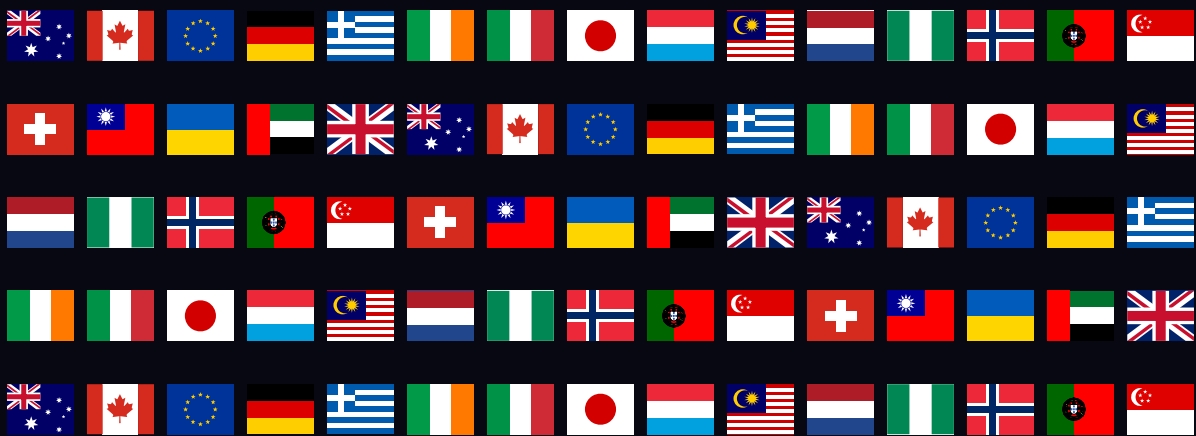


TAX CONTROVERSY

Ireland



Tax Controversy

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; compliance and enforcement; involvement/investigation of third parties; cooperation between tax and other authorities; special procedures, voluntary disclosure, and amnesties; rights of taxpayers; court actions; and recent trends.

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Table of contents

OVERVIEW

Legislation

Relevant authority

ENFORCEMENT

Verification of compliance with tax laws

Tax return review procedure and limitation periods

Tax authority requests for information

Taxpayer failure to provide information

Protecting commercial information

Alternative dispute resolution

Collecting overdue payments

Penalties - scope of application

Penalties – calculation

Penalties – defences

Collecting and calculating interest

Criminal consequences

Tax avoidance

Enforcement record

THIRD PARTIES AND OTHER AUTHORITIES

Third-party involvement with tax reviews

Cooperation with other authorities

FINANCIAL OR OTHER HARDSHIP

Voluntary disclosure and amnesties

RIGHTS OF TAXPAYERS

Rules protecting taxpayers

Requesting information from tax authority

Oversight of tax authority governance

COURT PROCEEDINGS

Competent courts

Lodging a claim

Combination of claims

Pre-claim payments

Cost recovery

Third-party funding

Availability of jury trials

Time frames

Disclosure requirements

Permitted evidence

Permitted representation

Publicity of proceedings

Burden of proof

Case management process

Appeal

UPDATE AND TRENDS

Key developments of the past year

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OVERVIEW

Legislation

What is the relevant legislation relating to tax administration and controversies? Aside from legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation regarding direct taxes is principally the Taxes Consolidation Act 1997. This Act includes provisions relating to income tax, corporation tax and capital gains tax. In respect of value added tax, the relevant legislation is principally the Value-Added Tax Consolidation Act 2010. The relevant legislation regarding stamp duty is the Stamp Duties Consolidation Act 1999; with respect to capital acquisitions tax, it is the Capital Acquisitions Tax Consolidation Act 2003; and, for customs, the Customs Act 2015, which implements EU customs rules. Both direct and indirect taxes are administered by the Office of the Revenue Commissioners (Revenue). Decisions of Revenue can be appealed to the Tax Appeals Commission.

In the practical sense, there are many other factors that are relevant to the interpretation and administration of tax legislation, which include:

- decisions of the courts: as Ireland is a common law system, previous court decisions are binding on taxpayers, unless overruled by subsequent legislation or by a higher court;
- the Irish Constitution;
- the international dimension, for example, the laws of the European Convention on Human Rights or EU treaties, EU directives and regulations, together with obligations arising from Ireland's OECD membership and cooperation with the base erosion and profit shifting project;
- double taxation treaties between Ireland and other jurisdictions;
- Revenue guidance as to Revenue's administration of the law, for example, Revenue eBriefs and codes of practice; and
- Revenue internal guidance manuals that are issued to employees of Revenue to be followed in the course of their duties of administration of the Irish tax system and are available to the public as a result of the Freedom of Information Act 2014.

Law stated - 01 August 2023

Relevant authority

What is the relevant tax authority and how is it organised?

Revenue was established by Government Order in 1923 and is responsible for administration of the government's tax policies. The board comprises three commissioners, one of whom is the chairman and all of whom carry the rank of secretary general. The chairman is also the accounting officer for Revenue. Its core function is the assessment and collection of taxes and duties. It derives its mandate from its statutory obligations and from the government as a result of EU membership.

