

The logo for the Guernsey Revenue Service Tribunal is a dark grey rectangle. It features a faint, stylized background image of a hand holding a scale of justice. The text "Guernsey Revenue Service Tribunal" is written in white, sans-serif font in the lower-left corner of the rectangle.

Guernsey Revenue  
Service Tribunal

# **GUIDANCE NOTES FOR APPELLANTS**

**This guidance aims to answer the questions you may have about how to appeal a decision of the Revenue Service in respect of your income tax assessment, the application of a late payment surcharge or penalty notice and in relation to whether the contribution conditions for any benefit are satisfied, and the class of insured persons in which a person is to be included, or the liability of an insured person to pay contributions of any class.**

**The guidance represents the Law and procedures as at February 2022 and the legislation may be subject to further amendment**

**In addition to reading this guide, you are strongly encouraged to also read the legislation under which the decision you are appealing was made and any guidance and advice notes published by the Director of the Revenue Service which may be relevant.**

**The principal legislation includes the Income Tax (Guernsey) Law, 1975, as amended the Social Insurance (Guernsey) Law, 1978, as amended and the Guernsey Revenue Service Tribunal Ordinance, 2021. Copies can be found at [www.guernseylegalresources.gg](http://www.guernseylegalresources.gg) and the relevant guidance and advice notes published by the Director of the Revenue Service can be found at [www.gov.gg/tax](http://www.gov.gg/tax) or copies can be requested from the Director of the Revenue Service at the Sir Charles Frossard House, La Charroterie, St Peter Port.**

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## DEFINITIONS

<b><u>Key word</u></b>	<b><u>Definition</u></b>
<b>1975 Law</b>	The Income Tax (Guernsey) Law, 1975, as amended
<b>1978 Law</b>	The Social Insurance (Guernsey) Law, 1978, as amended
<b>Ordinance</b>	The Guernsey Revenue Service Tribunal Ordinance, 2021 <sup>1</sup>
<b>Committee</b>	The States of Guernsey Policy & Resources Committee
<b>Revenue Service</b>	The States of Guernsey Revenue Service
<b>Director</b>	The Director of the Revenue Service and/or staff who make decisions under delegated authority and who may represent Director at appeal hearings
<b>Appeal</b>	An appeal under the 1975 Law or the 1978 Law
<b>Tribunal</b>	The Guernsey Revenue Service Tribunal, a statutory tribunal authorised by the 1975 Law <sup>2</sup> to hear an appeal
<b>Clerk</b>	The Clerk to the Tribunal (and includes the Deputy Clerk)
<b>Hearing</b>	A meeting of the Tribunal at which an appeal is to be heard
<b>Hearing Date</b>	A date scheduled for a hearing
<b>Appellant</b>	A person appealing to the Tribunal or, where appropriate, his professional representative or adviser. If a company is involved, this includes a director of that company or an authorised employee
<b>Parties</b>	The appellant and the Director (the Respondent)
<b>Statement</b>	A statement of agreed facts, prepared by the parties before a Hearing
<b>Legal Authorities</b>	Authoritative documents relating to the legal aspects of an Appeal, which may include extracts from legal textbooks, case reports, relevant Sections of the 1975 Law (or other laws) etc
<b>Decision</b>	The decision of the Tribunal after hearing an appeal

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<sup>1</sup> On 1<sup>st</sup> January 2022, the Tribunal's name was changed from the Guernsey Tax Tribunal to the Guernsey Revenue Service Tribunal under the Guernsey Revenue Service Ordinance, 2021

<sup>2</sup> Specifically, the Income Tax (Amendment) (Guernsey) Law, 1990

## THE GUERNSEY REVENUE SERVICE TRIBUNAL

The Tribunal is the independent body set up to hear appeals against certain decisions of the Director of the Revenue Service under the Income Tax (Guernsey) Law, 1975 and, from 1<sup>st</sup> January 2022, to hear against decisions of the Administrator made under section 74 of the Social Insurance (Guernsey) Law, 1978<sup>3</sup>.

The Tribunal has 8 members, including a President and a Vice-President. All the members are completely independent of the States of Guernsey, the Policy & Resources Committee and the Revenue Service. The Tribunal members will generally have a professional qualification or relevant experience in tax-related issues. They are appointed by the Royal Court and are required to take an oath of secrecy.

The current members of the Tribunal are:

Mr Roy McGregor, Tribunal President  
Advocate Russell Clark  
Advocate Antony Ellis  
Advocate Robin Gist  
Ms Gill Morris  
Mr Tony Rigden  
Mrs Victoria Russell  
Mr Jeremy Thompson

At an appeal hearing, three members, including either the President or the Vice-President, sit to determine the appeal.

The Tribunal is supported by a Clerk, Mr Martin Thornton, and a Deputy Clerk, Ms Elizabeth Dene, and are responsible for the general administration of the Tribunal and advise the Tribunal on questions of law and practice.

The Clerk is an independent postholder (i.e. a Statutory Official) and are appointed by the Policy & Resource Committee in consultation with the Tribunal's President.

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<sup>3</sup> See the Guernsey Revenue Service Ordinance, 2021; the Ordinance transfers the jurisdiction of the Guernsey Tax Tribunal to the Guernsey Revenue Service Tribunal. It provides that a person who held a position on the Guernsey Tax Tribunal immediately before the commencement of this Ordinance shall be deemed to have been appointed to the corresponding position on the Guernsey Revenue Service Tribunal and any proceeding or matter before the Guernsey Tax Tribunal immediately before commencement may be continued before the Guernsey Revenue Service Tribunal. It also amends references to the Guernsey Tax Tribunal in the Income Tax (Guernsey) Law, 1975. It also amends the Social Insurance (Guernsey) Law, 1978 to specify questions for determination by the Administrator and Director of the Revenue Service, appeals against decisions of the Director of Revenue Service, and appeals to the Ordinary Court and Court of Appeal.

The Tribunal can be contacted by writing to:

The Clerk to the Guernsey Revenue Service Tribunal  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey GY1 1FH  
or by  
Email: [revenue.servicetribunal@gov.gg](mailto:revenue.servicetribunal@gov.gg).  
Telephone: 01481 223384.

**The guidance notes are split into 3 sections:**

**Section 1 – appeals under the Income Tax (Guernsey) Law, 1975**

**Section 2 – appeals under section 74 of the Social Insurance (Guernsey) Law, 1978**

**Section 3 – the Tribunal’s general procedures for handling appeals**

**If your appeal relates to an income tax matter, please read sections 1 and 3.**

**If your appeal relates to a Social Insurance contribution matter, please read sections 2 and 3.**

## SECTION 1 – APPEALS UNDER THE INCOME TAX (GUERNSEY) LAW, 1975

### 1. *What decisions can be appealed*

The decisions of the Director of Revenue Services which the Tribunal can determine are set out in section 76 of the 1975 Law, namely:

Any person aggrieved by any:

- assessment,
- penalty,
- direction or order

made, or imposed upon him by the Director of Revenue Services, other than a notice under section 75A<sup>4</sup> or 75B<sup>5</sup>, or any:

- surcharge or additional surcharge under section 199, or
- supplement or additional supplement under section 199A

is entitlement to appeal to the Guernsey Revenue Service Tribunal.

The following income tax-related decisions of the Director may be appealed to the Tribunal:

- (a) A **surcharge** is payable if any amount (including a **penalty**) is not paid by the settlement date meaning the date on or before which it is due for payment. The rate of the surcharge is determined by regulation. An **additional surcharge** is due if the amount and surcharge has not been paid at the expiration of 6 months after the settlement date and then additionally at each successive six-monthly intervals on the amount outstanding. (In other words, compounding).
- (b) A **supplement** arises where the Director receives a fully completed tax return and which shows an overpayment of tax, the amount is to be repaid by the Director on the repayment date. The 'repayment date' is the date one year after the return was received. The rate of the supplement is determined by regulation. An **additional supplement** is due if the amount of tax overpaid has not been paid at the expiration of 6 months after the settlement date and then additionally at each successive six-monthly intervals on the amount outstanding (i.e. compounding).
- (c) A **penalty** may be imposed by the Director where a tax payer has:
  - Failed to give notice of liability to be charged tax (s.189);
  - Failed to deliver a return as to income within the prescribed period (s.190);
  - Negligently delivered a return of income which is incorrect or incomplete in any material particular (s.191);
  - Fraudulently delivered a return of income which is incorrect or incomplete in any material particular (s.192);

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<sup>4</sup> A notice under **section 75A** is a requirement for the taxpayer to produce documents that in the Director of Revenue Services opinion contain information relevant to any liability for tax or the amount of that liability.

