



## VALUE ADDED TAX ACT 1996

### VAT AND DUTIES TRIBUNAL RULES 2011

*Laid before Tynwald  
Coming into operation*

2011  
1 July 2011

#### INDEX

#### PART 1 INTRODUCTION

- 1 Title
- 2 Commencement and application
- 3 Interpretation
- 4 Overriding objective and obligation of parties to co-operate with the Tribunal
- 5 Alternative dispute resolution and arbitration

#### PART 2 GENERAL POWERS AND PROVISIONS

- 6 Case management powers
- 7 Procedure for applying for and giving directions
- 8 Failure to comply with rules etc
- 9 Supplementary powers of the Tribunal
- 10 Striking out a party's case
- 11 Substitution and addition of parties
- 12 Orders for costs
- 13 Representatives
- 14 Calculating time
- 15 Sending and delivery of documents
- 16 Use of documents and information
- 17 Evidence and submissions
- 18 Summoning or citation of witnesses and orders to answer questions or produce documents
- 19 Withdrawal1
- 20 Lead cases

**PART 3**  
**PROCEDURES BEFORE THE TRIBUNAL**

**Chapter 1**  
**Starting proceedings and allocation of cases to categories**

- 21 Proceedings without notice to a respondent
- 22 Starting appeal proceedings
- 23 Starting proceedings by originating application or reference

**Chapter 2**  
**Procedure after allocation of cases to categories**

- 24 Hardship applications
- 25 Allocation of cases to categories
- 26 Basic cases
- 27 Respondent's statements of case
- 28 Further steps in a default paper case
- 29 Further steps in a standard or complex case

**Chapter 3**  
**Hearings**

- 30 Determination with or without a hearing
- 31 Entitlement to attend a hearing
- 32 Notice of hearings
- 33 Public and private hearings
- 34 Hearings in a party's absence

**Chapter 4**  
**Decisions**

- 35 Consent orders
- 36 Notice of decisions and reasons

**PART 4**  
**CORRECTING, SETTING ASIDE, AND REVIEWING TRIBUNAL DECISIONS**

- 37 Interpretation
- 38 Clerical mistakes and accidental slips or omissions
- 39 Setting aside a decision which disposes of proceedings
- 40 Review of a decision
- 41 Power to treat an application as a different type of application

The Deemsters, after consultation with the President of the Tax and Duties Chamber of the Upper Tribunal and the President of the Tax Chamber of the First-Tier Tribunal<sup>(1)</sup>, make these Rules under paragraph 6 of Schedule 13 to the Value Added Tax Act 1996<sup>(2)</sup>.

## **PART 1** **INTRODUCTION**

### **1 Title**

These Rules are the VAT and Duties Tribunal Rules 2011.

### **2 Commencement and application**

- (1) These Rules come into operation on 1<sup>st</sup> July 2011
- (2) These Rules have effect to proceedings before the Tribunal which are concerned with decisions of the Treasury made on or after 1<sup>st</sup> July 2011.

### **3 Interpretation**

- (1) In these Rules —

“appellant” means —

- (a) the person who starts proceedings (whether by bringing or notifying an appeal, by making an originating application, by a reference, or otherwise);
- (b) in proceedings started jointly by more than one person, such persons acting jointly or each such person, as the context requires; or
- (c) a person substituted as an appellant under rule 11 (substitution and addition of parties);

“basic case” means a case allocated to the basic category under rule 25 (allocation of cases to categories);

“chairman” means the chairman of the Tribunal appointed in accordance with paragraph 4 of Schedule 13 to the Value Added Tax Act 1996;

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<sup>(1)</sup> Section 1(3) of the Value Added Tax (Amendment) Act 2009 substituted “the Chamber President” for the “President of the VAT and Duties Tribunal” in paragraph 6 of Schedule 13 to the Value Added Tax Act 1996

<sup>(2)</sup> 1996 c.1

“complex case” means a case allocated to the basic category under rule 25 (allocation of cases to categories);

“default paper case” means a case allocated to the basic category under rule 25 (allocation of cases to categories);

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purposes means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“party” means a person who is (or was at the time that the Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Tribunal;

“respondent” means —

- (a) the Treasury, where the appellant (or one of them) is not the Treasury;
- (b) in proceedings brought by the Treasury alone, the person against whom the proceedings are brought or to whom the proceedings relate;
- (c) a person substituted or added as a respondent under rule 11 (substitution and addition of parties);

“standard case” means a case allocated to the basic category under rule 26 (allocation of cases to categories);

“Tribunal” means the Value Added Tax and Duties Tribunal.

