

# THE GUERNSEY TAX TRIBUNAL

## NOTES FOR APPELLANTS

*Issued by the Guernsey Tax Tribunal*

*January 2003*

**If you wish to appeal against an assessment, penalty, direction or order issued by the Administrator of Income Tax and you have not already lodged an appeal, read Sections 8 and 9 on page 4 immediately:**

*These Notes aim to inform and guide people appealing to the Guernsey Tax Tribunal, and to answer the main questions you may have about the Tribunal and how it works. Although they do not form part of the law governing the Tribunal's operation, your appeal may suffer if you do not take account of their contents.*

*Note particularly the Sections on the setting of Hearing Dates. If you fail to attend on a previously agreed Hearing Date your case may be heard in your absence.*

## 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.*

<b>Key word</b>	<b>Definition</b>	<b>See Section</b>
<b>Tax Law</b>	The Income Tax (Guernsey) Law, 1975, as amended <sup>1</sup>	
<b>Authority</b>	The States of Guernsey Income Tax Authority	
<b>Administrator</b>	The Administrator of Income Tax and/or his staff, who represent the Authority at Hearings	
<b>Appeal</b>	An appeal under the Tax Law	<b>8</b>
<b>Tribunal</b>	The Guernsey Tax Tribunal, a statutory tribunal authorised by the Tax Law <sup>2</sup> to hear contentious Appeals	<b>1</b>
<b>Clerk</b>	The clerk to the Tribunal	<b>5</b>
<b>Hearing</b>	A meeting of the Tribunal at which an Appeal is to be heard	
<b>Hearing Date</b>	A date scheduled for a Hearing	<b>11 &amp; 12</b>
<b>Professional Representative</b>	Someone who will speak for you at a Hearing, usually an Advocate or Accountant	<b>17</b>
<b>Adviser</b>	Someone, usually an Accountant, who is advising you on an Appeal but does not speak for you at a Hearing	
<b>Appellant</b>	A person appealing to the Tribunal or, where appropriate, his Professional Representative or Adviser. If a Company is involved, this includes a Director of that Company or an authorised employee.	
<b>Parties</b>	The Appellant and the Administrator (the Respondent)	
<b>Statement</b>	A statement of agreed facts, prepared by the Parties before a Hearing	<b>15</b>
<b>Legal Authorities</b>	Authoritative documents relating to the legal aspects of an Appeal, which may include extracts from legal textbooks, case reports, relevant Sections of the Tax Law (or other laws) etc.	
<b>Decision</b>	The decision of the Tribunal after hearing an Appeal	<b>26</b>

<sup>1</sup> You should obtain a copy of the up-to-date consolidated Tax Law, which includes all recent amendments if you are seriously considering an Appeal.

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

## BACKGROUND

### *1. What is the Tribunal ?*

The Tribunal is the body set up to hear income tax appeals which cannot otherwise be resolved and which involve something other than a failure to make a tax return (such Appeals are often referred to as “contentious appeals”).

### *2. What sort of Appeals does it hear ?*

You may disagree with the Administrator on the interpretation of part of the Tax Law or with regard to whether a particular receipt is taxable. You may consider that a particular type of expense is tax deductible, whereas the Administrator may consider that it is not allowable as a deduction for tax purposes. There might be a dispute as to penalties imposed. The Tribunal’s role is to determine who is right in each case.

### *3. Who are the members of the Tribunal ?*

There is a President, a Vice-President and up to seven other members; at least three, including the President or the Vice-President, must be present at each Hearing. The Royal Court appoints Tribunal members. They are typically professional persons with appropriate qualifications. Its members are sworn in by the Royal Court and take an oath of secrecy.

### *4. Is the Tribunal independent of the Authority ?*

Yes. The Tribunal is responsible to the Royal Court for its affairs. Its members are completely independent of the Authority and chosen for their impartiality. None of them either work for, or are members of, the Authority. Members do not receive any remuneration for their appointment, but are paid a small expense allowance.

### *5. How is the Tribunal run ?*

The Tribunal is administered by a Clerk, usually a Guernsey Advocate no longer in general practice, 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; see Section 29.

### *6. How are the Tribunal’s procedures decided ?*

The Tribunal must conduct its proceedings in accordance with natural justice and as informally and quickly as a proper consideration of the matters before it will permit. In many cases, people attending Hearings have no prior experience in legal matters. The Tribunal decides on its procedures at meetings of its members, but always attempts to be flexible in practice and you should note that these procedure Notes are not part of the Law governing the Tribunal’s operation.

