

Guernsey Tax Tribunal

GUIDANCE NOTES FOR APPELLANTS

This guide aims to give an insight into the process for appealing certain decisions of the Director of the Revenue Service under the Income Tax (Guernsey) Law, 1975, as amended by providing the answers to the questions that have most frequently been asked about income tax appeals.

In addition to reading the guide, you are strongly encouraged to also read the Income Tax (Guernsey) Law, 1975, as amended and the related Ordinances and Regulations and guidance and advice notes published by the Director of the Revenue Service and the Policy & Resources Committee which may be relevant to their case.

The Income Tax (Guernsey) Law, 1975, as amended and the other Ordinances and Regulations can be found at www.guernseylegalresources.gg and the relevant guidance and advice notes published by the Director of the Revenue Service and the Policy & Resources Committee can be found at 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.

This guidance aims to answer the questions you may have about how to Planning Inquiry. It represents the Law and procedures as at January 2019 and the legislation may be subject to further amendment

The guide should be read in conjunction with the relevant planning laws, in particular:

The Income Tax (Guernsey) Law, 1975, as amended

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DEFINITIONS

To make these Notes easier to read, the following definitions are used throughout. The reader is assumed to be the Appellant. Key Words, as defined, are shown in the Notes with initial capital letters. The masculine gender (he/his) is used throughout for simplicity.

<u>Key word</u>	<u>Definition</u>
1975 Law	The Income Tax (Guernsey) Law, 1975, as amended
Department	The States of Guernsey Policy & Resources Committee
Office	The States of Guernsey Income Tax Office
Director	The Director of the Revenue Service and/or his staff, who represent the Authority at Hearings
Appeal	An appeal under the 1975 Law
Tribunal	The Guernsey Tax Tribunal, a statutory tribunal authorised by the 1975 Law ¹ to hear contentious Appeals
Clerk	The Clerk to the Tribunal
Hearing	A meeting of the Tribunal at which an Appeal is to be heard
Hearing Date	A date scheduled for a Hearing
Professional Representative	Someone who will speak for you at a Hearing, usually an Advocate or Accountant
Adviser	Someone, usually an Accountant, who is advising you on an Appeal but does not speak for you at a Hearing
Appellant	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
Parties	The Appellant and the Director (the Respondent)
Statement	A statement of agreed facts, prepared by the Parties before a Hearing
Legal Authorities	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
Decision	The decision of the Tribunal after hearing an Appeal

¹ Specifically, the Income Tax (Amendment) (Guernsey) Law, 1990

THE GUERNSEY TAX TRIBUNAL

1. *What is the Guernsey Tax 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.

Matters will be referred to the Tribunal for determination where the Director and the taxpayer have failed to resolve the matter.

2. *Who sits on the Tribunal?*

The Tribunal has up to nine 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 Income Tax Office. The Tribunal members will generally have a professional qualification or relevant experience in tax-related members.

There are up to nine Tribunal members. They are appointed by the Royal Court and are required to take an oath of secrecy.

At an appeal hearing, three members, including either the President or the Vice-President, will be present and will determine the appeal.

3. *How is the Tribunal administered?*

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

The Clerk is also an independent office holder (sometimes referred to as a Statutory Official). He is appointed by the Policy Council after consultation with the Tribunal's President.

The Clerk is supported by an assistant, who handles most of the day-to-day calls and queries.

4. *Where is the Tribunal based?*

The Tribunal can be contacted at:

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

or by email – tax.tribunal@gov.gg, or by telephone – 01481 717000.

MAKING AN APPEAL

5. *What decisions of the Director can be appealed?*

The decisions of the Director which the Tribunal can determine are set out in s.76 of the 1975 Law. The following decisions can be appealed:

- (a) An income tax assessment, i.e. how much income tax you are required to pay;
- (b) Any surcharge or additional surcharge imposed (*see also paragraphs 46 to 52*);
- (c) Any penalty charged (*see also paragraphs 36 to 45*); and
- (d) Any direction or order imposed by the Director.

6. *How do I make an Appeal?*

If you disagree with an assessment, penalty, surcharge, direction or order issued by the Director, you must first of all appeal by giving the Director notice of this disagreement in writing within the statutory period of **30 days from the date of the decision**.