#### **4 Overriding objective and obligation of parties to co-operate with the Tribunal**

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes —

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it —
- (a) exercises any power under these Rules; or
  - (b) interprets any rule or direction.
- (4) Parties must —
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.

## **5 Alternative dispute resolution and arbitration**

The Tribunal should seek, where appropriate —

- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
- (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.

## **PART 2 GENERAL POWERS AND PROVISIONS**

## **6 Case management powers**

- (1) Subject to any enactment applying in the Island, the Tribunal may regulate its own procedure.

- (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
- (3) In particular, and without restricting the general powers in paragraphs (1) and (2), but subject to any specific provisions in these Rules, the Tribunal may by direction —
  - (a) extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;
  - (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 20 (lead cases) or otherwise);
  - (c) permit or require a party to amend a document;
  - (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
  - (e) deal with an issue in the proceedings as a preliminary issue;
  - (f) hold a hearing to consider any matter, including a case management hearing;
  - (g) decide the form of any hearing;
  - (h) adjourn or postpone a hearing;
  - (i) require a party to produce a bundle for a hearing;
  - (j) stay proceedings;
  - (k) suspend the effect of its own decision pending an appeal or review of that decision.

## 7 Procedure for applying for and giving directions

- (1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.
- (2) An application for a direction may be made —

- (a) by sending or delivering a written application to the Tribunal; or
  - (b) orally during the course of a hearing.
- (3) An application for a direction must include the reasons for making that application.
- (4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party to the proceedings.
- (5) If a party wishes to challenge a direction which the Tribunal has given, the party may do so by applying for a second direction which amends, suspends or sets aside the first direction.

## **8 Failure to comply with rules etc**

- (1) An irregularity resulting from a failure to comply with any requirement in these Rules or a direction does not of itself render void the proceedings or any step taken in the proceedings.
- (2) If a party has failed to comply with a requirement in these Rules or a direction, the Tribunal may take such action as it considers just, which may include –
  - (a) waiving the requirement;
  - (b) requiring the failure to be remedied;
  - (c) exercising its power under rule 10 (striking out a party's case);
  - (d) restricting a party's participation in proceedings; or
  - (e) exercising its power under paragraph (3).
- (3) The Tribunal may exercise its powers under rule 10 in relation to, any failure by a person to comply with a requirement imposed by the Tribunal –
  - (a) to attend at any place for the purpose of giving evidence;
  - (b) otherwise to make himself or herself available to give evidence;
  - (c) to swear an oath in connection with the giving of evidence;
  - (d) to give evidence as a witness;

- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

## **9      Supplementary powers of the Tribunal**

- (1) In relation to the matters mentioned in subsection (2), the Tribunal has the same powers, rights, privileges and authority as the High Court.
- (2) The matters are –
  - (a) the attendance and examination of witnesses,
  - (b) the production and inspection of documents, and
  - (c) all other matters incidental to the Tribunal's functions.
- (3) Paragraph (1) shall not be taken to be limited by anything in these Rules other than an express limitation.

## **10     Striking out a party's case**

- (1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.
- (2) The Tribunal must strike out the whole or part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them.
- (3) The Tribunal may strike out the whole or a part of the proceedings if –
  - (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
  - (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
  - (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

- (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.
- (5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.
- (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.
- (7) This rule applies to a respondent as it applies to an appellant except that –
  - (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and
  - (b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.
- (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against the respondent.

## **11 Substitution and addition of parties**

- (1) The Tribunal may give a direction substituting a party if –
  - (a) the wrong person has been named as a party; or
  - (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.
- (2) The Tribunal may give a direction adding a person to the proceedings as a respondent.
- (3) A person who is not a party to proceedings may make an application to be added or substituted as a party under this rule.