Revenue's organisational structure comprises the following divisions:

- Large Corporates Division;
- Large Cases – High Wealth Individuals Division;
- Medium Enterprises Division;
- Customs Division;
- Personal Division;

- Business Division;
- Investigations and Prosecutions Division;
- Personal Taxes Policy and Legislation Division;
- Business Taxes Policy and Legislation Division;
- Planning Division;
- Corporate Services and Accountant General's Division;
- Revenue Solicitor's Division;
- Information, Communications Technology and Logistics Division;
- Collector General's Division;
- International Tax Division; and
- Indirect Taxes Policy and Legislative Division.

The work that Revenue undertakes includes assessing, collecting and managing taxes and duties that account for the majority of Exchequer revenue and administering a customs regime for the control of imports and exports and the collection of duties and levies on behalf of the European Union, as well as working with other state agencies in cross-departmental initiatives.

Law stated - 01 August 2023

ENFORCEMENT

Verification of compliance with tax laws

How does the tax authority verify compliance with the tax laws? Does this vary for different taxpayers or taxes?

In Ireland, the taxpayer reporting requirements vary depending on whether the taxpayer is employed or self-employed. The taxation system for individuals employed by an employer is the pay-as-you-earn (PAYE) system and employees have their taxes deducted at source through payroll by their employer. Self-employed individuals and companies are required to self-assess their tax liability over a certain period (known as the chargeable period) and file a return with the Office of the Revenue Commissioners (Revenue) for each period.

A self-assessment is required to be made in, and as part of, the return, stating the amount of income, profits or gains, or chargeable gains arising to the taxpayer for the period, together with an assessment of the amount of tax chargeable to and payable by the taxpayer. The self-assessment must also identify if there is a surcharge applicable for a late return. In the event that the indicative calculation is incorrect, any additional tax due must be paid one month after the amendment of the self-assessment. Interest is chargeable on any tax underpaid or paid late (namely, not on or before the due date). Companies pay corporation tax in a payment or payments of preliminary tax for the chargeable period and then complete and file a return. Following receipt of the taxpayer's return, Revenue may make an assessment of the company for the relevant tax.

There are a number of different forms of intervention that Revenue may undertake to ensure that tax liability has been self-assessed correctly and that the tax laws have been complied with. Revenue has a multifaceted approach to tackling non-compliance and may carry out a number of activities. Revenue's revised Code of Practice for Revenue Compliance Interventions (the Code) applies to all Revenue interventions notified from 1 May 2022. The Code sets out Revenue's approach to compliance interventions and establishes the following three-level compliance intervention framework:

- Level 1: the first level of Revenue intervention is aimed at supporting taxpayers by reminding them of their obligations and allowing them the opportunity to correct errors. This generally does not have the same level of

formality as an audit or investigation and may involve a request to self-review or a reminder of outstanding tax returns.

- Level 2: this level involves risk-based reviews and checks on data provided by taxpayers and can involve a risk review or an audit by Revenue. A risk review is a focused intervention that examines a specific risk in a taxpayer's return. An audit is an examination of a taxpayer's tax return, declaration of liability, statement of liability or compliance with tax and duty legislation. A Revenue audit may be undertaken by a single Revenue auditor or a team of auditors, depending on the complexity of the audit.
- Level 3: this level involves Revenue investigations that focus on high-risk practices and cases that may involve suspected fraud and tax evasion. As such, it is reserved for serious cases that may involve Revenue offences and therefore lead to a criminal prosecution.

Law stated - 01 August 2023

Tax return review procedure and limitation periods

What is the typical procedure for the tax authority to review a tax return and how long does the review last? What limitation periods apply?

In general, the same processes of review are applied to all taxpayers. However, as Revenue adopts a risk-based approach to audits, certain categories of taxpayers would be considered lower risk than others (eg, taxpayers who pay tax through the PAYE system). Further, there are differing levels of engagement between taxpayers and Revenue; for example, companies in the Large Corporates Division who have opted into a cooperative compliance framework would have closer contact with Revenue officials on a more regular basis.

Revenue assessments can be raised within four years of the end of the chargeable period in which the return is filed. Revenue may make an assessment if it is not satisfied with a particular return filed having received information in that regard, or where a Revenue officer has reason to believe that a return does not contain a full and true disclosure of all material facts. Revenue must give notice of assessment to the chargeable person. This should include time allowed for an appeal. It must identify separate liability to different taxes if applicable.

Law stated - 01 August 2023

Tax authority requests for information

What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Revenue officers may make such enquiries or take such actions within their powers as they consider necessary to ascertain whether a person is chargeable to tax and to assess the amount of income, profits or gains and the entitlement of the person to any allowance, deduction or relief. A Revenue officer may enter any business premises where that officer has reason to believe that there has been activity relating to chargeable tax, there are any records relating to such activity, or any property is or has been located. This officer may request that anyone who has information relating to such tax liability provide information and explanations relating to the liability, and produce any relevant records or property. They can also search the premises for any records or property if they feel they have not been produced.

There is a limit as to what the officers can obtain; they cannot require anything within the ambit of legal privilege or professional advice given in a confidential nature to a client. The officer also needs a warrant to enter any premises that is a private residence.

Taxpayer failure to provide information

What actions may the tax authority take if the taxpayer does not provide the required information?

If a Revenue officer has reason to believe that a person is withholding records or property relating to tax, the officer is entitled to search the premises in question for such records or property. A person who does not comply with an officer for this purpose is liable for a penalty of €4,000.

