



States of Guernsey
Income Tax

A Guide to Income Tax Information Powers

What they are and the
circumstances when and how
they will be used

States of Guernsey Income Tax
PO Box 37
St Peter Port
Guernsey
GY1 3AZ

Telephone: (01481) 225700

E-mail: taxenquiries@gov.gg
Website: www.gov.gg/tax

July 2017

Contents

Introduction	3
What are “information powers”?	4
My affairs are straight forward, so will this apply to me?	4
Why do you need these other powers if you could already obtain information from someone about their own affairs under section 68 of the Income Tax Law?	6
So what can the Director ask for under sections 75A and 75B?	6
How is a request made under sections 75A and 75B?	7
If I receive a Notice under section 75A, do I have to provide everything I have?.....	8
But how can, say, an advocate, accountant or a bank be required to provide information about a client or customer without breaking rules on confidentiality?.....	9
So if the Director asked my bank to provide information about my accounts, can the bank tell me about the request?	9
What are these “international agreements”?	10
What about the Double Taxation Arrangements (“DTAs”) that Guernsey has with the United Kingdom and Jersey?	11
So why did Guernsey enter into the first TIEA with the USA?.....	11
So does this mean that the USA, for example, can ask the Director to obtain whatever it likes?	11
How can I be sure that information about me won’t be abused or disclosed to others?	13
Do original documents have to be given to the Director?	14
Can the Director obtain information from other States departments and committees?.....	14
Will the Director always name the taxpayer when obtaining information from a third party?	14
What if my documents contain abbreviations or other entries that the Director wouldn’t understand?	15
How can the Director ask for documents if he doesn’t know whether I have them or what it is I have?.....	15
What can the Director do if he thinks someone would not fully comply with a Notice or provided information or documents that are false, misleading, etc?.....	16
What are the rights of appeal?	17
What is the actual procedure for making an appeal?	17
If the Royal Court hears an appeal, what can it do?.....	18
While an appeal is being dealt with, do the documents or information have to be given to the Director?	19
What happens if the Director asks someone to provide documents and that person throws them away or falsifies the contents?.....	19
These rules are complex and the penalties for doing something wrong can be quite severe.	
Where can someone receiving a Notice go for advice?	20
What if a company is asked for documents or information and does something wrong?	22
Can any person in the Income Tax Office issue a Notice asking for documents or information?	23
Appendix A	24
Appendix B	28

Introduction

This Guide, issued by the Director of Income Tax, explains what powers are available to the Director to gather information to enable him to carry out his statutory duties and the circumstances in which the powers may be used.

Under the Income Tax Law, the Director is responsible for assessing and collecting the income tax which helps pay for the running of the island and the provision of public services. In order to verify the contents of tax returns, and to detect tax evasion and tax avoidance, he may need to ask for information (such as documents and explanations).

Most people provide information that the Director asks for without difficulty. From time to time, however, people will not comply voluntarily (either because they do not want to or, particularly in the case of a third party, they are unable to because of a duty of confidentiality to a customer or client) and to deal with those situations the Income Tax Law has to contain provisions that give the Director the power to obtain what he needs to carry out his statutory function and must provide sanctions for those who still do not comply.

Some of those sanctions (such as search warrants and imprisonment for failure to comply with what is required of them) may appear severe but they have to be there to deal with those few cases where, even though they are legally required to provide documents etc, some people will not do so, or they will destroy or falsify what the Director requires, or will give him misleading or incorrect information.

Whilst, for the above reasons, the powers given to the Director, and the sanctions for noncompliance, are widely drawn, the majority of the taxpaying public will only be personally affected to the extent that they are asked to complete an annual income tax return and, on occasion, may be informally asked to provide additional documents or information.

The most common situations where the Director will use his more formal powers are:

- to investigate, and prevent, tax evasion and avoidance in connection with Guernsey income tax (which throws an unfair and disproportionate burden on the law abiding), and
- to provide information for tax purposes, to another country, where this is provided for in an agreement that Guernsey has entered into with that country.

The various information powers are contained in the Income Tax (Guernsey) Law 1975, as amended (“the Income Tax Law”), the full text of which is available on the Income Tax Office website (www.gov.gg/tax under “Income Tax legislation”).

This Guide will be reviewed on a regular basis to ensure that it remains up to date and the Director is always prepared to receive representations as to ways in which it may be improved.

NOTE: This Guide is for information purposes only. It has no statutory standing and does not affect any person’s rights, or obligations, under the Income Tax Law.

What are “information powers”?

Under the Income Tax Law, it is the Director’s statutory function to assess and collect income tax. In order to be able to do that job, he has to obtain information.

To enable the Director to do this, the Income Tax Law contains a number of sections that give the Director the right to ask people to provide information.

In addition, some of the information powers apply to requests for information that are received from other countries under international agreements that Guernsey has entered into.

Some of the information powers allow the Director to ask:

- a person to provide information about himself, and
- a person to provide information for the purpose of dealing with another person’s income tax affairs (these are referred to as “third party requests”).

For the purposes of this Guide, the term “information” includes documents, records, facts, statements and explanations.

My affairs are straight forward, so will this apply to me?

If you are liable to Guernsey income tax then the information powers already do apply to you.

The principal power that the Director uses to obtain information is the power to ask someone to complete a return of their income (section 68 of the Income Tax Law). That section also allows the Director to ask the person completing the return to provide, within a specified period, accounts or other information certified, if he requires, by a qualified accountant.

The Director may also be using his third party information powers to obtain information about you.