- (4) If the Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Tribunal.
- (5) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

## 12 Orders for costs

- (1) The Tribunal may such order as to costs as appears just and convenient in all of the circumstances of the case.
- (2) The Tribunal may in particular provide for the payment of —
  - (a) wasted costs;
  - (b) costs incurred where the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings; or
  - (c) costs incurred where —
    - (i) the proceedings have been allocated as a complex case under rule 25 (allocation of cases to categories); and
    - (ii) the taxpayer (or, where more than one party is a taxpayer, one of them) has not sent or delivered a written request to the Tribunal, within 28 days of receiving notice that the case had been allocated as a complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph.
- (3) The Tribunal may make an order under this rule on an application or of its own initiative.
- (4) A person making an application for an order under this rule must send or deliver to the Tribunal —
  - (a) a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
  - (b) a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.
- (5) An application for an order under this rule may be made at any time during the proceedings but may not be made later than 28 days after the date on which the Tribunal sends —
  - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

- (b) notice of a withdrawal under rule 19 which ends the proceedings.
- (6) The Tribunal may not make an order under this rule against a person (“the payer”) without first —
  - (a) giving the payer an opportunity to make representations; and
  - (b) if the payer is an individual, considering the payer’s financial means.
- (7) The amount of costs to be paid under an order under this rule may be ascertained by —
  - (a) summary assessment by the Tribunal;
  - (b) agreement of a specified sum by the payer and the person entitled to receive the costs or expenses (the “recipient”); or
  - (c) assessment of the whole or a specified part of the costs or expenses incurred by the recipient, if not agreed.
- (8) Following an order for assessment under paragraph (7)(c) the payer or the recipient may apply for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis, to the Chief Registrar, and the Rules of the High Court of Justice 2009 shall apply, with necessary modifications, to that application and assessment as if the proceedings in the Tribunal had been proceedings in the High Court.
- (9) In this rule “taxpayer” means a party who is liable to pay, or has paid, the tax, duty, levy or penalty to which the proceedings relate or part of such tax, duty, levy or penalty, or whose liability to do so is in issue in the proceedings.

### **13 Representatives**

- (1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.
- (2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative’s name and address.

- (3) Anything permitted or required to be done by a party under these Rules or a direction may be done by the representative of that party, except signing a witness statement.
- (4) A person who receives due notice of the appointment of a representative –
  - (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
  - (b) may assume that the representative is and remains authorised as such until he or she receives written notification that this is not so from the representative or the represented party.
- (5) At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.
- (6) Paragraphs (2) to (4) do not apply to a person (other than the appointed representative) who accompanies a party in accordance with paragraph (5).
- (7) In this Rule, "legal representative" means an advocate within the meaning of the Advocates Act 1976<sup>(5)</sup>.

#### **14 Calculating time**

- (1) An act required by these Rules or a direction to be done on or by a particular day must be done before 5pm on that day.
- (2) If the time specified by these Rules or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.
- (3) In this Rule, "working day" means any day which is a business day within the meaning of section 92 of the Bills of Exchange Act 1883<sup>(6)</sup>.

#### **15 Sending and delivery of documents**

- (1) Any document to be provided to the Tribunal under these Rules or a direction must be –

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<sup>(5)</sup> 1976 c.27

<sup>(6)</sup> Vol. V, p.310

- (a) sent by pre-paid post, document exchange or delivered by hand to the address specified for the proceedings; or
  - (b) sent or delivered by such other method as the Tribunal may permit or direct.
- (2) Subject to paragraph (3), if a party or representative provides a fax number, email address or other details for the electronic transmission of documents to them, that party or representative must accept delivery of documents by that method.
- (3) If a party informs the Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to provide documents to that party, that form of communication must not be so used.
- (4) If the Tribunal or a party send a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient.