If, during an audit intervention, a taxpayer refuses to facilitate the audit or to produce the requested information, it will be regarded as obstructing the audit process. If Revenue cannot obtain cooperation after a reasonable period, it will advise the taxpayer that such obstruction is a criminal offence. There may also be situations in which it may be necessary for Revenue to take immediate action to secure information.

Revenue may also serve notice on a financial institution and other third parties to make books, records or other documents available for inspection if they contain information relating to a tax liability of a taxpayer, even if the taxpayer is not known to the officer but is identifiable by other means. The officer authorised by Revenue must have reasonable grounds to believe that the financial institution or other third party is likely to have information relating to this liability. Revenue may also avail itself of a provision in the legislation that allows for an application to be made to the High Court for an order requiring information from financial institutions or third parties.

Where a taxpayer fails to submit a return on time, Revenue may charge interest on any tax that is paid late, and a surcharge will apply to the tax liability in question. The surcharge is treated as part of the liability to tax. The principal risk of not engaging constructively with Revenue is triggering a Revenue assessment of a taxpayer's tax liability, and ultimately non-compliance during an audit may result in increased penalties.

Protecting commercial information

How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

No powers of search or request of Revenue should be construed as requiring a person to disclose any information that would be covered by legal professional privilege, or that would constitute professional advice of a confidential nature given to a client. Legal advice privilege applies to confidential communications between a solicitor and client and litigation privilege applies in the context of advice given regarding litigation. Legal advice privilege applies only to lawyers. However, the Taxes Consolidation Act 1997 (TCA) protects professional advice given to a taxpayer if given in a confidential nature. An authorised officer of Revenue or a taxpayer who refuses to produce a document on the basis of privilege can apply to the District Court for a determination as to whether a document is privileged legal material.

Revenue is obliged by legislation to keep all taxpayer information held by it confidential. Information held by Revenue can only be disclosed in accordance with the TCA or other statutory provisions. Revenue is not obliged to withhold information in criminal proceedings or in proceedings to do with the administration or enforcement of the TCA or related legislation.

Revenue may only keep records that have been obtained from a taxpayer for as long as the investigation or audit into the taxpayer is ongoing. Information stored and maintained by Revenue is subject to the Data Protection Acts 1988 and 2018, and Revenue must comply with General Data Protection Regulation (EU) 2016/679. The data protection laws ensure that Revenue must act with a clear legal basis while safeguarding taxpayers' rights as regards the use of

retention and accuracy of information. Whereas before the Finance Act 2017, Revenue was required to disclose the name of the taxpayer relevant to a notice for information from a third party, this is no longer required. Revenue can seek non-specific information on taxpayers from third parties.

The Tax Appeals Commission (TAC) is required to publish determinations but must generally ensure that the identities of the parties involved are not revealed. The TAC may also publish reports on its decision, which must as far as possible prevent the identification of any party involved in the decisions.

Law stated - 01 August 2023

Alternative dispute resolution

What (if any) alternative dispute resolution (ADR) or settlement options are available?

While there is no formal ADR programme in place, Revenue's Complaint and Review Procedure is the process by which customer service issues between taxpayers and Revenue can be resolved. There are a number of stages to such proceedings. First, a taxpayer makes a formal complaint to the office where their case is managed. If dissatisfied with the result, a taxpayer can seek review by the manager for the local office, or in certain circumstances, from the divisional or regional office. If still dissatisfied, a taxpayer can seek independent review by an internal or external reviewer.

The TAC is the body responsible for hearing appeals in relation to an assessment made by Revenue. The TAC is under an obligation to be flexible in its proceedings. Appeal commissioners must endeavour, to the best of their ability, to ensure a flexible approach in relation to procedural matters and the avoidance of undue formality. Appeal commissioners must also give the parties the opportunity to settle their dispute by agreement. In practice, disputes are frequently resolved by agreed settlement. In 2022, 1,652 of the 2,661 (namely, 62 per cent) appeals closed during 2022 were closed by way of settlement.

Law stated - 01 August 2023

Collecting overdue payments

How may the tax authority collect overdue tax payments following a tax review?

Revenue may take a number of enforcement actions in the collection of overdue tax payments. The most frequently used enforcement action is recovery by sheriff. Revenue uses the services of a number of sheriffs to deal with the majority of cases to do with overdue tax payments. Attachment is also available as an enforcement option that can be used where conventional enforcement by sheriff has failed. Revenue also contracts with a number of solicitor firms for the purpose of pursuing payment through a court action. In certain circumstances, tax can also be collected through payroll.

Law stated - 01 August 2023

Penalties - scope of application

In what circumstances may the tax authority impose penalties?

Revenue may impose a number of fixed penalties for non-compliance. Where a person has been required by notice given under or for the purposes of certain provisions relating to corporation tax to furnish any information or particulars and he or she fails to comply with this notice, he or she will be liable to a penalty of €3,000.

If the failure continues after judgment has been given, there is an additional penalty of €10 per day. If the taxpayer is a

company, the penalty is €4,000 and €60 per day. Furnishing incorrect information or particulars gives rise to a penalty of €3,000 or €4,000 for a company.

Further, Revenue may impose tax-gearred penalties for specific defaults (which may be disputed by the taxpayer involved).

Law stated - 01 August 2023

Penalties – calculation

How are penalties calculated?

