

Making an appeal against a penalty for late submission of a tax return

The Appeals (against Penalty Order) **Form 690(b)** is available to download at www.gov.gg/tax under “Other tax forms”.

Sometimes you may think you have reasonable grounds for submitting a tax return that is late. For example, there may have been an unexpected or unusual event, beyond your control, which prevented you from meeting the deadline. In this case you must still deliver your return as soon as you can. The Director expects to receive it within 14 days of the problem ending.

Below are examples where the Director may consider the grounds of appeal to be “reasonable” (in which case he may choose to rescind a penalty without needing to refer the matter to the Clerk to the Tribunal) or “unreasonable” (in which case the Director may not apply his discretion to suspend collection of the penalty pending the resolution of an appeal). For the avoidance of doubt, ultimately it is the Guernsey Tax Tribunal that will decide whether or not a ground of appeal is reasonable.

Examples of reasonable grounds of appeal

There are no hard and fast rules, but some examples where the Director may agree you have a reasonable ground of appeal, if it prevented you from submitting your completed return on time, are:

- life-threatening illness (for example, a heart attack) or the onset of a disability or a serious mental health condition that prevents you from dealing with your tax affairs and engaging an adviser to do so on your behalf;
- the death of an immediate family member (for these purposes meaning spouse, common law spouse, child or parent) shortly before a tax return deadline;
- unexpected or unforeseeable postal delays (e.g. a postal strike); or
- important documents lost, for example through theft, fire or flood, that cannot be replaced in time to meet the submission deadline;

Examples of unreasonable grounds of appeal

The Director will not usually accept you have a reasonable ground of appeal if:

- you were unaware of the need to submit a return;
- you relied on another person to send your return and they did not;
- you claim that you delivered your return in person to the Income Tax Office, but did not obtain a receipt as proof of delivery;

- you did not believe that you were required to submit a return, because tax is deducted from your income under the ETI scheme;
- you did not receive a reminder for your tax return or the penalty order, for example because you had not notified us of a change to your address;
- you failed to submit the return due to events not covered in 1. above (.e.g. being on holiday, being busy at work);
- you submitted the return but failed to enter your personal details in Section 1 and therefore the return could not be easily identified as relating to you.

Extracts from the Income Tax (Guernsey) Law, 1975, as amended

190. 1. A person who fails to make a return of his income within the period prescribed by the Law for that purpose shall be liable to a penalty not exceeding £300 and he shall in addition be liable to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty, during which the failure continues:

Provided that –

- (i) if on or before the day on which the return is required to be delivered to the Director of Income Tax such person delivers a correct and complete return, he shall not be liable to any penalty;
 - (ii) if he proves that if he had made a return he would not have been liable to pay any tax in respect thereof, the penalty shall not exceed £50 but this paragraph does not apply in respect of a company required to complete certificate 1 of the return, unless the company has no income or profits in the period in respect of which the return of income is required to be delivered.
2. A penalty or further penalty is not payable under this section in such cases as may be prescribed by regulations of the Department or any statement of practice issued by the Director of Income Tax.

76. Any person aggrieved by an assessment made upon him by the Director, or by any penalty, direction or order imposed or made by the Director under this Law (but not a notice given under section 75A or 75B), or by any surcharge or additional surcharge under section 199 or any supplement or additional supplement under section 199A, shall be entitled to appeal to the appropriate body on giving to the Director notice in writing (stating the grounds of appeal) within 30 days of the date of the issue of the notice of assessment or of the order imposing the penalty, or other order or direction, or (as the case may be) the date of notification of the surcharge, additional surcharge, supplement or additional supplement:

Provided that the appropriate body may admit an appeal if it is satisfied that owing to absence, sickness or other reasonable cause a person has been prevented from giving the aforesaid notice within the time limited.

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NOTES FOR APPEALING AGAINST A PENALTY FOR FAILURE TO DELIVER A RETURN OF INCOME

I have appealed against a late filing penalty, who hears my appeal?