The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

- (5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

## **16 Use of documents and information**

The Tribunal may make an order prohibiting the disclosure or publication of –

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

## **17 Evidence and submissions**

- (1) Without limiting the general powers in rule 6(1) and (2) (case management powers), the Tribunal may give directions as to –
- (a) issues on which it requires evidence or submissions;
  - (b) the nature of the evidence or submissions it requires;

- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
  - (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
  - (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given —
    - (i) orally at a hearing; or
    - (ii) by written submissions or witness statement; and
  - (f) the time at which any evidence or submissions are to be provided.
- (2) The Tribunal may —
- (a) admit evidence whether or not the evidence would be admissible in a civil trial in the Island; or
  - (b) exclude evidence that would otherwise be admissible if —
    - (i) the evidence was not provided within the time allowed by a direction;
    - (ii) the evidence was otherwise provided in a manner that did not comply with a direction; or
    - (iii) it would otherwise be unfair to admit the evidence.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

## **18 Summoning or citation of witnesses and orders to answer questions or produce documents**

- (1) On the application of a party or on its own initiative, the Tribunal may—
- (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons or citation;

- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.
- (2) The Tribunal may only make the requirement at paragraph (1)(a) if—
  - (a) the person required to attend has been given at least 14 days notice of the hearing; and
  - (b) the summons or citation makes provision for the person's necessary expenses of attendance to be paid, and states who is to pay them, unless the person is a party to the proceedings.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the Island.
- (4) A person who receives a summons, citation or order may apply to the Tribunal for it to be varied or set aside if that person did not have the opportunity to object to it before it was made or issued.
- (5) An application under paragraph (4) must be made as soon as reasonably practicable after the person making it receives notice of the summons, citation or order.
- (6) A summons or order under this rule must—
  - (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons or order, if he or she has not had an opportunity to object to it; and
  - (b) state the consequences of failure to comply with the summons or order.

## **19 Withdrawal**

- (1) Subject to any provision in another enactment relating to withdrawal or settlement of proceedings, a party may give notice to the Tribunal of the withdrawal of that party's case in the Tribunal proceedings, or any part of that case—
  - (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or

- (b) orally at a hearing.
- (2) In a case falling within paragraph (1)(a) the Tribunal must notify each other party in writing of a withdrawal.
- (3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Tribunal within 28 days after —
  - (a) the date that the Tribunal received the notice under paragraph (1)(a); or
  - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

## 20 Lead cases

- (1) This rule applies if —
  - (a) two or more cases have been started before the Tribunal;
  - (b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
  - (c) the cases give rise to common or related issues of fact or law (“the related issues”).
- (2) The Tribunal may give a direction —
  - (a) staying the whole, or the parts relevant to the related issues, of all but one or more specified cases falling under paragraph (1) (the stayed cases being referred to as “the related cases”); and
  - (b) that the case or cases which have not been stayed be heard as a lead case or lead cases.
- (3) When the Tribunal makes a decision in relation to the part of the lead case or lead cases relevant to the related issues —
  - (a) the Tribunal must send a copy of that decision to each party in each of the related cases; and

- (b) subject to paragraph (4), that decision shall be binding on each of those parties.
- (4) Within 28 days after the date that the Tribunal sent a copy of the decision under paragraph (3)(a) to a party, that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related case.
- (5) The Tribunal must give directions in respect of cases which are subject to stays under paragraph (2)(a), provided for the disposal of or further directions in those cases.
- (6) If the lead case or cases are withdrawn or disposed of before the Tribunal makes a decision in relation to the part of the lead case or cases relevant to the related issues, the Tribunal must give directions as to –
  - (a) whether another case or other cases are to be heard as a lead case or lead cases; and
  - (b) whether any direction affecting the related cases should be set aside or amended.

## PART 3 PROCEDURES BEFORE THE TRIBUNAL

### Chapter 1 Starting proceedings and allocation of cases to categories

#### **21 Proceedings without notice to a respondent**

If a case or matter is to be determined without notice to or the involvement of a respondent –

- (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
- (b) any other provision in these Rules permitting a respondent to participate in the proceedings,

does not apply to that case or matter.

#### **22 Starting appeal proceedings**

- (1) Where an enactment provides for a person to make or notify an appeal to the Tribunal, the appellant must start proceedings by sending or

delivering a notice of appeal to the Tribunal within any time limit imposed by that enactment.

- (2) The notice of appeal must include –
  - (a) the name and address of the appellant;
  - (b) the name and address of the appellant's representative (if any);
  - (c) an address where documents for the appellant may be sent or delivered;
  - (d) details of the decision appealed against;
  - (e) the result the appellant is seeking; and
  - (f) the grounds for making the appeal.
- (3) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision that the appellant has or can reasonably obtain.
- (4) If the appellant provides the notice of appeal to the Tribunal later than any time limit imposed by another enactment or by an extension of time allowed under rule 6(3)(a) (power to extend time) –
  - (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time; and
  - (b) the Tribunal shall only admit the notice of appeal if it has extended the time for the notice of application under rule 6(3)(a) (power to extend time).
- (5) When the Tribunal receives the notice of appeal it must give notice of the proceedings to the respondent.

