

# **Tax & Duty Appeals Manual**

## **IMPORTANT MESSAGE FOR USERS OF THIS MANUAL**

On 21 March 2016, the Finance (Tax Appeals) Act 2015 came into operation and the new Tax Appeals Commission was established. This Act gives effect to a revised tax appeals process. A new Tax and Duty Appeals Manual, published in the 'Appeals' folder of the Tax and Duty Manuals (TDM) instead of the 'IncomeTax CapitalGainsTax CorporationTax' folder, will replace this Tax and Duty Appeals Manual. It will be populated incrementally as the new appeals process gets underway. Relevant material from this manual that has not been made redundant by the changes made to the appeals process will be incorporated into the new manual. While some of the material in this manual will continue to be relevant, depending on the type of material and when an appeal is made, staff should consult the new manual in conjunction with this manual to safeguard against relying on material that is no longer relevant.

**Tax and Duty Appeals Committee  
Office of the Revenue  
Commissioners**

***Revised January 2017***

## **Preamble**

### **Tax & Duty Appeals**

There are separate mechanisms in place for customers to:

- (a) lodge a CUSTOMER SERVICE complaint about the standard of service received from Revenue staff, whether by phone, letter, fax, e-mail or as a caller at one of our public offices;
- (b) request an INTERNAL REVIEW in relation to any aspect of the way in which their tax and duty affairs have been handled [this is covered in detail in Statement of Practice ***SP-GEN/2/99 Internal Review Procedures*** (Revised January 2005)]; or
- (c) lodge an APPEAL under statutory tax and duty provisions.

Externally, an individual may -

- (i) submit a complaint to the Office of the Ombudsman which examines complaints about the administrative actions of Government Departments and Offices, including the Office of the Revenue Commissioners;
- (ii) submit a complaint to the Equality Tribunal on the grounds of discrimination on the basis of any of the grounds - Gender, Marital status, Family status, Sexual orientation, Religious belief, Age, Disability, Race, Colour, Nationality, Ethnic or National origins and Membership of the Traveller Community - outlawed by the Equal Status Acts; or
- (iii) seek judicial review in the High Court against Revenue practices and procedures or that some aspect of tax or duty legislation is unconstitutional.

This Manual refers to (c) above [although references to (i), (ii) and (iii) above can be found in Chapters 28, 30 and 32].

Tax and duty legislation provides for a right of appeal against a variety of matters including assessments, determinations, decisions, refusals, etc. arising from Revenue's interpretation of such legislation.

It is important that Revenue officers are -

- (a) familiar with
  - ⇒ terms and phrases such as 'assessment', estimated assessment; 'estimate', 'determination', 'decision', etc.;
  - ⇒ the processes, practices and procedures relating to appeals.
- (b) able to identify
  - ⇒ whether or not an appeal actually exists;
  - ⇒ able to identify the 'point at issue' in an appeal case.
- (c) are aware of the supports available when dealing with tax and duty appeals.

This Manual has, therefore, been prepared -

- (a) with the view to assisting Revenue officers in dealing with appeals; and
- (b) for use as a training aid by training officers.

## **Table of Contents**

<b>Preamble</b>	<b>2</b>
<b>PART A</b>	<b>15</b>
<b>GENERAL APPEAL PROCEDURES</b>	<b>15</b>
<b>Chapter 0</b>	<b>16</b>
<b>Chapter 1</b>	<b>16</b>
<b>Appeal Matters – Roles of Various Parties</b>	<b>16</b>
1.1 Role of Districts / Branches	16
1.2 Role of District/Branch Managers	16
1.3 Role of Regional & Divisional Offices	17
1.4 Role of Revenue Legislation Services (RLS) Divisions	17
1.5 Role of Revenue’s Appeals Committee (see also Chapter 12)	18
1.6 Role of the Office of the Revenue Solicitor	19
1.7 Role of Counsel (barrister)	19
1.8 Role of stenographer	19
1.9 Role of the Tax Appeal Commissioners	19
<b>Chapter 2</b>	<b>21</b>
<b>Tax &amp; Duty</b>	<b>21</b>
<b>Appeals - Introduction</b>	<b>21</b>
2.1 Overview	21
2.2 Overview of Tax appeals	22
2.3 Quantum appeals	23
2.4 Technical appeal (sometimes also known as an argument appeal)	24
<b>Chapter 3</b>	<b>25</b>
<b>Identifying the point at issue</b>	<b>25</b>
3.1 Overview	25
3.2 Useful exercise to identify the point at issue [Fact v Law]	25
<b>Chapter 4</b>	<b>26</b>
<b>Does a tax or duty appeal exist?</b>	<b>26</b>
4.1 Overview	26
4.2 Identify whether an appeal exists	26
4.2.1 Identify what has issued from Revenue	26
4.2.2 Identify whether a valid appeal exists	27

