GUERNSEY TAX TRIBUNAL

CONSOLIDATED UPDATE – PART ONE

MATTERS DECIDED BY THE GUERNSEY TAX TRIBUNAL FROM 2001 ONWARDS (except appeals against late payment surcharges) and notes on earlier appeals.

and

APPEALS FROM THE TRIBUNAL BY WAY OF CASE STATED.

Explanatory Notes.

1. Matters are identified by year and number. Where a number is missing the reason is one of the following: (i) the matter was settled without a hearing, (ii) the matter awaits a hearing, (iii) it relates to an appeal against penalty, (iv) the decision turned on facts alone and a summary might lead to the identification of the appellant, or (v) the matter was referred to the Royal Court by way of Case Stated. (See below for matters upon which the Royal Court and Court of Appeal have given judgement).

2. The information provided is solely key points in the decision together with details of some or all of the relevant legislation and cases considered by the Tribunal. A professional person who has a bona fide reason for requiring more detailed information should write to the Clerk to the Tribunal who will then pass on the request to the appellant taxpayer or their personal representative. It will be the decision of the taxpayer as to what further information can be provided and what conditions may be imposed.

3. Appeals against penalty are not summarised unless there is some unusual feature. The Tribunal is only likely to allow an appeal against penalty if there has been a failure to follow Part XVIII of the Tax Law, a breach of natural justice, or the penalty is manifestly disproportionate.

4. As from 2005, the Tribunal will, as far as possible, endeavour to give all its written decisions in a neutered form so as to facilitate its release by the taxpayer appellant whilst retaining anonymity.

5. In the following summaries, the words "Tax Law" refer to the Income Tax (Guernsey) Law, 1975, as amended, in the form that was in force at the relevant time. "Guernsey" includes Alderney. "another jurisdiction" means a country other than Guernsey (and Alderney).

6. These summaries are prepared for guidance only and are not to be taken nor intended to be taken as an authoritative statement or interpretation of the Tax Law and the compilers accept no responsibility for any errors or omissions howsoever caused.

2001

2001/1. When the employment of a taxpayer is terminated summarily and immediate reemployment 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 reemployment is taxable as an emolument of employment. Sections 2(2) and 8 of the Tax Law.

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 Tax 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 in not real property in Guernsey. 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 Tax Law. (N.B. See also the Real Property (Housing Schemes, Leasehold and Miscellaneous Provisions) (Guernsey) Law, 2004, registered on 8th. July 2005, but not yet in operation.)

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. (Neither legislation nor law was cited).

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 Tax Law unless they satisfied the "wholly and exclusively" test. The burden of proof lies on the taxpayer (Section 18). The Tribunal followed 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- Sheppherd [1999] 1 W.L.R., 1333 H.L.

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. (R v. Commissioners for Taxes for St. Giles and St. George Bloomsbury (ex parte Hooper) [1915] 3 K.B. 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. (Consideration was given to the badges of trade as set out in Marson (H.M.Inspector of Taxes) v. Morton [1986] BTC 377).

2002

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 Tax Law will not necessarily be denied if they are defective. The Tribunal considered, inter alia, the test

in Pemsel's case (Special Commissioners of Income Tax v. Pemsel 3 TC 53 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 U.K. law, Guernsey law must be followed. See Sections 3(2)(a)(ii), and 3(2)(b) of the Tax Law.

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. See Sections 7 (2) and 18 of the Tax Law, Mallalieu v. Drummond (1983) 57 TC 330, and Newsom v. Robertson 33 TC 452.

2003

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. See the Tax Law sections 68, 73, and 75, including the proviso. See R v. Commissioners of Taxes for St. Giles and St. George, Bloomsbury (ex.p.Hooper) [1915] 3 K.B. 768 (concerning the word "discover") and Nicholson v. Morris (H.M. Inspector of Taxes) (C.A.) [1977] S.T.C. 162, (concerning "wilful default").

2004

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 Tax 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 Tax 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 was made in argument to Commissioners for Inland Revenue v. E.C.Warnes & Co. Ltd. 12 TC 227, Commissioners for Inland Revenue v. Alexander von Glehn & Co. Ltd. 12 TC 232, and T.Haythornwaite & Sons. Ltd. v. Kelly [1927] 11 TC 657.

