

## Commissioners of Appeals for Taxes – Contentious Cases Procedure

### For Taxpayers and their Agents (Appellants)

- Where an Appellant wishes to bring forward an Appeal of a Tax Assessment, they should discuss the Appeal with Revenue Jersey to agree suggested dates for the Appeal and should contact the Clerk to the Commissioners (the “Clerk”) to advise of the Appeal.
- The Clerk will notify the Commissioners that the Appellant wishes to bring an Appeal within 2 business days of receipt from the Appellant so that the Commissioners may consider the appropriate Hearing Date for the Appeal.
- For the purposes of this procedure, “Appellant” means the Taxpayer and their Tax Agent and/or Advisor if one is appointed to act on their behalf

Page | 1

### For Revenue Jersey (also referred to as the Respondent)

- Revenue Jersey is expected to advise the Commissioners of the complete list of contentious cases it anticipates will be brought to the Commissioners at the earliest stage possible.
- This notification should be provided to the Clerk to the Commissioners (the “Clerk”), who will give that list to the Commissioners within 2 business days of receipt from Revenue Jersey.

### For Appellants and Revenue Jersey

Any notification of Appeal should include:

- Name of Appellant(s) – if a corporate entity, include names of all board directors, officers, and beneficial owners
- The name of the Tax Agent/Advisor authorised to act on behalf of the Taxpayer, where applicable
- A high-level description of the tax issue
- The date(s) the Parties would like to appear before the Commissioners

This will allow Commissioners to complete their conflict-of-interest reviews and clear any potential conflicts before a final date is set for any Appeal. The schedule for each year is set in advance at the beginning of the year. Each Appeal Panel consists of three Sitting + one Standby Commissioners for each Hearing.

1. The Commissioners are agreeable to hearing both delay cases (cases where documents are outstanding and an assessment cannot be finalised) and one contentious Hearing (a matter where there are questions about the application of either fact or law) in one Appeal Hearing sitting, providing the following process is adhered to.
2. The process for delay hearings will be as follows:
  - a. Delay cases will be scheduled for the first hour of the Hearing (it is anticipated that all Hearings will take place at 13:00 unless otherwise agreed by the Parties).
  - b. Appellants will be asked to wait outside the Hearing room until they are called by the Clerk. All Appellants are asked to attend from 12:45 – 2 pm (or any earlier conclusion time if their matter has been heard by then). While a time may be allocated for the Hearing, there is no guarantee how long or short prior proceedings may be, and Appellants must be ready to proceed when called into the hearing room.
  - c. Where the Appellant Taxpayer has indicated they will appear in person or is represented by Advisors who are expected to attend, and/or where Advisors represent several Taxpayers, a set time for the Hearing may be allocated (it is anticipated this will be 30-45 minutes of the hour allotted, depending on the number of cases).

- d. Where it is unclear whether the Appellant will appear, all such matters will be listed for a single time, and the matters will be heard in the order that Appellant arrives for the Hearing or as otherwise requested by the Commissioners.
  - e. The sitting Panel of Commissioners reserve the right to extend the one-hour period by no more than 15 minutes if required to complete Hearings for which Appellants are in attendance but have been unable to present due to previous matters overrunning.
  - f. No delay hearing will be heard for any matter where an Appellant arrives after the first hour of the Appeal Hearing start time.
3. The timetabling process for contentious cases will be as follows:
- a. Generally, the Commissioners will only hear one contentious Appeal at a Hearing Date. The exception to this rule would be a situation where:
    - i. The issues (Article of the Income Tax Law (“ITL”)) under Appeals are identical or similar enough to be considered precedent for each other, e.g., breach of specific filing deadline breach under specific ITL Article and application of the same penalty for each breach
    - ii. The facts/circumstances of the Appeals are broadly similar
    - iii. The Appellant is the same or is the same legal entity for the Appeals
    - iv. It is likely that the same Appellant will appear for the Appeals

In the event that more than one case is to be brought to the Commissioners with similar facts and issues, the Commissioners may stipulate that one case will be heard and decided and that decision should be considered before any related cases are brought before the Commissioners.

#### For the Appellant and Respondent (Revenue Jersey)

Prior to an appeal being allocated to a confirmed date, the following must be confirmed to the Clerk:

- There have been recent communications between the Appellant(s) and Respondent (the “Parties”) with respect to the status of the Appeal (i.e., within the last 15 business days), and
  - The Appellant/Respondent still wish to proceed with the Appeal and have commented on or agreed to the draft Statement of Facts (or something similar) or has provided their respective version, or
  - In the view of either the Appellant or Respondent, the relationship between the Parties is no longer conducive to discussions and the Appeal needs to be brought to the Commissioners to be concluded, and
  - The Appellant and Revenue Jersey have discussed proceeding with an Appeal Hearing and the potential dates available and have confirmed their availability for the requested dates or the Clerk to the Commissioners has received confirmation from each Party that they wish to proceed with the Hearing and have confirmed their availability for the proposed Hearing dates.
1. The Commissioners will review the issues under Appeal and any statements of facts to determine whether there are any specific questions or points they want to be addressed either in the pleadings or at the Hearing. These will be advised in the formal direction provided for the Hearing date.
  2. The Commissioners will determine the date for the Hearing based on the conflict review, issues at stake and required timeline for production of the necessary documents (the “bundles”)
  3. The Commissioners understand that sometimes the request for an Appeal to the Commissioners needs to be done at short notice. However, the Appellant and Respondent should note that the Commissioners do not undertake to make decisions about Appeal Hearings and the allocation to a scheduled Appeal Hearing date with less than 5 business days’ notice before the notice of Appeal must be sent out, and this will only be done on an exceptional basis. Typically, the Commissioners will expect that they have a minimum of 7 business days prior to a scheduled Appeal Hearing date

notice period for an urgent matter to confirm any conflict checks and any decisions regarding allocation to that scheduled Appeal Hearing date.