4.3 Items not considered to be an appeal	27
<b>Chapter 5</b>	<b>28</b>
<b>Applications to Appeal Commissioners versus Appeals to the Appeal Commissioners</b>	<b>28</b>
5.1 Background	28
5.2 Relevance	28
<b>Chapter 6</b>	<b>29</b>
<b>Grounds of appeal</b>	<b>29</b>
6.1 Overview	29
6.2 Practice & procedures re grounds of appeal	29
6.3 Summary of requirement for grounds of appeal to be specified	30
6.3.1 Re appeals to which the Income Tax Self-Assessment provisions apply	30
6.3.2 Re appeals in all other cases	30
6.4 General Rule	30
<b>Chapter 7</b>	<b>31</b>
<b>Refusal to allow an appeal</b>	<b>31</b>
7.1 Background	31
7.2 Refusal to accept an appeal	31
7.3 Impact of Par. 7.2 above on other taxes and duties	31
7.4 Considerations re a decision to refuse to allow an appeal	32
<b>Chapter 8</b>	<b>33</b>
<b>Time limits / Late appeals</b>	<b>33</b>
8.1 Procedure re time limits for appeals	33
8.2 Time limits - overview	33
8.3 Posting a notice of appeal by registered post prior to the time limit ending but received after the time limit	33
8.4 Ambiguity as regards time limit in self-assessment cases	33
8.5 Late appeals - overview	33
8.6 Procedures to apply where a late appeal is submitted within 12 months of the notice of assessment [Section 933(7)(c) TCA 1997] and the relevant tax in the notice of assessment is either paid or, if not paid, is not the subject of enforcement action	34
8.6.1 Grounds for admittance of a late appeal	34
8.6.2 If admitted	34
8.6.3 If refused [N.B. – See also Chapter 7 re refusal to accept an appeal]	34
8.7 A late appeal submitted within 12 months of the notice of assessment [Section 933(7)(c) TCA 1997] and the relevant tax in the notice of assessment is the subject of enforcement action	35
8.8 A late appeal submitted more than 12 months after the issue of the notice of assessment [Section 933(7)(d) TCA 1997]	35
8.9 Concession re hardship cases	36
<b>Chapter 9</b>	<b>37</b>

<b>Action in Districts following receipt of an appeal</b>	<b>37</b>
9.1 Amending assessments	37
9.2 Action required on receipt of the notice of appeal	37
9.3 Follow up action	37
<b>Chapter 10</b>	<b>38</b>
<b>Methods of disposal of appeals</b>	<b>38</b>
10.1 Assistance in dealing with appeals / counsel's opinion in advance of the appeal hearing	38
10.2 Disposal of appeal by agreement	38
10.2.1 Income Tax / Corporation Tax / Capital Gains Tax	38
10.2.2 Other tax and duty appeals	38
10.3 Appellant decides not to proceed with his/her appeal (withdrawal of appeal)	38
10.4 No agreement/no withdrawal of appeal = Determination by Appeal Commissioner	39
<b>Chapter 11</b>	<b>40</b>
<b>Action Prior to an Appeal Hearing before the Appeal Commissioners</b>	<b>40</b>
11.1 Seeking assistance with an appeal	40
11.2 Counsel's Opinion in advance of the appeal hearing	40
11.3 Revenue Appeals Committee meeting and approval of counsel to support the Revenue officer	40
11.4 Case law	40
11.5 Database of opinions in the Office of the Revenue Solicitor	41
11.6 Text books	41
11.7 Getting the case listed for hearing / Form AH 1	41
11.8 Pre-hearing written submissions to the Appeal Commissioners	42
<b>Chapter 12</b>	<b>44</b>
<b>Role and Purpose of Revenue's Appeals Committee</b>	<b>44</b>
<b>Submission of Cases to Revenue's Appeals Committee</b>	<b>44</b>
12.1 Role of the Committee	44
12.2 Membership of the Committee	44
12.3 Meetings of the Committee	44
12.4 Cases to be submitted to the Appeals Committee	45
12.4.1 Importance of early submission of cases to the Committee	45
12.4.2 Cases to be submitted to the Appeals Committee	46
Cases to be considered by the Appeals Committee	46
12.4.3 Cases not submitted to the Committee before hearing	46
12.5 Covering report with cases submitted to the Appeals Committee	46
12.6 Procedures of the Appeals Committee	46
12.7 Decisions of the Appeals Committee in cases referred	46
12.7.1 Cases to be argued at Appeal Commissioners or Circuit Court	46
12.7.2 Dissatisfaction expressed by Revenue (decision by Appeal Commissioners/Circuit Court Judge in favour of taxpayer)	46
12.7.3 Dissatisfaction expressed by appellant (decision by Appeal Commissioners/Circuit Court Judge in favour of Revenue)	47

12.7.4 High Court decision NOT in Revenue's favour	47
12.8 Procedure after engagement of counsel has been approved by the Committee	47
12.9 Procedure where Committee decides not to approve engagement of counsel	47
12.10 Communication of decisions of the Appeals Committee	47
12.11 Progress reports to the Appeals Committee	48
12.12 Report to the Revenue Board	48
<b>Chapter 13</b>	<b>49</b>
<b>The Appeal Hearing</b>	<b>49</b>
13.1 Attendance at appeals	49
13.2 Can members of the public attend tax and duty appeal hearings?	49
13.3 Appeal proceedings	49
13.4 Form AS1	50
13.5 Balance of 'proof'	50
13.6 Onus of proof	50
13.7 Protocol [formal/informal]	50
13.8 Witnesses / examination under oath	51
13.9 Precepts	51
13.10 Determination	51
13.11 Failure to attend the appeal hearing	51
13.12 Dismissal of an appeal	52
13.13 Application for an adjournment to the appeal hearing	52
<b>Chapter 14</b>	<b>54</b>
<b>Consequences of outcome of an appeal heard by the Appeal Commissioners</b>	<b>54</b>
14.1 Overview	54
14.2 Request for a re-hearing of the appeal before a Judge of the Circuit Court (CCJ)	54
14.3 Following Appeal Commissioner's determination - No request for a re-hearing before a CCJ	54
14.4 Tax due following an Appeal Commissioner's determination	54
14.5 No request for a re-hearing before a CCJ and no appeal to a higher court	55
14.6 Status of an Appeal Commissioner's decision	55
14.7 Publication of an Appeal Commissioner's decision	55
<b>Chapter 15</b>	<b>56</b>
<b>Option to seek a re-hearing of the appeal before a Circuit Court Judge</b>	<b>56</b>
15.1 Request for a re-hearing of an appeal	56
15.2 Format and time limit for requesting a re-hearing of an appeal	56
15.3 Is the appeal heard before a CCJ an appeal of the Appeal Commissioner's determination?	56
15.4 Getting a case listed for hearing before a CCJ	56
15.5 Format of hearing	56
15.6 Must Revenue have counsel to argue a CCJ appeal?	57

