

[40.00.00] Transition to the reformed tax and duty appeals process

1. Introduction

Following a public consultation on the reform of the tax and duty appeals process carried out by the Department of Finance, the Finance (Tax Appeals) Act was enacted on 25 December 2015. The Act contains wide-ranging provisions designed to improve the transparency and efficiency of the appeals process and to ensure the independence of the newly established Tax Appeals Commission (TAC). While the Act has been enacted, it does not come into operation until the Minister for Finance makes a Commencement Order. Until this happens, the current appeal procedures will continue to apply.

A separate development to the reform of the appeals process is the recent appointment by the Minister for Finance of two new Appeal Commissioners, Mark O'Mahony and Lorna Gallagher, following the retirement of both long-serving Appeal Commissioners, John O'Callaghan and Ronan Kelly.

2. Continuation of current appeal procedures

Taxpayers who wish to exercise their right of appeal against Revenue assessments and decisions are currently required to submit their notice of appeal to Revenue in the first instance. One of the more important measures to strengthen the independence of the new TAC will be the requirement for appeals to be submitted directly to the TAC instead of through Revenue.

Following the enactment of the Finance (Tax Appeals) Act 2015, some taxpayers/agents have mistakenly assumed that notices of appeal should be submitted directly to the TAC. Pending the making of the necessary Commencement Order for the Act, notices of appeal should continue to be submitted directly to Revenue. In the meantime, the TAC will refer any appeals that are submitted directly to it to Revenue for processing in the usual way. **Any delay arising from the requirement to transfer such appeals to Revenue is not to be taken into account when considering whether an appeal was made within the statutory time limit for making the particular appeal.**

Pending further instructions, staff should continue to input "stop 16s" against disputed liabilities, to suspend collection and enforcement action, and to input the required details on the appropriate appeals dashboard. They should also continue to refer suitable cases to the TAC (using the existing form AH1) to arrange hearings and continue to refer cases for which Counsel is being sought to Revenue's Appeals Committee.

Any appeals that Revenue has already referred to the TAC for a hearing will continue to be dealt with in line with the current procedures pending the commencement of the revised procedures.

3. Next steps

The more important and immediate next steps in the transition to the new appeals process are described below.

3.1 Notification of appeals to Revenue

Following the commencement of the revised procedures, taxpayers/agents will submit notices of appeal directly to the TAC, which will then seek confirmation from Revenue that the particular appeal is a valid appeal; for example, that there is a right of appeal against the particular matter that is disputed and that any pre-conditions for an appeal have been met, such as the filing of a return and the payment of any self-assessed tax liability. A stop 16, if required, will be input against disputed liabilities.

The management of those aspects of the appeals process for which Revenue will be responsible will be incorporated into Revenue's case management system (RCM). However, as a functioning appeals case management module in RCM will take several months to implement, interim 'manual' arrangements will be put in place and will be communicated to staff in due course.

3.2 Treatment of existing appeals

The Finance (Tax Appeals) Act 2015 (section 31) provides for the treatment of appeals that have been submitted to Revenue but that have not yet been referred to the TAC to arrange hearings when the Act is commenced. Revenue will be required to refer such appeals to the TAC but, before doing so, must give appellants an opportunity to settle the matter under appeal by agreement if they so wish. Revenue will write to appellants/agents seeking their instructions in this regard, i.e. whether they wish to try to settle the matter with Revenue or to have the appeal referred to the TAC for determination. This process will begin when the Act is commenced. A standard letter is being prepared for this purpose and will be circulated to staff when ready.

3.3 Tax Appeals Commission: rules of procedure

The Finance (Tax Appeals) Act 2015 (section 6) gives the TAC discretion about adopting its own rules of procedure which, when adopted, will have to be published. Revenue understands that the TAC is currently drawing up its procedures and will publish these on its website when the Act is commenced. Revenue will then examine the TAC's procedures to identify and address the potential implications for our participation in the appeals process.

4. Further instructions

Further instructions will be issued to staff when the Finance (Tax Appeals) Act 2015 is commenced by the Minister for Finance. The timing of commencement is at the discretion of the Minister.

The current Appeals Manual will continue to apply until further notice.