The calculation of penalties generally depends on the nature of the default in question. In certain circumstances, a fixed rate penalty may apply (eg, where an employer fails to register with Revenue as an employer a fixed €4,000 penalty can apply). In other cases, penalties are calculated as a percentage of tax payable. For example, if a chargeable person deliberately or carelessly files an incorrect tax return, the penalty imposed is tax geared. The amount of the penalty imposed will depend on the nature of the default (namely, whether it was careless or deliberate) and the consequences of the default (namely, whether the behaviour resulted in significant consequences). The amount of the penalty will also depend on whether the taxpayer cooperates with Revenue, and makes a qualifying disclosure in relation to the default. By way of illustration, where a taxpayer carelessly files an incorrect return, without significant consequences, a tax geared penalty of 20 per cent is imposed where there is no cooperation by the taxpayer. In contrast, a penalty of 3 per cent applies where the taxpayer makes an unprompted qualifying disclosure and cooperates fully.

Law stated - 01 August 2023

Penalties – defences

What defences are available if penalties are imposed?

In general, where a taxpayer falls within the scope of tax penalties, there is often limited defences available (eg, where a return is carelessly or deliberately filed late). As such, the focus is often on reducing the applicable penalties through full cooperation with the Revenue investigation, and making a qualifying disclosure where available. This can result in significant reductions in penalties for taxpayers.

Law stated - 01 August 2023

Collecting and calculating interest

In what circumstances may the tax authority collect interest and how is it calculated?

Interest may be charged on late payments of tax in a number of sections in the TCA. In addition, where as a result of a Revenue intervention it is clear that the taxpayer has not made a full and correct return and that an undercharge to tax or duty arises, interest charges arise under the relevant interest provisions in the TCA. The rate of interest is determined by the relevant section in the TCA. Generally, interest applies at a rate of 0.0219 per cent per day (approximately 8 per cent annualised).

Law stated - 01 August 2023

Criminal consequences

Can criminal consequences arise as a result of tax non-compliance? Are these different for different types of taxpayers?

Criminal prosecution may result from a Revenue investigation and those convicted are liable to a fine or imprisonment or both. A Revenue investigation is an examination of a taxpayer's affairs where Revenue has reason to believe, after an examination of the relevant information, that a serious tax or duty evasion, or other offence, such as fraud, smuggling or trade without an excise licence, may have been committed.

A taxpayer commits a criminal offence under the TCA if he or she knowingly or wilfully files an incorrect tax return, or if he or she knowingly or wilfully aids, abets, assists, incites or induces another to file such a return. The Director of Public Prosecutions makes decisions as to whether a case should be prosecuted.

Law stated - 01 August 2023

Tax avoidance

Are there specific rules or provisions regarding perceived tax avoidance?

Ireland has general anti-avoidance provisions in the tax code that can be used by Revenue to counteract transactions that they regard as involving tax avoidance. In particular, the general anti-avoidance rule (GAAR) under the TCA, allows Revenue to take the position that a transaction constitutes a 'tax avoidance transaction'. The GAAR covers a wide range of taxes including income tax, corporation tax, capital gains tax, value added tax and stamp duties. The GAAR is designed to address schemes that have little or no commercial purposes and are primarily entered into to obtain a tax advantage. There is no time limit on when Revenue can investigate whether a transaction is tax avoidance, and withdraw the tax advantage in question. A tax avoidance surcharge of up to 30 per cent can be applied where a taxpayer enters into a tax avoidance transaction and seeks to obtain the benefit of a tax advantage.

In addition to the GAAR, many specific provisions of the Irish tax code incorporate specific anti-avoidance rules. For example, certain reliefs or exemptions under the Irish tax code are not applicable unless it can be established that the transaction in question has been effected for bona fide commercial reasons and does not form part of an arrangement one of the main purposes of which is the avoidance of liability to tax.

Law stated - 01 August 2023

Enforcement record

What is the recent enforcement record of the authorities?

The enforcement record of Revenue is good and public opinion in Ireland is strongly against tax-avoidance schemes.

Law stated - 01 August 2023

THIRD PARTIES AND OTHER AUTHORITIES

Third-party involvement with tax reviews

Can a tax authority involve third parties as part of the authority's review of a taxpayer's returns?

The Office of the Revenue Commissioners (Revenue) may request certain information from a bank or financial

institution or other third party in relation to a taxpayer's affairs. There is a provision in the Taxes Consolidation Act 1997 for an application for a court order directing a bank, financial institution or third party to furnish such information to Revenue. Taxpayers' rights regarding the privacy and security of their personal data are protected by the Data Protection Acts 1988 and 2018.

Revenue may also engage third-party experts to assist with reviewing and validating claims by taxpayers for certain reliefs (eg, R&D tax credit, intellectual property amortisation).

Law stated - 01 August 2023

Cooperation with other authorities

Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Revenue may work with other government departments or agencies in relation to specific areas of concern. For example, Revenue officers work with officers from the Department of Social Protection and the Workplace Relations Commission in investigations into non-compliance with tax, social welfare and employment legislation.

Exchange of taxpayer information between Revenue and other tax administrations is provided for in:

- Ireland's double tax treaties (DTTs);
- information exchange agreements;
- the OECD's Convention on Mutual Assistance in Tax Matters; and
- the EU's Directive on Administrative Cooperation in Taxation (Council Directive 2011/16/EU).