4. Parties are permitted to appear remotely where necessary. The Clerk to the Commissioners can make suitable arrangements for video conferencing for a Hearing to allow remote participation when so requested by any Party.
5. Parties may seek written Directions from the Commissioners on procedural questions by submitting written questions to the Clerk, who will seek clarification from the Commissioners. Clarification from the Commissioners may take the form of a letter, email, or formal direction, at the discretion of the Commissioners.

#### For the Appellant and Respondent - Process for Contentious Cases

- a) While the statutory notice period for a Notice of Appeal to be served is 21 days, the Commissioners of Appeal anticipate all Notices of Appeal will be served 28 days (4 weeks) prior to the Appeal Hearing Date.
- b) The Appellant shall deliver to the Respondent a copy of its Statement of Case by 5:00pm on the Friday three weeks prior to the Appeal Hearing Date. This Statement of Case should include all documents and other information required to support the Appellants interpretation of the facts and/or law in question. Any points not agreed in a Statement of Fact should be addressed in the documentation. (See (g) below for more details)
- c) The Respondent shall deliver to the Appellant a copy of its Statement of Case by 5:00pm on the Friday two weeks prior to the Appeal Hearing Date. The Respondent does not need to duplicate information provided in the Appellant's Statement of Case but may provide information or a description of how their view differs on the interpretation to that of the Appellant.
- d) The parties shall use their best endeavours to agree on a final and comprehensive bundle of documents. Where a combined bundle is not agreed, each party should prepare their individual bundles and file 6 hard copies of the same with the Clerk to the Commissioners by no later than 5:00pm on the Friday one week before the Appeal Hearing Date.
- e) The bundles will be provided to the Commissioners no later than the Monday, 1 week prior to the Hearing.
- f) Any deviation from these deadlines must be agreed in advance by the sitting Panel of Commissioners for Appeal for the particular Appeal Hearing Date.
- g) The agreed bundle referred to at b) and c) above shall be indexed, **fully paginated**, and divided, and must include:
  - i. The Appellant's Statement of Case together with all annexes and schedules referred therein.
  - ii. The Appellant's additional supporting documentation (if any) including documents, letters, copies of emails, financial statements, photographs, and such other information as may be required to support their Appeal, their position regarding the application of the law and/or the fact, or to refute any points in the Respondent's Statement of Fact with which they do not agree.
  - iii. The Respondent's Statement of Case together with all annexes and schedules referred to therein.
  - iv. The Respondent's additional supporting documentation (if any).
  - v. Copies of the relevant sections of legislation to which the parties would seek to refer.
  - vi. Copies of all case law (in their full form) to which the parties would seek to refer.
  - vii. Copies of any documentation which is not agreed but which either party would wish to submit to the Commissioners for consideration as part of the Appeal (it being understood that the inclusion of the document within the bundle will not be considered acceptance by the other side of its validity or effect).

- h) List of all witnesses (if any) that either of the parties wish to call at the Hearing together with addresses and full contact details must be provided to the other party and the Clerk to the Commissioners no later than 5:00pm two business days before the Appeal Hearing Date.

#### All Parties

- The filing of an Appeal will be considered specific permission by the Appellants for the sitting and standby Panel of Commissioners of Appeal for the particular Appeal to receive the agreed bundles prior to the Appeal Hearing Date so that they may review and prepare for the Appeal Hearing and to retain the bundles after the Hearing until the final decision is rendered and any Appeal timeframe has passed.
- The Parties should also be aware that the Hearing will be recorded and attending the Hearing will indicate they specifically permit the recording and the retention of that recording as a formal record of the Hearing. Parties will be permitted to request a copy of the recording. Any Party wishing a transcript of the recording will be required to pay for the transcript to be produced. A fee to cover the cost of producing the copy of the recording will be invoiced to the requesting Party. No minutes will be produced for the Hearing although Parties may take their own notes during the proceedings.

#### Appeal Hearing Process

- The Commissioners will sit in panels of three with a designated Chair for each Hearing day.
- The Chair will ask each of the Parties to make their submissions, normally beginning with the Appellant.
- Once the first Party has made their submissions, the second Party will be asked to make their submissions.
- Each Party will be offered the opportunity to respond to submissions by the other Party, at the request of the Chair. They may also be asked to answer questions by each of the Commissioners, until such time as the Commissioners are satisfied that they have all of the information they require to make a decision.
- Decisions will not normally will be given on the day of the Hearing.
- Where a decision is given on the day of the Hearing, the Clerk will send a letter confirming the decision within a week of the decision.
- Where a decision is not given on the day of the Hearing, the Commissioners will use their best efforts to reach a decision within two months of the Hearing date and instruct the Clerk to send a letter confirming the decision, or a copy of the formal decision within a week of the final decision.