15.7 Agreement before the CCJ hearing	57
15.8 Tax due	57
15.9 Status of a determination of a Judge of the Circuit Court	57
15.10 Dissatisfaction with a determination of a Judge of the Circuit Court	57
<b>Chapter 16</b>	<b>58</b>
<b>Case stated for the opinion of the High Court</b>	<b>58</b>
16.1 Rules of Law / Point of Law / Point of Fact	58
16.2 Findings of Fact	58
16.3 Appellant's or Revenue's request for case to be stated for the opinion of the High Court (Section 941 TCA 1997)	59
16.3.1 Request for a 'case stated' for the opinion of the High Court arising from a determination of the Appeal Commissioners	59
16.3.2 Request for a 'case stated for the opinion of the High Court' arising from a determination of a Circuit Court Judge	59
16.4 Role of the High Court	60
<b>PART B</b>	<b>61</b>
<b>APPEAL PROCEDURES</b>	<b>61</b>
<b>RE SPECIFIC TAXES AND DUTIES</b>	<b>61</b>
<b>Chapter 17</b>	<b>62</b>
<b>Income Tax/ Corporation tax / Capital Gains Tax Appeals</b>	<b>62</b>
<b>TCA 1997 - Lodging an appeal / acceptance of an appeal</b>	<b>62</b>
17.1 Right of appeal	62
17.1.1 Appeals against an assessment	62
17.1.2 Other appeals	62
17.2 Time limits	62
17.2.1 Appeals against an assessment	62
17.2.2 Self-assessment cases	62
17.2.3 Other appeals	62
17.3 To whom is the appeal made?	62
17.4 Notice of appeal against an assessment	62
17.5 Grounds of appeal against an assessment [N.B. See also Chapter 5]	63
17.5.1 Self-assessment cases	63
17.5.2 Non-Self Assessment 'assessment' cases	63
17.5.3 Other cases	63
17.6 Relevance of submission of tax return and tax due for the relevant tax year as regards appeals	63
17.6.1 Self-assessment cases [Section 958 TCA 1997]	63
17.6.1.1 'Normal' assessments	63
17.6.1.2 Estimated assessments	63
17.6.2 Non-self assessment cases	63
17.7 Refusal to accept an appeal	64
<b>Chapter 18</b>	<b>65</b>

<b>Appeals against –</b>	<b>65</b>
18.1 Assessments	65
18.2 PAYE Balancing Statements	65
18.3 Notices	65
18.4 Decisions	65
18.5 Determinations	66
18.5.1 Overview	66
18.5.2 Determination of tax credits / standard rate cut off point	66
18.5.3 A determination contained in a specific provision as regards, for example, the approval or non-approval of a scheme for the purposes of the Tax Acts	67
18.5.4 The general determination as regards determination of claims to exemptions, allowances, deductions and reliefs for repayment of tax [see section 864 and 949 TCA 1997]	67
18.5.5 Are determinations still used?	68
18.5.6 What is the format of a determination where a claim for a repayment of tax is being refused?	68
18.5.7 Scope of Section 949 TCA 1997	68
<b>Chapter 19</b>	<b>70</b>
<b>Relevant Contracts Tax Appeals</b>	<b>70</b>
19.1 Overview	70
19.2 RCT Estimates	70
19.3 Monthly RCT Estimate [Regulation 13 of the Income Tax (Relevant Contracts) Regulations 2000].	70
19.3.1 Issue of a monthly estimate	70
19.3.2 Grounds of Objection to a monthly RCT Estimate [See Chapter 6 re Grounds of appeal]	70
19.3.3 Time limit for a Regulation 13(2) Claim (Objection)	71
19.3.4 Discharge of an RCT Monthly Estimate	71
19.4 Inspector's (yearly) RCT estimate [Regulation 14 of the Income Tax (Relevant Contracts) Regulations 2000].	71
19.4.1 Issue of an Inspector's (yearly) RCT estimate	71
19.4.2 Appeal of an Inspector's (yearly) RCT estimate	71
19.4.3 Grounds of appeals against an Inspector's (yearly) RCT estimate [see also Chapter 6]	71
19.4.4 Time limit for an appeal against an Inspector's (yearly) RCT estimate	71
19.4.5 Procedures re an appeal against an Inspector's (yearly) RCT estimate	71
19.5 Appeals relating to the granting and cancellation of a 'certificate of authorisation' (a Form C2)	72
19.5.1 Overview	72
19.5.2 Grounds of appeal [see also Chapter 6]	72
19.5.2.1 The failure by Revenue to issue a 'certificate of authorisation' (a Form C2) to a person [Section 531(17) TCA 1997]	72
19.5.2.2 The cancellation of a 'certificate of authorisation' (Form C2) [Section 531(17A) TCA 1997]	72
19.5.3 Time limit for appeals	72
19.6 Limits imposed on a 'relevant payments card' [Section 531(17B) TCA 1997]	72
19.6.1 Appeal	72
19.6.2 Time limits for appeals	72
19.7 Procedures	73