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

- (a) Your full name (including any other name you may have been known by, e.g. maiden name)
- (b) Your full postal address
- (c) Your tax 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.

7. *Where do I send my appeal to?*

The appeal should be sent to:

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

8. *Can I make my appeal online?*

There is currently no provision for making an appeal online.

9. *How much does it cost to make an appeal?*

There is currently no fee payable for making an appeal. The 1975 Law does not include any provision for either an appellant or the Director to cover costs incurred in making the appeal.

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

You may be represented at the hearing by your advocate, accountant or tax adviser if you wish. 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 Office 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.

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

The Tribunal is often asked to hear Appeals that:

- (a) Have been lodged after the 30 day appeal period
- (b) Do not include adequate details of the grounds for appeal
- (c) Fail to mention grounds for 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 this 30 day period it may mean that the Tribunal dismisses your appeal.

The Tribunal will consider such appeals sympathetically² but must also consider any objections raised by the Director to why a late or incomplete appeal should not be heard.

In many cases where appeals are made after the 30 day appeal period, the appellant indicates that the decision letter, penalty or surcharge notice, etc. did not reach them because they had changed address.

Under the 1975 Law it is the responsibility of a tax payer to notify the Office of any change of address. Therefore, if you have failed to do so and then do not receive a decision letter you cannot automatically rely on the non-receipt of the letter as a reason why a late appeal should be accepted.

A prompt, complete and accurate Appeal is the only way to guarantee a satisfactory Hearing.

² 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.

12. *What happens once an Appeal has been lodged?*

When an appeal is submitted, the Director may attempt to resolve the matter with you, without recourse to the Tribunal. In many cases this approach is successful. The Tribunal only becomes involved when an agreement cannot be reached.

Once it becomes apparent that agreement will not be reached, the Director will forward details of the appeal (i.e. your letter of appeal and any other material you may have submitted and a synopsis of any action to try and resolve the matter without the need for the Tribunal to determine the matter) to the Clerk and ask for arrangements to be made for a hearing.

The Clerk will review the papers and start to make the arrangements for a hearing. For some categories of appeal (appeals against penalties and Delay Appeals), hearing dates are fixed because the Tribunal will be dealing with several appeals during the course of a day or half-day. In other cases, the Clerk may canvass you and the Director about dates when the key parties would be unable to attend a hearing.

The Clerk will also direct you and the Director regarding the submission of any papers, letters, material or other evidence relating to the appeal.

In most appeals against an assessment of the income tax payable (other than in respect of Delay Appeals), directors or orders decided by the Director, the Clerk will require that an Agreed Statement of Facts be prepared (see paragraphs 21 to 25 for more details).

THE HEARING

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

All Tribunal hearings are held in private, i.e. no members of the public or the media are able to attend the hearing.

The 1975 Law requires the Tribunal to 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, people attending hearings have no prior experience in legal matters. In deciding its procedures for hearing the members will always endeavour to ensure that can be understood by all parties and enable an unrepresented party to present their case.

Guidance notes such as this are issued from time to time. They are intended to make sure that Appellants are fully aware of how the Tribunal works and in order to achieve fair and efficient operation for all concerned.

14. *Where and when do Hearings take place?*

As indicated above, some appeals are determined on specific fixed dates. When setting hearing dates, the Tribunal will take your availability and that of the Director in consideration.

Please note, once a hearing date has been set you should assume that the Hearing will proceed on that date. It is thus vital to respond to the Clerk's choice of dates and select a date that is suitable for you. In the absence of a prompt response, the earliest offered hearing date will be allocated. The Clerk will advise you of the venue for the hearing.

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

In the majority of 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 he may have directed to represent him
- (c) The Tribunal members and the Tribunal Clerk.

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

If you are professional represented you may decide not to attend in person. However, you should bear in mind that there may be questions which only you can answer as you are likely to be the only person fully aware of background facts or details.

If the appeal is being made on behalf of a Company, the Tribunal would expect the Company to be either professional represented to be represented by the Company Secretary or a Director, i.e. somebody with a clear understanding of the Company's operations and working practices, etc.