Information may be exchanged on the basis of a request from a tax authority, or it can be exchanged spontaneously without request where a tax authority has information that may be of interest to another tax administration. Generally, spontaneous information exchange is limited to exchange under Council Directive 2011/16/EU or the DTTs, rather than under Ireland's information exchange agreements. In addition, certain information is exchanged automatically by Revenue and other tax authorities without a specific request under a number of automatic exchange-of-information initiatives (eg, tax rulings on cross-border matters, US Foreign Account Tax Compliance Act).

Country-by-country reporting also requires large multinational enterprises (MNEs) to file a report with tax authorities providing a breakdown of information such as revenue, profits and taxes. The country-by-country report is then automatically exchanged with other relevant jurisdictions (namely, where the MNE has a subsidiary).

Law stated - 01 August 2023

FINANCIAL OR OTHER HARDSHIP

Voluntary disclosure and amnesties

Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

In the past, the Office of the Revenue Commissioners (Revenue) has been sympathetic to occasional cash flow difficulties, but it has been keen to stress that the legal obligations for payment apply equally to all taxpayers. The Office of the Collector-General is charged with the responsibility of ensuring the collection of the majority of business and personal taxes. Where a taxpayer falls behind on tax payments, Revenue will seek to engage with the taxpayer to address the issue. Where meaningful engagement is not forthcoming, Revenue may take other actions, such as

charging interest or commencement of an enforcement action.

Law stated - 01 August 2023

Are there any voluntary disclosure or amnesty programmes?

Historically, Revenue has had a number of amnesty programmes, but none exist at present.

The procedure for voluntary disclosure is recognised and provided for within the Taxes Consolidation Act 1997 and the updated Revenue Code of Practice for Revenue Audit and other Compliance Interventions (2022), which sets out the guidelines to be followed by the taxpayer and Revenue when making qualifying disclosures.

The benefit of availing of the qualifying disclosure procedure is that it entitles the taxpayer to a reduction in penalties in any tax settlement with Revenue, and the taxpayer's name will not be published in the list of tax defaulters.

A taxpayer is entitled to make a qualifying disclosure in respect of undeclared tax, errors or duty liabilities at any time. However, any disclosure will be excluded from being a 'qualifying disclosure' in circumstances where a Revenue investigation has already commenced or the matters contained in the disclosure were already known to Revenue through their own investigations.

There are two types of qualifying disclosures – prompted and unprompted. A prompted qualifying disclosure is one that has been made to Revenue after the person is notified by Revenue that a Level 2 compliance intervention will start, but before the commencement of the Level 2 compliance intervention. In contrast, an unprompted qualifying disclosure is a disclosure letter submitted in the absence of any communication from Revenue of an intention to commence a Level 2 or Level 3 compliance intervention.

In practice, the level of the penalty will depend on whether the disclosure is prompted or unprompted, with unprompted disclosures attracting lower penalties. The degree of cooperation that the taxpayer has provided in dealings with Revenue can also reduce the penalty imposed.

Law stated - 01 August 2023

RIGHTS OF TAXPAYERS

Rules protecting taxpayers

What rules are in place to protect taxpayers when dealing with the tax authority?

The Office of the Revenue Commissioners (Revenue) is subject to the Data Protection Acts 1988 and 2018. These acts confer rights on individuals with regard to their personal data, and responsibilities on entities that use and process such data. Revenue treats all personal information received as confidential, and can only disclose such information to third parties under certain conditions. Revenue is also subject to the oversight of the Tax Appeals Commission (TAC) and the High Court in the discharge of its functions.

Under the Customer Service Charter that is part of Revenue's Complaints and Review Procedure, taxpayers can expect to be treated with courtesy and consistency, and can expect to be given the necessary information and assistance required to help them understand their tax obligations. A presumption of honesty also exists with respect to a taxpayer's dealings with Revenue.

Law stated - 01 August 2023

Requesting information from tax authority

How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Under the Data Protection Acts 1988 and 2018, Revenue must, on request from a taxpayer, provide that taxpayer with a copy of personal information that Revenue holds on them. Such information must also only be held by Revenue for as long as is necessary to carry out its functions in relation to such information. The taxpayer, who is the data subject, can request a copy of all information relating to them by way of a data subject access request in writing to the Data Controller in Revenue. The implementation of data protection legislation in Ireland is supervised by the Data Protection Commissioner.

Under the Freedom of Information Act 2014, any person can request access to information held by Revenue, as Revenue is a public body, provided it is not personal information or information that, if disclosed, would compromise law enforcement, security or the finances of the state.

Law stated - 01 August 2023

Oversight of tax authority governance

Is the tax authority subject to non-judicial oversight?

Revenue is accountable to the government of Ireland, which is responsible for the appointment of new Revenue commissioners. Decisions of Revenue can be appealed to the TAC. Likewise, actions of the Revenue may be open to judicial review directly before the High Court in certain circumstances.

Law stated - 01 August 2023

COURT PROCEEDINGS

Competent courts

Which courts have jurisdiction to hear tax disputes?

A taxpayer who wishes to make an appeal against a decision or assessment made by the Office of the Revenue Commissioners (Revenue) must submit a written notice of appeal to the Tax Appeals Commission (TAC), which is an independent statutory body whose main task is hearing, determining and disposing of appeals against assessments and decisions of Revenue concerning taxes and duties in accordance with relevant legislation. The High Court, Court of Appeal and Supreme Court have appeal jurisdiction to hear appeals on a point of law from determinations of the TAC.