2005

2005/7. When the Administrator raises an additional assessment under section 75 of the Tax 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 Tax 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. The Tribunal considered s. 36 of that Law; Dawes 'Laws of Guernsey', 1st. Edition, pp. 598 & 599; and Cross on Evidence 7th. Edition, pp. 16 & 17. It was also referred 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 & Anor t/a Farthings Steak House v. McDonald (HMIT) [1996] Sp C 91.

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 Tax 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 Tax Law apply, do not apply to appeals to the Tribunal under section 80A (b). (No cases were cited).

2005/10. When the Administrator brings penalty proceedings under section 200(1) of the Tax 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

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.
(See also Guernsey Statutory Instrument 2006 No. 37 - The Income Tax (Keeping of Records, etc) Regulations, 2006 – made on 17 October 2006 and coming into operation 01 January 2007).

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. (Tax Law sections 2, 19, and the statutory definition of 'business' in section 209 were considered). The Tribunal adopted the approach of Sir Nicolas Browne-Wilkinson V.C. in Marston v. Morton, [1986] BTC 377, pages 385 & 386. It also considered Taylor v. Good, [1974] 49 TC 277. The other cases cited were Ransom v. Higgs, [1974] 1 W.L.R. 1594 (HL) and Beautiland Co Ltd v. Commissioners of Inland Revenue, [1991] STC 467, (PC). *[This decision was upheld by the Royal Court, in its judgement 3/2008, see below under appeals by way of case stated]*.

2006/14. In considering an application to admit an appeal out of time, the Tribunal considered the proviso to section 76 of the Tax 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. The Tribunal followed its reasoning in 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, and (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. See section 76 of the Tax Law. On facts, the application to admit an appeal out of time was refused.

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 Tax Law. The Tribunal observed that

the Tax 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. The Clerk cannot assist by making contact with the appellants involved:

1997/1. Late appeals can only be admitted if they conform to the criteria in section 76 of the Tax 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 Tax 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.

APPEALS FROM THE TRIBUNAL BY WAY OF CASE STATED.

Copies of these judgements, which are matters of public record, should be available from the Greffe.

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 Tax 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 Tax Law not 31(3) which has no application to income from an office or employment.

Les Nicolles Vineries Limited. The written judgement of the Deputy-Bailiff Day delivered on 15 May 2001 dismissed the appellant's appeal. The appellant company carried on a growing business in glass that it owned until 1989 when, following some years of losses, its 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.

Gold. The written Judgement of the Guernsey Court of Appeal delivered 22 July 1999, annulling an assessment by the Administrator is reported in full in Issue 27 of the Guernsey Law Journal at paragraph 144 and is summarised in paragraph 46 along the following lines: 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.
In the full report, 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.

Tremoille Properties Limited. Written judgement of Lieutenant-Bailiff Talbot delivered 27 May 2002 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 and *held* that the payments were of a revenue rather than capital nature.

Bath Limited. Written judgement of Lieutenant-Bailiff Talbot delivered 03 November 2003. 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. *Held*, in allowing the taxpayer's appeal, 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 & Son Limited (1943) 25 TC 353 and Paget v. Commissioners of Inland Revenue (1937) 21 TC 677 considered.

Carpenter. The judgement of Deputy-Bailiff Rowland (Number 65/2003) handed down on 31 December 2003 allowed the taxpayer's appeal. The Head Notes include the following: 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 October 2004 includes the following in its Head Notes: 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. Written judgement of the Sir de Vic Carey, Bailiff, (Number 32/2005) delivered 03 June 2005, allowed the Administrator's appeal. The Headnotes 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 Tax Law. The written judgement of Lieutenant-Bailiff Talbot (Number 35/2005) delivered 13 June 2005 has the following Headnotes: "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."

The decision of the Tax Tribunal and the Royal Court was upheld in a written judgement (No. 361) of the Civil Division of the Court of Appeal issued on 31 January 2006.