17. *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.

If the case is particularly complex or there is a long history of events which have lead to the decision which is the subject of the appeal, it may take several weeks for the Statement of Agreed Facts to be prepared, appeal papers submitted by you and the Director, etc.

In some cases it will be possible to expedite arrangements for a hearing. For example if you were leaving the island for a prolonged or definite period and the Tribunal and Director were able to proceed with the appeal at short notice.

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

Yes, you may call any witnesses you wish where you believe their evidence is essential to 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.

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.

The Tribunal has the power to summons any witnesses it thinks able to give relevant evidence and the witness is unlikely to agree an adjournment if a witness has not been summoned and fails to attend.

Where the witness lives outside Guernsey or where his evidence is required on a simple factual matter, a properly sworn affidavit may suffice. This should, however, be discussed with the Clerk in advance, as the Director is entitled to object to the use of an affidavit. Any costs associated with call witnesses will have to be met by you.

APPEAL PAPERS

19. *What happens once a Hearing Date is allocated?*

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 generally include:

- (a) A copy of your appeal letter and any accompanying documents and letters
- (b) Copies of any documents and correspondence relating to the decision which is the subject of the appeal
- (c) Copies of any correspondence between you and the Director relating to any efforts to resolve the matter without recourse to the Tribunal
- (d) A Statement of Agreed Facts, with accompanying documents (see paragraphs 21 to 25 for further details)
- (e) Copies of any other documents you or your professional representative may rely on during the appeal
- (f) Copies of any other documents the Director may rely on during the appeal

The Clerk will confirm the date by which these documents must be submitted to him. He 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 three to five days before the hearing, depending on the complexity of the issues.

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

See the Appendix 1A regarding the form these documents should take

20. *When do documents have to be provided?*

In most cases the Clerk will endeavour to give parties between six and eight weeks to prepare for a hearing. The following timetable for the final submission of appeal papers will be strictly applied and the example is based on a hearing taking place on a Monday:

- (a) Last date for submission of documents - Thursday next but one before the Hearing (i.e. 11 days before the Hearing Date)
- (b) Documents dispatched to Tribunal members, the appellant and the Director - Wednesday before the Hearing (i.e. 4 days before the Hearing Date)

This timetable enables the Clerk to resolve any issues on documentation before their dispatch, and gives Tribunal members and the other parties the opportunity to read the documents and prepare for the Hearing.

21. *What is the Statement of Agreed Facts?*

The Statement of Agreed Facts is a single document setting out the main factual background to the appeal. It will include details of dates on which any decisions were made and letters sent to you, any responses from you, etc.

In addition, copies of all 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) will be attached to it.

22. *What is the purpose of the Statement of Agreed Facts?*

The Statement of Agreed Facts is to assist 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.

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

In practice, the Director usually prepares a draft Statement for you, especially if you do not have a professional representative or adviser, as he has considerable experience in the preparation of cases for hearing. The Statement will not be shown to the Tribunal without your agreement, although the Director is entitled to include a draft Statement in his own bundle of documents, as long as he makes it clear that it has not been agreed.

24. *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. You will be invited to suggest 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.

25. *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 his appeal papers if he believes it may assist the Tribunal in its deliberations. The Director would make it clear that the Statement had not been agreed.

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

There is no standard list of documents to be provided, but each side will commonly 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.

PROCEDURE AT HEARINGS

27. *What happens at a Hearing?*

Proceedings are informal and as indicated above are held in private.

As a general 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 then states his own position, again calling witnesses if appropriate. The Tribunal Members will usually ask questions of the parties or any witnesses, and both parties will be given an appropriate opportunity to respond to whatever the other says.

28. *Are Hearings recorded?*

Yes. The Clerk takes manuscript notes and Hearings are recorded. The notes and the tapes are retained for at least six years or until the final determination of any related proceedings, if later. The deliberations of the Tribunal, however, are not recorded.

Transcripts of Hearings are not usually available but you can contact the Clerk if you wish to obtain a CD of the proceedings. An administrative fee is charged for the production of the CD.

