



**Irish Tax
Institute**

Leaders in Tax

Appeal Commissioners Reform Consultation
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Appeal Commissioners Reform Consultation

Dear Sir/Madam

I am writing in response to the current consultation on proposed reforms to the appeals system for tax matters.

Reform of the tax appeals system has been a priority for the Irish Tax Institute in recent years. In March 2008, we published a comprehensive report on “The Rules and Procedures Governing Irish Tax Appeals” in which we made several recommendations for reform of both the legislative and the administrative aspects of the current system; a copy of this report is available on our website and can be accessed by clicking [here](#). We have also had various discussions on this issue with the Department of Finance in the intervening period. We are pleased to see that the matter is now being progressed in the form of a public consultation, with proposals to address many of the issues raised previously by the Institute being included in the consultation paper.

In this submission, we outline the Irish Tax Institute’s comments on the proposed amendments to the existing system, as set out in the Department’s Consultation Paper. Our views relate to the broad principles which we believe should underpin a reformed Appeal Commissioners, and we would welcome further consultation on the detailed amendments once the way forward has been decided upon.

We would also highlight a very important principle within the current appeals system that is not specifically referenced in the Consultation Paper. At present, appeal hearings are held “in camera”.

“Members of the public are not admitted to hearings and the Appeal Commissioners and Revenue Commissioners' staff are bound by oath to preserve the confidentiality of the taxpayer's affairs.”¹

It is essential that this “in camera” rule is preserved in any reform undertaken. It provides a fundamental safeguard to taxpayers wishing to appeal an assessment and any change to the rule would create a significant barrier to using the appeals system.

1. Structure of Appeal Commissioners

Of the options presented in the Consultation Paper, we favour the proposal that three Appeal Commissioners be appointed on a full time basis and that they would not be allowed to undertake work outside of their Appeal Commissioner duties.

We also recommend that provision be made for the appointment of a temporary Appeal Commissioner on a case-by-case basis to assist the permanent Appeal Commissioners in dealing with highly specialised areas, such as complex transactions particular to the financial services industry. This may require the establishment of a panel of experts, from which the temporary Appeal Commissioner could be chosen. We understand that this facility is in place in the UK's First-tier Tax Tribunal, which may include an “expert member” on the panel. Given the requirement at Appeal Commissioner level for detailed knowledge across all tax heads, we believe that this type of facility would deliver an appropriate mix of consistency, experience and expertise.

Based on our assessment of the current appeals system, we believe that the proposal for three Appeal Commissioners is necessary. However, the proposed regime would entail a good deal of additional responsibilities, and we believe that the number should be kept under review to ensure that it is sufficient for the increased workload.

We support the proposal that the name of the body be changed to something other than Appeal Commissioners. The shared designation of “Commissioner” (Revenue & Appeal) is felt by some to be suggestive of a connection, and an alternative designation would be an important signifier of independence.

2. Establishment and operation of the Appeal Commissioners

We support the proposal that the Office of the Appeal Commissioners would be responsible for its own staffing, IT systems etc. The staff of the office should be suitably qualified and independent. To ensure a range of expertise and an appropriate level of qualification for the roles, a public recruitment process should be undertaken.

An adequately staffed office will require an appropriate level of funding, and the reformed Appeal Commissioners will not be in a position to fulfil the objectives set out in the consultation paper without the requisite human and financial resources.

The procedures for appeal should be sufficiently clear and transparent for lay taxpayers who may not be familiar with the process.

¹ Office of the Appeal Commissioners (for the purposes of the Income Tax Acts) - Guide to the Functions and Records of the Office

If the point of law at issue in an appeal is considered to be of wider significance for cases other than the one at hand, we believe that the procedures should allow for two Appeal Commissioners to hear the case at the request *of* either party. This facility could also act as a safeguard to protect against instances of perceived bias.

The Consultation Paper contains a proposal that the Appeal Commissioners would develop “processes and guidance to minimise delays”. In particular, it will be vital to the functioning of the reformed Appeal Commissioners that there is a process for timely exchange of submissions between the parties to each case. In this way, both parties will be fully informed of the reasons for the appeal and the main arguments to be set forth on both sides.