### **23 Starting proceedings by originating application or reference**

- (1) If an enactment provides for a person to make an application or reference to the Tribunal, the appellant must start proceedings by sending or delivering a notice of application or of reference to the Tribunal within any time limit imposed by that enactment.
- (2) The notice of application or of reference must state –

- (a) the name and address of the appellant;
  - (b) the name and address of the appellant's representative (if any);
  - (c) an address where documents for the appellant may be sent or delivered;
  - (d) the name and address of any respondent;
  - (e) the facts relevant to the application or reference;
  - (f) the result the appellant is seeking (if any); and
  - (g) the grounds for making the application or reference.
- (3) If the appellant provides the notice of application or of reference to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 6(3)(a) (power to extend time) –
- (a) the notice of application or reference must include a request for an extension of time and the reason why that document was not provided in time; and
  - (b) the Tribunal shall only admit the notice of application or of reference if it has extended the time for the notice of application or of reference under rule 6(3)(a).
- (4) If the appellant provides the notice of application or of reference to the Tribunal the Tribunal must send a copy of that document, and any accompanying documents, to each respondent (if any).

## **24 Hardship applications**

- (1) This rule applies where an enactment provides, in any terms, that an appeal may not proceed if the liability to pay the amount in dispute is outstanding unless the Treasury or the Tribunal consents to the appeal proceeding.
- (2) When starting proceedings, the appellant must include or provide the following in or with the notice of appeal –
- (a) a statement as to whether the appellant has paid the amount in dispute;

- (b) if the appellant has not paid the amount in dispute, a statement as to the status or outcome of any application to the Treasury for consent to the appeal proceedings; and
  - (c) if the Treasury has refused such an application, an application to the Tribunal for consent to the appeal proceeding.
- (3) An application under paragraph (2)(c) must include the reasons for the application and a list of any documents the appellant intends to produce or rely upon in support of that application.
- (4) If the appellant requires the consent of the Treasury or the Tribunal before the appeal may proceed, the Tribunal must stay the proceedings until any applications to the Treasury or the Tribunal in that respect have been determined.

## **25 Allocation of cases to categories**

- (1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction allocating the case to one of the categories set out in paragraph (2).
- (2) The categories referred to in paragraph (1) are –
  - (a) default paper cases, which will usually be disposed of without a hearing;
  - (b) basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;
  - (c) standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and
  - (d) complex cases, in respect of which see paragraphs (4) and (5).
- (3) The Tribunal may give a further direction re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.
- (4) The Tribunal may allocate a case as a complex case under paragraph (1) or (3) only if the Tribunal considers that the case –
  - (a) will require lengthy or complex evidence or a lengthy hearing;
  - (b) involves a complex or important principle or issue; or

- (c) involves a large financial sum.
- (5) If a case is allocated as a complex case rule 12(2)(c) (costs in complex cases) applies to the case.

## Chapter 2

### Procedure after allocation of case to categories

#### **26 Basic cases**

- (1) This rule applies to basic cases.
- (2) Rule 27 (respondent's statement of case) does not apply and, subject to paragraph (3) and any direction given by the Tribunal, the case will proceed directly to a hearing.
- (3) If the respondent intends to raise grounds for contesting the proceedings at the hearing which have not previously been communicated to the appellant, the respondent must notify the appellant of such grounds.
- (4) If the respondent is required to notify the appellant of any grounds under paragraph (3), the respondent must do so –
  - (a) as soon as reasonably practicable after becoming aware that such is the case; and
  - (b) in sufficient detail to enable the appellant to respond to such grounds at the hearing.