29. *Can Hearings be postponed?*

The Tribunal is very reluctant to postpone or adjourn a hearing. In setting the date for hearings the Tribunal endeavours to give both parties reasonable notice of the hearing date.

The Tribunal has in any case only limited powers to postpone an appeal once a hearing date has been confirmed (see paragraph 27). 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 for postponement.

30. How is a postponement agreed?

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. You should note that the Tribunal will ask for comments from the Director, who may object to postponement.

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*”. These are the only valid reasons for postponement and the Tribunal is not obliged to accept any reason.

In the case of absence due to sickness, you will need 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.

31. Can a Hearing be adjourned?

The Tribunal may adjourn a hearing, once started, but at its entire discretion. 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.

You should not assume that a hearing once started will be adjourned because of the absence of one of the parties.

DECISIONS AND FURTHER APPEALS

32. 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 annual the assessment
- (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
- (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

(b) Increase or reduce the amount of the surcharge

A supplement or additional supplement:

(a) Confirm or annul the non-payment

(b) Increase or reduce the amount of the supplement

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

After hearing the arguments from both sides, and Tribunal's members asking any questions they may have, the Director will be invited to make a closing submission. You will then have the opportunity of summing up your case.

The Tribunal will then withdraw to consider its decision.

The Tribunal will, whenever possible, endeavour to give its outline decision orally to the parties. If this is not possible you and the Director will receive a written decision notice as soon as possible after the hearing. In this case the Clerk will generally call you after the hearing and give you an indication of when you will receive the decision.

You will probably simply want to know whether your appeal has succeeded or not, but the decision will have to be more specific than that. For example, you may think that some income should not be taxed; the Tribunal may decide that you are taxable, but may also decide that the amount assessed is too high³.

It is the practice of the Tribunal to follow up its outline decision in all cases with a full written decision, which will both set out in detail the findings of the tribunal and give the reasoning behind these findings.

The written decision may take several weeks to prepare and will be dispatched automatically to the parties.

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

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

³ Section 79(1) of the 1975 Law allows the Tribunal to confirm, reduce, increase or annul an assessment or to set aside an assessment and direct the Director to make a fresh assessment in due course.

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 when 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.

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 States 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.

35. *Are the Decisions of the Tribunal published?*

Not as yet. It is, however, the aim of the Tribunal to publish summaries of individual decisions with the purpose of informing the public, and professional representatives and advisers in particular, of important decisions, so that cases with a similar factual background may be resolved without recourse to the appeal procedure. The Tribunal will not do this until it is satisfied that the rights of the parties to anonymity and confidentiality can be preserved.

PENALTY APPEALS

36. *What is a Penalty Appeal?*

A Penalty Appeal is an appeal against a decision of the Director to impose a penalty where a person has:

- (a) Failed to give notice of liability to be charged tax (s.189)
- (b) Failed to deliver a return as to income within the prescribed period (s.190)
- (c) Negligently delivered a return of income which is incorrect or incomplete in any material particular (s.191)
- (d) Fraudulently delivered a return of income which is incorrect or incomplete in any material particular (s.192)
- (e) Failed to deliver a return other than a return of income within the prescribed period (s.193)
- (f) 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)
- (g) 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).

37. How do I appeal a decision to impose a penalty?

You must appeal in writing within 30 days of receiving the notification letter from the Director. In the first instance, the letter should be sent to the Director or emailed to penaltyqueries@tax.gov.gg. Your letter should set out the reasons why you believe the penalty should be set aside.

38. In what circumstances may the Director rescind the penalty?

This is a matter for the Director, but in reaching his decision he will take into consideration the reasons why the penalty was imposed and your arguments why it should be rescinded.

Where a penalty has been imposed because you have failed to make your income tax return within the prescribed period, the Director may rescind the penalty in the following circumstances:

- (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
- (d) You have been in receipt of supplementary or invalidity benefits for a number of years
- (e) You were married in the year in question and have submitted your return as part of your husband's return.

In all cases, the Director may ask you to provide written evidence to support your reason/s for rescinding the penalty.

39. In what circumstances may the Director reduce the amount of the penalty?

Where a penalty has been imposed because you have failed to make your income tax return within the prescribed period, the Director may rescind the penalty in the following circumstances:

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

In all cases, the Director may ask you to provide written evidence to support your reason/s for reducing the penalty.