Guidance notes such as this are issued from time to time, and are intended to make sure that Appellants are fully aware of how the Tribunal works<sup>3</sup> and in order to achieve fair and efficient operation for all concerned.

***7. Is it expensive to take an Appeal to the Tribunal ?***

Not necessarily. There is no charge for an Appeal Hearing and the Tribunal has no power to award costs in favour of a successful party or against an unsuccessful one. The Tribunal's procedures are designed to keep costs on both sides to a minimum, but please note that the cost of any Professional Representative or Adviser who you may employ (such as an advocate or accountant) cannot therefore be recovered.

## APPEALS

***8. How do I go about an Appeal ?***

If you disagree with an assessment, penalty, direction or order issued by the Administrator, you must first of all appeal by giving the Administrator notice of this disagreement in writing within the statutory period of 21 days from the date of issue. There is no standard format for such an Appeal, but an Appeal must be in writing, must clearly identify what you are appealing against and must state the reason for the Appeal.

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

This may harm your Appeal. A prompt, complete and accurate Appeal is the only way to guarantee a satisfactory Hearing. In practice the Tribunal is frequently asked to hear Appeals that have been lodged after the 21 day period, or which give inadequate details of the grounds for appeal, or which fail to mention grounds for appeal which the Tribunal is then asked to consider at the Hearing.

The Tribunal will consider such Appeals sympathetically<sup>4</sup> but must allow for objections raised by the Administrator to any late, inaccurate or incomplete Appeal.

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

The usual pattern is as follows:

- a. The Administrator may attempt to resolve the matter with you, without recourse to the Tribunal, and, in the majority of cases, this is successful. The Tribunal only becomes involved when agreement cannot be reached.

<sup>3</sup> The Tribunal is aware of guidance notes and statutory regulations for the equivalent tribunals in the UK\* and, while these do not have the force of law in Guernsey, has made use of them in drawing up its own procedures. Professional firms advising Appellants should be familiar with these documents.

\*Guidance notes issued by the Lord Chancellor's Department for the assistance of the General Commissioners and Statutory Instrument 1811 of 1994; similar guidance notes and Statutory Instrument 1812 of 1994 for the Special Commissioners.

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

- b. Once it becomes apparent that agreement will not be reached, the Administrator will advise the Clerk of the existence of a contentious appeal.
- c. The Clerk will propose and set a date for the Hearing (see Section 12).
- d. The Parties will prepare documents, including a Statement of Agreed Facts (see Sections 13 to 15).
- e. Where appropriate, the Administrator will continue to work with you to resolve the Appeal. If the Appeal is resolved, the Hearing will be cancelled. If it is close to resolution it will usually be postponed (see Section 23).

## HEARINGS

### *11. Where and when do Hearings take place ?*

Hearings are usually held in one of the meeting rooms at Sir Charles Frossard House, La Charroterie, St Peter Port. Hearing Dates are usually on Mondays.

### *12. How are Hearing Dates allocated ?*

Hearing Dates are agreed and booked long in advance. The Clerk has little or no flexibility to provide alternative Hearing Dates for your or the Administrator's convenience or for any other reason.

When the Administrator receives notice of a contentious Appeal and is satisfied that the matter cannot be resolved without a Hearing, he advises the Clerk of your name and the estimated duration of the Hearing<sup>5</sup>. The Clerk will then contact the Parties and normally offers a choice of the next three available Hearing Dates. It is the Tribunal's policy to offer dates at least two months in advance, so that you will have adequate time for preparation in advance of the allocated date. Usually only one Appeal will be heard on each Hearing Date.

Please note that 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. See Section 18 about the importance of actually attending a Hearing.

## DOCUMENTS

### *13. What happens once a Hearing Date is allocated ?*

You are expected to co-operate with the Administrator and/or the Tribunal to produce:

- a. A Statement of Agreed Facts, with accompanying documents
- b. A bundle of other documents that you wish to rely on

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<sup>5</sup> There is no reason why you should not be the person notifying the Clerk, but, in practice, this is unusual.

The Administrator will also produce

- c. A bundle of other documents that the Administrator wishes to rely on

**These documents should all be made available to the Tribunal and to the other party before the Hearing** (see Section *14* for timing). Although other documents may be produced at the Hearing, this may cause delays and it is in any case 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 *AI* regarding the form these documents should take.