It is a feature of the current system of appeals that the taxpayer, on bringing an appeal against an assessment, is obliged by law to specify in the notice of appeal the “grounds in detail” of their appeal as respects each amount or matter in the assessment with which they are aggrieved (Section 959AJ TCA 1997). They are then precluded by law, at a later stage in the appeal, from relying on any ground of appeal that is not specified in the notice of appeal.

Meanwhile, Revenue are under no such legal obligation to provide the taxpayer with details of the reasons for the assessment which they have raised. This differs from the position in the UK, where HMRC are required to provide a detailed Statement of Case. The practical impact of this disparity is that the taxpayer and his/her adviser are required to speculate as to the arguments that Revenue are likely to put forward at appeal and must prepare for multiple possible lines of argument, at considerable expense of both time and financial resources. It can, in practice, be very close to the date of the hearing by the time the taxpayer is informed of Revenue’s reasons for the assessment.

This imbalance should be redressed by the introduction of formalised rules governing the time limits and procedures for submitting and exchanging submissions. A legal requirement should also be introduced that Revenue must provide the taxpayer with detailed reasons for the assessment.

3. Appointment of Appeal Commissioners

We are strongly supportive of the proposal to legislate for the establishment of an open and formal selection, appointment and removal process for future Appeal Commissioners. We believe that appointment as an Appeal Commissioner should require a professional qualification with a minimum period of experience in law, accountancy or taxation and a strong working knowledge of tax legislation. At least 10 years’ experience in either law or taxation should be a minimum requirement. On the basis that the appeals process is a quasi-judicial system, we also recommend that at least one of the Appeal Commissioners should have a legal qualification.

We support the appointment of Appeal Commissioners for a fixed term of 7 years. This would be comparable to the terms of office for Secretaries-General of Government Departments, the Governor of the Central Bank, City and County Managers, and the President of Ireland. This term could be renewed for 1 further 7 year term where the Appeal Commissioner wishes to continue in the role and where he or she has met the required performance standards. However, no more than 2 terms in total should be permissible.

Given the number and complexity of indirect tax cases, we believe that some consideration should be given to designating one Appeal Commissioner, with the requisite expertise, to deal

with such cases.

4. Determinations of the Appeal Commissioners

We welcome proposals for the provision of determinations to the parties in all cases, and for the publication of decisions. The determinations to be provided to the parties should be reasoned, and should contain detailed findings of all relevant facts, the case law cited and the reasons for the decision. We believe that every decision of the Appeal Commissioners should be published. Since the facts will already have been summarised for the determination to be provided to the parties, it should be possible to publish a version of these decisions, which safeguards taxpayer confidentiality.

What is essential in any reform of the Appeal Commissioners, is that taxpayers have access to these published determinations:

- a) on a timely basis; and
- b) free of charge.

5. Appeal Commissioners Jurisdiction

It is a useful principle that the jurisdiction of the Appeal Commissioners may be extended by the Minister for Finance. There are practical issues within the current system that could be resolved if this facility were available – for example, it would be helpful if the Appeal Commissioners could determine whether a disclosure is a “qualifying disclosure” within the meaning of section 1077E TCA 1997.

6. Payment of Taxes

The Consultation Paper considers whether, based on the outcome of the appeal, the relevant tax or duty should be paid or repaid at the end of each stage of the appeal process.

On this issue, we would recommend that the status quo be maintained, i.e. that the tax is paid over when the appeals process comes to an end. We believe that the system should not discourage taxpayers from bringing a tax appeal and, on balance, we believe that the cash-flow impact of the proposed change could dissuade people from using the system. The system should continue to allow taxpayers to have the flexibility of making a payment on account should they wish to do so.

7. Appeals from the Appeal Commissioners

Of the two options presented in the Consultation Paper as regards appeals from the Appeal Commissioners, we prefer the three-stage process outlined in Option 1. The basis for this preference is the issue of cost, i.e. taking a tax appeal to the High Court can be prohibitively expensive for many taxpayers. The option of having the facts re-heard at the Circuit Court is useful, and if this option were not available it would be too costly for many taxpayers to go beyond the Appeal Commissioners stage.