<sup>5</sup> A notice under **section 75B** is a requirement in similar terms to any person other than the taxpayer. Note that 'person' under the interpretation law includes corporate entities and structures.

- Failed to deliver a return other than a return of income within the prescribed period (s.193);
- Negligently made a claim in connection with any relief or allowance from or in respect of tax which is incorrect or incomplete in any material particular (s.195); or
- Fraudulently made a claim in connection with any relief or allowance from or in respect of tax which is incorrect or incomplete in any material particular (s.196).

## **2. *How do I make an appeal?***

Section 76 provides that any appeal is to be:

- in writing,
- stating the grounds of appeal; and
- made to the Director of Revenue Services
- within 30 days of
  - the issue of the assessment; or
  - of the order imposing the penalty or other order or direction; or
  - the date of notification of the surcharge, additional surcharge, supplement, or additional supplement.

You should also include copies of any relevant letters or other material which relate to your appeal.

## **3. *Where do I send my appeal?***

The appeal should be sent to:

The Director of the Revenue Service  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port  
 Guernsey GY1 1FH

## **4. *Can I make my appeal online?***

There is not an online option but you may submit your appeal by email to the Director of the Revenue Service.

## **5. *What are the grounds of appeal against the imposition of a penalty?***

The grounds of appeal against a penalty are limited to:

- (a) The penalty is not payable as a matter of law as the return was submitted on or before the filing deadline; and/or
- (b) There are proper grounds for the Tribunal to rescind the penalty or to reduce the penalty payable.

**6. In what circumstances may the Director rescind the penalty?**

When an appeal is received, the Director will review the decision and may rescind the penalty if:

- (a) You have left the island and were not employed within the year in question;
- (b) You have not worked for a few years;
- (c) You have been seriously ill when the return should have been submitted;
- (d) You have been in receipt of supplementary or invalidity benefits for a number of years;  
or
- (e) You were married in the year in question and have submitted your return as part of your husband's return.

Similarly, the Director may reduce the amount of the penalty in the following circumstances:

- (a) If your gross income is less than any allowances; or
- (b) If you have been in receipt of supplementary benefit during the year in question unless your gross income is greater than your allowances.

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

You may ask the Director to defer the payment of the penalty order pending a decision on your appeal.

The 1975 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. However, the 1975 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.

**8. 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 refund the penalty or, if appropriate, offset the amount paid against any other tax you may owe.

**9. What are the grounds of appeal against a surcharge?**

The grounds of appeal against a surcharge are limited:

- (a) The surcharge or additional surcharge is not payable (i.e. as a matter of Law);
- (b) The surcharge or additional surcharge has been miscalculated; or
- (c) In the case of an appeal against an additional surcharge, the Director has delayed making an assessment for at least six months after having received the relevant tax return fully completed.

**10. If I appeal against a surcharge, do I have to pay it before the appeal is heard?**

You may ask the Director to defer the payment of the surcharge pending a decision on your appeal.

The 1975 Law states that a surcharge or additional surcharge must be paid within 30 days of the date of the order imposing a surcharge and if it is not then the Director can recover it as a civil debt. It also gives the Director the discretion to relieve a taxpayer from the obligation of paying the surcharge whilst waiting for an appeal to be heard.

**11. *If I pay the surcharge 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 refund the penalty or, if appropriate, offset the amount paid against any other tax you may owe.

**12. *What decision can the Tribunal reach?***

When determining an appeal the Tribunal may in the case of an appeal against:

*An assessment:*

- (a) Confirm, reduce, increase or annul the assessment; or
- (b) Set the assessment aside and direct the Director to make a fresh assessment after making any further enquiry the Director may think fit or the Tribunal may direct.

*An order imposing a penalty:*

- (a) Confirm or cancel the imposition of the penalty; or
- (b) Increase or decrease the amount of the penalty.

*Any other director or order:*

- (a) Make such order as the Tribunal thinks fit.

*A surcharge or additional surcharge:*

- (a) Confirm or annul the imposition of the surcharge; or
- (b) Increase or reduce the amount of the surcharge.

*A supplement or additional supplement:*

- (a) Confirm or annul the non-payment; or
- (b) Increase or reduce the amount of the supplement.

**13. *How will I be notified of the decision?***

The Tribunal generally issues a written decision following the hearing. This will be sent to you and the Director within 2 to 3 weeks of the hearing. This is sometimes referred to as a reserved decision.

## SECTION 2 – APPEALS UNDER SECTION 78 OF THE SOCIAL INSURANCE (GUERNSEY) LAW, 1978

### 14. *What decisions can be appealed?*

On 1<sup>st</sup> January 2022, the powers of the Tribunal were extended under the Guernsey Revenue Service Tribunal Ordinance, 2021 to include appeals against certain decisions of the Director.

Part III of the Ordinance also extends the role of the Tribunal to include appeals against decisions of the Director made under section 74 of the Social Insurance Law which relates to:

- (a) questions as to whether the contribution conditions for any benefit are satisfied, by the Administrator<sup>6</sup>,
- (b) questions otherwise relating to a person's contributions, by the Director of the Revenue Service<sup>7</sup>,
- (c) questions as to –
  - (i) the class of insured persons in which a person is to be included<sup>8</sup>, and
  - (ii) the liability of an insured person to pay contributions of any class<sup>9</sup>, by the Director of the Revenue Service.

### 15. *How do I make an appeal?*

If you disagree with the decision in respect of the matters set out in section 74 of the 1978 Law, you may appeal the decision.

The appeal period is **28 days after the date of the decision** or within such further time as the chairman of the Tribunal may, for good cause, allow.

There is no standard format for such an appeal, but it must be in writing and you should explain what you are appealing and give reasons why you disagree with the decision. Your appeal letter should include the following information:

- (a) Your full name
- (b) Your full postal address
- (c) Your social insurance reference number
- (d) Details of any advocate, accountant or other tax professional who is acting for you.

You should also include copies of any relevant letters or other material which relate to your appeal.

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<sup>6</sup> Under the Social Insurance Law, some benefits are only paid if the person has a specified number of contributions over a particular time period; where this is the case, the Administrator will be asked to confirm the person's contribution history; the person may challenge their contribution history if they believe it is incorrect.

<sup>7</sup> This may arise where a person believes they should have received a contribution credit, e.g. when not in paid employment, but no credit has been awarded by the Administrator.

<sup>8</sup> The class of an insured person depends on whether they are e.g. employed, self-employed, not working, retired and in receipt of their States' pension, etc.

<sup>9</sup> The class of an insured person will determine what contributions, if any must be paid.

**16. On what grounds can an appeal be made under this section?**

The sole grounds of appeal are that the determination was:

- (a) Based on a miscalculation or was otherwise wrong, or
- (b) Unreasonable as a matter of law, having regard to all the facts and circumstances of the case.

**17. Where do I send my appeal?**

The appeal should be sent to:

The Director of the Revenue Service  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey GY1 1FH

**18. What decisions can the Tribunal reach?**

The Tribunal may:

- (a) confirm, annul or vary the determination of the Director which is the subject of the appeal, or
- (b) set aside the determination and order the Director to make a fresh determination after

making such further enquiry as:

- (i) the Director thinks fit, or
- (ii) the Guernsey Revenue Service Tribunal may direct.

**19. How will I be notified of the decision**

The Tribunal generally issues a written decision following the hearing. This will be sent to you and the Director within 2 to 3 weeks of the hearing. This is sometimes referred to as a reserved decision.