For example, if you are an employee then your employer is required to provide the Director with information about your earnings under the Employees Tax Instalment (“ETI”) legislation. Section 70 of the Income Tax Law also allows the Director to ask your employer, or an ex-employer, to provide other information about your employment (such as when you started and/or left employment) and for your name and address.

If you have shares in a Guernsey company, the company may be providing details of any distributions and deemed distributions, and any “qualifying loans”, made to you, to the Director under sections 81B and 66A of the Income Tax Law respectively.

In addition, if you receive investment income (interest or dividends) from a company resident in Guernsey, the Director may be using his powers under section 69 of the Income Tax Law to obtain details of that income direct from the company (another example of a third party request).

Section 71 of the Income Tax Law also allows the Director to obtain details of people who live in hotels and guesthouses for long periods of time (more than six months of the year).

In addition to the powers to obtain returns from taxpayers and information from third parties, in specific situations, some of which are set out above, there are other powers available to the Director to enable him to obtain information from individuals, in connection with their own affairs, and third parties.

These powers reinforce the power of the Law Officers to obtain documents and information in any case of suspected serious tax fraud (under the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991).

Why do you need these other powers if you could already obtain information from someone about their own affairs under section 68 of the Income Tax Law?

For many years, up to 2005, section 68 was the principal power available to the Director, to enable him to counter tax evasion and avoidance. As this did not extend to third parties, however, it proved insufficient in ensuring that all income subject to taxation was properly charged. In addition, the penalty that can be charged under the Income Tax Law by the Director for failure to provide information requested under section 68 is a maximum of a £300 initial penalty plus up to £50 for each day that the failure to provide the information continues. Whilst, to most people, that would be a significant amount (as it amounts to more than £18,000 per annum) if someone was not providing information because they had not disclosed all of their income on their returns, and if the sums involved were large enough, they may decide to pay the penalties rather than provide the information. (The Director has seen cases where, for whatever reason, people simply decide that they will not complete income tax returns, or provide information to support any returns they have made, even though they are suffering penalties of up to £50 per day, where evasion or avoidance of tax is unlikely to be the reason behind the failure to provide the information.)

With effect from 1 January 2006, sections 75A-75Q of the Income Tax Law came into effect.

Section 75A provides the Director with additional power to obtain information from a taxpayer about his own affairs.

Although, as set out above, there are already in existence some powers to obtain information from third parties, it can be seen that they are very specific and quite limited. As a consequence, section 75B of the Income Tax Law provides a general power to the Director to obtain information from third parties. He may do this, for example, where someone has denied having received bank interest, or having carried out work for someone, and the Director uses these powers to require the bank/customer concerned to provide details of any interest/payments made, along with copies of any supporting documentation.

Section 75C extends the powers that the Director has under sections 75A and 75B to cover requests received from other countries under international agreements.

So what can the Director ask for under sections 75A and 75B?

Under section 75A, the Director can ask a person to:

- deliver documents that are in his possession or power which, in the Director's opinion, contain, or may contain, information relevant to any liability to tax to which that person

is or may be subject, or the amount of any such liability (such as bank statements, invoices, contracts, leases, diaries, etc);

- furnish him with information, as the Director may require, as being relevant to, or to the amount of, any such liability (e.g. explanations of how amounts shown on tax returns have been calculated); and
- provide evidence of his residence in Guernsey or elsewhere which the Director requires (e.g. the days he has spent in Guernsey during a year).

The Income Tax Law does provide that the person must be given a reasonable opportunity to deliver the documents, or to furnish the information or evidence, before a formal request is made under section 75A. There is, however, a caveat to this in that if the Director believes that to do so would prejudice any enquiry or the performance of the Director's statutory functions, he may issue a request under section 75A without making an informal approach first. This is most likely to be done, in practice, in the more serious cases of suspected evasion.

Under section 75B, the Director can ask third parties to provide documents that are in their possession or power, and to furnish information, in connection with another person's tax liability. For example, a builder's yard may be asked to provide details of transactions carried out with a named customer, or a trust company may be asked to provide details of payments made to a beneficiary.

The Income Tax Law requires that the Director will make an informal request first, although the same caveat applies that he does not have to do so if he thinks an informal request would prejudice the enquiry or the performance of the Director's statutory functions.

How is a request made under sections 75A and 75B?

A request has to be made in writing (a "Notice") and it will specify what documents or other information is required and the period within which it should be provided.

So what happens if a Notice under section 75A or 75B is not complied with?

A person who fails to comply with a Notice, and who does not have a reasonable excuse for doing so, is guilty of an offence and liable on summary conviction to a fine imposed by the Royal Court (not the Director) not exceeding twice level 5 on the uniform scale (at the time this Guide was issued that equated to £20,000) and to a further fine not exceeding level 3 on the uniform scale for each day that the failure continued after conviction (at the time this Guide was issued that equated to £2,000 per day). You will see, therefore, that this is significantly higher (at up to £730,000 per annum) than the penalty that could be charged for a failure to provide information requested under section 68, although, clearly, the actual amount imposed in any particular case would depend on the facts of that case.

If I receive a Notice under section 75A, do I have to provide everything I have?

The Notice will specify what information, or type of information, the Director is asking for. The Income Tax Law does provide an exception for documents that have been created for the purposes of a pending tax appeal (including a tax appeal in another country). This does not mean that all documents relevant to a tax appeal are exempt. It is only those documents that have been brought into existence for the purposes of the appeal that are exempt (this could include, for example, correspondence that passes between the appellant and his professional advisers about how the appeal was going to be handled).