<b>Chapter 20</b>	<b>74</b>
-------------------	-----------

<b>Employer PAYE Estimates</b>	<b>74</b>
<b>Re non-operation of PAYE by an employer</b>	<b>74</b>
<b>Procedures re Appeals of Employer PAYE Estimates</b>	<b>74</b>
<b><i>(re non-operation of PAYE by an employer)</i></b>	<b>74</b>
20.1 Overview of PAYE Estimates	74
20.2 Monthly PAYE Estimates	74
20.2.1 Issue of a monthly estimate	74
20.2.2 Claim re a monthly PAYE Estimate	74
20.2.3 Grounds of Claim [see also Chapter 6]	74
20.2.4 Time limit for a Section 989(3) Claim	74
20.2.5 Discharge of a monthly PAYE estimate	74
20.2.6 Treating a claim under Section 989(3) in like manner to an appeal against an income tax assessment	75
20.3 Yearly PAYE Estimate	75
20.3.1 Issue of yearly PAYE estimates	75
20.3.2 Appeal against a yearly PAYE Estimate	75
20.3.3 Grounds of appeal against a yearly PAYE estimate [see also Chapter 5]	75
20.3.4 Treating an appeal under Section 999(2) in like manner to an appeal against an income tax assessment	75
20.3.5 Time limit for an appeal against a yearly PAYE estimate	75
20.3.6 <i>Discharge of a yearly PAYE estimate</i>	76
<b>Chapter 21</b>	<b>77</b>
<b>VAT Appeals</b>	<b>77</b>
21.1 VAT Interpretation Branch, Indirect Taxes Division	77
21.2 Overview of VAT appeals	77
21.3 Applying Income Tax appeals provisions to VAT appeals	79
21.4 Appeals under Section 51, 109, 111 and 119 of the Value-Added Tax Consolidation Act 2010	79
21.4.1 Right of appeal	79
21.4.2 Grounds of appeal [but see also Chapter 6]	79
21.4.3 Time limits [but see also Chapter 8]	79
21.4.4 <i>Section 111 assessments</i>	80
21.5 VAT estimates – Section 110 of the Value-Added Tax Consolidation Act 2010	80
21.5.1 Right of appeal	80
21.5.2 Grounds of appeal [but see also Chapter 6]	80
21.5.3 Time limits [but see also Chapter 8]	80
21.5.4 Amendment of estimate and recovery of VAT	80
21.6 Appeal matters referred to the European Court of Justice	81
<b>Chapter 22</b>	<b>82</b>
<b>Appeal procedure relating to Customs Matters</b>	<b>82</b>
22.1 Who can appeal?	82
22.2 Statutory basis for Customs appeals	82
22.3 What decisions may be appealed?	82
22.4 Overview of Customs appeals	82

22.5 Appeals to the Revenue Commissioners [The 'first stage' appeal]	82
22.5.1 How is an appeal made?	82
22.5.2 Appellant's Notice of Appeal	83
22.5.3 Grounds of appeal [but see also Chapter 6]	83
22.5.4 Time limits: paragraph 4 S.I. 355/1995 [but see also Chapter 8]	83
22.5.5 Refusal to allow an appeal	83
22.5.6 What to do on receipt of a customs appeal	83
22.5.7 Determination of the appeal	84
22.5.8 Time limits under which a DAO must determine an appeal	84
22.5.9 Outcome of a Revenue DAO's decision	84
22.6 Appeal to the Appeal Commissioners [The 'second stage' appeal]	85
22.6.1 Overview	85
22.6.2 Appellant's Notice of Appeal	85
22.6.3 Grounds of appeal [but see also Chapter 6]	85
22.6.4 Time limits: Paragraph 4 S.I. 355/1995 [but see also Chapter 8 re time limits and late appeals and Par. 22.6.6 ]	85
22.6.5 Application of the appeals procedures in the Tax Acts to Customs appeals	85
22.6.6 Late appeals in Customs cases	85
22.6.7 Refusal to allow an appeal	86
22.6.8 Action on receipt of an appeal to the Appeal Commissioner	86
22.6.9 Re the appeal hearing	86
22.6.10 Is there a right of re-hearing of a Customs appeal before a Circuit Court Judge (CCJ)?	87
22.6.11 Dissatisfaction with a determination of the Appeal Commissioners	87
22.7 Assistance with customs appeals	87

## **Chapter 23** **88**

### **Appeals Relating to Excise Matters** **88**

23.1 Statutory basis for Excise appeals	88
23.2 Scope of Excise appeals	88
23.3 Excise matters that may be appealed	88
23.4 Appeals to the Revenue Commissioners – Section 145 FA 2001 (also known as a 'first stage' appeal)	89
23.4.1 Revenue Appeals Officers	89
23.4.2 Consideration of Appeals	89
23.4.3 Appellant's Notice of Appeal	89
23.4.4 Grounds of appeal [but see also Chapter 6]	89
23.4.5 Time limits for Excise appeals under Section 145 FA 2001	89
23.4.6 On receipt of an appeal	89
23.4.7 Consideration of an appeal by the Appeals Officer	89
23.4.8 Time limit for a Revenue Appeals Officer to make a determination	90
23.5 Appeals to the Appeal Commissioners – Section 146 FA 2001 (also known as a 'second stage' appeal)	90
23.5.1 Overview	90
23.5.2 Appellant's Notice of Appeal	90
23.5.3 Grounds of appeal [but see also Chapter 6]	90
23.5.4 Time limits for Excise appeals under Section 146 FA 2001 (see also Chapter 8 and Paragraph 22.6.4 below).	90
23.5.5 Application of the appeals procedures in the Tax Acts to Excise Appeals	90
23.5.6 Late appeals in Excise cases	91
23.5.7 Refusal to allow an appeal	91

23.5.8 Re the appeal hearing	91
23.5.9 Is there a right of re-hearing of an excise appeal before a Circuit Court Judge (CCJ)?	91
23.5.10 Dissatisfaction with a determination of the Appeal Commissioners	91