#### **27 Respondent's statements of case**

- (1) A respondent must send or deliver a statement of case to the Tribunal, the appellant and any other respondent so that it is received –
  - (a) in a default paper case, within 42 days after the Tribunal sent the notice of the appeal or a copy of the application notice or notice of reference; or
  - (b) in a standard or complex case, within 60 days after the Tribunal sent the notice of the appeal or a copy of the application notice or notice of reference.
- (2) A statement of case must –

- (a) in an appeal, state the legislative provision under which the decision under appeal was made; and
  - (b) set out the respondent's position on the case.
- (3) A statement of case may also contain a request that the case be dealt with at a hearing.
- (4) If a respondent provides a statement of case to the Tribunal later than the time required by paragraph (2) or by an extension allowed under rule 6(3)(a) (power to extend time), the statement of case must include a request for an extension of time and the reason why the statement of case was not provided in time.

## **28 Further steps in a default paper case**

- (1) This rule applies to default paper cases.
- (2) The appellant may send or deliver a written reply to the Tribunal so that it is received within 30 days after the date on which the respondent sent to the appellant the statement of case to which the reply relates.
- (3) The appellant's reply may –
  - (a) set out the appellant's response to the respondent's statement of case;
  - (b) provide any further information (including, where appropriate, copies of the documents containing such information) which has not been provided to the Tribunal and is relevant to the case; and
  - (c) contain a request that the case be dealt with at a hearing.
- (4) The appellant must send or deliver a copy of any reply provided under paragraph (2) to each respondent at the same time as it is provided to the Tribunal.
- (5) If the appellant provides a reply to the Tribunal later than the time required by paragraph (2) or an extension allowed under rule 6(3)(a) (power to extend time), the reply must include a request for an extension of time and the reason why the reply was not provided in time.
- (6) Following receipt of the appellant's reply, or the expiry of the time for the receipt of the appellant's reply then, unless it directs otherwise and

subject in any event to paragraph (7), the Tribunal must proceed to determine the case without a hearing.

- (7) If any party has made a written request to the Tribunal for a hearing, the Tribunal must hold a hearing before determining the case.

**29 Further steps in a standard or complex case**

- (1) This rule applies to standard and complex cases.
- (2) Subject to any direction to the contrary, within 42 days after the date the respondent sent the statement of case (or, where there is more than one respondent, the date of the final statement of case) each party must send or deliver to the Tribunal and to each other party a list of documents –
- (a) of which the party providing the list has possession, the right to possession, or the right to take copies; and
  - (b) which the party providing the list intends to rely upon or produce in the proceedings.
- (3) A party which has provided a list of documents under paragraph (2) must allow each other party to inspect or take copies of the documents on the list (except any documents which are privileged).

**Chapter 3  
Hearings**

**30 Determination with or without a hearing**

- (1) The Tribunal must hold a hearing before making a decision which disposes of proceedings unless –
- (a) each party has consented to, or has not objected to, the matter being decided without a hearing; and
  - (b) the Tribunal considers that it is able to decide the matter without the hearing.

This is subject to the above paragraphs and rule 28 (further steps in a default paper case).

- (2) This rule does not apply to decisions under Part 4 (correcting, setting aside and reviewing Tribunal decisions).

- (3) The Tribunal may dispose of proceedings without a hearing under rule 10 (striking out a party's case).

### **31 Entitlement to attend a hearing**

Each party to proceedings is entitled to attend a hearing, subject to rule 21 (proceedings without notice to a respondent) and rule 33(4) (exclusion from a hearing).

### **32 Notice of hearings**

- (1) The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of any hearing (including any adjourned or postponed hearing) and any changes to the time and place of any hearing.
- (2) In relation to a hearing to consider disposal of proceedings, the period of notice under paragraph (1) must be at least 14 days except that the Tribunal may give less than 14 days notice –
  - (a) with the parties' consent; or
  - (b) in urgent or exceptional circumstances.

### **33 Public and private hearings**

- (1) All hearings must be held in public, but subject to the following paragraphs.
- (2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private if the Tribunal considers that restricting access to the hearing is justified –
  - (a) in the interests of public order or national security;
  - (b) in order to protect a party's right to respect for their private and family life;
  - (c) in order to maintain the confidentiality of sensitive information;
  - (d) in order to avoid serious harm to the public interest; or
  - (e) because not to do so would prejudice the interests of justice.
- (3) If a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

- (4) The Tribunal may give a direction excluding from any hearing, or part of it –
  - (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing; or
  - (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
  - (c) any person where the purpose of the hearing would be defeated by the attendance of that person; or
  - (d) a person under the age of eighteen years.
- (5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.
- (6) If the Tribunal publishes a report of a decision resulting from a hearing which was held wholly or partly in private, the Tribunal must, so far as practicable, ensure that the report does not disclose information which was referred to only in a part of the hearing that was held in private (including such information which enables the identification of any person whose affairs were dealt with in the part of the hearing that was held in private).