## SECTION 3 - THE TRIBUNAL'S GENERAL PROCEDURES FOR HANDLING APPEALS

*The information set out below applies equally to appeals made under the section 76 of the 1975 Law (as set out in Section 1 above) and those made under section 74 of the Social Insurance Law (as set out in Section 2 above).*

### LATE APPEALS

#### **20. What happens if an Appeal is late or defective in some other way?**

The Tribunal is sometimes asked to hear Appeals that:

- (a) Have been lodged after the appeal period has expired;
- (b) Do not include adequate details of the grounds of appeal, relevant correspondence, etc.; or
- (c) Fails to include grounds of appeal which the Tribunal is then asked to consider at the Hearing.

The Tribunal has little discretion to accept late appeals. Therefore, if your appeal is made after the expiry of the appeal period, it may mean that, unless you can show good reason for the late submission of the appeal, your appeal may be dismissed without a full hearing.

The Tribunal will consider such appeals carefully<sup>10</sup> but must also consider any objections raised by the Director as to why a late or incomplete appeal should not be heard.

### APPEAL PAPERS

#### **21. What happens once a hearing date has been confirmed?**

Once a hearing date has been confirmed the Clerk will advise you and the Director regarding the submission of any written material for the Tribunal. This will usually be confirmed in the written directions which will be issued after the short hearing, sometimes referred to as a case management hearing, where all the administrative arrangements for the full hearing will be agreed.

The Clerk will confirm the date by which these documents must be submitted and will then arrange for the Tribunal members, yourself and the Director to receive a full set of the appeal papers. The appeal papers are generally distributed 10 days before the hearing, depending on the complexity of the issues.

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<sup>10</sup> Section 78(4) of the 1975 Law gives specific discretion to the Tribunal to accept new grounds for appeal, provided the omission was not wilful or unreasonable.

Although other documents may be produced at the Hearing, this may cause delays. It is essential to provide copies of all legal authorities<sup>11</sup> in advance to enable the Clerk, the Tribunal and the parties to the appeal to have adequate notice of the issues to be advanced.

**See Appendix 1 for an explanation of how appeal papers, including legal authorities, should be prepared and included in your appeal bundle**

## **22. *When do documents have to be provided?***

In most cases the Clerk will endeavour to give parties between four to six weeks to prepare for a hearing. This will depend on the number and complexity of grounds set out in the appeal and whether or not the parties are professionally represented.

The written directions following the case management hearing<sup>12</sup> will set out a timetable for the submission of all documents, including a written statement of the appellant's grounds of appeal, the Director's defence to the grounds of appeal<sup>13</sup>, skeleton arguments<sup>14</sup>, Statement of Agreed Facts<sup>15</sup>, witness statements, and the exchange of document bundles. This timetable ensures that the Tribunal members and parties have sufficient time to read and review the documents and prepare for the Hearing.

## **23. *What is the Statement of Agreed Facts?***

A Statement of Agreed Facts is a document setting out the main factual background to the appeal on which the parties agree, i.e. the facts of the case which are not in dispute. It will normally include details of dates on which any decisions were made and letters sent to you, any responses from you, etc. and copies of relevant correspondence and other non-contentious documents (e.g. copies of tax returns, letters between you and the Director, sets of accounts, legal agreements etc.).

## **24. *What is the purpose of the Statement of Agreed Facts?***

A Statement of Agreed Facts assists the Tribunal to identify the issues it needs to resolve. It also assists the parties to resolve a number of issues before the hearing and eliminates duplication of evidence. It will also assist you and the Director to focus on the key issues which are in dispute and the reason for the appeal.

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<sup>11</sup> Legal authorities are decisions or judgments made in other cases and are available to the general public. They can be used to highlight the outcome of a case that may have similar circumstances. It is not compulsory to include them but if you do you must highlight the section(s) you want to draw attention to. You can include them within your bundle of documents or you can bring seven copies to the hearing.

<sup>12</sup> A case management hearing is held to explain to the parties (i.e. the appellant and/or their legal or professional representative and the Revenue Service) what further documents need to be submitted prior to a hearing and to set the time, date and venue of the hearing itself. These hearings are usually chaired by the Tribunal's Clerk as they are dealing with matters of administration rather than making any decisions on the facts of the appeal, etc.

<sup>13</sup> Your reasons for challenging the Director's decision

<sup>14</sup> A skeleton argument summarises what you will say to the Tribunal members at the hearing. It is a broad outline of your case and is not meant to contain everything that you might say to the judge

<sup>15</sup> A Statement of Agreed Facts is a short summary of any facts

**25. *How is the Statement of Agreed Facts prepared?***

In practice, the Director usually prepares a draft Statement for you, especially if you are not professionally or legally represented. The Statement will not be shown to the Tribunal without your agreement.

**26. *What input into the Statement of Agreed Facts will I have?***

You will be sent a draft copy of the Statement by the Director before it is sent to the Clerk and you be able to make any additions, alterations, corrections or deletions which you feel should be made to the draft Statement. You will be asked to agree a final version of the Statement before it is sent to the Clerk.

**27. *What happens if I don't agree with the draft Statement of Agreed Facts?***

If you do not agree with the draft Statement, it will not be included in the appeal papers as a document which has been agreed by both parties.

However, the Director may include it in the Revenue Service's appeal papers if it will assist the Tribunal in its deliberations. The Director would make it clear that the Statement had not been agreed.

**28. *What other documents does the Tribunal need?***

There is no standard list of documents to be provided, but each side will normally provide copies of relevant legal authorities to which they wish to draw attention and copies of any documents that are not included with the Statement.

**THE HEARING**

**29. *How does the Tribunal conduct its proceedings?***

The Tribunal must conduct its proceedings in accordance with natural justice and as informally and quickly as a proper consideration of the matters before it will permit.

The Tribunal is conscious that in many cases, the appellant is unlikely to have had any prior experience in legal matters. In deciding its procedures for hearing the Tribunal will always endeavour to ensure that parties, especially where unrepresented, are able to present their case and to ensure that the proceedings are fair to all concerned.

**30. *Where and when do hearings take place?***

The hearings are generally held at a neutral venues rather than within a States' building. The Tribunal usually uses one of the rooms at Les Cotils Centre or St James Concert and Assembly Rooms. The hearings are held on a weekday and will usual start at 9.30am or 10.00am. During the hearing, breaks will be taken at convient times. These are usually agreed on the day of the hearing and depend on how the proceedings are going.

**31. Who will be present at the hearing?**

In most cases, the only people present during the hearing will be:

- (a) You and anybody assisting or representing you at the appeal;
- (b) The Director or any officers who may have directed to represent the Director;
- (c) Any witnesses either you or the Director may wish to call; and
- (d) The Tribunal members and the Tribunal's Clerk.

**32. Do I have to attend the Hearing?**

You are strongly encouraged to attend the hearing as there may be questions which only you can answer. If you are professional represented, you may decide not to attend in person. The Tribunal does have the power to consider an appeal in the absence of the appellant.

Where an appeal is being made on behalf of a company, the Tribunal will expect the company to be either professional represented and for the Company Secretary or a Director, i.e. somebody with a clear understanding of the Company's operations, etc. to also attend.

**33. How long does it take to arrange a hearing?**

The length of time between you submitting your appeal and a hearing date being set will vary from case to case. The Tribunal will always endeavour to arrange hearings in a timely manner.

**34. How will I present my appeal?**

As a rule, the Tribunal will invite you or your professional representative to present your case. You are entitled to call any witnesses at this stage. The Director and the Tribunal members will have the opportunity to ask questions of you and/or any witnesses you may call.

The Director then states their defence to your appeal, again calling witnesses if appropriate. You and the Tribunal members will have the opportunity to ask questions of the Director or any witness who may have given evidence.

As well as the Tribunal asking questions of the parties or any witnesses, both parties will be given an appropriate opportunity to respond to whatever the other says.