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

As the Parties will normally have at least eight weeks to prepare for a Hearing, the following timetable is to be observed as far as practicable:

Hearing Date:	Monday
Last date for submission of documents:	Thursday next but one before the Hearing (i.e. 11 days before the Hearing Date)
Documents dispatched to Tribunal members by the Clerk:	Thursday 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 peruse the documents in private before the Hearing.

***15. How is the Statement of agreed facts prepared ?***

The Statement is intended to set out the main factual background to the Hearing and to identify the issues that need to be resolved by the Tribunal. To this Statement will be attached copies of all relevant correspondence and other non-contentious documents (e.g. copies of tax returns, letters between you and the Administrator, sets of accounts, legal agreements etc.). The Statement assists the Parties to resolve a number of issues before the Hearing and eliminates duplication of evidence.

In practice, the Administrator 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 Administrator 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.

***16. 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

### *17. Do I need to have an advocate or accountant to represent me ?*

No. There is no need for professional representation, as proceedings are informal and the intention is to keep costs to a minimum. If you do not have professional representation, the Tribunal will ensure that the format of the Hearing allows for this.

You may, of course, prefer to have a Professional Representative and, if so, you should give notice to the Clerk, in writing, as soon as possible after the Hearing Date is advised, with the name of your proposed Professional Representative. If necessary, you should check with the Clerk to ensure that your choice is acceptable<sup>6</sup> and it may also be necessary for written notice to be given to the Administrator.

### *18. Do I need to attend the Hearing ?*

Yes. It is vital that you or your Professional Representative attend. Failure to attend a Hearing may severely damage your own case and you will be unable to respond to any new items that are raised at the Hearing. Even if you are professionally represented, it is advisable to attend, as you may often be the only person fully aware of background facts or details.

Where the Appellant is a Company, the Tribunal would expect the Company to be represented by a Professional Representative or by a Director. If that is not possible, then a duly authorised employee of the Company should attend.

See also Section 22 about postponement of Hearings.

### *19. What happens at a Hearing ?*

Proceedings are informal and usually in private<sup>7</sup>. It is the usual, but not inflexible, practice for you or your Professional Representative to state your case, calling witnesses if appropriate. The Administrator then states his own position, again calling witnesses if appropriate. Members of the Tribunal 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.

### *20. Are Hearings recorded ?*

Yes. The Clerk takes manuscript notes and Hearings are tape-recorded. The notes and the tapes are retained for at least 6 years or until the final determination of any related proceedings, if later. The deliberations of the Tribunal, however, are not recorded.

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<sup>6</sup> Section 78(2) of the Tax Law permits only Advocates of the Royal Court and Chartered or Certified Accountants as of right, but the Tribunal may be prepared to accept others, such as holders of equivalent qualifications, on application in writing. Any professional person representing an Appellant owes the same duties to the Tribunal as he would to the Royal Court, including a duty not to mislead the Tribunal in matters of law or to put forward any fact that cannot be supported by evidence. Such a person must cease from representing a client if they find that the client's case is flawed or false. Above all, he must assist the Tribunal in identifying the issues involved upon which it must find as matters of fact and the points of law upon which it must give a ruling.

<sup>7</sup> An Appellant may, strictly, request a public Hearing, but issues of confidentiality would have to be adequately addressed.

Transcripts of Hearings are not usually available but see Section **26** about written Decisions.

### ***21. May I call witnesses ?***

Yes. You should make your own arrangements for the attendance of witnesses and these will be at your own expense. You should inform the Clerk and the Authority in advance that you are calling a witness, and indicate whether you envisage having difficulty in securing the witness's attendance. The Tribunal has the power to summons any witness whom it thinks able to give relevant evidence, and 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 Administrator in advance, as he is entitled to object to the use of an affidavit.

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

The Tribunal is very reluctant to postpone Hearings. The procedures give both Parties adequate notice of the Hearing Dates; there are a limited number of available Hearing Dates and postponement effectively delays the hearing of other cases; it also wastes the time of the Administrator as well as that of the Tribunal members. The Tribunal has in any case only limited powers to postpone an Appeal that has been allocated a Hearing Date (see Section **23**).

If you fail to attend, the Tribunal is likely to begin the Hearing without you unless it has a valid reason for postponement. Section **18** sets out the problems this can cause.