Furthermore, where a request is made under section 75A (and, indeed, under section 75B) documents subject to legal professional privilege (as defined in section 24 of the Police Powers & Criminal Evidence (Bailiwick of Guernsey) Law 2003) do not have to be disclosed. This includes:

- (a) communications between a professional legal adviser (e.g. an advocate or solicitor) and his client or any person representing his client made in connection with the giving of legal advice to the client (for example, this would include advice given in connection with the legal consequences of a transaction but, in the absence of lawyer-client legal advice, documents prepared by, or held by, a lawyer would not be covered);
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made –
 - (i) in connection with the giving of legal advice, or

- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.

[**Note:** Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.]

Any other documents that may be relevant to an income tax liability may have to be provided (including correspondence, diaries etc., as well as more obvious financial documents/records).

But how can, say, an advocate, accountant or a bank be required to provide information about a client or customer without breaking rules on confidentiality?

The legislation provides, in section 75M, that Notices under sections 75A and 75B (and also under 75D, 75E, 75F and 75I – see later) have to be complied with, notwithstanding an obligation to confidentiality or, indeed, any other restriction on the disclosure of information provided by statute (such as data protection legislation), contract (for example, a “secrecy” or non-disclosure clause), or in any other case, and that any obligation or restriction is not treated as contravened by disclosing information made under those sections.

In addition, if someone has a lien (which broadly means a claim in the nature of a proprietary right) to a document then production of that document under a formal request, under the sections referred to above, is treated as not prejudicing his lien.

So if the Director asked my bank to provide information about my accounts, can the bank tell me about the request?

Yes, unless the Director has made a specific direction, under section 75B, that the bank must not inform you, or cause or permit you to be informed, because he thinks this may prejudice an enquiry or the performance of his statutory functions. There may be a number of reasons why he may believe this but one example would be if the Director suspects serious tax evasion may have occurred and that, if the person concerned discovered that the Director was investigating the matter, he may then destroy other, relevant, documents.

Similarly, the Director can direct that the third party must not disclose, or cause or permit to be disclosed, to any person, any information or matter that is likely to prejudice the enquiry to which the Notice relates or the performance of the Director’s statutory functions. This

would include, for example, preventing the bank from telling your accountant that the request had been made (because your accountant could then tell you about the request). If a third party fails to comply with a direction not to disclose, they are guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale (at the time of the issue of this Statement that equated to £20,000).

The third party does have a defence if he can show that he took all reasonable precautions and exercised all due diligence to avoid the offence by himself or by any person under his control.

Where disclosure is made to a person other than the taxpayer to whom the Notice relates, the third party would also have a defence if he could show that he did not know or suspect that the disclosure was likely to be prejudicial to the enquiry or the Director's statutory functions.

The Income Tax Law does make it clear that if the Director instructs a third party not to disclose then simply lodging an appeal against receipt of the Notice does not amount to a breach. This is because appeals (see later) would be heard in public and the taxpayer may become aware of the Notice through, for example, the media, which cannot be avoided.

Whilst it is not a requirement of the Income Tax Law, the Director has decided that where a request for information has been made under an international agreement with another territory, he will only make a direction that the third party is prevented from disclosing if:

- there is a similar “no tipping-off” provision in the domestic tax legislation of the other territory (the Director will consider that there is a “no tipping-off” provision if the other territory is not required to name the person who is the subject of the request when making a similar request for information in their own jurisdiction), and
- that territory confirms that it would exercise that power if it received a request for information from Guernsey, in similar circumstances, and
- the other territory has specifically asked for the “no tipping-off” direction to be made, and
- the other territory has confirmed that disclosure would seriously prejudice the assessment or collection of tax in the other territory.

What are these “international agreements”?

Section 75C of the Income Tax Law allows the Director to exercise his powers under sections 75A and 75B if a request for information is made under the terms of an “approved international agreement”.

An “approved international agreement” is an agreement or arrangement providing for the obtaining and exchanging of information in relation to tax, which is made between the States of Guernsey and the government of another territory and which has been confirmed as such by Ordinance of the States.

At the date of issue of this Guide, discussions are continuing with a number of countries in connection with the possibility of entering into such agreements. The finalised agreements are the Tax Information Exchange Agreements (“TIEAs”) and an up to date list of the TIEAs Guernsey has signed can be located on the Income Tax website at www.gov.gg/tiea

What about the Double Taxation Arrangements (“DTAs”) that Guernsey has with the United Kingdom and Jersey?

Although the DTAs with the UK and Jersey do contain articles dealing with the provision of information to tackle fraud or avoidance, the DTAs have not been made “approved international agreements” and so the powers under sections 75A and 75B cannot be used in relation to requests for information made under the DTAs.

So why did Guernsey enter into the first TIEA with the USA?

The background to this is contained in a Report made to the States, by Treasury & Resources Department (now the Policy & Resources Committee), on 19 April 2005 (a copy of which is attached as [Appendix A](#)). The appendix also includes a table summarising the contents of sections 75A – 75Q inclusive of the Income Tax Law ([Appendix B](#))).

So does this mean that the USA, for example, can ask the Director to obtain whatever it likes?

No. The Director will only use the powers that he has to obtain information, under sections 75A and 75B, where a request is made under the terms of, and in accordance with, the Guernsey/USA TIEA.

