

SCHEDULE 2

The Upper Tax Tribunal for Scotland Rules of Procedure 2015

PART 2

General Powers and Provisions

Orders for expenses

10.—(1) The Upper Tribunal may not make an order in respect of expenses in proceedings transferred or referred by, or on appeal from, the First-tier Tribunal except to the extent and in the circumstances that the First-tier Tribunal had the power to make an order in respect of expenses.

(2) In other proceedings, the Upper Tribunal may not make an order in respect of expenses except—

- (a) in relation to wasted expenses and expenses incurred in applying for such expenses; or
- (b) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.

(3) The Upper Tribunal may make an order for expenses on an application or on its own initiative.

(4) A person making an application for an order for expenses must—

- (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
- (b) send or deliver with the application a schedule of the expenses claimed in sufficient detail to allow summary assessment of such expenses by the Upper Tribunal.

(5) An application for an order for expenses may be made at any time during the proceedings but may not be made later than 30 days after the date on which the Upper Tribunal sends—

- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
- (b) notice under rule 17(2) that a withdrawal which ends the proceedings has taken effect.

(6) The Upper Tribunal may not make an order for expenses against a person (the “paying person”) without first—

- (a) giving that person an opportunity to make representations; and
- (b) if the paying person is an individual, considering that person’s financial means.

(7) The amount of expenses to be paid under an order under this rule may be ascertained by—

- (a) summary assessment by the Upper Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the expenses (the “receiving person”); or
- (c) assessment of the whole or a specified part of the expenses, including the expenses of the assessment, incurred by the receiving person, if not agreed.

(8) Following an order for assessment under paragraph (7)(c)—

- (a) the paying person or the receiving person may apply to the Auditor of the Court of Session (as specified in the order); or
- (b) the Upper Tribunal may make a remit to the Auditor of the Court of Session,

for the taxation of the expenses according to the fees payable in that Court.

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(9) Upon making an order for the assessment of expenses, the Upper Tribunal may order an amount to be paid on account before the expenses are assessed.

(10) In this rule, “wasted expenses” means any expenses incurred by a party—

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative or any employee of such a representative; or
- (b) which, in the light of any such act or omission occurring after they were incurred, the First-Tier Tribunal considers it is unreasonable to expect that party to pay.