

Insights

AN UPDATE ON RELYING ON ORAL EVIDENCE FROM ABROAD IN THE UK TAX TRIBUNAL

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SUMMARY

In this blog, we consider the First-tier Tribunal (Tax Chamber)'s recent update to its guidance for parties wishing to rely on evidence given by a witness from outside the UK.

The First-tier Tribunal (Tax Chamber) (the “**Tax Tribunal**”) recently updated its guidance on taking oral evidence from witnesses residing outside the UK. This is a further update to its original published on 12 April 2022 following the decision of the Upper Tribunal in *Secretary of State for the Home Department v Agbabiaka* [2021] UKUT 00286 (IAC).

In summary, where a party to proceedings in the Tax Tribunal wishes to adduce oral evidence from a witness in a state outside the UK, a Crown Dependency or British Overseas Territory, that state's permission is required before it may do so. Such permission should be sought through the newly-established Taking of Evidence Unit within the Foreign, Commonwealth and Development Office and the process set out in the guidance followed.

Fortunately, a party may rely on written evidence supplied by a person in a foreign state without obtaining permission. Permission is also not required for an individual outside the UK to watch or make written or oral submissions (although it is anticipated that these instances will be rare).

COMMENT

Although clear, the steps in the guidance are onerous and will be time-consuming. There are likely to be cases where the requisite permission cannot be obtained sufficiently quickly in advance of a hearing. In the interests of expeditiously resolving matters, parties should give serious consideration as to whether facts can be agreed in writing, for example through a Statement of Agreed Facts, without the need to lead witness evidence. If that is not possible, other options should also be explored, in particular seeking to agree listing dates when all witnesses can attend in person in the UK.

We are closely monitoring how parties to ongoing matters in the Tax Tribunal interact with this guidance.

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