

Society of Trust And Estate Practitioners, Seminar, 4th February 2016

Update on Tax Appeals following the enactment of Finance (Tax Appeals) Act 2015

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Background

The tax appeal system has been examined over the years and a number of reports and tribunals have made recommendations including the Law Reform Commission and the Commission on Taxation. The long-awaited reform of the tax appeals system culminated on last Christmas Day with the signing into law of the Finance (Tax Appeals) Act 2015. The Act is the product of a public consultation process involving stakeholders that provides for reform of the role, functions and structure of the Office of the Appeal Commissioner and the tax appeals system. The overall objective of the Act was to ensure an enhanced and cost-effective appeal mechanism for tax cases while providing transparency and increased certainty for taxpayers.

The purpose of this Seminar is to introduce the new Tax Appeals Commission and the framework within which tax appeals will now be processed, adjudicated and determined.

The Appeal Commissioners

The Appeal Commissioners are responsible for carrying out the statutory duties assigned to them under the Taxes Consolidation Act 1997 principally the hearing of appeals by taxpayers against decisions of the Revenue Commissioners concerning taxes and duties and most appeals relate to the quantum of the appellant's tax liability. The Appeal Commissioners are independent – as appropriate to an administration tribunal – in carrying out their duties. They play a key role in the operation of a fair and efficient taxation system.

Part 2 of the Act contains provisions for the establishment of a Tax Appeals Commission. This is a new independent statutory body to replace the Appeal Commissioners - its members will still be known as Appeal Commissioners. The Act gives an independent legal basis for the Tax Appeals Commission. The Act also provides for the appointment of Appeal Commissioners for a fixed term of 7 years (subject to one renewal) pursuant to a Public Appointments Process. There are additional provisions concerning inter alia the appointment of temporary commissioners, cessation and removal of commissioners.

In 2015, Commissioners John O'Callaghan and Ronan Kelly, who have overseen the workings of the Office for the past two decades retired. Two new

Commissioners have been appointed Mr Mark O'Mahony and Ms Lorna Gallagher under the new public appointments process.

Processing appeals

In a fundamental administrative change and reflecting the new independent basis of the Office, all tax appeals will be notified and processed by the Tax Appeals Commission. This means that for the first time the taxpayer will notify the Commission directly of an appeal and it will be a matter for the Commission rather than the Revenue to decide whether an appeal is valid. This ends the current requirement to notify the Revenue Commissioners of an intention to appeal a tax assessment – through the relevant inspector of taxes – who then decided whether the appeal was valid and acted as the statutory conduit for the listing of the appeal and other steps in the appeal. It is self-evident that this is more robust so for example it is the Appeal Commissioners rather than the Revenue Commissioners – the respondent to every appeal – that will now control the processing of an appeal.

Of course, the timely and effective processing of appeals will create significant resource requirements for the Office – the significance of which is obvious when one considers that currently, a very large proportion of the appeals notified to the Revenue Commissioners never proceed to hearing for example because they settle. The Act envisages that technology will play a big part in the processing of appeals and ultimately it is likely that there will be some form of online appeals notification and electronic case management systems.

Enhanced functions

The existing functions of the Tax Appeals Commission will be retained and enhanced. The overriding statutory function of the Commission is to secure the processing, adjudication and determination of appeals in a timely and effective manner and guided by the statutory imperative that their functions will be performed in a manner that has regard to the need for proceedings before the Commissioners – (a) to be accessible and fair, and (b) to be conducted as expeditiously as possible. Any procedures adopted by the Commission must be flexible reflecting the context in which the forum operates in circumstances where the Commission adjudicates on the spectrum of tax appeals.

Case management powers

The new enhanced functions include pre-hearing case management powers. There is statutory provision for pre-hearing directions in relation to the conduct of an appeal including:

- Requiring a party to provide documents, statements, accounts, returns, computations, explanations, particulars records, certificates, declarations, schedules and other items or information they consider relevant to the adjudication of the matter under appeals.

- Consolidating or hearing together two or more appeals raising common or related issues.
- Staying proceedings
- Holding a case management conference
- Adjourning a hearing
- And extending time within which a direction must be complied with.

It is a statutory requirement that the procedures adopted by the Commission will be informal, flexible and expeditious.

There are new provisions too for a statement of case and an outline of argument to be provided in advance of the hearing. In addition, there are provisions for a case management conference, settlement and staying proceedings. Entirely new is the power for the summary disposal of appeals – either by way of dismissal or paper-based determinations (similar to the new rules in the Supreme Court for the admission of cases). It seems that these provisions may have only limited impact when considered in the context of fair procedures and the lack of incentive to taxpayers to move away from an oral hearing.

Public hearings?

Traditionally, tax appeals are heard ‘in-camera’ in circumstances where it has been considered that appeals in public would act as a deterrent to a taxpayer particularly in a small country. While the Act now provides that all tax appeals will be heard in public, that general provision is very significantly circumscribed by a requirement for a hearing ‘in-camera’ if so required by the taxpayer and a power to have the hearing ‘in-camera’ for reasons including public policy and the interests of justice. In practical terms, this means the ‘in-camera’ rule is substantially retained and this reflects the political sensitivity around this particular issue as it was one of the most controversial areas in the consultation process.

Determinations

Once an appeal has been heard, the Appeal Commissioners deliver a determination. To date, this could be either orally or in writing. The Appeal Commissioners are now required to issue a written determination (albeit they may still deliver the determination orally at the conclusion of an appeal.) The Act permits the Appeal Commissioners to invoke the doctrine of precedent in respect of common or related issues.

Very welcome is the introduction of a mandatory requirement for the publication within a short time-frame of all determinations which will be redacted as appropriate to protect the confidentiality of the Taxpayers. Currently, there is provision for publication of determinations, but only a small number of determinations have been published – 35 determinations have been published on the website in the past fifteen years.

Right of appeal to the Circuit Court

Up to now, a taxpayer (but not the Revenue other than in limited cases such as under the Capital Acquisitions Tax Act) had the right to an appeal by way of *re-hearing* to the Circuit Court from an unfavorable determination of the Appeal Commissioners – a second bite at the cherry in effect – in addition to a right of appeal to the High Court on a point of law by way of case stated. What was broadly the taxpayers' right of appeal to the Circuit Court has been removed from the new tax appeals process. The alternative would have been to retain the right of appeal with perhaps an extension of that right of appeal to the Revenue in all tax appeals. This was probably the most controversial change introduced in the Act.

Case stated procedure

The Taxpayer and the Revenue has the right of appeal on a point of law from a determination of the Appeal Commissioners to the High Court. This right of appeal is retained. However, the responsibility preparing the case-stated now rests with the Appeal Commissioner with input from both parties to the Appeal and it must be prepared within a very short time-frame. This is a welcome change to address what is probably one of the main sources of delay in the present system.

For more information:

- Finance (Tax Appeals) Act 2015
- Law Reform Commission, Report on a Fiscal Prosecutor and a Revenue Court (LRC 72-2004), Chapter 7.
- Duggan and McGuinness, The Finance (Tax Appeals) Bill 2015, Irish Tax Review, November 2015.