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 written judgement of Deputy-Bailiff Richard Collas (Judgement 3/2008) was delivered on 21 January 2008. The Headnotes 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.'

(FOR LATE PAYMENT SURCHARGE APPEALS SEE PART 2.)

Practice Direction.

On 24 August 2006, the Tribunal issued a Practice Direction that mirrors Practice Direction No. 1 of 2006 issued by the Royal Court on 18 August 2006. It lays down procedures to be followed should a party to an appeal wish to raise a human rights issue.

NO APPEALS WERE HEARD EITHER DURING THE SECOND HALF OF 2008 OR DURING THE FIRST HALF OF 2009 THEREFORE THE CONSOLIDATED

UPDATE PUBLISHED ON 17 JULY 2008 THAT COVERS ALL CASES (other than late payment surcharge appeals) UP TO THE END OF JUNE 2008 REMAINS VALID. ALL EARLIER PUBLICATIONS MAY BE DISCARDED.

N. Le Poidevin
Clerk to the Guernsey Tax Tribunal.
29 June 2009.

See next pages (11 – 16).

APPENDIX – PART 1 OF THE WRITTEN DECISION IN APPEAL 2008/2.

GUERNSEY TAX TRIBUNAL

Appeal 2008/2 – Part One.

Introduction

1. This is an instance where a taxpayer has:

a) Failed to submit detailed grounds of appeal;
b) Failed to respond to a draft Statement of Agreed Facts;
c) Failed to attend the appeal hearing; and
d) Failed to give notice of his inability or unwillingness to attend the appeal

Regrettably, it is common to encounter some such shortcomings in an appeal; it therefore seems appropriate to state for the record the Tribunal's response to these deficiencies. Of necessity, these are general observations which may be altered by the facts of a given appeal.

The Tribunal's constitution

2. It is worth stating at the outset some basic facts about the Tribunal:

Tribunal Members:

a) are appointed by the Royal Court;
b) are wholly independent of the Income Tax Authority;
c) are typically professionals with some years of experience in a variety of fields; and
d) are not salaried and receive only a small attendance allowance for hearings.

The Tribunal:

e) does not have access to the Income Tax Authority files;
f) does not deal directly with the Income Tax Authority;
g) has no premises but rents recording equipment and is provided with meeting rooms at Sir Charles Frossard House;
h) is assisted by a Clerk (who conducts correspondence with taxpayers and the Income Tax Authority) and some support staff, remunerated on a time spent basis; and
i) does not usually see correspondence between the Clerk and third parties.

The Appellant's motivation

3. It appears to the Tribunal that some taxpayers may be under the impression that lodging an appeal defers the payment of tax at no cost to the taxpayer. If so, taxpayers

are directed to the section of the Tax Law dealing with late payment surcharges (section 199) which makes it clear that such surcharges apply to any amount due under the Tax Law. **A taxpayer who believes that he can delay payment by lodging an appeal runs the real risk of a surcharge being imposed.**

4. The Tribunal also suspects that some taxpayers may lodge an appeal as a way of escalating a dispute with the Administrator, in the hope of achieving a more favourable assessment. The Tribunal cannot speak on behalf of the Administrator in this respect, being totally independent of the Income Tax Authority, but **the Tribunal's decisions will be based entirely on the facts and the Tax Law as the Tribunal understands them, not on the assertiveness of a taxpayer**.

The importance of stating proper Grounds of Appeal

5. The Tax Law requires that all appeals be notified to the Administrator within thirty days of the matter complained of, whether that be an assessment, a penalty or a surcharge. (See section 76). This notice must be in writing and state the grounds of appeal. The Tribunal entirely understands that taxpayers may not be familiar with the Tax Law or may not fully understand the Administrator's reasoning for an assessment, penalty or surcharge; for this reason the Tax Law allows a taxpayer to lodge further or more detailed grounds of appeal (although the Tribunal has discretion in this respect and a taxpayer should not assume automatic acceptance).

