Q&A on the Tax Appeals Regime

5 October 2017

1. Why is this in the news?

1. The Office of the Comptroller and Auditor General released its 2016 Annual Report last week, which found the value of cases under appeal at the Tax Appeals Commission has increased over the past two years.
2. A recent Parliamentary Question[1] highlighted that there are currently 4,387 appeals before the Tax Appeals Commission creating a huge backlog in the system. There is currently €1.5bn of tax in dispute.
3. The C&AG's Report stated that in March the total value of tax appeals was €1.1bn[2] - recent Dáil PQs in September show that it has now grown to €1.5bn[3].
4. A public consultation on the Rules and Procedures of the Tax Appeals Commission closed last Friday. The Irish Tax Institute submitted a response to this consultation. To do this, we requested case studies from our members to get an understanding of the situation.

2. What are the key figures and facts involved?

According to the most recent statistics[4], there are 4,387 appeals at the Tax Appeals Commission – totalling over €1.5bn in tax.

- Over 2,200 appeals – 50% of the total number of appeals – relate to amounts of tax that are less than €10,000. While these appeals account for half of all the appeals in the system they account for less than 1% of the total amount of tax in dispute.
- A further 886 appeals fall between €10,000 and €50,000, representing €24.4 million in tax.
- At the top end of the scale, 50 appeals (just over 1% of the total) represent close to €1 billion in tax – nearly two thirds (66%) of the total amount of tax at appeal.
- 40 case determinations have been published by the TAC in the past 18 months. It's estimated that an average of 20 new tax appeals are being lodged every week and, although not all of these appeals will progress to a hearing, the number of outstanding cases is certainly on the rise. It could take up to 10 years to clear the backlog of cases.

3. What is a tax appeal?

A taxpayer may disagree with Revenue's assessment of the tax that they owe. This can happen for many reasons, for example, the taxpayer may believe that Revenue's interpretation of the tax legislation is incorrect, or that Revenue does not understand the full facts of their case. If the taxpayer and Revenue cannot agree on the correct amount of tax that is due, the taxpayer's only option is to appeal Revenue's assessment to the Tax Appeals Commission.

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[1] Latest figures received from a PQ to the Minister of Finance, Paschal Donohoe, on 20 September 2017.

[2] 2016 Annual Report, Office of the Comptroller and Auditor General.

[3] Latest figures received from a PQ to the Minister of Finance, Paschal Donohoe, on 20 September 2017

[4] Latest figures received from a PQ to the Minister of Finance, Paschal Donohoe, on 20 September 2017.

They then decide to:

(a) either pay the disputed tax upfront to avoid interest clocking up while they wait in the appeals system, or
(b) decide not to pay the disputed tax and bear the risk of a high interest charge of they ultimately lose the case.

4. Why is the current situation so frustrating for taxpayers?

There are many reasons why this is frustrating for taxpayers including cost, interest payment, uncertainty and lack of detail on how the case is proceeding.

For example:

- The waiting period can be long and drag on for many years
- There are high costs involved, including interest payments at 8% and 10% per annum if the taxpayer is not successful in their appeal.

5. Why is the current situation a concern for the state?

There is over €1.5 billion in tax stuck in the appeals process which is a large amount of money when you consider the tight fiscal space available for Budget 2018.

6. Why are taxpayers concerned?

In **<u>some</u>** cases, taxpayers are waiting

(a) several years to have their appeals heard, and

(b) then waiting a further year or more to receive the decision in their case.

These delays, which are out of the control of the taxpayer, can also give rise to huge financial costs. If a taxpayer loses their appeal, they are exposed to high rates of interest – interest is charged at 10% per annum in the case of VAT and PAYE (and at 8% for other taxes). This interest accumulates on a daily basis from the date the disputed tax was due until it is paid and the "interest clock" continues while the appeal is stuck in the appeals process.

