

Consultation on the proposal to move to a Tax Tribunal

Consultation Process

The consultation period will run until 6th January 2023.

Any submissions received after this date may not be considered.

Responses should be emailed to:

Tax.policy@gov.je, with message subject "Tribunal Consultation"

Or can be returned via post to:

Tax Policy Unit – Tribunal Consultation
Philip Le Feuvre House
La Motte Street
St Helier
JE4 8 PE

Freedom of Information

Submissions will be subject to the provisions of the Freedom of Information Act. Revenue Jersey may receive requests for any or all information supplied as part of this process.

1. Introduction

Currently, any disputes related to income tax and other areas under the remit of the Comptroller of Revenue follow the commissioners of appeal process, outlined in Article 27 of the Income Tax (Jersey) Law 1961. In other areas where disputes are considered in relation to employment, health, charity, discrimination etc. Jersey follows a tribunal procedure, outlined in the respective legislation.

The purpose of this consultation is to examine the benefit of a tax tribunal for disputes related to decisions of Revenue Jersey.

The 2017 'Improving Administrative Redress in Jersey' topic report outlines a need for a single administrative tribunal. The administrative function and efficiency of each sector's tribunal system could be dramatically improved through the development of one single overarching tribunal. However, amendments of that scale will take time. In the interim, it is considered worthwhile reviewing the Income Tax Law's reliance on the commissioners of appeal system and the proposal, as a first step, to move to a tax Tribunal.

The Government proposal is that a move to a tribunal process for taxes would improve efficiency and modernise the process.

2. Background to the Commissioners of Appeal process

- 2.1. The Commissioners of Appeal for Taxes is a body established by the Income Tax (Jersey) Law 1961, which provides that up to 12 Commissioners are appointed by the Minister for Treasury and Resources.
- 2.2. Article 27 of the Income Tax (Jersey) Law 1961 grants an individual the right to appeal to the Commissioners against any tax assessment issued on him or her by the Comptroller of Revenue. Appeals must be made within 40 days of receipt of the relevant assessment and contest a matter of fact or law. The Commissioners cannot change the law but will apply it as it stands. Other Revenue Laws use the same appeal process with any necessary modifications.
- 2.3. As per Article 5 of the Revenue Administration (Jersey) Law 2019, a commissioner is a Jersey resident, who has experience in financial matters, but is not currently working in any trade, business or profession which is of such a nature as would cause their appointment to be objected to by competitors in similar trades, businesses or professions carried on in Jersey. Whilst the ability to understand the underlying principles of taxes, particularly income tax and GST, is essential, there is no requirement to have a legally qualified member. The Minister also appoints a clerk, who under Law must be a Jersey advocate, to assist the Commissioners of Appeal.
- 2.4. The Commissioners of Appeal has jurisdiction over matters under the remit of the Comptroller of Revenue. Cases vary from simple matters (for example the appellant has failed

to supply Revenue Jersey with sufficient information for them to establish their correct tax liability, or the validity of a late filing penalty), to contentious cases, disputing large liabilities and complex technical and legal issues. Either party may appeal a determination of the Commissioners of Appeal to the Royal Court.

- 2.5. Appeals to the Commissioners of Appeal are listed in batches and are presently heard once a month. A panel of three Commissioners sits for each hearing.
- 2.6. Whilst the Commissioners of Appeal have been in place since 1928, and have clearly developed over this time, there are various shortcomings that could be improved through modernisation and alignment to the tribunal system that already exists across other sectors in Jersey.