## **Chapter 24 92**

### **Appeal Procedures relating to Vehicle Registration Tax 92**

24.1 Vehicle Registration Tax	92
24.2 Statutory basis for VRT appeals	92
24.3 Scope of VRT appeals	92
24.4 Appeals to the Revenue Commissioners – Section 145 FA 2001 (also known as a ‘first stage’ appeal)	92
24.4.1 Areas of responsibility	92
24.4.2 Appellant’s Notice of Appeal	93
24.4.3 Grounds of appeal [but see also Chapter 6]	93
24.4.4 Time limits for VRT appeals under Section 145 FA 2001	93
24.4.5 Time limit for a Revenue Appeals Officer to make a determination	94
24.4.6 Action in relevant area of responsibility on receipt of an appeal	94
24.4.7 Action by the relevant Revenue Appeals Officer	94
24.4.8 Informing appellant of determination	94
24.5 Appeals to the Appeal Commissioners – Section 146 FA 2001 (also known as a ‘second stage’ appeal)	94
24.5.1 Overview	94
24.5.2 Appellant’s Notice of Appeal	94
24.5.3 Grounds of appeal [but see also Chapter 6]	95
24.5.4 Time limits for VRT appeals under Section 146 FA 2001 [see also Chapter 6 and Paragraph 24.5.6 below]	95
24.5.5 Application of the appeals procedures in the Tax Acts to VRT appeals	95
24.5.6 Late appeals in VRT cases	95
24.5.7 Refusal to allow an appeal	95
24.5.8 Re the appeal hearing	96
24.5.9 Is there a right of re-hearing of a VRT appeal before a Circuit Court Judge (CCJ)?	96
24.5.10 Dissatisfaction with a determination of the Appeal Commissioners	96

## **Chapter 25 97**

### **Appeal Procedure Relating to Capital Acquisition Tax 97**

25.1 Introduction	97
25.2 CAT appeals in cases other than appeals regarding value of real property (Section 67 CATCA 2003)	97
25.2.1 Right of appeal	97
25.2.2 Notice of Appeal	97
25.2.3 Time limit [see also Chapter 8]	97
25.2.4 Grounds of Appeal	97
25.2.5 Application of appeal provisions of the Taxes Consolidation Act 1997 to CAT appeals	97
25.2.6 Late appeal against a CAT assessment	98
25.2.7 Refusal to accept an appeal against a CAT assessment	98
25.2.8 Re the appeal hearing	98
25.2.9 Decision of the Appeals Commissioners	98
25.3 CAT appeals regarding value of real property (Section 66 CATCA 2003)	98
25.3.1 Overview of CAT appeals regarding value of real property	98

25.3.2 Time limit	99
25.3.3 Appellant limited to grounds of appeal	99
25.3.4 Appeal to the High Court	99
25.3.5 Interaction with Stamp Duty documents re evidence	99

## **Chapter 26** **100**

### **Appeal Procedure Relating to Stamp Duties** **100**

26.1 Introduction	100
26.2 Assessment of Stamp Duty by Revenue (Section 20 of the SDCA 1999)	100
26.3 Overview of Stamp Duty appeals (Section 21 SDCA 1999)	100
26.4 Application of Chapter 1 of Part 40 (Appeals) of the Taxes Consolidation Act 1997 to Stamp Duty appeals	100
26.4 Stamp Duty appeals in cases other than appeals regarding value of real property [Section 21(2) SDCA 1999]	100
26.4.1 Right of Appeal	100
26.4.2 Notice of appeal	100
26.4.3 Grounds of appeal	101
26.4.4 Late appeal against a Stamp Duty assessment [see also Chapter 7]	101
26.4.5 Refusal to accept an appeal against a Stamp Duty appeal	101
26.4.6 Re the appeal hearing	101
26.4.7 Determination of the Appeal Commissioners	101
26.5 Stamp Duty appeals regarding value of real property [Section 21(5) SDCA 1999]	101
26.5.1 Overview of Stamp Duty appeals regarding value of real property	101
26.5.2 Time limit	102
26.5.3 Appellant limited to grounds of appeal	102
26.5.4 Appeal to the High Court	102

## **Chapter 27** **103**

### **Appeals against the refusal by the Collector General to issue a Tax Clearance Certificate** **103**

27.1 Overview	103
27.2 Issue of a Tax Clearance certificate	103
27.3 Refusal to issue a Tax Clearance Certificate	103
27.4 Application to have an application for a tax clearance certificate referred to the Appeal Commissioners	103
27.5 Important matters	104
27.6 Other appeal routes	104

## **PART C** **105**

### **MATTERS OUTSIDE THE NORMAL TAX AND DUTY APPEAL STRUCTURE** **105**

## **Chapter 28** **106**

### **Person claims that a Tax / Duty statute contravenes natural justice** **106**

### **Judicial Review** **106**

28.1 Overview	106
28.2 What is judicial review?	106
28.3 Outcome of judicial review	106
28.4 Legal Manual for Government Departments and Offices: Judicial Review (Compiled by the Office of the Attorney General)	106
28.5 What to do on receipt of judicial review papers from a taxpayer's solicitor	106
<b>Chapter 29</b>	<b>107</b>
<b>Person claims that a tax or duty statute is unconstitutional</b>	<b>107</b>
29.1 Overview	107
29.2 What to do?	108
29.3 Background note re the presumption of constitutionality	108
<b>Chapter 30</b>	<b>109</b>
<b>Person claims that a tax statute contravenes the Equal Status Acts</b>	<b>109</b>
30.1 Overview	109
30.2 What to do	109
30.3 Background note re claims that a tax statute contravenes the Equal Status Acts 2000-2004	109
<b>Chapter 31</b>	<b>110</b>
<b>Person claims that a tax or duty statute contravenes EU Law / Directives</b>	<b>110</b>
31.1 Overview	110
31.2 What to do	110
31.3 EU Directives	110
31.4 What to do where a taxpayer claims that a tax or duty statute contravenes EU law/Directive/Regulation	110
31.5 Legal Manual for Government Departments and Offices: Aspects of European Union Law (Compiled by the Office of the Attorney General)	110
<b>PART D</b>	<b>111</b>
<b>INTERACTION OF TAX AND DUTY APPEALS WITH 'REVIEW' MECHANISMS</b>	<b>111</b>
<b>Chapter 32</b>	<b>111</b>
<b>Interaction of tax and duty appeals with 'review' mechanisms</b>	<b>111</b>
32.1 Can a person lodge a tax or duty appeals and at the same time seek judicial review on the same issue?	111
32.2 Can a person lodge a tax or duty appeal whilst at the same time seek to have an internal review undertaken under <i>Statement of Practice SP-GEN/2/99 Revenue Internal Review Procedures (Revised January 2005)</i> on the same issue?	111
32.3 Can a person lodge a tax or duty appeal whilst at the same time submit a complaint to the Office of the Ombudsman on the same issue?	112
<b>Appendix 1</b>	<b>112</b>