Once you and the Director have presented your case, you will be invited to address the Tribunal on a right of reply. At this stage, you should not introduce any new evidence or appeal grounds, unless the Tribunal otherwise agrees, and subject to any condition that the Tribunal may impose including allowing the Director the right to reply.

**35. Can I appoint somebody to represent me at the Tribunal?**

Yes, you may be represented at the hearing by your advocate, accountant, or tax adviser. If you chose to be professionally represented, you will be responsible for any costs and there is no provision for you to recover such costs from the Revenue Service if your appeal is allowed.

If you are to be professional represented, you must advise the Clerk in writing and give the person's full name and professional qualifications.

### **36. *Are Hearings recorded?***

The hearings are normally recorded. In addition, the Tribunal members will also make their own notes during the hearing to assist them in reaching their decision and drafting the written decision.

The Tribunal's procedures for recording hearings and providing a transcript of the hearing is set out in Appendix 5.

### **37. *Can Hearings be postponed?***

In setting the date for hearings, the Tribunal endeavours to give both parties reasonable notice of the hearing date and so is reluctant to postpone or adjourn a hearing unless there are exceptional circumstances for doing so.

It is important to understand the difference between postponement and adjournment:

- (a) Postponement of a hearing means the hearing cannot commence on the allocated hearing date
- (b) Adjournment means that the hearing starts, but for some reason cannot be completed on the day in question.

If you fail to attend, the Tribunal is likely to begin the hearing without you unless it has a valid reason to postpone the hearing.

### **28. *How is a postponement agreed?***

Section 78(3) of the 1975 Law states that, for a postponement to be granted, you must be prevented from attending by "*absence, sickness or other reasonable cause*". A request for postponement will usually be considered at a formal hearing of the Tribunal on the confirmed hearing date, whether or not you are able to attend. The Tribunal will invite any comments from the Director, who may object to postponement.

In the case of absence due to sickness, you may be asked to provide a medical certificate from a doctor. In all other cases, the Tribunal takes the view that there must be compelling external circumstances, which prevented you from attending (such as transport delays or the serious illness of a close relative). The fact that attendance may be inconvenient or clash with other demands is not a sufficient reason, nor is lack of preparation on your part or that of your or professional representative.

The one exception to this is where both parties are close to reaching an agreement on the subject matter of the appeal and both parties agree to a postponement. By concession, the Tribunal will agree to postpone a Hearing in these circumstances, but the Clerk must be informed as soon as possible, and no later than two working days before the hearing date so

that he can give the Tribunal members adequate notice and to avoid unnecessary dispatch of documents, costs, etc.

**39. *Can a Hearing be adjourned?***

The Tribunal may adjourn a hearing part way through the hearing. This may be necessary to enable certain information to be produced to the Tribunal, or because a witness needs to be called or simply because the hearing has taken more than the time allocated.

If the hearing is adjourned, the Tribunal will generally set a time, date and venue for it to be resumed before it closes the proceedings.

**WITNESSES**

**40. *Can I call witnesses if I need to?***

Yes, you may call any witnesses you wish who are able to give evidence in support of your appeal. You must advise the Clerk in writing of the full names of any witnesses and give an indication about the evidence they will be giving. It will be your responsibility to ensure that your witnesses attend the hearing. If they fail to attend it is unlikely that the Tribunal will allow an adjournment unless there are exceptional circumstances for doing so.

**41. *Summoning Witnesses***

If you believe that a witness is unlikely to attend but has evidence which is central to your appeal you should inform the Clerk without delay.

Where the witness lives outside Guernsey or where his evidence is required on a simple factual matter, a properly sworn affidavit may suffice. Alternatively, the Tribunal will consider whether a witness may appear via a video link.

The Tribunal has powers to summons any witnesses where it believes hearing from a particular person is necessary to ensure a fair hearing and it has reason to believe that person will not otherwise attend.

**TRIBUNAL DECISIONS**

**42. *How does the Tribunal give its Decision?***

Once the Tribunal has heard all the evidence and submissions from yourself and the Director, it may exercise one of the following options:

- (a) Give its decision as to whether the Appeal is allowed or refused verbally at the end of the hearing, and thereafter publish its written decision to the parties once it has been prepared; or
- (b) Reserve its decision and to publish its decision as soon as it is able following the conclusion of the hearing.

The Tribunal will withdraw to consider its decision. If it intends to give its decision verbally, it will set a time for the hearing to be reconvened.

The written decision is generally issued within 2 to 3 weeks of the hearing.

## **FURTHER APPEALS**

### **43. *What happens if I am dissatisfied with the Tribunal's Decision?***

A decision of the Tribunal on matters of fact is final.

Section 80 of the 1975 Law gives you the right to appeal to the Royal Court on matters of law. If you intend to make an appeal to the Royal Court you may wish to consider appointing an Advocate to advise and represent you before the Royal Court.

### **44. *How do I make an appeal to the Royal Court?***

If you wish to appeal to the Royal Court, you must lodge a notice of appeal with the President of the Tribunal within **21 days of the determination of the initial appeal**. The 21-day period starts on the date the full written decision is issued.

When the notice of appeal is lodged, it is essential to advise the Clerk of the specific matters of law on which your appeal will be based.

### **44. *How are appeals to the Royal Court determined?***

Appeals against decisions of the Tribunal proceed by way of a "Case Stated". This requires the Tribunal to prepare a full report on the case, setting out the facts of the case and the determinations of the Tribunal. The written decision forms the core of the Case Stated and so you will have already seen most of the information that this report contains.

The Clerk will send a draft copy to you and the Director for comment as to factual accuracy and requests for further clarification. Once agreed, the report will be sent to you and you must then submit it to HM Greffier, who will arrange for the Royal Court to hear the appeal.

Full details of the procedure for appeals to the Royal Court can be found in [the Royal Court \(Guernsey Revenue Service\) Order 2008](#).

## **DATA PROTECTION**

The Tribunal is an independent appeal tribunal established under the provisions of the Income Tax (Guernsey) Law, 1975 to determine appeals against decisions as set out in these guidance notes.

Personal information which may form part of the appeal papers will only processed in accordance with section 12 of Schedule 1 of the Data Protection (Bailiwick of Guernsey) Law, 2017<sup>16</sup>.

A copy of the Panel's Fair Processing Notice is available on request and can be downloaded from the Revenue Services Tribunal's website ([www.gov.gg/revenueservicetribunal](http://www.gov.gg/revenueservicetribunal)).

The Revenue Services Tribunal's data controller can be contacted at the address below.

## **FURTHER INFORMATION**

If you require further information regarding appeals against decisions of the Director of the Revenue Service, please contact:

The Clerk to the Guernsey Revenue Service Tribunal  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

You may also contact the Clerk by email – [revenue.servicetribunal@gov.gg](mailto:revenue.servicetribunal@gov.gg).

If you wish to telephone the Tribunal, you may do so on (01481) 223384.

**Issued by the Guernsey Revenue Service Tribunal – February 2022  
Reviewed April 2023**

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<sup>16</sup> **12.** The processing is necessary –

- (a) for the purpose of, or in connection with –
  - (i) any legal proceedings (including prospective legal proceedings), or
  - (ii) the discharge of any functions of a court or tribunal acting in its judicial capacity,
- (b) for the purpose of obtaining legal advice, or
- (c) otherwise for the purposes of establishing, exercising or defending legal rights.

## **APPENDIX 1 - APPEAL PAPERS**

### **A. *FORMAT OF DOCUMENTS TO BE SUPPLIED***

#### ***Originals and Copies***

The parties must be aware that the authenticity of documents can be challenged and so may be asked to produce original documents at a hearing. The production of a Statement of Agreed Facts, with accompanying agreed and admitted documents, is intended to avoid this problem.

#### ***Legal authorities***

A copy of the title page of any textbook must be included with any textbook extract, showing the title, author, edition and date.

When copies of cases are submitted, one copy of the entire case must be provided to the Clerk and a further copy of any pages that are to be referred to at the Hearing. The case must be clearly identified by title, year, journal and page.