Under the terms of the Income Tax (Guernsey) Law, 1975 ('the Income Tax Law') appeals against penalty orders must be heard by the Guernsey Tax Tribunal ('the Tribunal').

Is the Tribunal independent of the Income Tax Office?

Yes.

The Tribunal is responsible to the Royal Court for its affairs. Its members are completely independent of the Income Tax Office and are chosen for their impartiality. None of them either work for the Director of Income Tax or are members of the Treasury & Resources Department (which has political responsibility for the Income Tax Office).

How is the Tribunal run?

The Tribunal is administered by a Clerk, who convenes meetings, keeps records and, if requested, advises the Tribunal on questions of law and practice. The Clerk handles most communication on behalf of the Tribunal.

Why must appeals be notified to the Director?

This is because the Income Tax Law requires it. In practical terms the Director attempts to resolve a dispute, if this is possible, within the provisions of the Income Tax Law, and only refers matters to the Tribunal if agreement cannot be reached.

How do I appeal against a penalty order?

You must notify the Director – in writing – within 30 days of the date of the order imposing a penalty. The Income Tax Law requires that you state your grounds for appeal. The Tribunal will not hear your appeal unless you have stated your grounds of appeal. If you do not state your grounds of appeal in your notice of appeal, the Director will ask you to do so within 30 days. Unless you do this, the Tribunal will not set a date for hearing your appeal.

What are the grounds of appeal against a penalty order?

They are very limited and are that:

- a. the penalty is not payable as a matter of law as the return was submitted on or before the filing deadline;
- b. there are proper grounds for the Tribunal to cancel the order or to reduce the penalty payable.

You should note that:

- a. The Tribunal has power not just to cancel or reduce the penalty charged but also to confirm and or increase it, if it considers appropriate.
- b. The Tribunal is unlikely to entertain an appeal to set aside a penalty order on the basis that personal circumstances prevented you from filing your return by the due date, or where you did not file a return because your income was below the personal allowance. This is because an appeal on those grounds would go against the policy behind the imposition of a penalty, as set out in the Income Tax Law, which requires the return to be delivered by the relevant date.
- c. The Income Tax Law provides that the maximum penalty is restricted to £50 if you can prove that you would not have been liable to pay any tax if the tax return had in fact been submitted.

What happens when the Director passes an appeal to the Tribunal?

The Clerk will contact you and require you to send him and the Director a more detailed outline of your case within the next 30 days. When he receives it, the Clerk will notify you and the Director of the date, time and place for the hearing of your appeal. If you do not send this written outline within 30 days then your appeal will be seriously prejudiced. When writing to you, the Clerk will give further information and explain what you need to do to prepare for your hearing.

If I appeal against a penalty order, do I have to pay it before the appeal is heard?

The short answer is 'yes'. The Income Tax Law states that a penalty must be paid within 30 days of the date of the order imposing a penalty and if it is not then the Director can recover it as a civil debt. The Income Tax Law gives the Director the discretion to relieve a taxpayer from the obligation of paying the penalty whilst waiting for an appeal to be heard. You must discuss that with the Director, not the Tribunal, however.

If I pay the penalty and later win my appeal, do I get my money back?

Yes.

If the penalty, or part of the penalty, has been paid, the Director would automatically repay you (or would offset the amount paid against any other amount that you then owed, if appropriate).

Do I have to attend the appeal?

It is not essential but it is most desirable. The Director will be represented by one of his senior officers. If you are not present then you cannot question what the officer says. The Tribunal will only have the documents that you or the Director have sent in. It does not have access to your records kept by the Director. The evidence of the Director is likely to be accepted unless it is manifestly incorrect. Given the narrow grounds for possible appeal, this is likely to mean that your appeal will be unsuccessful.

I can't attend the appeal, can somebody else represent me?

Yes,

but if that person is not either your accountant or an advocate then the Tribunal could object, so it is advisable to contact the Clerk well in advance.

Can I find more details about penalty order appeals?

Yes.

The Tribunal provides summaries of all its previous important decisions, and these and other information can be found at www.gov.gg. In addition, the Clerk can assist you in matters of procedure but he cannot advise you on the Law.