<b>Form AH1</b>	<b>112</b>
<b>Appendix 2</b>	<b>114</b>
<b>Form AS1</b>	<b>114</b>
<b>Appendix 3</b>	<b>116</b>
<b>Sample written submission</b>	<b>116</b>
<b>Appendix 4</b>	<b>118</b>
<b>Report to Appeals Committee - Case Outline</b>	<b>118</b>

# **PART A**

## **GENERAL APPEAL PROCEDURES**

## **Chapter 0**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## **Chapter 1**

### **Appeal Matters – Roles of Various Parties**

#### **1.1 Role of Districts / Branches**

The role of Districts/Branches in appeal matters is to -

- (a) Ensure that appeals are progressed to conclusion in a timely manner;
- (b) Ensure those handling appeal cases are informed on settled interpretation of customs, tax and duty law and practice;
- (c) Ensure the application of the law in line with settled Revenue instructions, interpretations, precedents and practices;
- (d) Ensure there is consultation, as appropriate, with the relevant Revenue Legislation Services (RLS) Division or the Office of the Revenue Solicitor;
- (e) Ensure timely notification of all argument appeals to the relevant RLS Division;
- (f) Ensure relevant cases are brought to the attention of the Appeals Committee (see Par. 1.5) in good time and ensure timely engagement with that Committee in the performance of its role of identifying significant issues in argument appeals; and
- (g) Oversee and co-ordinate appeals in the District /Branch;
- (h) Ensure the presentation of appeals at an appeal hearing before the Appeals Commissioner or before a Circuit Court Judge (see Note).

**Note:** In some instances, the appeal may be co-ordinated and taken by the relevant RLS Division.

Revenue officers may seek the assistance of the RLS Divisions and/or the Office of the Revenue Solicitor when dealing with appeals and may also seek, via Revenue's Appeals Committee, the engagement of Counsel to assist in the appeal.

In particular, officers should consult the relevant RLS Divisions when preparing what is known as the 'written submission' to be made to the Appeal Commissioners in advance of an appeal hearing.

#### **1.2 Role of District/Branch Managers**

District/Branch Managers should -

- (a) Ensure that an appeal tracking system is in place in his/her District to monitor the progress of appeal cases;
- (b) Maintain a register of appeals;
- (c) Be involved closely in: -
  - Cases sent to the Appeals Committee;

- Ensuring a consistently high standard in the preparation and presentation of the Revenue case in appeals; and
  - Monitoring progress of appeal cases at each stage of the appeal process
- (d) Book a suitable venue for the appeal hearing.

### **1.3 Role of Regional & Divisional Offices**

The role of Regional & Divisional Offices is to provide general oversight of the progress of appeals within the Region/Division, to ensure they are brought to a timely conclusion by Districts/Branches.

As part of this process, all Regional/Divisional Offices, including Large Cases Division; the Collector-General's Division and Investigations and Prosecutions Division, are required to report details of all open appeals in their Regions/ Divisions to the Secretary to the Appeals Committee on a quarterly basis (the report will generally be in a standard format but additional detail may be requested in particular cases).

This requirement will also apply to appeals under the artist exemption scheme dealt with in Income and Capital Taxes Division (in these cases reports are required to be submitted to the Secretary to the Appeals Committee by Business Income Tax Branch 2).

[**Note:** The Secretary to the Appeals Committee will inform Regional/Divisional Offices of the details to be included in reports. In as far as possible, information available on open appeals will be extracted from Revenue's IT systems, thereby keeping to a minimum the need for manual reporting of information.].

### **1.4 Role of Revenue Legislation Services (RLS) Divisions**

RLS is the name given to those central Revenue Divisions whose work relates mainly (but not entirely) to policy, drafting and interpretation of tax, duty and excise legislation.

In appeal cases, the relevant RLS Division will, as necessary, support and assist Regions/Districts in the presentation of appeals [in particular, appeals which are likely to be referred to the higher courts] and the argument of cases where the engagement of counsel is not justified.

**Where such support or assistance is required it is likely to be more effective if it is sought at an early stage – where advice in relation to how to approach the case before it ever gets to "appeal" stage may be given.**

To ensure that the full facts are presented and that they can be fully considered by the relevant RLS Division or other area, all requests for advice or assistance should in general:

- Be made in writing
- Be researched as fully as possibly by the Region/District, and,
- Include the Region/District opinion on the issue in dispute.

**Note:** The Appeals Committee Secretary will, where necessary, assist any officer who is unsure as to whom he/she should contact in any RLS Division.

The RLS consists of four Divisions. In turn, each Division has a number of Branches as set out in the Table below –

<b>Revenue Legislation Services [RLS]</b>			
<b>Customs Division</b>	<b>Indirect Taxes Division</b>	<b>Income and Capital Taxes Division [ICTD]</b>	<b>Corporate Business and International Division [CBID]</b>
<b>Branches</b>	<b>Branches</b>	<b>Branches</b>	<b>Branches</b>
<ul style="list-style-type: none"> <li>• CAP &amp; Own Resources</li> <li>• Customs Procedures Branch</li> <li>• International &amp; Trade Security Branch</li> <li>• E-Customs Branch</li> <li>• Strategy &amp; Support Branch</li> <li>• Customs Legislation Consolidation</li> <li>• AEP</li> </ul>	<ul style="list-style-type: none"> <li>• VRT &amp; Divisional Resources</li> <li>• Excises</li> <li>• VAT Policy &amp; Legislation</li> <li>• VAT Interpretation – General</li> <li>• VAT Interpretation – Property &amp; Financial Services</li> <li>• VAT Communications &amp; Appeals</li> </ul>	<ul style="list-style-type: none"> <li>• Personal Income Tax 1</li> <li>• Personal Income Tax 2</li> <li>• Business Income Tax 1</li> <li>• Business Income Tax 2</li> <li>• CGT and CAT</li> <li>• Stamp Duties and Revenue Powers</li> </ul>	<ul style="list-style-type: none"> <li>• Corporation Tax 1</li> <li>• Corporation Tax 2</li> <li>• Incentives and Financial Services 1</li> <li>• Incentives and Financial Services 2</li> <li>• International 1</li> <li>• International 2</li> </ul>

### **RLS Division & Branch Contact Names**

These can be found in the Organisation Chart for each Division & Branch – such charts are located within the 'Corporate Info' folder in REVNET.