The full copy of a case is required to enable the Tribunal to study the entire text and to ensure that selective quotations are reflective of the overall judgment.

#### ***Size and numbering of documents and authorities***

All documents (other than originals) and authorities must be on A4 paper, single sided, unless A4 is too small, in which case A3 may be used. They should be tagged in the upper left-hand corner, not stapled. There should be adequate margins and care should be taken, especially when photocopying books, that all text is included and legible.

All pages should be numbered in the bottom right corner, with prefix letters, followed by page number. The following prefix letters are to be used:

Documents accompanying Statement of Agreed Facts - SAF

Appellant's documents (i.e. from you) - APP

Respondent's documents (i.e. from the Director) - RES

For example, page 12 of your bundle should be numbered APP/12.

### **B. *CHOICE OF DOCUMENTS AND AUTHORITIES***

The parties and their professional representatives or advisers must ensure that only relevant documents and legal authorities are included in bundles or otherwise placed before the Tribunal. A document should not be submitted unless it can assist the Tribunal in determining issues of fact.

### **C. *LAW AND EVIDENCE***

The Tribunal must apply Guernsey (or, where appropriate, Alderney) law. You and your professional representative must bear in mind that English case law may not necessarily be or direct application where matters of Guernsey or Alderney law are involved. Professional representatives must exercise care when presenting English legal authorities to the Tribunal.

You and your professional representatives must assume that the Tribunal will follow the Loi relative aux Preuves, 1865 and the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, unless other statutory provisions prevail.

The Clerk cannot advise the parties in matters of law.

**D.     *RETAINING OF DOCUMENTS***

When the Tribunal has disposed of an appeal, all copies of material supplied to it, other than one set, will be shredded. Originals will be returned to their owners. One set of material will be retained for at least six years or until final determination of an appeal to the Royal Court, if later.

## **APPENDIX 2 – INCOME TAX APPEALS TO THE ROYAL COURT BY WAY OF CASE STATED**

### **Bannister**

The appellant was a shareholder and director of a Company. By an Employment Agreement effective from 1<sup>st</sup> January 1988, the Company employed him as a Director. By agreement with his co-director he ceased to draw a salary after 1991 but remained as a director and sought advantage of the ceasing source arrangement in section 31 of the 1975 Law. The Administrator argued that the employment did not cease in 1991. The appeal was allowed and the Court held:

- (1) Income from the same source cannot be divided into director's fees and wages;
- (2) The income ceased in 1991 even though its source remained. The taxpayer falls to be assessed by section 31(2) of the 1975 Law not 31(3) which has no application to income from an office or employment.

### **Les Nicolles Vineries Limited**

The appellant company carried on a growing business in glass that it owned until 1989 when, following some years of losses, it ceased and it let the glass to a third party. It claimed the benefit of annual allowances brought forward against the profits from letting in the years subsequent to 1989. The Administrator refused this claim on the grounds that annual allowances could only be brought forward and set-off in relation to the same business. The Royal Court dismissed the appeal.

### **Gold**

The duty of the Tribunal in stating a case for the Royal Court was to set forth the facts and determination. This required findings of fact where the evidence was susceptible of more than one interpretation and determination as to the tax consequences of those findings of fact, the purpose being that both taxpayer and Revenue should know what conclusions the Tribunal had arrived at and why. The determination of the Tribunal must be clear and unambiguous and the evidence which supported the Tribunal's conclusion must be identified. Where a Statement of Agreed Facts, or any other documentation was presented as part of the Case Stated, an explanation should be given as to how the documents were analysed and what conclusions were drawn from them. The Court of Appeal encouraged any parties who appear before the Tribunal to give appropriate assistance by, for example, inviting them to make findings as to particular facts perceived to be relevant. The appeal was allowed and the assessment annulled<sup>17</sup>.

### **Tremoille Properties Limited**

Royal Court dismissed the Administrator's appeal. The appeal centred on whether payments made by the taxpayer under two Base Rate Cap Agreements were deductible as revenue expenditure or were capital expenditure and not deductible. The Lieutenant-Bailiff gave guidance concerning the conduct of future appeals and the preparation of a Case Stated. He then analysed what he termed a delicate borderline question. The Royal Court allowed the appeal deciding that the payments were of a revenue rather than capital nature.

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<sup>17</sup> The written Judgement is reported in Issue 27 of the Guernsey Law Journal at paragraph 144

### **Bath Limited**

The taxpayer company received sums from the proceeds of sale of preference shares resulting from the exercise of call options granted in a subscription agreement. In allowing the appeal, the Royal Court stated that the Tribunal made serious arithmetical errors that may have affected their interpretation of the evidence of the principal witness for the taxpayer company and led to the substitution of their own opinions as to how a venture capital deal might operate. In the interests of justice the appeal would be decided by the Royal Court rather than remitting it to the Tribunal. On analysis of the transactions, the gains received were capital rather than income receipts. *Lomax v Peter Dixon and Son Limited* [1943] 25 TC 353 and *Paget v Commissioners of Inland Revenue* [1937] 21 TC 677 considered.

### **Carpenter**

The appeal was allowed. The Head Notes read as follows: Whether in the circumstances of the case profit on the purchase and sale of a single property was assessable to income tax – badges which identify a transaction as an adventure in the nature of trade – procedure followed by the Tribunal – whether the Tribunal’s finding was a true and reasonable conclusion open to it on the facts – principles of natural justice must be observed.

### **Carpenter**

A further judgement of Deputy-Bailiff Rowland (Number 51/2004) handed down on 29<sup>th</sup> October 2004. The Head Notes reads: Plaintiff had successfully appealed to the Royal Court from a decision of the Guernsey Tax Tribunal (see Judgment 65/2003) – plaintiff’s application for interest on the tax paid – whether this was pre-judgment interest under the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 – whether the Royal Court was *functus officio* – held not to be an appropriate case where a supplemental order for pre-judgment interest should be made.

### **Broadaker Company Limited**

The appeal was allowed. The Head Notes read as follows: Income Tax (Guernsey) Law, 1975 – whether abortive capital expenditure could be reclassified as a bad debt – Tax Tribunal held it was an allowable deduction – Administrator’s appeal by way of case stated – appeal allowed.

### **Cachemar Limited**

This was a test case concerning the meaning of “*permissible management expenses*” as defined in section 169 of the 1975 Law. The written judgement of Lieutenant-Bailiff Talbot (Number 35/2005) delivered 13<sup>th</sup> June 2005. The Head Notes read as follows: Income Tax (Guernsey) Law, 1975 – investment company – Tax Tribunal held the company was entitled to deduct a ‘management fee’ as ‘permissible management expenses’ – Administrator’s appeal by way of case stated – approach taken by the Tribunal – ‘permissible management expenses’ to be given a fairly wide meaning – Administrator’s appeal dismissed.

### **Glass**

This was a case that considered whether a one-off transaction could be construed as an adventure in the nature of trade and whether income received from it was taxable. The Head Notes read as follows: Income Tax (Guernsey) Law, 1975 (s.80) – appeal by way of Case Stated from decision of the Guernsey Tax Tribunal – whether transaction was in the nature of capital or income – definition of “business” - held that payment received by the Appellant constituted “an adventure in the nature of trade” - appeal dismissed.

### APPENDIX 3 - TRIBUNAL DECISIONS (other than Late Payment Surcharge Appeals (see Appendix 4))

Matters are identified by year and number. Where a number is missing the reason is one of the following:

- The matter was settled without a hearing
- The matter awaits a hearing
- It relates to an appeal against penalty
- The decision turned on facts alone and a summary might lead to the identification of the appellant, or
- The matter was referred to the Royal Court by way of Case Stated.

**2001/1** When the employment of a taxpayer is terminated summarily and immediate Re-employment is offered by a new employer involving identical work at the same place of employment, although on different terms, a payment made to the taxpayer as a consideration for accepting re-employment is taxable as an emolument of employment.