6. In general, the possible grounds of appeal can easily be categorised into two groups: appeals on the basis of disputed facts and appeals on the grounds of disputed law. A good example of the former will be where a self-employed tradesman keeps only partial records and is subject to an assessment on income which the Administrator suspects is undeclared. A good example of the latter is the case of a property purchase and sale which the Administrator assesses as a 'venture in the nature of trade' (and subject to income tax), whereas a taxpayer is of the view that this was a capital transaction (and thus not taxable). In the first group the Tax Law is usually not the issue; generally, in the second group, the facts are not in dispute.

7. The Tribunal will not be concerned at the exact words used to phrase the initial grounds of an appeal, and it is only common sense for a taxpayer to make the general nature of his appeal known to the Administrator at an early stage. If the matter goes to appeal, the Tribunal will need to be clear whether the appeal is one of a factual nature or of a legal nature (note that, as regards matters of law, the Tribunal can refer to the Royal Court).

8. In the latter case, it will be essential to give a statement of the legal issue which is in dispute. If a taxpayer is unrepresented (i.e. does not have a professional representative, such as an advocate or accountant, acting for him) the Tribunal will accept an informal statement – in the example quoted above a simple statement that the property sale should not have been subject to tax would suffice. **Failure to clarify the grounds of appeal will make it difficult for the Tribunal to do justice as between a taxpayer and the Administrator, and cannot be in a taxpayer's best interests.** The next few paragraphs explain how current Tribunal procedure works in this respect.

9. Although the present Tax Law gives the Administrator only limited powers to decide appeals himself, in practice the vast majority of appeals are resolved without the need for a Tribunal hearing. In other cases, the Administrator refers an appeal to the Tribunal. The first stage is that the Administrator writes to the Clerk and asks for a hearing date for the appeal. He copies this and all subsequent correspondence to the taxpayer, and the Clerk does likewise when writing to the Administrator.

10. Once an appeal has been referred to the Tribunal, the Clerk provides the taxpayer with details as to what must be done to prepare for the appeal. If the grounds of appeal are missing or vague he may seek clarification. **In the absence of clear grounds of appeal, as required by the Tax Law, the Clerk may decline to ask the President of the Tribunal to set a hearing date.** Taxpayers may thus risk not only delay but possible additional late payment surcharges.

11. At the next stage in the appeal process, the Clerk will usually ask both parties to expand on the grounds of appeal, and, in the case where the appeal is on matters of law, to provide skeleton arguments to support their case. If these are not provided the Tribunal will not be able to study the arguments in advance, and this could be against a taxpayer's interests.

Preparation for an Appeal hearing

12. Once a hearing date is fixed, the taxpayer and the Administrator are requested to co-operate to prepare a bundle that contains copies of all the necessary documents to enable the Tribunal to come to a conclusion. The Clerk supplies the taxpayer and the Administrator full details of what is required for a particular appeal. These details are also given in the booklet 'Notes for Appellants' or, in connection with late payment surcharge appeals, the relevant leaflet (both are freely available from the Income Tax Authority and will in any case be provided automatically to appellants).

13. In practice, unless the taxpayer has a professional representative, the Administrator, although not obliged to, prepares a bundle of documents and sends them to the taxpayer for

comment a few days before the hearing. This will include a draft Statement of Agreed Facts, intended to ensure that time is not wasted at a hearing on agreeing, for example, the history of the matters subject to appeal. Regrettably, some taxpayers do not comment on these documents, nor agree the draft Statement of Agreed Facts. **The Tribunal wishes to make it clear that, if undisputed (and in the absence of manifest error), a Statement of Agreed Facts will usually be treated as reliable evidence of the facts given. The failure of a taxpayer to correct errors or to add other information may thus be unhelpful to his case.**

Timing and postponement of Appeal hearings

14. Currently, appeals are always held on a Monday. All documents must be with the Clerk by close of business on the Wednesday before the hearing (or such other day as may be directed). A bundle is then sent to each of the Members that will be sitting, in time for them to look through it over the weekend. This is to ensure that the Members and also the Clerk, whose duty is to advise them on matters of law should they so request, arrive at the hearing with some knowledge of what is involved. Were this procedure not followed, it could result in the Members adjourning a hearing for sufficient time to enable them to read through the bundles whilst leaving the taxpayer and the Administrator waiting.