Take the example of a VAT case for €100,000 that is delayed by 4 years. Over this time €40,000of interest accrues to be paid by the taxpayer if they lose the case – even though the delay is not of their making.

In some cases, taxpayers are paying the disputed tax upfront to mitigate the interest costs. Sometimes, taxpayers will not take an appeal in the first place because of the length of the delays in the appeal process and the fear of increasing interest costs.

In contrast, in the case of refunds the rate of interest for the taxpayer is only 4% and the circumstances in which it is payable is much more limited. This is unfair for the taxpayer.

7. How long are taxpayers waiting to have their appeal heard?

The Institute's case studies and feedback indicate that **some** people have been waiting up to 10 years to have their case heard. In fact, there are two waiting periods:

1. to have the taxpayer's case heard and
2. then waiting for the decision to be released.

8. Why is there a large backlog in the system – wasn't the tax appeals regime revamped last year?

The appeals regime was completely revamped in 2016 – a new body, the Tax Appeals Commission, was established; new appeals legislation came into force and new rules; and procedures for handling appeals were developed. However, there is a legacy problem here.

Under the previous regime appeals were submitted to Revenue in the first instance, and then submitted to the Appeal Commissioners. Revenue had circa 3,000 appeals on hand when the new regime came into operation – these appeals were transferred to the TAC in late 2016.

But before Revenue transmitted these appeals to the TAC they launched a settlement initiative to engage with taxpayers on their appeal cases and to try to reach a negotiated settlement. However, **less than 10% of cases** resulted in a settlement. 2,731 appeals were subsequently submitted by Revenue to the Tax Appeals Commission.

9. Is there a resources issue?

The Institute believes that there is a serious resources issue. There are two full time and one recently appointed temporary Tax Appeals Commissioners, operating from one dedicated room that is available for hearings. There are also two additional members of the senior management team involved in managing the appeals process.

10. Are taxpayers essentially working in the dark on the issue?

When a taxpayer is trying to decide whether to appeal a Revenue assessment, one important factor will be how long the process is likely to take. The taxpayer knows that uncertainty and costs will increase for as long as the appeal is open.

At the beginning of the process, taxpayers have no estimate about how long it will take for their case to be heard and ultimately determined. Similarly, there is no visibility for any taxpayer waiting in the system to know "where they are in the queue".

Also, in the UK, the HMRC is required to submit a Statement of Case first, which includes their technical basis for assessing the taxpayer. This enables the taxpayer to make an informed decision as to whether to pursue an appeal, and ensures that all parties have a better understanding of the matters in dispute at an early stage.

The Institute would welcome the adoption of a similar approach because it would help the taxpayer to make an informed decision when trying to assess their decision on whether to progress their appeal.

11. What are we recommending?

The Institute has made 15 recommendations and amongst the highlights are:

- Taxpayers are not responsible for the delays that have accumulated in the tax appeals system. It is unfair that they must pay for these delays at very high interest rates of 8% or even 10% (for fiduciary taxes), should they prove to be unsuccessful with their appeal. Statutory interest should be "stopped" on cases that are in our congested appeals process until the current levels of congestion have been dealt with and taxpayers have a clear understanding of the timeline for a decision.
- A "Small Claims" model tax court should be set up to deal efficiently with smaller taxpayers that are appealing straightforward tax issues.
- We would welcome the adoption of a similar approach to the HMRC in the UK, where it is required to submit a Statement of Case first which includes their technical basis for assessing the taxpayer. This enables the taxpayer to make an informed decision as to whether to pursue an appeal, and ensures that all parties have a better understanding of the matters in dispute at an early stage.
- To help assist with the current levels of congestion in the appeals system, an independent mediation regime should be introduced. This could help to reduce the waiting times for appeal and the associated costs and stress for taxpayers which are associated with taking an appeal case at present.

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For further information:
Olivia Buckley
Communications Director
Irish Tax Institute
T: 353 1 6631706
E: obuckley@taxinstitute.ie