## **1.5 Role of Revenue's Appeals Committee (see also Chapter 12)**

- 1.5.1 The role of the Committee is to identify significant issues that might give rise to concern in relation to the quality and standard of Revenue's approach to appeals as well as to oversee and co-ordinate appeals.

Specifically, it is responsible for:

- ⇒ Implementing a consistent and effective approach to the selection and presentation of appeals to the higher courts;
- ⇒ Deciding on whether engagement of counsel should be approved in particular cases;
- ⇒ Ensuring a free flow of information throughout the Organisation regarding cases taken to appeal to the higher courts; and
- ⇒ Monitoring the timely passage of appeals through the appeal process and ensuring appropriate technical input is received from the RLS area.

- 1.5.2 The Appeals Committee also has a role of general oversight of and the reporting to the Board/MAC on the progress of all open appeals dealt with in the Regions/LCD/CGs/IPD. In particular, it will bring to the attention of the Regional /Divisional management and, where relevant, the Board/MAC, trends or operational or policy matters which, in its view, might benefit from further consideration.

The Secretary to the Appeals Committee will prepare a quarterly report for the Board on all open appeals.

[Note: Revenue Districts/Branches are responsible for ensuring that appeals are brought to a timely conclusion – See Paragraph 1.3.]

For further information on the workings of the Appeals Committee, see Chapter 12.

### **1.6 Role of the Office of the Revenue Solicitor**

The role of the Office of the Revenue Solicitor includes the provision of comprehensive legal support services, including legal advice, the conduct of litigation and appeals and the prosecution of criminal offences.

Where Regional/District officers wish to seek the view of the Office of the Revenue Solicitor as regards appeal matters, the general practice is to do so via the relevant RLS Division. The reason for routing requests via the relevant RLS Division is to ensure that the RLS Division is aware of contentious interpretative issues arising at District level (but see Par. 1.7 below re engagement of counsel).

### **1.7 Role of Counsel (barrister)**

The role of Counsel in tax and duty appeals is to -

- (a) Give opinions on various matters;
- (b) Attend consultations;
- (c) Prepare pre-hearing written submissions;
- (d) Assist Revenue in preparing for appeal hearings and acting on behalf of Revenue at appeal hearings; and
- (e) Usually prepare the first draft of a case stated for the opinion of the High Court.

Engagement of, and contact with, Counsel is done only through the Office of the Revenue Solicitor.

It is possible for Revenue staff to request Counsel's opinion on an issue in advance of going to appeal or, indeed, in advance of raising an assessment in what is a potentially contentious and difficult issue. Such request can be made directly to the Office of the Revenue Solicitor but it is preferable if such requests are routed through the relevant RLS Division.

Requests for Counsel to assist a Revenue officer at an appeal hearing must be referred to Revenue's Appeals Committee (see Chapter 12).

### **1.8 Role of stenographer**

The engagement by Revenue of a stenographer to attend appeal hearings is arranged by the Office of the Revenue Solicitor.

In general, in appeal cases involving the Office of the Revenue Solicitor or Counsel, a stenographer is engaged to record the proceedings of the appeal hearing before the Appeals Commissioners or Circuit Court Judge. It is not standard practice to engage a stenographer for High Court appeal hearings.

### **1.9 Role of the Tax Appeal Commissioners**

**Note** – The information below is taken from [the Appeal Commissioners' website](#).

#### ***General Description of the Office of the Appeal Commissioners***

The Appeal Commissioners for the purposes of the Income Tax Acts are appointed by the Minister for Finance under Section 850 of Taxes Consolidation Act, 1997 (previously Section 156 of Income Tax Act, 1967).

The Appeal Commissioners are responsible for carrying out the statutory duties assigned under the Taxes Consolidation Act, 1997 and related legislation, principally the hearing of appeals by taxpayers against decisions of the Revenue Commissioners concerning taxes and duties.

Despite what may be suggested by the name of the Office, the Appeal Commissioners hear appeals relating not only to Income Tax but also to Corporation Tax, Value Added Tax, Capital Gains Tax, Stamp Duties, Capital Acquisitions Taxes (Gift Tax and Inheritance Tax), Residential Property Tax, certain Customs and Excise Duties, Motor Vehicle Registration Tax and sundry other matters arising under the Taxes Consolidation Act, 1997 and related legislation.

***Service Provided by the Office of the Appeal Commissioners and Access to the Service***

The Appeal Commissioners appoint times and places for the hearing of appeals and give notice of such times and places to the Inspector of Taxes who advises the applicant taxpayer in writing of the appeal hearing arrangements.

A taxpayer may represent herself at an appeal hearing or may choose to be represented by a barrister, solicitor, accountant, member of The Institute of Taxation or any other person the Appeal Commissioners may permit.

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

Hearings are somewhat informal within the parameters of fair procedure. The hearing usually begins with the submission of the taxpayer which is followed by that of the Revenue Commissioners and ends with the response of the taxpayer to the submission of the Revenue Commissioners. Witnesses may be called by either side.

Hearings are held in Dublin, Dundalk, Letterkenny, Sligo, Castlebar, Galway, Athlone, Limerick, Tralee, Killarney, Cork, Thurles, Waterford, Wexford, and Kilkenny.