The full text of the TIEAs that Guernsey has signed can be accessed on the Guernsey Income Tax website. When making a request (and using the Guernsey/USA TIEA in this example) the USA would have to provide the Director with the information requested under Article 5(5), as follows:

- the identity of the person under examination or investigation;
- the period of time for which the information is requested;
- the type of information requested and the way in which the USA would prefer to receive it (e.g. simple photocopies, authenticated copies, etc);
- the reason, under USA tax law, for asking for the information;
- the reasons for believing that the information requested is “foreseeably relevant or material” to tax administration and enforcement in the USA;
- reasonable grounds for believing that the information is present in Guernsey or is in the possession of a person in Guernsey;
- if known, the name and address of the person in Guernsey believed to have, or able to get, the information requested;
- a statement that the request conforms to USA law and administrative practice and that the information would be obtainable by the USA in similar circumstances, both for its own tax purposes and in response to a valid request from Guernsey under the TIEA (in other words, they cannot ask Guernsey to obtain information for their use that they could not obtain for themselves or for Guernsey if the roles were reversed);
- a statement that the USA has pursued all reasonable means available to it to obtain the information, except where that would give rise to disproportionate difficulty.

(**NB** – the precise wording of the relevant TIEA should be consulted, in any relevant case, as the text may, and does, vary between individual TIEAs.)

It can be clearly seen, therefore, that the request must relate to a specific person and the USA must have exhausted all reasonable options to obtain the information within the USA before they seek it from Guernsey under the TIEA.

It can also be clearly seen that, what are often referred to as, “fishing expeditions” are not allowed under a TIEA. For example the USA could not ask the Director to approach a Guernsey bank or fund administrator to obtain details of accounts or investments held by all American citizens.

How can I be sure that information about me won’t be abused or disclosed to others?

All information provided to the Director, for Guernsey tax purposes, is covered by the Oath of Secrecy that everyone employed in the Income Tax Office, and everyone who has anything to do with tax matters (such as Members of the Guernsey Tax Tribunal), has to take, under the Income Tax Law.

In addition, the use and disclosure of information by the Income Tax Office is governed by Guernsey’s Data Protection Law. The Director has issued a Code of Practice on Data Protection, which can be accessed on the Income Tax Office website at <https://gov.gg/taxationstatementsofpractice>

Where information is provided to another country under a TIEA then use of that information is strictly governed under the confidentiality clause of the relevant TIEA. For example the Guernsey/USA TIEA provides for this as follows:

- All information provided and received by the USA has to be kept confidential.
- Information received by the USA may not be used for any purpose other than for the tax purposes stated in the TIEA, without prior express written consent from Guernsey.
- Information provided can be disclosed only to persons or authorities (including judicial, administrative and Congressional oversight authorities) officially concerned with the tax purposes specified in the TIEA (and used by such persons or authorities only for those purposes, including the determination of any appeal). Information may be disclosed in public court proceedings or in judicial proceedings in the course of the above.
- Information provided may not be disclosed to any third party, including an agency or employee of any other government.

Do original documents have to be given to the Director?

No. Copies of documents can be provided but these must be in such form as the Director may specify (for example, the Director may ask for copies of documents that have been scanned into a computer to be provided in a specific format – such as on paper or on a CD). The Director can ask to see the originals, however, if he specifically wishes.

Can the Director obtain information from other States departments and committees?

Yes. A Notice under section 75B can be issued to States departments and committees.

Will the Director always name the taxpayer when obtaining information from a third party?

In most cases, yes. However, there are some circumstances under section 75CB of the Law, where the nature of the request is such that it is appropriate for the name of the taxpayer to be omitted.

- Example 1: The Requesting Jurisdiction is aware that Mr A has transactions with Guernsey Company B, the nature and extent of those transactions leading them to believe that Mr A may have a beneficial interest in Company B, which he has not disclosed. To further their investigation they request sight of the bank statements for Company B; the 75B Notice could be issued to Company B without revealing the identity of Mr A.

In these circumstances, an application to a Member of the Guernsey Tax Tribunal (GTT) will be made under section 75CB of the Law to omit the Taxpayers name from the section 75B notice; if the GTT Member concludes it is appropriate, it will be omitted.

- Example 2: Where the request relates to a group of people, whose identities are not known to the Director and the information is not readily available to the Director from another source, the name of the taxpayers may be omitted i.e. The Director approaches Building Firm C for details of the identities and amounts paid to a group of subcontractors who carried work out a particular site during a specified period.

What if my documents contain abbreviations or other entries that the Director wouldn't understand?

You could volunteer explanations of these but if you did not, under section 75D the Director can ask for an explanation of, and questions relating to, the document. In addition, if the document requested has not been produced (for example because it is not in the person's possession or power) the Director may ask the person to state, to the best of his knowledge, where the document is.

In relation to the above, the Director can ask that any statement or information be given on oath or affirmation.

Failing to comply with the above can give rise to the same penalties as failing to comply with a Notice under section 75A or 75B.

How can the Director ask for documents if he doesn't know whether I have them or what it is I have?

Under section 75D, the Director can ask a person to whom he intends to issue a Notice under section 75A or 75B to tell him what documents he has that may be relevant. He can also specify that the person must not remove, tamper with, falsify or destroy any documents that may be relevant, nor must they cause or permit them to be removed, tampered with, falsified or destroyed, and also that they must take any steps that appear to be necessary for preserving the documents and preventing interference with them. Again, failure to comply incurs the same penalties as failing to comply with a section 75A or 75B Notice.

The Policy & Resources Committee made Regulations (under section 75P of the Law) that require people to make, maintain, keep and retain certain records for income tax purposes. In some situations (particularly in relation to businesses and income from the letting of property) the rules about what has to be kept are very detailed. The full Regulations (The Income Tax (Keeping of Records etc) Regulations, 2006) can be accessed on the Income Tax website www.gov.gg/tax via "Income Tax legislation".