The legislation concerned is the Finance (Tax Appeals) Act 2015 and the Taxes Consolidation Act 1997. As of 31 December 2022, the TAC comprised one chairperson, two full-time appeal commissioners, and five temporary appeal commissioners, together with staff who support the appeal commissioners in their duties. In addition, where certain actions of Revenue do not give rise to a direct right of appeal before the TAC, the High Court may have jurisdiction in a judicial review procedure.

Law stated - 01 August 2023

Lodging a claim

How can tax disputes be brought before the courts?

The taxpayer must submit a written notice of appeal to the TAC within 30 days of the relevant decision or assessment made by Revenue. It is possible for taxpayers to make their appeals electronically through the TAC website. The taxpayer must include in the notice of appeal all of the information relating to the issue, including the name and address of the appellant, the taxpayer's personal public service number or tax reference number, information on the matter under appeal and the grounds for appeal, together with any other matters stipulated by the appeal commissioners. There is no minimum (or maximum) threshold on the value of appeals to the TAC.

As soon as practicable after receipt of the notice of appeal, the TAC will send a copy of the notice of appeal and any supporting documentation to Revenue. Revenue will be advised that any objection to the acceptance of the appeal on the grounds of validity of the appeal must be communicated to the TAC by notice in writing, stating their reason for the objection, no later than 30 days after the date on which the copy of the notice of appeal has been sent to them. To be a valid appeal, it must be made in relation to an appealable matter and all conditions must be satisfied as required by the provisions of the acts relating to the appeal concerned.

Where no notice of objection has been received from Revenue within 30 days, or alternatively, where a notice of objection has been received from Revenue and the appellant has been afforded the opportunity to respond in writing to that notice of objection, the commission will decide whether the appeal should be accepted.

A decision on whether an appeal should be accepted may be made by a member or members of staff of the commission or by a commissioner. A decision not to accept an appeal will only be made where the member or members of staff of the TAC or the appeal commissioner is satisfied that the appeal is not a valid appeal, the appeal is without substance or foundation or the appeal is a late appeal and the requirements for acceptance of a late appeal have not been satisfied.

An individual can appeal a decision of the TAC to the High Court in situations where they consider that the TAC erred in its decisions in relation to a point of law only, but not in relation to the facts. A party to an appeal process who is dissatisfied with a decision of the TAC as being erroneous on a point of law may by notice in writing require the TAC to state and sign a Case Stated for the Opinion of the High Court. This written notice must be given to the TAC, and copied to any other party to the appeal, no later than 21 days from the date on which the decision has been notified to the parties, and must specify the particular respect in which the decision is alleged to be erroneous in law. Decisions of the High Court can be then appealed to the Court of Appeal, and from there to the Supreme Court.

Law stated - 01 August 2023

Combination of claims

Can tax claims affecting multiple tax returns or taxpayers be brought together?

Where multiple appeals regarding the same matter are brought by different taxpayers, Revenue may apply to have the cases effectively joined by applying to have all cases except one stayed for the duration of the hearing of the single appeal case and then applying the TAC's determination to each of the stayed appeals.

Law stated - 01 August 2023

Pre-claim payments

Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Having lodged an appeal against a Revenue assessment, a taxpayer will have paid the tax that the taxpayer believes is due for the relevant accounting period as a precondition of the appeal. There is no requirement to pay the disputed tax to appeal. On the determination of the appeal, if there is any additional tax due as a result of the determination, it will then become payable. Where a chargeable person has an additional liability to tax on the determination of an appeal, that additional amount of tax is generally deemed due and payable on the same date as the tax charged by the assessment that was under appeal.

If the tax paid was 90 per cent of the total tax after the determination of the appeal, and it relates to income tax, corporation tax or capital gains tax, then it will be due and payable one month from the date of the determination of the appeal.

Law stated - 01 August 2023

Cost recovery

To what extent can the costs of a dispute be recovered?

Each party is responsible for its own costs for a TAC hearing. However, the winning party may seek to recover the costs of the dispute at the High Court level.

Law stated - 01 August 2023

Third-party funding

Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no specific restrictions of this nature stated in the rules of procedure of the TAC. However, such provisions are not permitted by a general rule of litigation in Ireland.

The Supreme Court has confirmed that the law of champerty in Ireland prohibits a third party with no bona fide interest in a dispute from funding another party's litigation.

Law stated - 01 August 2023

Availability of jury trials

Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The appeal commissioners decide on the issues under appeal and issue determinations. As noted, as of 31 December 2022, there is one Chairperson, two permanent appeal commissioners and five temporary appeal commissioners. Where the appeal commissioners think it appropriate, they may adjudicate on a matter without a hearing on consent of the parties. Appeal commissioners may have regard to a previous appeal that raised common or related issues. There is no provision for a jury trial in the TAC. Appeals on a point of law will be adjudicated before the High Court, Court of Appeal and the Supreme Court without a jury. A jury will only be relevant in a criminal prosecution of a tax case.

Law stated - 01 August 2023

Time frames

What are the usual time frames for tax hearings?