3. Reason to introduce a Tax Tribunal

- 3.1. The current Commissioners of Appeal follows its own, currently unpublished, general process guidance notes, but by Law are able to conduct hearings in any manner they consider suitable. There is not a published service standard to which the Commissioners of Appeal must adhere. The tribunal procedures already in place across Jersey's other sectors do adhere to such service standards. These service standards prescribe what needs to be done, and the application by a tax tribunal of such standards might result in improved efficiency.
- 3.2. The Commissioners are volunteers, and the increased number of contentious cases is increasing the amount of time they need to dedicate to effectively fulfilling their appointment. The complex nature of such cases may also place pressure on appointed individuals who do not possess all the specific knowledge and formal qualifications related to some of the appeal areas. Any chairman of a Tax Tribunal would operate under a contract and be remunerated according to the hearings they sat, allowing for any prior preparations and research undertaken, and writing up decisions made. Such members would receive adequate recognition of the time they would need to devote to each case.
- 3.3. At a hearing, sensitive taxpayer information is discussed and analysed. Treatment of such information must adhere to the government's disclosure of information and data protection regulations. Simultaneously, accurate records must be maintained. Commissioners of Appeal hearings take place on the premises of the clerk's law firm (currently, Le Gallais and Luce), and are carried out in private. However, Tribunals are administered by the Judicial Greffe and in the Tribunal Service premises. The perception is that there would be synergies and benefits from this arrangement, and that the public's perception of the robustness of procedures would be enhanced. It is also a consideration that with the wider tribunal staff, there would be less risk (delays etc.) in the administration of the process. In future, should procedures or data protection requirements alter, the Judicial Greffe would be better able to meet and accommodate any such alterations.

- 3.4. Currently the Commissioners of Appeal hear in person cases on a monthly timetable; one hour of simple cases, followed by a contentious case. There is no flexibility to hear, in appropriate circumstances, cases 'on paper', nor to move cases directly to the Royal Court where there is every likelihood of an appeal no matter the outcome.
- 3.5. Commissioners of Appeal judgments have not, as yet, been published. Decisions reached by other Tribunals in Jersey are routinely published.

4. Administration details

- 4.1. The requirement for an appeal to be received by Revenue Jersey within 40 days of the date of issue of the notice of assessment will remain. Likewise, the appeal of default assessments and long-term care contributions will continue to be disallowed.
- 4.2. An appeal will first be reviewed by Revenue Jersey, and where possible, be resolved between Revenue Jersey and the appellant. If a resolution cannot be agreed, either party may refer the case onward to the Tribunal.
- 4.3. This appeal to the tax tribunal would follow procedure substantially similar to the current appeal to the tribunal service procedure. This will minimise any need for industry to adapt to unfamiliar processes.
- 4.4. Appeals should be made in writing. The relevant appeal form will be available from the tribunal office and online, and must be submitted, accompanied by any relevant documentation supporting the appellant's position.
- 4.5. Tax hearings will be heard by a newly recruited panel, comprising a chairperson and two supporting lay members. Government anticipate that two chairpersons would be recruited to cover the Tax Tribunal.

5. Requests for feedback on this consultation

We are seeking your feedback regarding this proposed move from the Commissioners of Appeal process to a Tax Tribunal. Please could you highlight any areas of concern or areas that you believe would require further consideration, should the proposed changes go ahead. We would be particularly interested in your views on the following areas:

- 5.1. Are there advantages to the current Commissioners of Appeal which a Tax Tribunal could not fulfil?

- 5.2. Currently, to be appointed as a commissioner, experience in financial matters and an understanding of the principles of income tax and GST is essential, but no specific qualifications are required. Would the role of a tribunal chair be adequately fulfilled on a similar basis, or better served by an advocate or individual currently employed in a relevant profession?
- 5.3. Would it be a requirement of the tribunal to hear every case submitted in person, or, in the instance of an appeal against matters of relative simplicity, would an option for “appeals on paper” be welcome?
- 5.4. Would there be merit in making ‘appeals on paper’ a mandatory form of appeal where the quantum at issue is small (amount to be determined)?
- 5.5. In relation to receipt of several cases of directly comparable circumstance, would it be suitable to present one case at the hearing, but the tribunal’s judgement be applied to any other such comparable ‘follower’ cases?
- 5.6. If any case submitted to the Tax Tribunal is likely to be appealed by both parties if the determinations is against them, should the chairperson be granted the right to refer such case directly to the Royal Court of the Inferior Number?
- 5.7. Alternatively, should the Tax Tribunal be the primary fact-finding body, and any appeal to the Royal Court be limited to points of law?
- 5.8. Jersey Tribunals publish the decisions reached in relation to each case, including details of the parties involved. The Commissioners of Appeal publish anonymised decisions. If a tax tribunal was adopted, would the rightful process to follow in relation to publication be that of the already existing tribunals?

Respondent details

Please provide the name (and contact details) of the firm / company / individual who is responding.

Are you answering this consultation on your own behalf, or on behalf of another body?

How would you be directly affected by the proposed move from the Commissioners of Appeal process to a Tax Tribunal?

Thank you

Please could you send your feedback by the 6th January 2023.

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