In addition, the Director has issued a Statement of Practice on the keeping, maintaining and retaining of records for income tax purposes, and this can also be accessed on the Income Tax Office website www.gov.gg/taxationstatementsofpractice

What can the Director do if he thinks someone would not fully comply with a Notice or provided information or documents that are false, misleading, etc?

In the above circumstances, or if issuing a Notice may seriously prejudice the performance of the Director's statutory functions, he may ask the Royal Court to issue an Order in place of the Director (sections 75E and 75F).

A person who fails to provide information under a Notice issued by the Royal Court is treated as if he had committed contempt of court.

Before the Director sought an Order from the Royal Court, the person to whom it was intended to be sent would be advised and could appear and be heard at the hearing of the application again unless the Royal Court was satisfied that this may significantly prejudice the enquiry to which the Order would relate or the performance by the Director of his statutory functions. If the person is given notice of the Royal Court application, however, he then commits an offence if he conceals, destroys, alters or disposes of any documents to which the application relates, or discloses to any other person information or any other matter likely to prejudice the enquiry to which the Order relates, or the performance by the Director of his statutory functions. However, these restrictions can be waived by agreement of the Royal Court or with the written permission of the Director. The restrictions would also be waived if application for the Order is dismissed or abandoned or (if the application is granted) after it has been complied with.

A professional legal adviser is also exempt from the restrictions in certain specified circumstances.

Under section 75I, the Director can ask the Bailiff to issue a search warrant instead of making an Order.

Clearly this section of the Income Tax Law exists solely to deal with the most serious matters and is likely to be used only in rare and exceptional situations.

The conditions for making a request are the same as for asking the Royal Court to issue an Order but the legislation also specifies:

- which type of premises the warrant may relate to;
- who or what may be searched and what can be seized and taken away;
- the powers available to those who exercise the warrant and the conditions under which they must do so.

A person who, without reasonable excuse, obstructs a person exercising a warrant, or fails to comply with any requirements of the warrant, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale (which at the time of issue of this Guide equated to £20,000) or to both imprisonment and a fine.

What are the rights of appeal?

An appeal can be lodged against a Notice under sections 75A and 75B.

An appeal against a section 75A or 75B Notice is heard by the Royal Court.

There is a further right of appeal from a decision of the Royal Court to the Court of Appeal but this is only on a question of law.

The grounds on which an appeal must be based are:

- that the decision to issue the Notice was ultra vires (i.e. outside of the Director's powers or beyond the scope of the Law) or unreasonable in law, or that some other error of law has been made, or
- that a material error as to the facts has been made. (In the case of an appeal lodged against a notice issued following a request under a TIEA, this only applies if the Bailiff considers it just and convenient for the Royal Court to consider an appeal, where it is alleged that a material error as to the facts relating to the notice itself (but not the liability to tax under enquiry) has occurred, rather than the courts situated in the country which is asking for the information¹. This is to avoid the Royal Court becoming involved in matters it may not be able to, or practical for it to, resolve whilst making available justice to those who have a proper case for appeal.)

What is the actual procedure for making an appeal?

Firstly, the appellant has to obtain leave (permission) of the Bailiff to appeal. This is to ensure that appeals that are not lodged on proper grounds, or are mainly designed to delay or frustrate the investigative process, without having any real merit, do not waste the Royal Court's time.

¹ *This is subject to registration of the Income Tax (Guernsey) (Amendment) Law 2008, which had not occurred at the time of publication of this version of the Guide.*

In order to get leave of the Bailiff to appeal, the appellant has to send a summons to the Director, within **10 days** of the date of the Notice (legislation is currently in the process of being introduced to increase the appeal period to 30 days from the date of the Notice but until such time as this amendment is registered, the statutory appeal period of 10 days applies), stating the grounds and material facts on which the appellant intends to rely in his appeal. For this purpose a “summons” is a formal summons which starts the Royal Court process of appeal. It is signed by an advocate and served by HM Sergeant either directly on the Director or, by practice, on the Director via St James’ Chambers.

If the Bailiff (or the Court of Appeal – see below) gives leave to appeal then the appellant has 7 more days in which to lodge the actual appeal (although the Royal Court does have discretion to extend this period as it sees fit). Again, this is done by summons served on the Director, stating the grounds and material facts on which the appellant relies. In most cases, the summons prepared for the purpose of obtaining the Bailiff’s leave to appeal and the summons actually lodging an appeal will be very similar.

If the Bailiff decides not to give leave to appeal then there is a right of appeal from that decision to the Court of Appeal. The right of appeal to the Court of Appeal must be exercised within 7 days of the Bailiff’s decision not to give leave to appeal (although the Court of Appeal does have discretion to extend this period as it sees fit)².

If the Director believes that an appeal against a Notice, or against a decision of the Bailiff, has been made simply in order to delay the process of obtaining information, he can ask the Royal Court, or the Court of Appeal, as appropriate, to dismiss the appeal for want of prosecution (which, broadly, means a failure to pursue the matter within a reasonable timeframe).

If the Royal Court hears an appeal, what can it do?

The Royal Court can:

- cancel the Notice,
- send it back to the Director with any directions that the Court wishes to give, or
- confirm the Notice, in whole or in part.

² This is subject to registration of the Income Tax (Guernsey) (Amendment) Law 2008, which had not occurred at the time of publication of this version of the Guide.

While an appeal is being dealt with, do the documents or information have to be given to the Director?