There is no specified guideline in terms of the time typically taken to complete an appeal. However, the case-management powers of the TAC are aimed at concluding appeals as expeditiously as possible. Appeal commissioners have the power to direct that a case management meeting be held to help progress a case. An initial case management meeting may be held following the receipt of the statement of case. Further case management conferences may be held if necessary with the aim of securing the completion of the proceedings in a fair and expeditious manner.

Law stated - 01 August 2023

Disclosure requirements

What are the requirements concerning disclosure or a duty to present information for trial?

The TAC can request that the appellant and Revenue submit a Statement of Case. The TAC may also direct in what order Statements of Case are to be submitted. Typically, a Statement of Case would contain an outline of the relevant facts, a list of and copies of the relevant documents that will be relied upon, details of any witnesses, details of the statutory provisions being relied upon and any case law being relied upon. The Statement of Case must be furnished to the other party at the same time as it is furnished to the TAC, and the TAC is to be given written confirmation that the other party has received a copy of the Statement of Case. The TAC may also direct that the parties submit and exchange an Outline of Arguments in advance of the hearing. The Outline of Arguments is generally requested in complex cases and expands on the grounds of appeal, description of facts and the legal arguments that the parties intend to put forward to support their case.

Law stated - 01 August 2023

Permitted evidence

What evidence is permitted in tax hearings?

The appeal commissioners may summon any person who they think is able to give evidence regarding an assessment made on another person to appear before them to be examined, and may examine such person under oath. The clerk, agent, servant or other person confidentially employed in the affairs of a person chargeable can also be examined in the same manner, and subject to the same restrictions, as in the case of a taxpayer who presents him or herself to be questioned in person. A person who, after being summoned, neglects or refuses to appear before an appeal commissioner at the time and place appointed for that purpose, appears but refuses to be sworn or subscribe the oath or refuses to answer any lawful question will be liable to a penalty. In general, the taxpayer may decide, but will not be compelled, to give evidence. The appeal commissioners may allow evidence to be given orally or in writing, albeit there is a preference for oral evidence, and may allow the submission of evidence that would not ordinarily be admissible in court. The appeal commissioners can limit the number of witnesses whose evidence a party may put forward.

Law stated - 01 August 2023

Permitted representation

Who can represent taxpayers in a tax trial? Who represents the tax authority?

The taxpayer can submit their own appeal to the TAC or it can be submitted on their behalf by a legal representative.

The TAC will hear any barrister or solicitor, or any person who is a member of a number of professional bodies set out in the Taxes Consolidation Act 1997 (the Irish Auditing and Accounting Supervisory Authority or an accountancy body that comes within its supervisory remit, the Irish Taxation Institute and the Law Society of Ireland), who appears on behalf of a party. Notwithstanding that a person does not fall within these categories, the TAC may hear this person if they are satisfied it is appropriate to do so. The appeal commissioners are required to manage and conduct proceedings in a way that will meet the reasonable expectations of members of the public about the avoidance of undue formality and a flexible approach being adopted in respect of procedural matters.

There is no provision at present for legal aid specifically in the tax appeals system.

Where a taxpayer is being prosecuted for tax evasion due to deliberately misinforming Revenue of the true facts of their business affairs or where there has been wilful non-compliance with legislation, legal representation might be available due to the criminal nature of the proceedings.

Revenue is represented at the TAC by the Revenue solicitors and often may also be represented by external barristers.

Law stated - 01 August 2023

Publicity of proceedings

Are tax hearings public?

Although the default position is that every TAC hearing will be held in public, the taxpayer can opt for a TAC hearing to be heard in private, either at the statement of case stage, or within 14 days of receiving notice of the time and place of the hearing. As such, most TAC appeals are conducted in private.

Appeal commissioners may also direct that an appeal or part of an appeal be held in private if deemed necessary.

TAC determinations are published within 90 days of the relevant decision, names and personal details of the taxpayer are redacted where the appeal was heard in private.

Law stated - 01 August 2023

Burden of proof

Who has the burden of proof in tax hearings?

The standard of proof in civil cases generally is on the balance of probabilities. In tax cases, the burden of proof depends on the particular section in the legislation that is subject to the dispute; however, generally, the burden rests with the taxpayer.

Law stated - 01 August 2023

Case management process

What is the case management process for a tax hearing?

The Finance (Tax Appeals) Act 2015 includes several provisions aimed at assisting the expeditious and fair completion of proceedings, including the right for appeal commissioners to direct that a meeting, known as a case-management conference, be held to progress a case. Where such a conference is arranged, the appeal commissioners will fix a date and time for an initial case management conference following the receipt of the statement of case, and this will be notified to the parties not less than 14 days prior to the time and date of the hearing. They may hold further case management conferences as appear necessary or desirable with the aim of securing the completion of the

proceedings in a fair and expeditious manner. In 2022, TAC held 91 case management conferences.

The appeal commissioners will request the parties to the appeal to notify them in writing not later than seven days before the date fixed for a conference of any application for directions that the party intends to make, including a brief statement of the grounds on which the party will argue that such directions are necessary and appropriate for the fair and efficient disposal of the appeal. A party that notifies the commissioners of an intention to apply for a direction or directions should at the same time furnish the other party with a copy of such notification and should confirm in writing to the commission that this has been done.

