

Tax Controversy 2022

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Tax Controversy

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Richard Jeens

Slaughter and May

Lexology Getting The Deal Through is delighted to publish the ninth edition of *Tax Controversy*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union, Germany, Luxembourg and Ukraine.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.



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OVERVIEW

Legislation

1 | What is the relevant legislation relating to tax administration and controversies? Other than 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 VAT, 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 recently established 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, 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 which are available to the public as a result of the Freedom of Information Act 2014.

Relevant authority

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

Revenue is responsible for administration of the government's tax policies. Revenue was established by Government Order in 1923 and there are currently 110 Revenue offices countrywide. 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. During 2018, the organisational structure of Revenue was realigned from a regional

division basis to one that is based on a nationally segmented taxpayer base. The following divisions now exist within Revenue:

- 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 EU, as well as working with other state agencies in cross-departmental initiatives.

ENFORCEMENT

Compliance with tax laws

3 | How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

In Ireland, businesses and individuals are required to self-assess their tax liability and file a return with the Office of the Revenue Commissioners (Revenue). They assess their tax liability over a certain period, known as the chargeable 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 (ie, 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 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 may undertake a non-audit compliance intervention, which does not have the same level of formality as an audit or investigation, and may be in the form of an unannounced visit, a request for a business to undertake a self-review of tax liability or a pursuit of returns from non-filers. Revenue may also undertake a formal audit, which 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. Lastly, Revenue can undertake a formal investigation of a taxpayer's affairs where it believes that serious tax evasion may have occurred. Such an investigation may result in criminal prosecution.

Revenue assessments can be raised within four years of the end of the chargeable period for 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.

Types of taxpayer

4 | Are different types of taxpayers subject to different reporting requirements? Can they be subjected to different types of review?

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 are required to submit their own individual return on a self-assessment basis, in the same manner as a company submits a corporation tax return. Generally, 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: for example, taxpayers who pay tax through the PAYE system. Furthermore, 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.

Requesting information

5 | 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. Such an officer may request a person who has information relating to such tax liability to provide information and explanations relating to the liability, and to produce any relevant records or property. They can also search the premises for any such 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.

Available agency action

6 | What actions may the agencies 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

7 | 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 the 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 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.

Limitation period for reviews

8 | What limitation period applies to the review of tax returns?

Where a chargeable person has delivered a return containing a full and true disclosure of all material information for a chargeable period in which the return is filed, Revenue may not make an assessment or an amendment to an assessment after the end of four years commencing at the end of the chargeable period in which the return is filed.

Unless and until a full and true return has been filed, the four-year time limit does not begin to run. A Revenue assessment on a person other than a chargeable person cannot be made any later than four years after the chargeable period to which the assessment relates.

Revenue is not bound by the four-year look-back period for the raising or amending of assessments in cases of fraud or neglect on the taxpayer's behalf.

Alternative dispute resolution

9 | Describe any alternative dispute resolution (ADR) or settlement options 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. It is understood that, particularly with regard to cases that were under appeal prior to the formation of the new TAC and are governed by transitional rules, Revenue will take a pragmatic and commercial view in seeking to negotiate a settlement with taxpayers relating to the alleged liability.

Generally, the Code of Practice for Revenue Audit and Compliance Intervention states that the use of appropriate monetary settlement is consistent with the efficient management of the tax system and it has an important role in Revenue's compliance programmes.

Collecting overdue payments

10 | 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 an exemplary 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.

Penalties

11 | 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.

Furthermore, Revenue may impose tax-geared penalties for specific defaults. In a case where a penalty arises, the amount of the penalty is generally computed by Revenue, agreed with the taxpayer and paid. If the taxpayer does not agree with the computation, it is a matter for a court to determine whether the taxpayer is liable.

12 | How are penalties calculated?

The calculation depends on a classification of the default into categories; that is, whether the action that gave rise to the liability was careless or deliberate behaviour and whether it was with or without significant consequences. The level of disclosure made by a taxpayer is also considered. Qualifying disclosure is defined as disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty.

The penalty amount differs depending on whether the disclosure was the first, second or third disclosure made by the taxpayer in that category. Higher penalty rates arise when there is deliberate behaviour and with no qualifying disclosure. Cooperation with Revenue also affects the rate where there has been no disclosure.

The penalty also varies depending on whether the qualifying disclosure was prompted or unprompted.

13 | What defences are available if penalties are imposed?

