

## INCOME TAX REVIEW TRIBUNAL

### PRACTICE DIRECTION NUMBER 1 OF 2015.

Issued by the Tribunal pursuant to Regulation 38 of the *Income Tax Regulations 1959*.

1. This practice direction has effect on and from 1<sup>st</sup> January 2015, and applies to all references before the Tribunal, whether lodged before or after that date.
2. This practice direction sets out the procedures to be adopted for all applications for review of decisions of the Commissioner General under section 246 of the *Income Tax Act 1959* as amended from time to time (hereinafter referred to as “the Act”).
3. This procedure can be varied by specific direction of the Tribunal, at the request of a party, or of its own motion.
4. The practice direction is intended to assist the Tribunal achieve the dual purpose of attempting to obtain an agreed resolution where possible, and ensuring that appropriate steps are taken to prepare for the hearing of those matters which do not settle.
5. Applicants are reminded that section 250 of the Act provides:

*“250. Grounds of objection and burden of proof.*

*Upon a reference or appeal -*

*(a) the taxpayer is limited to the grounds stated in his objection: and  
(b) the burden of proving that the assessment is excessive lies upon the taxpayer.”*

6. Within 28 days of the receipt by the Commissioner General of an Application for Review by the Tribunal in form 6A, the Commissioner General shall:
  - a. forward a copy of this direction to the taxpayer seeking review, and to his or her agent (if any) together with a copy of Part V of the *Income Tax Regulations 1959* (hereinafter referred to as “the Regulations”); and
  - b. forward to the Tribunal legible copies of:

- i. the relevant objection under section 245 of the Act lodged by the taxpayer in form 6 of the Regulations, and any covering correspondence;
  - ii. the Decision of the Commissioner General served on the taxpayer in accordance with section 246 of the Act, and any covering correspondence;
  - iii. the Application for Review by the Tribunal under section 247 of the Act form 6A and any covering correspondence received from the taxpayer.
7. Following the lodgement of an Application for Review by the Tribunal, consultations should take place between the Applicant and the Commissioner General with a view to reaching a resolution of the matter. However, it must be remembered that once an application has been lodged with the Tribunal, the Tribunal is seized of the matter, and only the Tribunal is competent to dispose of the matter. An application can only be concluded by its withdrawal, in which circumstance the decision of the Commissioner General would be affirmed, or by a decision made after consideration of evidence and legal argument. In circumstances where the taxpayer and the Commissioner General reach a shared view as to how the case should be resolved it remains necessary for the Tribunal to exercise its discretion according to law. The taxpayer continues to bear the onus of proof that the assessment under review is excessive, and the onus is on the taxpayer to adduce evidence in support of such a finding. There is no scope for settling a matter “by consent” without the proper involvement of the Tribunal.
8. Where there is little or no substantial dispute between the taxpayer and the Commissioner General as to the material facts of the case, the parties should prepare a Statement of Agreed Facts within twenty-eight days of the lodgement of the Application for Review. Alternatively, where there are some material facts in dispute, the parties should prepare a Statement of Agreed and Disputed facts in two parts, with part A setting out so much of the facts as are agreed, and part B setting out the assertions of the taxpayer which are not agreed as being fact by the Commissioner General. Facts agreed will not require evidence at the hearing, and evidence will be confined to disputed assertions of facts.
9. At the preliminary conference, the Statement prepared in accordance with the preceding paragraph should be produced to the Tribunal. The applicant should also produce two copies (one for the Commissioner General and one for the Tribunal) of any witness statements which are intended to be relied upon at the hearing.

10. Any witness statements in reply from the Commissioner General should be delivered to the applicant and the Tribunal within fourteen days after the preliminary conference.
11. Any witness who provides a statement should be available at the hearing for cross examination and to answer any questions the Tribunal may have. If physical attendance is not reasonably possible, telephone attendance may be acceptable.
12. Upon finalisation of witness statements, the Tribunal shall call a pre-hearing conference to satisfy itself that the matter is ready to proceed to final hearing. Parties should be in a position to inform the Tribunal regarding the likely duration of the hearing, and the availability of witnesses, and the necessity if any to receive evidence at the hearing by telephone or other means. Parties should also advise the Tribunal regarding any notices they consider should be issued by the Tribunal in accordance with regulation 39(2). At the conclusion of the pre-hearing conference, the Tribunal shall set a hearing date not less than fourteen days after the pre-hearing conference, and shall serve notices of the hearing in accordance with regulation 36.
13. Not later than seven days prior to the date set for hearing, the parties are to lodge and exchange a list of any cases which they intend to rely upon at the hearing, together with a written outline of submissions, which should be no longer than three pages.
14. Parties are at liberty to make reasonable requests for departure from this practice direction, or to seek any further direction which may facilitate the resolution of the matter. Any such request should be made on notice to the other party, at either the preliminary conference, or the pre-hearing conference, or a special conference convened for that purpose.
15. Sittings of the Tribunal will ordinarily take place in Port Moresby unless the Tribunal determines otherwise.