**2001/2** When a taxpayer enters into a long-term lease with the owner of a parcel of land and with the owner's agreement constructs buildings or other permanent works on that land at the taxpayer's expense, the taxpayer is disentitled to any relief for depreciation under Part IX of the 1975 Law. The situation would be different for a taxpayer that constructs such buildings on land that they own. Whatever might be the position in other jurisdictions, a leasehold interest in land is not real property in Guernsey.

Cited: See Report presented to the Royal Court on 16<sup>th</sup> January 1852, (R.O. page 231), the Conveyancing (Guernsey) Law 1996, and Section 209 of the 1975 Law and the Real Property (Housing Schemes, Leasehold and Miscellaneous Provisions) (Guernsey) Law, 2004

**2001/5** When a taxpayer appeals to a higher court against one defined aspect of a decision of the Tribunal, those parts of the original decision of the Tribunal that were not the subject of the appeal remain valid and executory.

**2001/6** The expenses of professional representation at a hearing before the Tribunal or a higher court were not an authorised deduction under Section 7 of the 1975 Law unless they satisfied the "wholly and exclusively" test. The burden of proof lies on the taxpayer (Section 18).

Cited: *Allen (H.M. Inspector of Taxes) v Farquharson Brothers and Company* [1928 – 1933] 17 TC 59. It distinguished a line of cases to which reference was made that led to *McKnight v Shepherd* [1999] 1 WLR., 1333 HL

**2001/7** When a taxpayer fails to provide the Administrator with any information to displace a provisional assessment, nor indeed attends a hearing of an appeal of which the taxpayer had knowledge, the Tribunal will uphold the assessment if, having heard from the Administrator, it finds it to be reasonable.

Cited: *R v Commissioners for Taxes for St. Giles and St. George Bloomsbury (ex parte Hooper)* [1915] 3 KB 363 was considered in connection with the meaning of “discovery of information” by the Administrator.

- 2001/8** Although a taxpayer, whose business includes property development, might purchase residential property with the intention of renovating and selling it at profit, it is possible for intentions to change due to force of circumstances. A dwelling original earmarked for development could become the taxpayer’s principal place of residence and the profit resulting from its subsequent sale might not on the particular facts be treated as income.  
Cited: Consideration was given to the badges of trade as set out in *Marson (HM Inspector of Taxes) v Morton* [1986] BTC 377
- 2002/2** When considering the charitable status of an unincorporated association, the Tribunal will consider all relevant facts. The rules of the association are only one of such facts and exemption from tax under section 40(k) of the 1975 Law will not necessarily be denied if they are defective. The Tribunal considered, inter alia, the test in Pemsel’s case  
Cited: *Special Commissioners of Income Tax v Pemsel* [1891] AC 531 at page 96
- 2002/3** The Tribunal can only determine whether a person is principally resident in Guernsey for a particular year of charge on the basis of evidence placed before it. Although different rules may apply when determining principal residence under UK law, Guernsey law must be followed.
- 2002/4** A taxpayer resident in the jurisdiction can only deduct expenses of travelling to meet the manager of assets owned by the taxpayer elsewhere if these are incurred wholly and exclusively in connection with the taxpayer’s business.  
Cited: *Mallalieu v Drummond* (1983) 57 TC 330, and *Newsom v Robertson* 33 TC 452.
- 2003/4** If the Administrator discovers that a taxpayer has not made proper returns he may make his own assessment. The onus is on the taxpayer to displace it.  
Cited: *R v Commissioners of Taxes for St. Giles and St. George, Bloomsbury (ex.p.Hooper)* [1915] 3 KB 768 (concerning “discover”) and *Nicholson v Morris (HM Inspector of Taxes)* [1977] STC 162, (concerning “wilful default”).
- 2004/1** A taxpayer resident in another jurisdiction but making occasional visits to conduct a business at an address in Guernsey must pay tax as assessed by the Administrator. Any claim for double taxation relief must be made to the revenue authority in the other jurisdiction. An agreement between the taxpayer and that revenue authority cannot bind the Administrator. The Administrator must follow any relevant double taxation agreement. Section of 5(1)(d) of the 1975 Law requires a non-resident to pay tax on income arising from a business carried out in Guernsey. Section 51(1) denies personal allowances to non-residents although proportional allowances may be claimed.

- 2004/3** The Administrator is not required to send a reminder to a taxpayer prior to imposing a late payment penalty.
- 2004/4** When a taxpayer that has knowledge of a hearing fails to appear at an appeal against estimated assessments raised by the Administrator under section 75 of the 1975 Law, the Tribunal will, nevertheless, require the Administrator to demonstrate the reasonableness of those assessments. (On facts, the Tribunal amended or disallowed some of the assessments). The fact that unexplained cash belonging to the taxpayer has been detained by lawful authority in another jurisdiction will not prevent it being assessed as income if the circumstances so warrant.  
Reference made in argument to: *Commissioners for Inland Revenue v E.C. Warnes & Co. Ltd* [1919] 12TC227, *Commissioners for Inland Revenue v Alexander von Glehn & Co. Ltd* [1920] 12TC232, and *T. Haythornwaite & Sons Ltd. v Kelly* [1927] 11TC657.
- 2005/7** When the Administrator raises an additional assessment under section 75 of the 1975 Law, he must demonstrate to the Tribunal that he had a reason to do so and that his additional assessment was appropriate in all the circumstances. The onus then lies on the taxpayer to provide material to displace that assessment. An anonymous communication received by the Administrator can be admitted in support of his decision to raise an assessment but cannot be admitted to support the amount of that assessment. The fact that the 1975 Law does not specifically prohibit the Tribunal from admitting hearsay evidence does not mean that it can be admitted. In matters of evidence, the Tribunal considers itself bound to follow *La Loi Relative aux Preuves*, 1865, and other relevant Guernsey statute.  
Considered: s. 36, *Loi Relative aux Preuves*, 1865.  
Reference made in argument to: *Brittain v Gibbs (H.M. Inspector of Taxes)* [1986] BTC 348; *Coy v Kime (H.M. Inspector of Taxes)* [1987]; and *Scott and Anor t/a Farthings Steak House v McDonald (HMIT)* [1996].
- 2005/8** The failure of a taxpayer's professional representative to give the Administrator notice of an appeal within the statutory 21-day time limit is not, for the purposes of section 76 of the 1975 Law, a reasonable cause that has prevented the taxpayer from giving notice within that period. A taxpayer is bound by an omission of his professional representative. Any procedures that the Administrator might adopt under his delegated authority from the Policy & Resources Committee in relation to appeals to which section 80A(a) of the 1975 Law apply, do not apply to appeals to the Tribunal under section 80A(b).
- 2005/10** When the Administrator brings penalty proceedings under section 200(1) of the 1975 Law, he can only impose penalties under section 192, which relates to fraudulent returns, if there is clear evidence upon which fraud may be proved. On facts, the penalty was reduced.
- 2006/2** On facts, the Tribunal, by a bare majority, admitted the appeal out of time. In dismissing the appeal itself, the Tribunal made some general observations

concerning cash transactions. It noted that there is nothing whatsoever illegal about a tradesman dealing in cash. Problems arise when a tradesman seeks to claim deductions for purchases made with cash. Unless he can produce receipts, he is in difficulty in proving the purpose of the payments. A problem arises when many cash payments remain unexplained. A tradesman who sells items of his trade or does work for cash runs the risk of having his income challenged by the Administrator if he does not keep good records. A problem with cash payments is to prove how many took place, for what purpose, and at what price. A tradesman who does not keep accounts exposes himself to estimated assessments made by the Administrator and the inconvenience or even the impossibility of disproving them. The Tribunal will uphold such assessments unless manifestly unreasonable.

**2006/9** A one-off transaction can be an adventure in the nature of trade. Although there is not any tax on capital gains received by a Guernsey resident, it is possible that, on facts, the sale of shares in an enterprise could be regarded as income. (1975 Law sections 2, 19, and the statutory definition of “business” in section 209 were considered)<sup>18</sup>.

