

Executive Summary of Institute Response to the Consultation on the Rules and Procedures of the Tax Appeals Commission

The introduction of a reformed appeals regime in March 2016 was a welcome development and the Irish Tax Institute appreciates the opportunity to provide feedback on it. Our members have in-depth experience of the appeals process and their input has informed our approach to this submission.

The Consultation Paper seeks feedback on the Rules and Procedures of the Tax Appeals Commission (TAC). While clearly, the questions raised in the Consultation Paper are aimed at identifying ways in which the TAC can reduce delays in the appeals process and mitigate the costs for taxpayers, we believe that the measures proposed will not address the fundamental deficiencies in the regime, many of which are caused by under-resourcing. Therefore, in this submission we have considered the operation of the tax appeals regime more generally and outlined structural reforms that we believe are necessary to ensure the regime works as intended for the benefit of all.

After many years of discussion and debate, a new tax appeals regime was introduced with effect from 21 March 2016. In announcing the new system, then Minister for Finance Michael Noonan T.D. stated that its objective was:

“to ensure an enhanced and cost-effective appeal mechanism, which provided transparency and increased certainty for taxpayers”.

18 months after the commencement of the new TAC, the position according to a Parliamentary Question on 20 September 2017, is that:

- 4,387 appeals are currently before the TAC; representing
- €1.5bn of tax in dispute.

A large proportion of these appeals date back some years and represent cumulative delays and inefficiencies in Ireland’s tax appeals regime. In fact, 2,731 appeals were transferred over to the TAC from Revenue in the last quarter of 2016 after attempts to settle the case load on hand at that time¹ resulted in less than 10% of the cases concluding with a settlement.

In addition to this legacy problem, the 2016 Annual Report of the TAC suggests that an average of 20 new tax appeals are being lodged every week and, although not all of these appeals will progress to a hearing², the number of outstanding cases is certainly on the rise. In contrast, only 40 case determinations have been published by the TAC in the past 18 months.

¹ Required under section 31 of the Finance (Tax Appeals) Act 2015

² The appeal may be withdrawn or a settlement may be reached with Revenue before a hearing is called



Dealing with this situation are two full time and one recently appointed temporary Tax Appeal 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.³

448 appeals were concluded in 2016. At this rate of throughput, it is estimated that it would take nearly 10 years just to clear the current backlog of cases, taking no account of new appeals that will be lodged in the meantime.

This workload is simply not capable of being dealt with by any three individual Commissioners. Further resources are urgently required for the appointment of additional Commissioners and for other reforms, so that the State can unlock whatever part of the €1.5bn tax in dispute is found to be ultimately due.

As well as committing additional resources to the operation of the TAC, effective ways must be found of:

1. Resolving cases more quickly which are already in the TAC system; and
2. Reducing the flow of future cases coming into the system, by creating alternative pathways to dispute resolution.

Issues of natural justice and fairness also arise for all stakeholders who are dealing with the appeals regime. It is well-recognised internationally, that effective dispute resolution regimes enhance tax certainty both for taxpayers and for tax authorities.

*“In the absence of an effective mechanism to resolve disputes, taxpayers’ trust in the fairness of the system will be eroded”.*⁴

Uncertainty undermines taxpayers’ freedom to do business and hampers prospective growth, innovation and entrepreneurship.

³ Tax Appeals Commission, Code of Governance, August 2017

⁴ Tax Certainty, IMF/OECD Report for the G20 Finance Ministers, March 2017



List of Recommendations

Resourcing the Tax Appeals Commission regime

1. The main long-term solution to dealing with time delays is to provide adequate resources so that the tax appeals system can operate as intended. This includes additional permanent and full-time Appeal Commissioners, a Registrar to work with the Commissioners and additional legal support and case management and office staff. This is an investment which would help to unlock the potential tax in dispute for the State which currently stands at the outer level of €1.5bn (the amount due to the State if it were to be successful in all the appeals on hand.)

