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Mr Tom Sheridan
Clerk to the Joint Committee
Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Dublin 2
D02 XR20

To: fincom@oireachtas.ie

29 May 2019

Dear Mr Sheridan

**Re: Pre-Legislative Scrutiny – Finance (Tax Appeals) (Amendment) Bill, 2019
Request for Written Submission**

We welcome the opportunity to provide feedback on the General Scheme of the Finance (Tax Appeals) (Amendment) Bill, 2019. Given the importance of transparency to an independent body such as the Tax Appeals Commission (TAC), we believe that any amendment to their powers should only be considered after appropriate consultation has taken place with relevant stakeholders. It is also critical that relevant stakeholders are given sufficient opportunity to provide feedback on the draft legislation, when available, so as to avoid any unintended consequences.

Appointment and role of chairperson (Heads 1, 2 & 3)

The Institute very much welcomed the recommendations of Ms Niamh O'Donoghue in her *Review of the Workload and Operations of the Tax Appeals Commission* that was published on Budget Day. In particular, we are supportive of the appointment of a Commissioner to act as Chairperson, Accounting Officer and Head of Office and we note the proposed functions of the Chairperson as outlined under Heads 2 and 3. However, we would require sight of the draft legislation in order to provide further feedback regarding the exact nature of the duties and powers of the Chairperson.

Procedures for case stated (Heads 4 & 5)

A party to an appeal may appeal a determination of the TAC which they believe to be erroneous on a point of law to the High Court. In such circumstances, the appellant must file a notice with the TAC requesting the Commissioner to state and sign a case (referred to as a 'case stated') for the opinion of the High Court.¹

¹ Section 949AP Taxes Consolidation Act 1997

The High Court's consideration of the point of law at issue is limited to the case stated. As the documents appended to or exhibited in a case stated, form part of the case stated, the nature and the content of the exhibits are of the utmost importance. It is the role of the Commissioner to decide what should be exhibited to the case stated, although they may have regard to representations made by either party to the appeal.² We do not believe that that this role should be changed nor, would it be appropriate to allow the appellant unilaterally to decide which documents are to be appended to that case stated.

We believe that the proposed legislation must be clear that the Commissioner may request either party to prepare, photocopy or collate relevant exhibits to the extent that they are within their power or possession. It is not necessarily the case that the appellant will have possession of all relevant exhibits, as certain exhibits may only be in the possession of the responding party. Therefore, it is important that the TAC has the to power to make such a request from either party to the appeal.

Power to enter contracts (Head 6)

Head 6 refers to the TAC being granted powers necessary or expedient for the performance of its functions and the explanatory note refers to a lack of clarity surrounding the power of the TAC to enter into contracts.

To the extent that it is intended that the powers to be granted relate to the entering into contracts regarding the physical running of the office of the TAC (for example, the acquisition of IT systems), we believe that this is a matter for government.

Consequential amendments (Head 7)

Unfortunately, we are not able to comment on any proposed consequential amendments without sight of the draft legislation setting out the exact nature of any such amendments.

Please contact Anne Gunnell at agunnell@taxinstitute.ie or on (01) 6631750 if you wish to discuss any of the matters raised in this submission.

Yours truly



Marie Bradley
Institute President

² Section 949AQ Taxes Consolidation Act 1997