Normally the Notice would be suspended while the appeal process was ongoing. The Director does have the right under the Income Tax Law to ask the Royal Court or the Court of Appeal, as appropriate, to give effect to the Notice even though the appeal process hasn't been completed. The Director would only do this in exceptional circumstances, and particularly he may consider doing so if he believed that documents or information could be destroyed, defaced, removed from the island, etc, during the course of the appeal process.

The Income Tax Law also gives the Bailiff, the Royal Court or the Court of Appeal, as appropriate, the power to require any documents sought under the Notice to be lodged with the relevant Court while the appeal process is ongoing. It can also require information about the documents (such as where they are kept) and it can also require the appellant to enter into undertakings concerning the documents (such as requiring them to be lodged with the appellant's advocate, bank, etc, for safe keeping).

Anyone who fails to comply with an Order or requirement of the Bailiff, Royal Court or Court of Appeal is punishable as if they committed contempt of court.

What happens if the Director asks someone to provide documents and that person throws them away or falsifies the contents?

Section 75M of the Income Tax Law provides that a person commits an offence if he intentionally:

- falsifies,
- conceals,
- destroys,
- otherwise disposes of, or
- causes or permits the falsification, concealment, destruction or disposal of a document which the Director has requested.

Importantly, the above does not just relate to documents that are requested in a Notice under section 75A or 75B – it also applies to documents that the Director requests informally prior to issuing a Notice.

The above offences also apply to documents that are the subject of an Order issued by the Royal Court under section 75E or 75F.

Exceptions to the above are if the act is carried out:

- with the written permission of the Director;
- after the document has been provided to the Director and he has returned it; or
- after a copy of the document has been given to the Director and the Director has inspected the original document.

A person also commits an offence if he:

- makes a statement that he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular;
- dishonestly or otherwise recklessly makes a statement that is false, deceptive or misleading in a material particular;
- produces or furnishes, or causes or permits to be produced or furnished, any information or a document that he knows, or has reasonable cause to believe, to be false, deceptive or misleading in a material particular; or
- dishonestly or otherwise recklessly produces or furnishes, or recklessly causes or permits to be produced or furnished, any information or document that is false, deceptive or misleading in a material particular.

All of the above offences can result, on summary conviction, to imprisonment for a term not exceeding two years, to a fine not exceeding twice level 5 on the uniform scale (at the time this Guide was issued this equated to £20,000) or to both imprisonment and a fine.

These rules are complex and the penalties for doing something wrong can be quite severe. Where can someone receiving a Notice go for advice?

The basic rules – detailing the Director's powers to call for information – are actually relatively straightforward. Most of the complexities in the legislation are there to deal with the rights of appeal and situations where people, for whatever reason, do not comply with a request to provide documents or information.

If you receive a Notice and you comply with it in good faith then even if there is a small omission or oversight that subsequently comes to light, the Director is unlikely to take any action against you, so long as you then put the matter right.

The penalties in the legislation are there to deal with situations where people do not respond to a notice or deliberately destroy, deface, falsify, etc, documents or deliberately or recklessly say or give things to the Director that they know, or have reason to believe, are incorrect.

Anyone receiving a Notice, whether it requires them to provide information about their own affairs or the affairs of another party, can seek advice from their professional advisers (advocates, accountants, etc). Caution may need to be exercised in the case of a third party who has received a direction from the Director under the “no tipping-off provision”. In rare circumstances it is possible that seeking advice from a professional adviser could lead to the person about whom the information is being sought becoming aware of the existence of the Notice (for example, if the same adviser also dealt with the affairs of the person concerned). To protect himself, the third party should ensure they take all reasonable precautions and exercise all due diligence when consulting with a professional adviser to avoid committing a “tipping-off” offence.

When the Director issues a Notice asking for documents or information, he does so because, in his opinion, he needs them either for the purposes of dealing with somebody's Guernsey income tax affairs or in order to comply with an agreement the States has made to exchange information with another country. It is not in his interest, therefore, to make requests that are unlikely to be complied with because the request is confusing or unclear.

In a Notice, the Director will:

- Clearly state under which provision of the Income Tax Law he believes he is empowered to ask for the documents or information.
- Identify what it is that he believes he requires (and in the case of a Notice under section 75B, he will identify the person or persons to whom the information relates if he is able to. He will always do this in the case of a request made under an international agreement with another country).
- State clearly the time allowed for the information to be provided.
- Make reference to the rights of appeal.

Where a Notice is issued as a result of a request made under an international agreement with another country then in addition to the above the Director will also:

- Detail that the Notice is being issued as a result of a request being received from another country, under the relevant international agreement.
- Confirm that the request has been made by the authorised competent authority and will name the country which has made the request.
- Detail the purpose of the request (for example, whether the request received relates to the assessment, collection or enforcement of taxes, the investigation or prosecution of criminal tax matters, etc) and confirm under which Article of the international agreement such a request is considered to be in conformity.
- The type of tax which is subject to the request (for example, income tax, wealth tax, value added tax, etc) and confirm under which Article of the international agreement such a request is considered to be in conformity.

As, in a lot of cases, the Director will not know exactly what documents or information are available, it is inevitable that, from time to time, he may ask for something that cannot be provided (for example, he may ask for a document that has already been destroyed) or precisely what he wants may be confusing (perhaps because he uses terms that are unfamiliar to, or may be interpreted differently by, the recipient of the Notice). Anyone who receives a Notice, who has any doubts or concerns about what it is that is required, is free to contact the Director to obtain any confirmation or clarification they need in order to comply with the Notice.

What if a company is asked for documents or information and does something wrong?