40. What happens if the Director refuses to rescind or reduce a penalty?

In these circumstances your appeal will be considered by the Tribunal.

The procedures for arranging the hearing and during and after the hearing are the same as for any other appeals to the Tribunal.

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

The grounds of appeal against a late payment surcharge are limited and include:

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

42. *Can the Tribunal rescind the penalty?*

The Tribunal can:

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

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

The short answer is 'yes'. 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.

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. This is something you should raise with the Director and not the Tribunal.

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

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

45. *Is there anything else I should take into consideration when deciding whether or not to appeal the imposition of a penalty?*

In addition you should note,

- (a) The Tribunal is unlikely to entertain an appeal to set aside a penalty order on the basis that personal circumstances prevented you from filing your return by the due date, or where you did not file a return because your income was below the personal allowance. This is because an appeal on those grounds would go against the policy behind the imposition of a penalty, as set out in the Income 1975 Law, which requires the return to be delivered by the relevant date

- (b) The 1975 Law provides that the maximum penalty is restricted to £50 if you can prove that you would not have been liable to pay any tax if the tax return had in fact been submitted.

LATE PAYMENT SURCHARGE APPEALS

46. *What is a Late Payment Surcharge Appeal?*

A Late Payment Surcharge Appeal is an appeal against a decision of the Director to impose a surcharge on any balance of tax owed (including any unpaid penalties) which is not paid on or before the settlement date.

47. *How do I appeal a decision to impose a surcharge?*

You must appeal in writing within 30 days of receiving the notification letter from the Director. In the first instance, the letter should be sent to the Director or emailed to penaltyqueries@tax.gov.gg. Your letter should set out the reasons why you believe the penalty should be set aside.

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

The grounds of appeal against a surcharge are limited and include:

- (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
- (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.

49. *Can the Tribunal rescind the surcharge?*

The Tribunal can:

- (a) Confirm or cancel the surcharge
- (b) Increase or decrease the amount of the surcharge

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

The short answer is 'yes'. 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.

The 1975 Law gives the Director the discretion to relieve a taxpayer from the obligation of paying the surcharge whilst waiting for an appeal to be heard. This is something you should raise with the Director and not the Tribunal.

51. *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 automatically repay you (or would offset the amount paid against any other amount that you then owed, if appropriate).

52. *Is there anything else I should take into consideration when deciding whether or not to appeal the imposition of a penalty?*

In addition you should note, the 1975 Law does not give the Tribunal the power to set aside a surcharge or additional surcharge because of personal circumstances which may have prevented you from paying the tax owed.

Further, if at a later date the assessment in respect of which the surcharge was made is reduced or annulled does not automatically invalidate the original decision to make the surcharge or additional surcharge order.

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 Tax Tribunal
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

You may also contact the Clerk by email – tax.tribunal@gov.gg.

If you wish to telephone the Tribunal, you may do so on (01481) 71700, but please note that only certain persons (currently Advocate Elizabeth Dene, Deputy Clerk, Mrs Lissette Ellis and Mr David Way) have taken the statutory oath of secrecy relating to the Tribunal.

Issued by the Guernsey Tax Tribunal – November 2019

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. They should be prepared to produce original documents at a Hearing. Documents produced at short notice or at the Hearing itself are more likely to be challenged. 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 do not give misleading guidance to the Tribunal.

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.

A legal authority should not be submitted unless it is relevant to the issues of law involved in the appeal. Frequently the Tribunal is provided with copies of far more documents than are referred to at the hearing and with extracts from cases that have no relevance to the issues involved. Many such cases are clearly distinguishable on facts, that is to say they bear so little similarity to the facts that are the subject of the hearing as to be of no relevance. The submission of irrelevant material wastes the time of members of the Tribunal, and raises the costs of those who have to pay for their preparation.

Although members of the Tribunal have access to copies of the 1975 Law, relevant extracts should be included in the documents submitted.

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 give good guidance 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.

It should also be noted that 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 – APPEALS FROM THE TRIBUNAL BY WAY OF CASE STATED

Bannister

The appellant was a shareholder and director of a Company. By an Employment Agreement effective from 1st. 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.