The directions that can be made include a direction to join parties to an appeal, to stay the proceedings for a fixed period, to direct that the parties submit a statement of agreed facts, a book of core documents, or a book of authorities, as well as a statement of evidence to be furnished during the appeal. Appeal commissioners may also direct that any experts giving evidence of a scientific or technical nature be called to meet in advance of the hearing and prepare an agreed statement on the areas on which the experts agree and the areas in which they differ.

Law stated - 01 August 2023

Appeal

Can a court decision be appealed? If so, on what basis?

While decisions of the appeal commissioners are final and conclusive on the facts of the case, a party to an appeal process who is dissatisfied with a determination of the appeal commissioners as being erroneous only on a point of law may by notice in writing require the appeal commissioners to state and sign a Case Stated for the Opinion of the High Court. Written notice must be given and copied to any other party to the appeal no later than 42 days from the date on which the determination has been notified to the parties. It must specify the particular respect in which the determination is alleged to be erroneous in law. This may in turn be appealed to the Court of Appeal and the Supreme Court.

It is no longer possible to have a full hearing of the relevant matter when appealing a decision of the TAC.

Law stated - 01 August 2023

UPDATE AND TRENDS

Key developments of the past year

What are the current trends in enforcement of tax controversies? What are the current concerns of the authorities and taxpayers in relation to the enforcement and handling of tax controversies and are these likely to change? Are there proposals to change the relevant legislation or other rules?

The Office of the Revenue Commissioners (Revenue) published its Annual Report for 2022 in April 2023 (the Revenue Report). The Revenue Report confirmed that Revenue is focused on supporting a culture of voluntary compliance by adopting a risk-focused response to non-compliance. The total yield from Revenue audit and compliance interventions in 2022 was €813 million with 428,316 audit and compliance interventions carried out in 2022. Tax settlements were agreed with 104 taxpayers in respect of tax avoidance cases, leading to settlements in the amount of €16.1 million. The Revenue Report confirmed that Revenue continues to implement a real-time data drive risk assessment approach to ensure timely compliance and are committed to tackling non-compliance in all its forms. The risk-based and data-focused approach allows Revenue to identify and quantify risk to target relevant taxpayers. Revenue noted that 2022 was the first year of the implementation of the Code of Practice for Revenue Compliance Interventions (the Code), and

that the Code further supported compliance by emphasising self-assessment and self-review as mechanisms to deal with taxpayer compliance.

As regards specific focuses for compliance programmes and intervention, the Revenue Report noted that the construction sector continues to demonstrate significant risks to the tax system and, as a result the sector again featured prominently in compliance programmes in 2022, mainly focused on value added tax (VAT), relevant contracts tax and pay-as-you-earn (PAYE). In addition, Revenue is focused on monitoring employers who availed themselves of the Temporary Wage Subsidy Scheme during the covid-19 pandemic. In 2022, these checks confirmed a high level of compliance with the scheme. Revenue is also focused on e-commerce activities and is working actively with other EU member states in relation to e-commerce regulation and compliance. Revenue noted the VAT compliance of non-resident online traders who supply goods and digital services to Irish customers continues to be a particular area of ongoing interest for them.

The Revenue Report noted that Revenue is continuing to proactively address international tax issues and, in particular, transfer pricing audits and interventions. Revenue's increased activities and interventions in transfer pricing led to the initiation of 51 transfer pricing compliance interventions in the period from 2015 to the end of 2022. Some 25 interventions have been finalised, leading to a yield of €676.1 million and a restriction in trading losses of €949 million. Revenue has also issued amended corporation tax assessments deriving from transfer pricing compliance interventions, identifying underpaid corporation tax in the amount of €81.6 million (albeit these assessments are generally under appeal). The Revenue Report also noted that 103 mutual agreement procedures were completed and four bilateral advance pricing agreements were concluded in 2022. Revenue re-developed its PAYE Real-time Risk system in 2022, which has allowed Revenue to respond with increased speed to risks in relation to payroll withholding tax compliance.

The Tax Appeals Commission (TAC) also published its Annual Report for 2022 (the TAC Report), which demonstrates a marked increase in the number of appeals received by the TAC and disputes resolved, either by way of agreed settlement or determination by the TAC. In total, 2,661 appeals representing €605 million of disputed tax were closed by the TAC in 2022. 190 determinations were issued by the TAC in 2022. Corporation tax appeals were significantly the highest value appeals determined in 2022 with 18 appeals totalling €195.7 million. This continues a consistent trend of higher value, more complex disputes being brought before the TAC.

Law stated - 01 August 2023

Jurisdictions

	Australia	Gadens
	Canada	McCarthy Tétrault LLP
	European Union	Freshfields Bruckhaus Deringer
	Germany	Freshfields Bruckhaus Deringer
	Greece	Dryllerakis & Associates
	Ireland	Matheson LLP
	Italy	Chiomenti Studio Legale
	Japan	Anderson Mōri & Tomotsune
	Luxembourg	Arendt & Medernach
	Malaysia	Lee Hishammuddin Allen & Gledhill
	Netherlands	De Brauw Blackstone Westbroek
	Nigeria	Ikeyi Shittu & Co
	Norway	KPMG Law
	Portugal	Durham Agrellos
	Singapore	Drew & Napier LLC
	Switzerland	Bär & Karrer
	Taiwan	Chien Yeh Law Offices
	Ukraine	GOLAW
	United Arab Emirates	Wasel & Wasel
	United Kingdom	Macfarlanes LLP