

GUERNSEY TAX TRIBUNAL

Guernsey Tax Tribunal
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NOTES FOR APPEALING AGAINST A PENALTY FOR FAILURE TO DELIVER A RETURN OF INCOME

I have appealed against a late filing penalty, who hears my appeal?

Under the terms of the Income Tax (Guernsey) Law, 1975 ('the Income Tax Law') appeals against penalty orders must be heard by the Guernsey Tax Tribunal ('the Tribunal').

Is the Tribunal independent of the Income Tax Office?

Yes. The Tribunal is responsible to the Royal Court for its affairs. Its members are completely independent of the Income Tax Office and are chosen for their impartiality. None of them either work for the Director of Income Tax or are members of the Treasury & Resources Department (which has political responsibility for the Income Tax Office).

How is the Tribunal run?

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

Why must appeals be notified to the Director?

This is because the Income Tax Law requires it. In practical terms the Director attempts to resolve a dispute, if this is possible, within the provisions of the Income Tax Law, and only refers matters to the Tribunal if agreement cannot be reached.

How do I appeal against a penalty order?

You must notify the Director – in writing – within 30 days of the date of the order imposing a penalty. The Income Tax Law requires that you state your grounds for appeal. The Tribunal will not hear your appeal unless you have stated your grounds of appeal. If you do not state your grounds of appeal in your notice of appeal, the Director will ask you to do so within 30 days. Unless you do this, the Tribunal will not set a date for hearing your appeal.

What are the grounds of appeal against a penalty order?

They are very limited and are that :

- (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.

You should note that:

- (a) The Tribunal has power not just to cancel or reduce the penalty charged but also to confirm and or increase it, if it considers appropriate.
- (b) 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 Tax Law, which requires the return to be delivered by the relevant date.
- (c) The Income Tax 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.

What happens when the Director passes an appeal to the Tribunal?

The Clerk will contact you and require you to send him and the Director a more detailed outline of your case within the next 30 days. When he receives it, the Clerk will notify you and the Director of the date, time and place for the hearing of your appeal. If you do not send this written outline within 30 days then your appeal will be seriously prejudiced. When writing to you, the Clerk will give further information and explain what you need to do to prepare for your hearing.

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

The short answer is ‘yes’. The Income Tax 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 Income Tax 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. You must discuss that with the Director, not the Tribunal, however.

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).

Do I have to attend the appeal?

It is not essential but it is most desirable. The Director will be represented by one of his senior officers. If you are not present then you cannot question what the officer says. The Tribunal will only have the documents that you or the Director have sent in. It does not have access to your records kept by the Director. The evidence of the Director is likely to be accepted unless it is manifestly incorrect. Given the narrow grounds for possible appeal, this is likely to mean that your appeal will be unsuccessful.

I can't attend the appeal, can somebody else represent me?

Yes, but if that person is not either your accountant or an advocate then the Tribunal could object, so it is advisable to contact the Clerk well in advance.

Can I find more details about penalty order appeals?

Yes. The Tribunal provides summaries of all its previous important decisions, and these and other information can be found at www.gov.gg/guernseytaxtribunal. In addition, the Clerk can assist you in matters of procedure but he cannot advise you on the Law.