Cited: *Marston v Morton*, [1986] BTC377; *Taylor v Good*, [1974] 49TC277; *Ransom v Higgs*, [1974] 1 WLR 1594 (HL) and *Beutiland Co Ltd v Commissioners of Inland Revenue*, [1991] STC467

**2006/14** In considering an application to admit an appeal out of time, the Tribunal considered the proviso to section 76 of the 1975 Law. The word ‘may’ denotes that the Tribunal is not obliged to admit a late appeal but gives it a discretion whether or not to do so. The word ‘satisfied’ means that the Tribunal must be satisfied on balance of probabilities that absence, sickness or other reasonable cause was such as prevented the notice being within time. The word ‘prevented’ means that absence, sickness, or other reasonable cause was something that went beyond mere passive inconvenience but was active in preventing the notice being within time. On facts the application was refused.

**2007/38** The Administrator issued a penalty notice to a resident Company that had failed to submit income tax returns. He also issued follow-up letters. The Company submitted its returns some 20 months after the date of the original penalty notice and subsequently appealed against the penalty. A preliminary hearing was held to decide whether the Tribunal would admit the appeal out of time. On facts, the application to admit an appeal out of time was refused.

The Tribunal followed appeal 2006/14 and rejected arguments that:

- (a) An alleged breakdown of communications between the Director of the Company and its accountants, both resident locally
- (b) The quantum of the penalty was such as would force closure of the Company, were reasonable causes preventing the notification of an appeal within time.

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<sup>18</sup> This decision was upheld by the Royal Court, in its judgement 3/2008

- 2008/1** A taxpayer's Notice of Appeal reached the Administrator some 20 days after the expiry of the statutory 30-day period. The taxpayer could not provide any reason that fell within the proviso to section 76 of the 1975 Law. The Tribunal observed that the 1975 Law did not permit it any discretion and declined to admit the appeal out of time.
- 2008/2** A taxpayer appealed some assessments within time. Neither the taxpayer nor the taxpayer's representative filed any documents nor appeared at the hearing. The Tribunal was satisfied that the assessments were made reasonably and thereby confirmed them. It observed that in the absence of taxpayer or representative, it could not amend the grounds of appeal (which in any event were never supplied) by taking into account correspondence passing between the taxpayer and the Administrator subsequent to the notice of appeal. The Tribunal noted that this was another in a series of appeals when a taxpayer failed to appear and it directed that Part 1 of its written decision be made public and this is appended to this update.

#### **NOTES ON MATTERS HEARD PRIOR TO 2001**

**No detailed written decisions of cases heard prior to 2001 are available, but the following summaries prepared with the assistance of the Administrator may be of interest.**

- 1997/1** Late appeals can only be admitted if they conform to the criteria in section 76 of the 1975 Law. They cannot be used to delay collection.
- 1997/2** If a taxpayer fails to provide documents and records relating to a business, including one in which their spouse had an interest, the Administrator is entitled to make a reasonable estimate of profits. The taxpayer must demonstrate that the estimates are excessive. In the absence of reasonable explanation by the taxpayer, the Administrator is entitled to treat as income substantial and unexplained deposits into bank accounts.
- 1997/3** A company holding and managing property in another jurisdiction could only claim annual allowances if it was trading.
- 1998/1** The Administrator is not estopped from pursuing a wife by way of a section 44 Notice by reason of an unsatisfied judgement against her husband in respect of unpaid tax. Further, the fact that the wife had not committed wilful default or fraud did not prevent the Administrator for pursuing out of time collection on the basis that the husband committed wilful default or fraud.
- 1999/1** A taxpayer has the onus of proving the nature of his residence in Guernsey. If the Administrator could demonstrate that accounts prepared by an accountant were unreliable by reason of unreliable information provided to that accountant by the taxpayer, then the onus was on the taxpayer to displace the assessment made by the Administrator.

- 1999/2** A Guernsey resident who owned a company registered in another jurisdiction but trading in Guernsey could, in the absence of co-operation and by reason of inconsistent information, be assessed on the income of the company under the legal avoidance provisions of the 1975 Law.
- 1999/3** Relief on interest paid relating to rental properties in another jurisdiction could not be claimed if the letting did not constitute a business.
- 1999/4** A penalty order could be imposed for failure to submit ETI forms even though no tax was due to be deducted from employees.
- 1999/5** A taxpayer that claimed that his substantial assets were held as a nominee for others and who failed to co-operate with either the Administrator or the Tribunal would be bound by the assessments and penalty orders made by the Administrator.
- 2000/1** Payments and shares given to an employee following the purchase of his employer by another company were held on facts to be taxable as emoluments of office.

## APPENDIX 4 - TRIBUNAL DECISIONS ON LATE PAYMENT SURCHARGE APPEALS

- 2006/4** A taxpayer is bound by errors and omissions of their professional representative. A surcharge is payable at the rate of 5% of the amount of tax due under the 1975 Law at the close of the settlement date. This amount remains payable notwithstanding any subsequent reduction of the amount on which the original surcharge was based. The Tribunal cannot vary a surcharge that is correctly imposed under the 1975 Law.
- 2006/5** A taxpayer claimed to have posted a settlement cheque two days before the settlement date. The Administrator claimed that he did not receive it until after that date and imposed a surcharge. On the particular facts relating to this case, the Tribunal allowed the appeal. The Tribunal observed that although it was the duty of the taxpayer to pay on time, a taxpayer was entitled to rely upon the postal system. The Tribunal made recommendations to the Administrator as to steps that he might take to avoid similar problems in the future.  
Cited: Section 11 of the Interpretation (Guernsey) Law 1948, and section 116 of the Companies (Guernsey) Law, 1994.
- 2006/6** A taxpayer is liable to a surcharge under section 199 of the 1975 Law if the Administrator does not receive payment by the settlement date, in this case 30<sup>th</sup> June 2006. Although the Administrator did not impose surcharges on any payment received on 3<sup>rd</sup> July 2006, he was not acting in a discriminatory way by imposing surcharges on payments received after that date. Under section 76 of the 1975 Law, an allegation of discrimination against a taxpayer who paid after that date is not a ground of appeal against the imposition of a surcharge. The Tribunal recommended that taxpayers organise their affairs so as to ensure that payments are received by the Administrator on or before the settlement date.
- 2006/10** A Taxpayer overlooked payment due on 30<sup>th</sup> June 2006 because of family matters and the Administrator imposed a LPS. The amounts of the assessment and surcharge were not in dispute. The Taxpayer, who paid on the first reasonable opportunity and had a good payment record, asked for these matters to be taken into consideration. The Tribunal considered section 76 of the 1975 Law and held that it had no power to do this and dismissed the appeal. It made recommendations to the Administrator that the wording of the Statements of Account should stress that no reminders will be sent and that a LPS may be imposed.
- 2006/12** By a majority of 5-2 the Tribunal found that the wording on the Notices of Assessment and Statements of Account sent to the Taxpayer were not so ambiguous as to permit him not to pay an amount shown as due on 30 June. The Administrator must agree expressly to any deferment of payment. The Tribunal made suggestions to the Administrator concerning the wording of documents sent to Taxpayers.

- 2006/21** An alleged failure of the Administrator to give advance notice of changes in the 1975 Law is not a valid ground of appeal under Section 76. The Tribunal’s powers are only those given to it by law. The Tribunal observed that there is no requirement for the Administrator, or the States of Guernsey, to give publicity to changes in its revenue or any other law. This may be inconvenient for taxpayers, for the public at large, or for non-residents, but is a fact of life.
- 2006/23** A Taxpayer who fails to appeal against an assessment, (whether final, estimated, provisional or otherwise), and/or fails to ask for and obtain express agreement for deferred payment must pay a late payment surcharge on the full amount of tax payable but unpaid on the due date.
- 2006/28** The due date for an assessment made before 10<sup>th</sup> June is 30<sup>th</sup> June. A Taxpayer does not have 30 days within which to make a payment in respect of an assessment issued on 9<sup>th</sup> June.