Held, allowing the taxpayer's appeal:

- (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 annulled⁴.

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.

Bath Limited

⁴ The written Judgement is reported in Issue 27 of the Guernsey Law Journal at paragraph 144

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 29th October 2004. The Head Notes read as follows: 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 13th 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 16th 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; Dawes, “*Laws of Guernsey*” 1st Edition, pp. 598 & 599; and Cross on Evidence 7th Edition, pp. 16 & 17.
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] BTC 66; and *Scott and Anor t/a Farthings Steak House v McDonald (HMIT)* [1996] Sp C91.
- 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 Treasury & Resources Department 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)⁵.

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.

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

⁵ This decision was upheld by the Royal Court, in its judgement 3/2008

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 30th June 2006. Although the Administrator did not impose surcharges on any payment received on 3rd 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 30th 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 10th June is 30th June. A Taxpayer does not have 30 days within which to make a payment in respect of an assessment issued on 9th 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."*

Failure to Pursue an Appeal

There have been a number of instances when taxpayers have lodged an appeal against a LPS but have failed either to send in documentation or attend the hearing. The Tribunal has commented in the following terms when dismissing such appeals:

"This Tribunal, appointed by and subject to the Royal Court, is totally independent from the Income Tax Authority. It does not have access to the taxpayer's file held by the Income Tax Authority. Its function is to do justice between a taxpayer and the Authority. It is placed in a difficult position when a taxpayer lodges an appeal against a late payment surcharge and fails to follow it up.

The Clerk to the Tribunal provides a taxpayer with details as to what must be done to prepare for the appeal. In this case, the taxpayer has not provided any documents, nor given any reason for wishing to appeal, nor attended at the time notified for the appeal, nor indeed made any contact with the Tribunal.

In these circumstances all that the Tribunal can do is to accept the evidence of the Administrator that the taxpayer was sent a statement of account requiring the payment of a sum by a certain date (the settlement date), and that the sum was not so paid. These details are shown on the Notice of Surcharge. The Taxpayer received this Notice because without it the taxpayer would not have lodged an appeal. In the absence of manifest error on the part of the Administrator in the preparation of the surcharge Notice, which the Tribunal was satisfied was not present in this case, the Tribunal has no option other than to dismiss the appeal."

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" ("LPS").

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-

- (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 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.

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.

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.”

Arrangement between the Administrator and GSCCA in respect of ETI deductions and interpretation of section 81A(3) of the 1975 Law (Appeal 2007/14)

The taxpayer received income both from employment and other sources. The former was subject to ETI deductions. The Administrator issued a transaction record that showed two interim assessments for the current year of charge and a final assessment in respect of the previous year.

The statement of account showed a credit balance in favour of the taxpayer. The statement of tax due that accompanied this statement noted that tax paid under the ETI scheme had been ignored in arriving at the payments due. The credit balance was the difference between the tax paid under the ETI scheme and the tax noted as due.

The Administrator referred to an agreement made with the Guernsey Society of Chartered and Certified Accountants (the GSCCA) that interim assessments would not include income, which had tax deducted at source, such as employment income subject to the ETI scheme.

The purpose of this was to simplify administration both for his office and for accountants and taxpayers. The Administrator accepted that whilst this had no different result on the amount of tax due in June and December than would have been the case if the taxpayer's full income had been included in the assessment, this practice was not in accordance with section 81A(3) of the 1975 Law. He conceded that the Tribunal may be bound to uphold the appeal.

The Tribunal sympathised with the Administrator's position of trying to simplify his administration and observed that, prior to the introduction of the 2006 LPS regulations, the arrangement with GSCCA had only penalised late payment in exceptional circumstances. Nevertheless the plain wording of section 81A(3) of the 1975 Law meant that tax deducted under the ETI scheme could be applied towards any tax charged or chargeable. The Taxpayer's appeal was allowed and the surcharge annulled.

ADDENDUM - *The effect of this decision has been overturned by the enactment on 27th June 2007 of the Income Tax (Guernsey) (Amendment) Law, 2007*

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. Appeal dismissed.