It is important to understand the difference between postponement and adjournment. Postponement of a Hearing means that it cannot commence on the allocated Hearing Date. Adjournment means that the Hearing starts, but for some reason cannot be completed on the day in question (see Section **24**).

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

A request for postponement will usually be considered at a formal Hearing of the Tribunal on the Hearing Date allocated, whether or not you are able to attend. You should note that the Tribunal will ask for comments from the Administrator, who may object to postponement.

The Tax 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 Professional Representative or Adviser.

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 (i.e. no later than the preceding Thursday), to give members adequate notice and to avoid unnecessary dispatch of documents.

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

The Tribunal has power to 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 cannot assume that a Hearing once started will be adjourned because of the absence of one of the Parties.

***25. Can Hearings be arranged at short notice ?***

Yes. Sometimes Hearing Dates become free and, if you and the Administrator have completed all your pre-Hearing preparations, it may be possible for the date of a Hearing to be brought forward, provided both Parties agree. The latest time for the Administrator to advise the Clerk is the close of business on the Thursday before the relevant Hearing Date. After this the Clerk will inform members of the Tribunal that there will not be a Hearing on that Hearing Date.

## **DECISIONS & APPEALS**

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

After hearing the arguments from both sides, and after the Tribunal's members have asked such questions as they think fit, you and the Administrator withdraw while the Tribunal considers its Decision.

After a short period for discussion, the Tribunal will, whenever possible, give its outline Decision orally to the Parties, or it will advise them that it will not be in a position to give a Decision that day and that the Decision will be communicated in writing (in which case the Clerk may also advise the Parties of the Decision by telephone in advance).

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 high.<sup>8</sup>

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.

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<sup>8</sup> Section 79(1) of the Tax Law allows the Tribunal to confirm, reduce, increase or annul an assessment or to set aside an assessment and direct the Administrator to make a fresh assessment in due course.

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

The Tax Law gives you the right to appeal to the Royal Court on matters of law. A Decision of the Tribunal on matters of fact is final.

The remainder of this section gives you a general outline of the Royal Court appeal procedure, but you should not rely on these Notes if you intend to make such an appeal. At this stage Appellants should therefore consider appointing an Advocate to advise them and to represent them before the Royal Court.

If you wish to appeal to the Royal Court, you must lodge a notice of appeal with the President of the Tribunal within 21 days of the determination of the initial appeal. The 21-day period starts 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", which is a full report on the case prepared by the Tribunal, setting out the facts of the case and the determinations of the Tribunal. The person appealing submits this to H.M. Greffier, who will arrange for the Royal Court to hear the appeal.

Cases Stated are prepared by the Clerk. The written Decision will already have been circulated to the Parties before its preparation and will form the core of the Case Stated, which will be forwarded in draft to the Parties for comment as to factual accuracy and requests for further clarification.

If an appeal proceeds by way of the Case Stated, the Tax Law sets out the procedure to be followed.

**28. 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.

**29. How do I contact the Tribunal ?**

All communications should be addressed to:

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

Letters will only be opened by persons who have taken the statutory oath of secrecy.

If you wish to telephone the Tribunal, you may do so on (01481) 717000, but please note that only certain persons (currently Ms. Denise Board and Ms. Maggie Zandvliet) have taken the statutory oath of secrecy relating to the Tribunal.

If you wish to communicate by facsimile, you may do so on (01481) 717299, but please note that this number, although designated for confidential correspondence, is not for the exclusive use of the Tribunal.

In urgent situations the Clerk can be contacted on (01481) 264373 or by facsimile on (01481) 268138

Letters, documents and any other material sent to the Tribunal should be copied to the other party (i.e. to the Administrator in the case of an Appellant).

**Issued by the Guernsey Tax Tribunal, January 2003**

## APPENDIX

### *A1. Format of documents to be supplied*

For the ease of administration, the following practice notes cover the provision of documents to be provided under Section **13** to **16** of these Notes.

#### 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 Administrator)	RES

Thus page 12 of your bundle should be numbered APP/12.

The Tribunal discourages bundles in other formats, especially those in hard-backed ring binders, which are bulky and difficult to dispatch.

### *A2. 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 Tax Law, relevant extracts should be included in the documents submitted.

### ***A3. 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 Guernsey Law of Evidence of 1865 and its Alderney equivalent, unless other statutory provisions prevail. It should also be noted that the Clerk cannot advise the Parties in matters of law.

### ***A4. 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 and disposed of as confidential waste. 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.