In the interest of improved efficiency, we believe that consideration should be given to introducing a system whereby tax appeals to the Circuit Court are assigned to a specialist Circuit Court, with cases heard by an experienced Judge. This could be done by way of establishing a “Tax List” of tax appeal cases, which could be dealt with on a regular basis, e.g.

once a month. This proposal would of course require discussion and agreement with the Courts Service. If the right of appeal to the Circuit Court is extended to Revenue under a reformed system, this is likely to increase the volume of Circuit Court appeals, and our proposal for a more streamlined Circuit Court stage could assist in handling the increased case-load.

Other issues

We would like to raise two additional issues which are not specifically referred to in the Consultation Paper.

Firstly, we believe there would be merit in considering whether a separate forum should be established for cases in which the tax in dispute is of a relatively small amount, say, less than €50,000. This would be particularly important in the context of a reformed Appeal Commissioners, which may involve more procedural formality than is the case with the current system. A simpler forum for smaller cases may assist taxpayers who would be deterred by entering into the more formal mainstream appeals process.

Finally, we believe it would be worth considering streamlining the time limits for appeals across the Tax Acts. We have outlined at Appendix I the provisions on appeals across the Tax Acts, which highlights the variety of time limits currently in place. Regularising the time limits would eliminate the possibility of confusion arising from a multiplicity of time limits for appeals.

We are available for further discussions and consultations on any of the matters raised in this submission.

Yours truly

A handwritten signature in black ink that reads "Helen O'Sullivan". The signature is written in a cursive, flowing style.

Helen O'Sullivan

President
Irish Tax Institute

Appendix I

Specific Appeal Provisions in the TCA 1997

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
S29	Persons chargeable to CGT	Appeal against any decision of the Revenue Commissioner's concerning domicile or ordinary residence	Notice in writing within 2 months of the date on which notice of the decision is given	As for the Income Tax Acts
S35	Securities of foreign territories	Appeal against any decision of RC's concerning residence	Notice in writing within 2 months of the date on which notice of the decision is given	As for the Income Tax Acts
S63	Exemption of dividends of non-residents	Appeal against any decision of RC's concerning residence	Notice in writing within 2 months of the date on which notice of the decision is given	As for the Income Tax Acts
S85	Deduction for certain industrial premises	An apportionment of the rateable value of 'premises' may be amended by the Appeal Commissioners	The appeal is taken by way of appeal against the assessment made on the basis of the apportionment	As for assessments. Certificate of Commissioner of Valuation is evidence of the valuation stated therein
S195(6)	Artists, composers, & writers	The taxpayer may make an appeal to the Appeal Commissioners seeking a determination that work has cultural or artistic merit	Notice to Revenue in writing within 30 days of the end of the "relevant period" , which is six months from the date the claim for was first made to Revenue	Procedures for appeal are those for appeals against assessment of income tax
S211	Friendly Societies	Appeal against any determination of the Revenue Commissioners under the section	As for appeal against assessment to income tax	As for Income Tax Acts
S305(2) & S305(3)	Capital allowances	There is an appeal to the Appeal Commissioners against a determination in relation to an allowance under Part 9 of the TCA	Notice in writing to Revenue within 21 days of the notification of the decision to the taxpayer	Procedures for appeal are those for appeals against assessment of income tax

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
S372AT	Appeals (re lessors and owner-occupiers)	Appeal lies in relation to any question arising under Chapter 11, except matters appealable under s18 of Housing Act, 1979	As for an appeal against an assessment of income or corporation tax	As for CT or IT appeals.
S381(6)	Loss relief and repayments	Appeal against a determination of the Revenue regarding a claim for loss relief under the section	Notice in writing to the Revenue within 21 days after notification to that person	As for appealing against an assessment to Income Tax
S389	Terminal loss relief	Appeal in relation to a decision under S385	Within 21 days of the notification of the decision	As for an appeal against an assessment to income tax
S408	Restriction on tax incentives on property investment	Appeals against a determination under the section	As for appeals against an assessment of income tax under the Income Tax Acts	As for appeals against an assessment of income tax under the Income Tax Acts
S473	Rent relief	Appeal against a decision regarding the giving of rent relief	As for an appeal against an assessment of income tax	As for an appeal against an assessment of income tax
S486B	Relief for investment in renewable energy	Appeal to the Appeal Commissioners concerning determination of proportion of relief where aggregate investments exceed the specified maximum	None specified	None specified. Appeal Commissioners to apply 'just and reasonable' test
S530I	Determination of rates	Appeals in relation to RCT decisions	Within 30 days of the date of the determination	As for an appeal against an assessment of income tax
S531AA A	Application of provisions relating to income tax	Appeals in relation to Universal Social Charge	As for an appeal against an assessment of income tax	As for an appeal against an assessment of income tax
S621(6)	Depreciatory transactions in a	Inspector, Appeal Commissioner or judge	None specified, S864 and S949 presumably do	None specified, S864 and S949