#### **34 Hearings in a party's absence**

If a party fails to attend a hearing, the Tribunal may proceed with the hearing if the Tribunal –

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

### **Chapter 4 Decisions**

#### **35 Consent orders**

- (1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order dismissing the proceedings and make such other appropriate provision as the parties have agreed.

- (2) Regardless of any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

### **36 Notice of decisions and reasons**

- (1) The Tribunal may give a decision orally at a hearing.
- (2) The Tribunal must provide to each party within 28 days after making a decision which finally disposes of proceedings (except a decision under Part 4), or as soon as practicable thereafter, a decision notice which –
- (a) states the Tribunal's decision; and
  - (b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.
- (3) Unless each party agrees that it is unnecessary, the decision notice must –
- (a) include a summary of the findings of fact and reasons for the decision; or
  - (b) be accompanied by full written findings of fact and reasons for the decision.
- (4) If the Tribunal provides no findings and reasons, or summary findings and reasons only, in or with the decision notice a party to the proceedings may apply for such full written reasons, and must do so before making an application for permission to appeal under or rule 14.19A of the Rules of the High Court of Justice 2009<sup>1</sup>.
- (5) An application under paragraph (4) must be made in writing and sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application.
- (6) The Tribunal must send a full written statement of reasons to each party to the proceedings within 28 days after receiving an application for full written reasons made in accordance with paragraphs (4) and (5), or as soon as practicable thereafter.

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<sup>1</sup> SD 379/09. This rule was inserted by rule 3 of SD xxx/11.

**PART 4**  
**CORRECTING, SETTING ASIDE, AND REVIEWING TRIBUNAL DECISIONS**

**37 Interpretation**

In this Part –

“appeal” means the exercise of a right of appeal on a point of law; and

“review” means the review of a decision by the Tribunal.

**38 Clerical mistakes and accidental slips or omissions**

The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by –

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendments to any information published in relation to the decision, direction or document.

**39 Setting aside a decision which disposes of proceedings**

- (1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if –
  - (a) the Tribunal considers that it is in the interests of justice to do so; and
  - (b) one or more of the conditions in paragraph (2) are satisfied.
- (2) The conditions are –
  - (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;
  - (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;
  - (c) a party, or a party’s representative, was not present at a hearing related to the proceedings; or

- (d) there has been some other procedural irregularity in the proceedings.
- (3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.
- (4) If the Tribunal sets aside a decision or part of a decision under this rule, the Tribunal must notify the parties in writing as soon as is practicable.

#### **40 Review of a decision**

- (1) The Tribunal may only undertake a review of a decision –
  - (a) pursuant to rule 14.19A of the Rules of the High Court of Justice 2009; and
  - (b) if it is satisfied that there was an error of law in the decision.
- (2) The Tribunal must notify the parties in writing of the outcome of any review, unless the Tribunal decides to take no action following the review.
- (3) The Tribunal may not take any action in relation to a decision following a review without first giving every party an opportunity to make representations in relation to the proposed action.
- (4) If the Tribunal takes any action in relation to a decision following a review, the Tribunal must also make any necessary amendment to any document published by it in relation to the decision.

#### **41 Power to treat an application as a different type of application**

The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal on a point of law against a decision, as an application for any other one of those things.

MADE 23<sup>rd</sup> day of June 2011

*D.C. Doyle*  
His Honour the First Deemster and Clerk of the Rolls

*Andrew Corlett*  
Second Deemster

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules are made under paragraph 6 of Schedule 13 to the Value Added Tax Act 1996 (c.1) and are concerned with the administration and hearing of appeals relating to decisions of the Treasury in customs, excise and VAT matters.

The Rules apply to appeals to the VAT and duties tribunal established pursuant to Schedule 13 in respect of decisions of the Treasury made on or after 1 July 2011.