If a company commits an offence under the Income Tax Law and it is proved that it committed the offence with the consent or connivance of, or if the offence is attributable to any neglect on the part of, any director, secretary or other similar officer of the company (or anyone purporting to act in such a capacity) he, as well as the company, is guilty of the offence.

Can any person in the Income Tax Office issue a Notice asking for documents or information?

No. It is only the Director or the Deputy Directors or their delegated Competent Authorities who can issue Notices.

Appendix A

[NB – subsequent to the publication of this Report, the office of “Administrator of Income Tax” has been changed to “Director of Income Tax”]

INFORMATION POWERS

1. **Executive Summary**

- 1.1. The purpose of this Report is to obtain approval to legislation giving the Administrator of Income Tax additional powers to obtain information from taxpayers in respect of their own tax affairs, and from third persons also. Such information would be obtainable not only for domestic tax administration but also to give effect to Guernsey's international obligations arising under tax information exchange agreements.

2. **Information Powers**

Background

- 2.1. In the July 2002 Policy & Resource Planning Debate, the States resolved to authorise the Advisory and Finance Committee to nominate a member to execute Tax Information Exchange Agreements (“TIEAs”) on behalf of the States. The responsibility of the Committee is now vested in the Policy Council. To date, one TIEA has been concluded with the United States in September 2002.
- 2.2. The TIEA which has been signed with the United States creates international obligations upon Guernsey, from 1 January 2006, to provide information to the United States taxation authorities in response to specific requests for information, provided that a number of conditions are satisfied. In order to provide that information, the Administrator of Income Tax (who will be responsible as the ‘competent authority’ for handling requests under the TIEA) needs to have comprehensive and effective information gathering powers available to him, which are not provided by the Income

Tax (Guernsey) Law, 1975, as amended (“the 1975 Law”). In this respect, it should be remembered that the 1975 Law was a consolidation of earlier legislation, drafted at a time when the need for the Administrator to be able to obtain information from taxpayers was not acute. However, the increasing tendency of a number of taxpayers everywhere to engage in tax avoidance, or even fraudulent evasion, to the prejudice of the majority of law abiding taxpayers has resulted in all income tax authorities taking powers to obtain information, and Guernsey should not be immune from this process. Irrespective of the desirability of providing the Administrator with powers to obtain documents and information for domestic tax administration, the binding obligations on the States arising under the United States TIEA must be deliverable from 1 January, 2006. The Department is of the firm

opinion that provision must be made enabling the Administrator, as the competent authority for the purposes of the United States TIEA, to have powers to obtain documents and information. Any failure by the States to provide such powers would reflect adversely on Guernsey's reputation internationally, and would have the inevitable consequence that Guernsey would be unable to comply with its international obligations. Accordingly in June 2004 (Billet d'Etat VIII, 2004) the States resolved, to direct "the preparation of such legislation as may be necessary or expedient to implement and give effect to bilateral agreements on taxation and transparency entered into with the authority of the States". The principal purpose of this Report is to bring to the States the primary legislation pursuant to their June 2004 Resolution to give the Administrator the requisite powers. I am grateful to the Policy Council for agreeing that this report may be placed before the States in the same Billet d'Etat as the draft Projet de Loi.

- 2.3. It should be noted, however, that the powers proposed in the Projet apply not only in respect of international agreements but also in respect of domestic tax administration. There are two reasons for this:
- (a) Protection of the island's domestic tax base is of paramount importance. In the light of the proposed reforms to the corporate tax system from 2008 onwards (which are the subject of a consultation document issued in March 2005) pressures upon States' finances will increase. This is particularly so in respect of the proposal to transfer the burden of tax in respect of most companies from the company itself to the shareholders, where they are Guernsey resident. There are a number of ways in which true beneficial ownership of companies can be disguised and it is essential, therefore, that there are robust measures in place to counter any such tax avoidance. A significant aspect of any such measure will be the ability of the Administrator to have the power to obtain documents and information required to determine a taxpayer's correct liability. The powers will also be available to supplement the relatively limited powers currently available to the Administrator, as provided by sections 67 and 68 of the 1975 Law, which are not sufficient to enable him to administer tax fairly and effectively.
 - (b) The legislation has been drafted to enable the States by Ordinance to implement it at different times and for different purposes, and so for TIEAs on a case by case basis. The legislation provides that the Administrator's information gathering powers are equally as extensive as respects his administration of domestic income tax as for TIEAs, though whether and if so how any request for information is dealt with by the Administrator will, of course, depend on the facts and circumstances of each case. The States should note that H.M. Procureur has advised of the possibility of challenge to the legislation if the States were to implement information gathering powers in connection with the enforcement of TIEAs if, at the same time, such powers were not available to the Administrator in the administration of domestic income tax.

- 2.4 The Isle of Man has already enacted information gathering powers, for both domestic and international purposes. It is understood that, legislation is currently being drafted, for consideration by the Jersey Authorities in the middle of 2005.
- 2.5. At this stage it is worth mentioning the progress made in the negotiation of TIEAs with other jurisdictions. Such jurisdictions currently include Australia, France, Germany, Ireland, Italy, the Netherlands, New Zealand and the United Kingdom, and a number of other states and territories have expressed an interest in commencing negotiations. Members will know that the process arises from the commitment made by Guernsey to the OECD initiative in 2002, together with the majority of financial centres throughout the world.
- 2.6. That commitment was on the basis of there being a level playing field between all jurisdictions, OECD members and non-members alike. The Policy Council is not satisfied that the level playing field is presently in place, and therefore, whilst continuing negotiations with selected countries, no further TIEAs will be signed unless the Policy Council is satisfied that a level playing field is in place, or that it is in Guernsey's best economic interests in any particular case to conclude a TIEA in the absence of a level playing field. The issue of whether or not a level playing field exists is currently subject to discussion in and by the OECD, and other non-member states and territories, at Global Forum meetings regularly organised by the OECD. When those participating in the Global Forum (including Guernsey, the other Crown Dependencies and the majority of other offshore finance centres) are satisfied that a level playing field does, in fact, exist, Guernsey will then be in a position to fulfil its 2002 commitment, and thus information powers will be needed in order to comply with any TIEAs which are concluded as a result of that commitment.