Taxpayers are responsible for the filing and payment of their own taxes, even where filed on their behalf by a professional adviser. The TCA applies to self-assessments made by another person acting under the taxpayer's authority as if it was made by the taxpayer. As the penalty calculation rules take into account the extent to which the taxpayer's behaviour was careless or deliberate and the level of cooperation, the taxpayer who was unaware of non-compliance through carelessness and later cooperates with Revenue in assessment of the correct liability would likely incur a lesser penalty.

Collecting interest

14 | 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. Interest is treated as an increase in tax due for the accounting period in question. The rate of interest is determined by the relevant section in the TCA.

Criminal consequences

15 | Are there criminal consequences that can arise as a result of a tax review? 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.

Enforcement record

16 | 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.

THIRD PARTIES AND OTHER AUTHORITIES

Cooperation with other authorities

17 | Can a tax authority involve or investigate 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.

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

In practice, Revenue works with a number of other authorities within Ireland in carrying out its functions, including An Garda Síochána (the Irish police force), the National Employment Rights Authority and the Department of Social Protection.

Revenue cooperates with multiple foreign tax authorities. Ireland has entered into a number of double taxation treaties with other jurisdictions. In addition to Ireland's treaty network, Ireland has entered into tax information exchange agreements (TIEAs) with many other jurisdictions, under which Revenue cooperates with foreign authorities in the exchange of tax information. Ireland's TIEAs tend to follow the

OECD model for TIEAs. Ireland has also signed up to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides for information exchange to combat cross-border tax avoidance and evasion. Revenue has information exchange obligations arising from Ireland's membership of the EU and the OECD, both of which involve automatic exchange of information relating to cross-border tax rulings and advance pricing agreements.

SPECIAL PROCEDURES

Voluntary disclosure and amnesties

19 | 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.

20 | 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 (TCA) and the Revenue's Code of Practice for Revenue Audit and other Compliance Interventions (2017), 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 in accordance with section 1086 TCA.

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 applies in circumstances where a notification of a Revenue audit has issued from Revenue but before the examination of the books and records or other documents has commenced. In contrast, an unprompted qualifying disclosure is a disclosure letter submitted in the absence of any communication from Revenue. In practice, the level of the penalty will depend on whether the disclosure is prompted or unprompted, with unprompted disclosures attracting lower penalties. Another criterion in the level of the penalty is the degree of cooperation that the taxpayer has provided in dealings with Revenue.

RIGHTS OF TAXPAYERS

Rules protecting taxpayers

21 | What rules are in place to protect taxpayers?

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.

Requesting information

22 | 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 protection 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.

Tax authority governance

23 | 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 as outlined in the following questions. Likewise, actions of the Revenue may be open to judicial review directly before the High Court in certain circumstances.

COURT ACTIONS

Competent courts

24 | Which courts have jurisdiction to hear tax disputes?

In Ireland, the High Court, Court of Appeal and Supreme Court have appeal jurisdiction to hear appeals on a point of law from determinations of the Tax Appeals Commission (TAC). 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 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 legislation concerned is the Finance (Tax Appeals) Act 2015 and the Taxes Consolidation Act 1997. The TAC currently comprises two appeal commissioners appointed by the Minister of Finance, who have a renewable fixed term of seven years in office, together with staff who support the appeal commissioners in their duties. In addition, where certain actions of the 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.

Lodging a claim

25 | How can tax disputes be brought before the courts?

The taxpayer must submit a written notice of appeal to the TAC. 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. A taxpayer will have 30 days to appeal a decision or assessment made by Revenue. There is no minimum threshold value of an appeal stated in the rules of procedure.

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 or not the appeal should be accepted.

A decision on whether or not 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. Such 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.

Combination of claims

26 | 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 on application to have all cases except one stayed for the duration of the hearing of the single appeal case and can then apply the determination to each appeal case on the same matter.

Pre-claim payments

27 | 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, then it will be due and payable one month from the date of the determination of the appeal.

Cost recovery

28 | 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.

Third-party funding

29 | 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 recently 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.

Court decision maker

30 | 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. At present, there are two appeal commissioners; both of whom have, prior to appointment, acted as practising barristers. 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.

Time frames

31 | What are the usual time frames for tax trials?

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 will normally 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.

Disclosure requirements

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

The TAC can request that the appellant and the 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.

Permitted evidence

33 | What evidence is permitted in a tax trial?

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 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.

Permitted representation

34 | 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 such 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 with regard to 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.

Publicity of proceedings

35 | Are tax trial proceedings public?

The taxpayer can opt for an appeal hearing to be heard in camera, but the default position is that every hearing will be held in public unless

specifically requested otherwise, either at the statement of case stage, or within 14 days of receiving notice of the time and place of the hearing. Appeal commissioners may also direct that an appeal or part of an appeal be held in camera if deemed necessary. Determinations are published within 90 days of the decision with the name and any personal details of the taxpayer redacted.