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
to (8)	group	(as the case may be) must reduce loss/gain according to what is “just and reasonable”	not apply as the relief is not measured	presumably do not apply as the relief is not ‘measured’
S658(7) & S658(8)	Farming: allowances for capital expenditure	Appeal against Revenue’s decision concerning claim for farm buildings allowance	Notice in writing to Revenue within 21 days of being notified of the decision	As for the Income Tax Acts
S659(6) & S659(7)	Farming: allowances for farm pollution control	Appeal against Revenue’s decision concerning claim for farm pollution control allowance	Notice in writing to Inspector within 21 days of being notified of the decision	As for the Income Tax Acts
S669(5)	Supplementary provisions	Appeal against Inspector’s decision concerning value of trading stock for farmers	None specified	None specified. Appeal Commissioners to apply ‘just and reasonable’ test
S670	Mine development allowance	An appeal lies in relation to any question arising under Section 670	As for appeal against an assessment to Income Tax	Income Tax Acts rules apply
S697G	Tonnage tax	Appeal against the giving of a notice under S697E or S697F	Notice in writing to the Revenue within 30 days from the date of the giving of the notice	None specified
S787D	PRSA Claims	Appeals against any determinations under Chapter 2A	Notice in writing within 21 days of notification of the Revenue’s decision	As for appeals under the Income Tax Acts
S789	Purchased life annuities supplementary provisions.	Appeal against a determination as to whether annuity is a purchased life annuity and capital element thereof	Within “the prescribed time.”	Regulations may be made to apply Income Tax Acts.
S806(9)	Transfer of assets abroad	Appeal against a decision of the Revenue as to whether assets were transferred for bona fide	No specific limits specified, as for appeals against assessment to tax	As for appeals against assessment to tax

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
		reasons		
S811	Anti-Avoidance	Appeal against an opinion that a transaction is a tax avoidance transaction	Notice in writing within 30 days of the date of the notice of opinion	As for the Income Tax Acts, except grounds confined to matters specified in S811(7)
S824	Appeals, residence	Appeals for all issues arising under Part 34	Notice in writing to the authorised officer within 2 months of the date notice was given to the individual	As for an appeal against an assessment
S864	Making of Claims	Where there is no specific mechanism set out in relation to: (1) <i>claims</i> for exemption, allowance, deductions (2) claims for repayment (3) claims for a <i>measured</i> relief - Revenue may prescribe manner & form of the original <i>claim</i> . Appeal to Appeal Commissioners arises separately, under S949	Time limits as set out in S949 i.e. notice in writing within 30 days of notification of the determination	As for an assessment of income tax under S933, per S949
S865	Repayment of tax	Appeals referable to this section are dealt with under S949	Time limits as set out in S949 i.e. notice in writing within 30 days of notification of the relevant determination	As for an assessment of income tax under S933
S897(6) & S897(7)	Returns of employee emoluments	Appeal against reapportionment of expenses	Notice in writing to Revenue within 21 days of being notified of the apportionment	As for the Income Tax Acts
S949	Claims against determinations of certain claims etc	Catch all appeal for all matters covered by S864 (also adopted to cover S865)	Notice in writing within 30 days of notification of the relevant determination	As for appeal against assessment under S933
S988(2)	Registration of certain persons as employers	<i>Referral</i> to the Appeal Commissioners in relation to the registration of a person as an employer under	Notice in writing to Revenue within 14 days from the service of the notice to the person	<i>Referral</i> specified to be final and conclusive. Why are appeals under this section not covered