Detailed Proposals

- 2.7. Attached as an appendix to this report is a table summarising relevant provisions of the proposed Projet. **[NB – this has been updated to reflect subsequent amendments.]**
- 2.8. Members will note that the powers which will be available to the Administrator of Income Tax, if approved, are widely drawn and prescriptive. For that reason, it should be emphasised that, in relation to domestic tax administration, the vast majority of taxpayers will notice little change in the way the Administrator deals with their income tax affairs. He will still use an informal request for information in most cases, followed by a request under the existing powers contained in section 68(1) of the 1975 Law, if that information is not provided. The use of the powers provided by the new Part VIA of the Projet will be only in cases where the Administrator feels it appropriate to use such formal measures, e.g. because of an inadequate, or no, response. Indeed, the new sections 75A(2) and 75B(3), introduced by the Projet, generally require the person who is to be subject to the notices under those sections to be given a reasonable opportunity to provide the information required in advance of a formal notice.

- 2.9. Moreover, the sections enabling court orders and warrants to be obtained (sections 75E, 75F and 75I) would be reserved for the most serious cases and their use would be exceptional.
- 2.10. The Treasury & Resources Department has consulted with the Guernsey Society of Chartered & Certified Accountants, the Bar Council, and the Guernsey Financial Services Commission in the drafting of the Project.

3. **Recommendations**

The Treasury & Resources Department recommends the States to agree that legislation is enacted as set out in this Report and to approve The Income Tax (Guernsey) (Amendment) Law 2005.

Appendix B

Table summarising provisions regarding information powers

[All references are to the Income Tax (Guernsey) (Amendment) Law, 2005 except where annotated “(2008)” (which refers to the Income Tax (Guernsey) (Amendment) Law, 2008)]

Section of Amendment Law	New or amended section of main Law	Detail
2, 3 & 4	68(1), 68(1AA), 68(3) & 68(4)	Widens and clarifies powers currently available under section 68
5	75A	Confers on the Director power to obtain information and documents from the taxpayer
5	75B	Confers on the Director power to obtain information and documents from third parties concerning the taxpayer.
5 / 1 & 2 (2008)	75C	Applies the powers under sections 75A and 75B to requests for information received under international agreements approved by the States by Ordinance
3 (2008)	75CA	Sets out the procedures for a Member of the Guernsey Tax Tribunal “vetting” requests under a TIEA. (NOTE: this provision was repealed before introduction and so never had force of Law)
3 (2014)	75CB	Confers on the Director the ability to apply to Guernsey Tax Tribunal to omit name of taxpayer on s75B notice, where it is not necessary to name the taxpayer
5	75D	Contains supplementary provisions as to the manner in which sections 75A and 75B are to be applied
5	75E	Empowers the Royal Court to order production of documents in a case where a notice has been served under section 75A and has not been complied with (or where an order under section 75A is not practical)
5	75F	Empowers the Royal Court to order production of documents in a case where a notice has been served under section 75B and has not been complied with (or where an order under section 75B is not practical)

Section of Amendment Law	New or amended Section of main Law	Detail
5	75G	Contains supplementary provision as to the operation of orders under sections 75E and 75F
5	75H	Deals with notice of applications for and procedures regarding Court Orders under sections 75E and 75F
5	75I	Empowers the Bailiff, where an order under section 75E or 75F has not been complied with, to issue a warrant to enter and search premises, and remove documents, subject to the usual legal safeguards
5	75J	Prescribes how any documents removed in the course of a search under section 75I are to be kept, safeguarded and handled, and the procedure for their removal and retention
5 + 4 (2008)	75K	Provides a right of appeal to the Royal Court regarding a notice under sections 75A or 75B
5	75L	Creates offences relative to the falsification of documents and the provision of false information under this Part of the Law
5	75M	Overrides duties of confidentiality and safeguards any lien, and gives protection against self-incrimination
5	75N	Prescribes the constitution of the Royal Court for the purposes of this Part of the Law
5	75O	List of definitions
5	75P	Allows Policy & Resources Committee to make Regulations regarding the type of tax records to be kept, and the manner and length of time for which they are to be kept
5	75Q	Allows the States to amend this Part of the Law by Ordinance
6	76	Clarifies that the rights of appeal provided by section 76 of the Law do not apply to notices given under sections 75A or 75B
7	203A	Deals with general procedural matters relating to Ordinances, Regulations and Orders of the Royal Court made under the Law
8	205	Adds to the Director's functions under the Law the exchange of information under approved international agreements

Section of Amendment Law	New or amended Section of main Law	Detail
9	208A	Enacts the standard provision imposing criminal liability on directors with whose consent or connivance the company has committed offences under the Law
10	209(1)	Revises the definition of "Director" to include "Deputy Director"
11	-	Citation
12	-	Provides that commencement of the 2005 Amendment Law shall be effected by Ordinance, and provides that different commencement dates may be provided for the purposes of the administration of income tax under domestic laws, and for the purposes of any approved international agreement