### **Extract from Decisions on Late Payment Surcharge Appeals**

**The following extract is taken from a text common to many of the latest decisions made by the Tribunal concerning Late Payment Surcharge appeals.**

3. The Income Tax (Guernsey) Law, 1975, as amended (the “1975 Law”) contains specific provisions concerning appeals. Section 76 of the 1975 Law states that a taxpayer ‘shall be entitled to appeal to the appropriate body by giving the Administrator notice in writing (stating the grounds of appeal) within 30 days of the date of the notice of assessment.....etc.’. By section 80A(b) of the 1975 Law, the appropriate body in this appeal is this Tribunal because the Taxpayer had delivered returns for the Years of Charge in question.
4. Section 76 of the 1975 Law has the proviso that the appropriate body, in this case this Tribunal, 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 [notice within 30 days].
5. The Tribunal refers to the three italicised words. Firstly, the word ‘may’ denotes that the Tribunal is not obliged to admit a late appeal. It has discretion whether or not to do so. Secondly, the word ‘satisfied’ means that the Tribunal must be satisfied on balance of probabilities that absence, sickness or other reasonable cause was such as prevented the notice being within time. The third word ‘prevented’ means that absence, sickness, or other reasonable cause was something that went beyond mere inconvenience but was active in preventing the notice being within time.
6. Section 199(1) of the 1975 Law makes a person liable to a surcharge if any amount due from him under the 1975 Law (including for the avoidance of doubt, any penalty) is not paid on or before the settlement date. Section 199(2) defines the settlement date as the date on or before which the amount in question is payable. We shall refer to such a surcharge as a “Late Payment Surcharge” (“LPS”).

7. The powers of the Tribunal to set aside or vary a LPS are severely limited by statute. Proviso (a) in Section 76 of the 1975 Law states that the only grounds of appeal against a LPS are that,
  - the surcharge or additional surcharge is not payable,
  - the surcharge or additional surcharge has been miscalculated, or
  - (there has been an unreasonable delay on the part of the Administrator in making an assessment).

This third proviso is not applicable to this appeal.

8. Section 199(11) makes clear that the original LPS becomes payable notwithstanding any subsequent reduction of the amount on which the original surcharge was based. The Tribunal interprets the subsection as referring to a sum in dispute or due under an estimated assessment.
9. Further, lodging an appeal against an assessment does not have the effect of annulling a LPS. Section 199(10) states that any forbearance or failure of the Administrator to enforce payment does not affect the settlement date unless the Administrator has expressly agreed that the amount due may remain unpaid. The Tribunal interprets this subsection as meaning that a sum due must be paid on or before the settlement date unless the Taxpayer has asked for and the Administrator expressly agreed that collection be postponed.
10. The above provisions of the 1975 Law may sometimes appear as unfair or harsh, but this Tribunal must apply the law as it stands and has no discretion to alleviate a difficult personal situation unless the Law so allows. The changes in the 1975 Law that brought about late payment surcharges being applied equally to all taxpayers rather than on a case by case basis were as a result of a decision of the legislature and it is not for this Tribunal to question that decision.

### **Invalid Grounds of Appeal (Appeal 2007/5)**

The taxpayer appeared in person and argued five grounds for appeal:

- (a) The taxpayer had a good record of paying tax due
- (b) The Administrator had a duty to publish details of changed procedures for payment.
- (c) The taxpayer's accountants had already lodged an appeal against an estimated assessment in respect of which payment was made late.
- (d) The Administrator had not agreed an amended assessment prior to the due date.
- (e) The taxpayer had a credit balance at the end of 2005.

In dismissing the appeal, the Tribunal noted that alleged absence of information about changes is not a valid ground for appeal. The lodging of an appeal against an estimated

assessment does not suspend a surcharge unless the Administrator has expressly agreed to suspend collection of the relevant tax. The existence of a previous credit balance does not remove the obligation to pay tax by the due date.

### **Taxpayer's Personal Difficulties (Appeal 2007/7)**

The Taxpayer did not attend but the Tribunal has before it a letter from the Taxpayer dated xx.yy.zz. In it, the Taxpayer claimed a good payment record and drew attention to personal difficulties.

Section 199(1) of the 1975 Law makes a person liable to a surcharge if any amount due from him under the 1975 Law (including for the avoidance of doubt, any penalty) is not paid on or before the settlement date. Section 199(2) defines the settlement date as the date on or before which the amount in question is payable. We shall refer to such a surcharge as a Late Payment Surcharge.

The powers of the Tribunal to set aside or vary a Late Payment Surcharge are severely limited by statute. Proviso (a) in Section 76 of the 1975 Law states that the only grounds of appeal against a Late Payment Surcharge are that:

- (i) the surcharge or additional surcharge is not payable,
- (ii) the surcharge or additional surcharge has been miscalculated, or
- (iii) (there has been an unreasonable delay on the part of the Administrator in making an assessment).

This third proviso is not applicable to this appeal.

Section 199(11) makes clear that the original Late Surcharge Payment becomes payable notwithstanding any subsequent reduction of the amount on which the original surcharge was based.

The Tribunal interprets the subsection as referring to a sum in dispute or due under an estimated assessment.

Further, lodging an appeal against an assessment does not have the effect of annulling a Late Payment Surcharge. Section 199(10) states that any forbearance or failure of the Administrator to enforce payment does not affect the settlement date unless the Administrator has expressly agreed that the amount due may remain unpaid. The Tribunal interprets this subsection as meaning that a sum due must be paid on or before the settlement date unless the Taxpayer has asked for and the Administrator expressly agreed that collection be postponed.

The above provisions of the 1975 Law may sometimes appear as unfair or harsh, but this Tribunal must apply the law as it stands and has no discretion to alleviate a difficult personal situation unless the Law so allows. The changes in the 1975 Law that brought about late payment surcharges being applied equally to all taxpayers rather than on a case by case basis were as a result of a decision of the legislature and it is not for this Tribunal to question that decision.

Under the circumstances the Tribunal cannot do other than confirm the surcharge imposed by the Administrator by Notice dated uu.vv.ww.

By section 199(8) of the Income 1975 Law, a surcharge becomes payable 30 days after the settlement date and may be recovered as a civil debt. There is not any provision in the Law for the Administrator to suspend collection of a surcharge pending appeal. It follows that the surcharge is and remains due for payment.

### **Invalid Grounds of Appeal (Appeal 2007/15)**

The Tribunal noted that there was not any dispute as to the amount of tax due, nor of the facts that the taxpayer had received both a Statement of Account and a note sent along with his tax return form at the start of 2007 that set out details of surcharges.

The allegations by the taxpayer that information concerning surcharges was not sufficiently explicit in these documents were not a ground of appeal as permitted under proviso (a) to section 76 of the Income 1975 Law. The appeal was dismissed.

## **APPENDIX 5 - PROCEDURES FOR THE AUDIO RECORDING OF TRIBUNAL HEARINGS**

1. The making of an audio recording of a hearing shall be under the sole authority and control of the Tribunal hearing the case. No other recordings are permitted. The recording process and the physical record of it shall at all times remain under the control of the Tribunal.
2. The primary purpose of the recording is to provide a verbatim record by way of a transcript of the proceedings for any appeal hearing. If any party wishes to obtain a transcript of a hearing (or any part of it) an application should be made in writing to the Clerk to the Tribunal. The cost of obtaining and preparing a transcript shall be paid by the party making the request. A copy of any transcript shall first be provided to the Clerk who, upon being satisfied as to its accuracy, shall thereafter authorise its release to the party.
3. Any request to listen to the recording of a hearing (or part of it) shall be made in writing to the Clerk. Reasonable provision for listening to recordings will be made, but will depend upon resources and shall be in the discretion of the Tribunal. Copies of recordings will not be provided.
4. The recording of hearings will only apply automatically to final hearings. If a party wishes to apply for a Case Management Meeting or other hearing to be recorded, sufficient notice must be given to the Clerk. It is for the person chairing the hearing to decide whether it shall be recorded.
5. Any other requests should be made in writing to the Clerk. Any decision is a matter for the discretion of the Tribunal, who may refer the matter to the Tribunal's President or Vice President.
6. These procedures may be varied at any time.