Resolving cases in the system more effectively

2. Better case management procedures are needed in the tax appeals system, so that cases are dealt with more expeditiously. This has been recognised in the first Annual Report in 2016, published by the TAC earlier this year. For example, just 26 appeals currently account for over €800m⁵, which is almost 50% of the total tax in dispute. A way needs to be found of dealing with complex and large cases at the same time as smaller ones, so that neither group is disadvantaged by the other.
3. Another priority should be a focussed effort on delivering all outstanding determinations for cases that have already been heard.
4. The introduction of a “List System”, where each taxpayer is allocated a reference number, could help to increase the transparency of the waiting period.
5. A separate register of outstanding determinations should also be maintained to track decisions awaited. Such a Register of Reserved Judgments is already in place for decisions of the Courts.
6. It is hoped that if the recommendations provided elsewhere in this document are acted on, then cases can pass more swiftly through the appeals process and more (substantive) determinations will become available on the TAC website.

Reducing the flow of new cases into the appeals system

7. To ensure that assessments without sufficient Revenue stateable grounds do not enter the appeals process, an external mechanism is required to review these cases. The focus initially could be on smaller amounts of tax in dispute and, for these cases, Alternative Dispute Resolution methods could be explored (see 9. below).
8. An analysis should be published each year by the Comptroller & Auditor General on legal fees incurred by Revenue in taking cases to appeal versus the tax ultimately recovered on those cases. This analysis should be broken down into bands of tax in dispute, for example legal fees incurred versus tax recovered or lost between 0 and €10,000 and so on.

⁵ Parliamentary PQ number 39468/17

9. To help assist with the current levels of congestion in the appeals system, an independent Alternative Dispute Resolution Mechanism “ADR” 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.
10. In addition, the Institute has consistently called for a separate “Small Claims” model tax court to be set up to deal efficiently with smaller taxpayers that are appealing straightforward tax issues. This forum does not displace the need to focus on reaching a settlement with the taxpayer, wherever possible, so that taking a case to the “small claims court” is a last resort.

If the taxpayer does not wish to use this small claims court, they should not be denied their right to a full hearing before the TAC, in full knowledge of the costs and potential delays involved.

Issues of fairness, transparency and certainty

11. 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. Taxpayers are also being prevented from appealing assessments where they do not believe tax is due, because of the fear of these high interest charges. This impacts on their rights as taxpayers to natural justice.

Statutory interest should be “stopped” on cases that are in our congested appeals process until at least such time as the current levels of congestion have been dealt with and taxpayers have a clear understanding of the time line for a decision.

12. Under the Finance (Tax Appeals) Act 2015, the Appeal Commissioners may request that one or both parties provides a Statement of Case that includes information they consider necessary to enable a hearing to be scheduled. In practice, it is the taxpayer who is often asked to provide the Statement of Case. This request on the taxpayer can be made even before they know Revenue’s grounds for raising the assessment in the first place.

In the UK, 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. We would welcome the adoption of a similar approach in Ireland.

13. Under their powers in the Finance (Tax Appeals) Act 2015, the TAC can and should expand the guidance they provide to taxpayers, to make it as clear and as easy as possible for a taxpayer to navigate the appeals system. Areas of particular concern at the minute include:
 - the level of detail required to be included in the Notice of Appeal;
 - the operation of case management conferences; and
 - the circumstances in which the TAC may dismiss an appeal in circumstances of minor breaches of protocol.



14. The Institute welcomes the publication of the first Annual Report of the Tax Appeals Commission, which is a welcome move towards transparency. Additional information on the throughput of cases in the system would be helpful, including:

- The amount of tax in dispute by band and the number of cases in each band in tabular form.
- The length of time that taxpayers have been waiting for a hearing since they lodged their appeal, by year, in tabular form.
- The number of months that taxpayers have been waiting to receive a determination after their appeal has been heard, in tabular form.

The Annual Report of the New York City Tax Appeals Tribunal provides an excellent analysis of case inventories on an annual basis and we attach a copy for information.

15. Once adequate resources have been provided to alleviate the current congestion in the system we would welcome the development of published customer service standards. These could include e.g. expected turnaround time on queries submitted to the TAC, acknowledgment to Statement of Case submitted etc.

You can read our full submission to the consultation on our website www.taxinstitute.ie