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
		PAYE regulations		by S992?
S989(3)	Estimation of tax due for income tax months	<i>Referral</i> to the Appeal Commissioners against an estimation of tax for an income tax month under PAYE regulations	Notice in writing to Revenue within 14 days from the service of the notice to the person	As for IT Acts per S992 but the referral is specified to be final and conclusive.
S990(2)	Estimation of tax due for year	<i>Appeal</i> to the Appeal Commissioners against estimation of tax against employer for tax year	Notice in writing to Revenue or other officer with 30 days of the service of the notice	Having submitted a Regulation 31 return is a precondition to appeal
S992	Estimates under S989 and S990	Applies income provisions to appeals under these sections, with the modifications noted above	See above	As for IT, except that the Appeal Commissioner decision is final for S989(3) appeals
S1012	Modification of provisions as to appeals	Appeal against determinations re the assessment of partnerships under S1008(3) and S1010(6)	Appeals timetable started by delivery of notice to the precedent partner, thereafter as for assessments to Income Tax	Usual Income Tax rules for appeals, when concerning apportionment of partnership trade affected persons must be notified, and are entitled to appear
S1037	Charge on % of turnover	Where the true profits are not readily ascertainable, allows the Revenue or on appeal the Appeal Commissioners to assess tax on a non-resident person, through a resident, based on a % of turnover. Then a further appeal to a Board of Referees	For the appeal to the Referees, 4 months from the date the of determination	Specifically excluded from rehearing provisions by S949(3)
S1094(7)	Tax clearance certificate	Appeals in relation to tax-clearance certificate decisions	Notice in writing to Collector General within 30 days of the refusal	As for Income Tax Acts, although cannot act as a collateral appeal in

TCA Section	Heading	Effect of the Provision	Time Limit & Notice Requirements	Procedures
				relation to tax or interest.
Schedule S19(16)	Certification of Distributing Funds	An appeal to the Appeal Commissioners lies against a refusal to certify, or notification that accounts are not properly disclosed	By notice specifying the grounds of the appeal given to the RC's within 30 days of the notification	May be made by the fund or by a trustee or officer of the fund. General procedures as for Income Tax appeals

Provisions governing the Appellate Jurisdiction of the Appeal Commissioners, as included in legislation other than the Taxes Consolidation Act 1997 (TCA)

Tax Heading	Grounding Provision	Procedures	Notification Requirements	Notes
Capital Acquisitions Tax	Section 67, CAT Consolidation Act 2003	As for appeals under the Income Tax Acts, with necessary modifications. Revenue have a right to request a rehearing in the Circuit Court	Written notice to Revenue within 30 days of the date of the assessment	No right of appeal concerning the value of real property, this must be done under S33 Finance (1909-10) Act 1910.
Value-Added Tax	Section 111 of the VATCA covers 'assessments' and appeals against same. Section 119 covers most other "determinations".	As for appeals under the Income Tax Acts, with necessary modifications (Section 119) Section 51(6) provides a specific appeals mechanism for a VAT rate determination	Generally, within 21 days of the date the taxpayer being notified. But there are only 14 days in which to appeal an estimation made under Section 110	Separately mentioned appeals under S111, S119, S51(6) & S110
Capital Gains Tax	Section 945, TCA 1997	As for the provisions Income Tax Acts in relation to a specified list of matters	Within 30 days of the notice of assessment	As for CAT there is a power to make regulations to allow notification to affected 3 rd parties
Stamp Duty	Section 21 & S121, SDCA 1999	As for appeals under the Income Tax Acts, with necessary modifications	Written notice to Revenue within 30 days of the date of the <i>assessment</i>	No right of appeal concerning the value of real property, this must be done under S33 Finance (1909-10) Act 1910
VRT	Section 146, Finance Act 2001	One must first appeal the decision to the Revenue Commissioners. As for appeals under the Income Tax	Within 30 days of the date of the determination of the Revenue, or of the expiry of time for a determination	No right of rehearing in the Circuit Court

Tax Heading	Grounding Provision	Procedures	Notification Requirements	Notes
		Acts, with necessary modifications		
Local Property Tax	Section 61 and 62, Finance (Local Property Tax) Act 2012 (as amended)	As for appeals under the Income Tax Acts, with necessary modifications	None specified	