to this Tribunal.

**Grant of permission to appeal**

2. HMRC set out three proposed grounds of appeal in their application for permission settled by Ms Brown of counsel and dated 23 May 2022. I consider all three of those grounds to be sufficiently arguable to merit the grant of permission. I therefore grant permission to appeal on those three grounds.

**Additional directions**

3. I note that HMRC’s appeal involves a sum of just £1,631.58. Reading between the lines, it may be that HMRC wish to pursue the appeal because of some wider issues of principle. Specifically:

(1) Logic suggests that what HMRC have termed the “August Letter” may be in standard form, or at least involve some standard wording that is widely used. It is

possible that the question whether a letter in that form involves the notification of a customs debt may be of general interest for HMRC or other taxpayers who have received, or will receive, letters incorporating that common wording.

(2) If, as the majority decision of the FTT suggests, subsequent changes to the amount of duty set out in the August Letter involved HMRC making new decisions (raising separate questions of limitation) rather than varying existing decisions, that may have some implications for HMRC's working practices generally.

4. There is, of course, nothing wrong with HMRC bringing this appeal to determine legal propositions of some general application. However, if questions of general application are to be determined, I do have some concerns about "equality of arms" (noting that HMRC are represented by specialist tax counsel, whereas the taxpayer is apparently not). I also wonder whether it is right that the taxpayer should run the risk of being subject to an adverse costs award if HMRC are successful in an appeal involving just £1,631.58 if HMRC are indeed appealing against the Decision because it raises questions of general application.

5. It is with those concerns in mind that I make the following directions which are in addition to, and in not in substitution for, the usual requirements that apply following a grant of permission to appeal (namely the provision by the taxpayer of a Response to HMRC's appeal and the provision of a Reply by HMRC if so advised):

(1) The taxpayer may wish to ask HMRC to apply the "Rees Practice" in relation to this appeal. Details of the Rees Practice are set out in the attached hyperlink to HMRC's manuals <https://www.gov.uk/hmrc-internal-manuals/appeals-reviews-and-tribunals-guidance/artg8670>

(2) If the taxpayer wishes to ask HMRC to apply the Rees Practice, it should apply to HMRC (and not to the Tribunal) no later than 24 June 2022.

(3) No later than 22 July 2022, please could both parties write to the Tribunal to explain (i) whether the taxpayer has asked HMRC to apply the Rees practice and (ii) HMRC's decision in response to any such application to include an explanation of how the Rees practice is to apply if HMRC are prepared to apply it.

(4) Also by 22 July 2022, please could the taxpayer notify the Tribunal (with a copy to HMRC) whether it is to be represented by specialist tax counsel.

(5) If the taxpayer is not to be represented by specialist counsel, the Tribunal may wish to consider approaching the Revenue Bar Association to see if a barrister might be prepared to act as counsel to the Tribunal on a pro bono basis (i.e., without charging a fee). The Tribunal would welcome the views of the parties as to whether this would be an appropriate course of conduct or not. In particular, since the parties are closer to the facts of this dispute than the Tribunal, the Tribunal would welcome their views as to whether the dispute does raise issues of more general application. Please could any such views be given by 22 July 2022.

**Signed on Original**

**Jonathan Richards**

**Date: 30 May 2022**

**Issued to the parties on: 30 May 2022**

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