15. As a consequence, **it is not feasible to cancel or postpone a hearing unless the Clerk is notified by 4 p.m. on the Thursday before the hearing at the latest.** Beyond that time it becomes too late to stop bundles being sent out, to cancel recording equipment, to reallocate the meeting room, and for the Members themselves to make other arrangements for the following Monday. Under such circumstances, a hearing is likely to go ahead even if a settlement seemed possible.

Failing to attend a hearing

16. If a taxpayer fails to attend an appeal and does not advise the Clerk in advance, the appeal will not, in general, be postponed, although the Tribunal may decide to adjourn the appeal for other reasons. The taxpayer will have been given adequate notice of the time and date of the appeal and there will have been a detailed process of preparation for an appeal. Apart from being discourteous to the Members, the Clerk and the Administrator, failure to attend a hearing cannot be in a taxpayer's own interest. Postponement may also result in a cost to the people of Guernsey in general for the abortive hearing.

17. It is possible that a taxpayer or his representative is prevented at the very last moment from attending at the time stated. 'Notes for Appellants' provides an emergency contact number for the Clerk. The Tribunal has the power to postpone a hearing if a taxpayer is "prevented by absence, sickness or other reasonable cause from attending" (section 78(3)).

Even if the Tribunal is advised of a taxpayer's absence in advance, it still has the discretion to proceed with the hearing.

18. It is not possible to lay down any hard and fast rules, but the following observations may be of help:

a) The Clerk must be contacted with the least possible delay. This contact should be followed speedily by a written explanation, ideally available to the Tribunal at the hearing.

b) If there have been travel problems, then the carrier concerned should provide a note to that effect. Persons travelling to Guernsey should anticipate problems due to forecasted bad weather or fog, and make appropriate arrangements.

c) In the event of sickness, there should be a letter from the taxpayer's medical practitioner to the Clerk certifying that an unforeseen medical condition prevented attendance. A general certificate that a taxpayer was signed off work is unacceptable. For example, a tradesman signed off work because of a broken thumb might be perfectly capable of attending a hearing.

d) If there has been a sudden emergency, then either the taxpayer or a responsible person should write to the Clerk to explain briefly what has occurred.

e) The Tribunal is likely to be more sympathetic to such situations should a taxpayer have co-operated in preparing documents for the appeal.

The power of the Tribunal to postpone is clearly set out in the Tax Law; the Tribunal will insist on written corroboration for the reasons for absence, which must satisfy the stated criteria.

The Tribunal's policy for appeals 'in absentia'

19. The Tribunal is mindful of an overall duty to act "in accordance with natural justice". Its procedures give all taxpayers adequate notice of appeals and allow the dissemination of the main documents to all parties in advance; if a taxpayer chooses not to attend an appeal or fails to provide grounds for non-attendance the Tribunal is entitled to proceed without the taxpayer being present. **When a hearing proceeds in the absence of a taxpayer, the Tribunal will nevertheless attempt to satisfy itself that the Administrator has acted reasonably in making an assessment or imposing a penalty or late payment surcharge. If it is so satisfied, it will dismiss the appeal.**

20. Say, for example, that the Administrator has been obliged to issue an estimated assessment on the basis that he a) feels he has good evidence that some income has been omitted from a tax return and b) has used his best endeavours to arrive at a reasoned figure for an increased assessment. If the Tribunal is satisfied a) that there is prima facie evidence that

the tax return is in error and b) that the calculation of the new assessment is based on clear reasoning and is not simply arbitrary, then it will accept the Administrator's revised assessment without amendment, in other words dismiss the appeal.

21. In this sense, the Tribunal acts more generously towards a taxpayer than many courts of law would do to a person that fails to attend their appeal hearing. The difference, of course, is that such appeals would typically be against a decision of a lower court. The Tribunal, however, hears appeals against a decision of the Administrator who is a party to the appeal.

22. The Tribunal hopes that the publication of the above general comments will assist taxpayers in understanding the appeals process and help to prevent further aborted sittings involving a general waste of public funds. Part 2 of this decision follows. It relates to the specific appeal and so is confidential and not for public circulation.