Burden of proof

36 | Who has the burden of proof in a tax trial?

The burden 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.

Case management process

37 | Describe the case management process for a tax trial.

The Finance (Tax Appeals) Act 2015 includes a number of 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 such 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. 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 are in agreement and the areas in which they differ.

Appeal

38 | 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 21 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. An appeal route that previously lay to the Circuit Court for a full rehearing is being discontinued.

UPDATE AND TRENDS

Key developments of the past year

- 39 | 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 2020 Annual Report in April 2021. Unsurprisingly, the impact of the covid-19 pandemic is addressed before the performance review of 2020. In recognising the challenges faced by many businesses, Revenue has committed to work with viable businesses experiencing tax payment and trading difficulties.

Otherwise, Revenue noted strong levels of timely, voluntary compliance across all tax heads. Timely compliance rates were over 97 per cent for large and medium-sized cases and 96 per cent in all other cases. In 2020, Revenue completed 595,000 compliance interventions, yielding €487 million in tax, interest and penalties. Revenue settled 104 tax avoidance cases, yielding €18 million in tax, interest and penalties.

Revenue has reiterated its commitment to protecting Exchequer funds and supporting voluntary compliance by confronted non-compliance. The Annual Report recognises the external challenges presented by the covid-19 crisis, Brexit and the evolving international tax agenda.

In relation to audit and enforcement, there continues to be a focus on risk-based auditing and the use of technology. There is an express commitment to maximising the use of data and the deployment of analytics and risk-assessment approaches to identify and effectively manage compliance risk. There is extensive use of third-party information, provided to Revenue in accordance with statutory requirements, by pre-populating tax returns, refining risk systems and developing analytical tools to conduct sectoral risk assessments and detect tax and duty evasion.

The Tax Appeals Commission (TAC) also published its 2020 Annual Report in April 2021 which outlines the challenges posed by the pandemic and the success in the transition to remote hearings to ensure that taxpayers had access to their right of appeal. The Annual Report noted that 1,392 appeals were closed in 2020 with the number of ongoing appeals currently 3,021. The structure of the TAC also changed in 2020 with the first inaugural chairperson being appointed in June 2020.

Coronavirus

- 40 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

On 24 March 2020, the government announced a range of measures to provide financial support to businesses and workers affected by the covid-19 pandemic. More specifically, Revenue has sought to proactively address situations where taxpayers are experiencing tax payment problems. Since then, Revenue has taken a range of actions to assist businesses experiencing cash flow and trading difficulties, including suspending all debt collection and the charging of interest on late payment for the 2020 VAT and payroll withholding periods. The deferred payments, which amounted to €2.3 billion as of 31 March 2021, have been a vital liquidity support to both small and medium-sized enterprises (given automatically) and larger businesses (on request)

that are severely impacted by pandemic. The introduction of the Covid Restrictions Support Scheme announced in Budget 2021 has resulted in payments of €423 million paid to 22,000 businesses as of the end of the first quarter of 2021.

In 2020, Revenue introduced the debt warehouse scheme that allows debts associated with the pandemic to be deferred or warehoused while a business was unable to trade or was subject to restricted trading because of covid-19-related health restrictions. Under the scheme, unpaid VAT and PAYE debts arising from the pandemic will be warehoused for a period of 12 months after a business resumes trading in accordance with the Living with Covid-19 plan. The period covered by the scheme is the period in which a business was unable to trade due to covid-19 trading restrictions until 31 December 2021. There will be no collection of any of the debt in question during this period. Interest shall apply at 0 per cent initially to the warehoused debt during period 1 ending on 31 December 2021 and period 2 from 1 January 2022 to 31 December 2022. The rate of interest shall increase to 3 per cent on commencement of period 3 from January 2023 to the date of repayment. Revenue has indicated that traders utilising the debt warehousing scheme should contact Revenue with their repayment plan for such warehoused debt before 31 December 2022. To avail of the scheme, the tax debt will have to be quantified by the business through the filing of all relevant returns for the restricted trading phase and all taxes falling outside of the debt warehouse scheme must be paid. The government has also introduced legislation that expands the scope of the debt warehousing scheme to include the recovery of any overpayment of the Temporary Wage Subsidy and Employment Wage Subsidy Scheme.

Separately, Revenue has indicated in the 2020 Annual Report that its debt management programmes including collection and enforcement activity are to resume on an incremental basis during the second quarter of 2021 depending on the status of covid-19 restrictions.

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