The decisions of the Appeals Commissioners are based on findings of fact made from the evidence presented and interpretation of taxation law. The rules for statutory interpretation are set down by the Supreme Court and the High Court through decided cases. There is no register of precedents as the Tribunal is not a tribunal of record.

The decision or determination of the Appeal Commissioners may be given orally or in writing, at their discretion, either at the conclusion of the hearing or at a later date advised to the parties to the appeal. The reasoning behind the decision of the Appeal Commissioners is explained when the determination is handed down.

## **Chapter 2**

### **Tax & Duty**

Tax & Duty Appeals	2
The role of Districts/Branches in appeal matters is to -	16

#### **Step 1 25**

#### **Step 3 25**

Article 15.4.1. of the Constitution states that -	108
<i>"the Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof".</i>	108
It has long been accepted that statutes enacted after the Constitution came into being in 1937 have the presumption of constitutionality. The presumption of constitutionality appears to be particularly strong in the case of taxation statutes.	108
In the case of <i>Lowth v. Minister for Social Welfare</i> [1999] 1 ILRM, Hamilton C.J. stated -	108
I wish to have time made available for an appeal as follows -	113

### **TAX APPEAL 115**

### **INTERIM LISTINGS 115**

THE REVENUE COMMISSIONERS	Respondent	116
9. Relevant Legislation		118

### **Appeals - Introduction**

#### **2.1 Overview**

Within Revenue Regions & Districts, officers are likely to encounter, or at least need to consider, appeals against a wide variety of items under each of the tax and duty heads. For example, an appeal can be lodged against items such as -

- ⇒ an assessment;
- ⇒ an estimate;
- ⇒ a determination made by a Revenue official (including various other matters such as refusal to grant a relief or approval provided for in statute);
- ⇒ a notice of withdrawal (e.g. a withdrawal of an approval);
- ⇒ certain decisions;
- ⇒ a certificate of tax credits issued under the PAYE Regulations;
- ⇒ a PAYE Balancing Statement (in certain circumstances);
- ⇒ a refusal of a repayment,

and one or more such item can occur within each of the taxes and duties. It is important, therefore, that staff are -

- (a) familiar with
  - ⇒ terms and phrases such as 'assessment', estimated assessment; 'estimate', 'determination', 'decision', etc.;
  - ⇒ the processes and procedures relating to appeals.
- (b) able to identify
  - ⇒ whether or not an appeal actually exists;

⇒ able to identify the point at issue in an appeal case.

**Note** - An assessment and a notice of assessment are separate and distinct items:-

- the assessment is what the inspector has made and retains [i.e. an assessment NEVER issues to the person assessed]; and
- the notice of assessment is that which is issued to the person assessed informing him/her the he/she has been assessed to tax.

This is evidenced by the appeal provisions wherein an appeal is against the assessment within 30 days of having received the **notice** of that assessment. The 1944 tax case of *Norman v Golder* [TC 26 298] found that an appeal is against the assessment and not against the notice of assessment.

There are separate appeal provisions in -

- ❖ the Tax Acts;
- ❖ the Value Added Tax Consolidation Act 2010
- ❖ the Capital Acquisitions Tax (Consolidation) Act 2003 (Part 8);
- ❖ the Stamp Duties Consolidation Act 1999 (Part 4);
- ❖ Customs [Council Regulation (EEC) No. 2913/92];
- ❖ General Excise (Sections 145 and 146 Finance Act 2001); and
- ❖ Vehicle Registration Tax legislation.

**However, in general, the income tax appeal provisions are applied, with appropriate modifications, to appeals against Revenue decisions, estimates, assessments, etc. in respect of the other taxes and duties (including capital gains tax and corporation tax).**

The specific appeal provisions relating to the various tax and duty headings are included in Chapters 17 to 27.

## **2.2 Overview of Tax appeals**

As regards income tax, corporation tax, capital gains tax, stamp duty, capital acquisitions tax and VAT, an appeal is to the Appeal Commissioners generally by way of notice in writing to the Revenue Commissioners.

However, customs duty, excise duty and vehicle registration tax appeals differ from other tax and duty appeals in that -

- (a) an appeal is, in the first instance, made to the Revenue Commissioners; and
- (b) a determination of the Revenue Commissioners may be appealed to the Appeals Commissioners.

### **Outline of a Tax & Duty appeal**

#### **Start with**

An appeal by a person against items such as:-

- a) an assessment;
- b) an estimate;
- c) a Revenue determination;
- d) a Revenue decision;
- e) a tax credit certificate;

- f) a PAYE Balancing Statement;
- g) a refusal [e.g. to grant approval to a scheme or to make a repayment of tax or duty], etc.

***Why***

Because there is a difference of opinion on either:

- a) interpretation of **fact** [e.g. the amount of income or duty to be assessed]; or
- b) interpretation of **law** [e.g. whether or not a charge or relief may apply].

***Legal route***

The 'legal route' for disputes on these matters is by way of appeal -

- ⇒ to the Revenue Commissioners in customs, excise and vehicle registration tax appeals and, if dissatisfied with the determination of the Revenue Commissioners, then to the Appeals Commissioners; and
- ⇒ in other tax and duty cases, to the Appeal Commissioners (via the Revenue Commissioners).

***Appeal  
Commissioner's  
Decision***

If the appellant is dissatisfied with the decision of the Appeal Commissioners, he/she may either -

- a) apply for a re-hearing of the cases before the Circuit Court (not available for Customs, Excise & VRT appeals); or
- b) seek to have a case stated on the matter referred, on a point of law (or on a point of law and fact), for the opinion of the High Court.

**BUT**

if Revenue are dissatisfied with the decision of the Appeal Commissioners, Revenue can only seek to have a case stated on the matter referred, on a point of law (or on a point of law and fact), for the opinion of the High Court **EXCEPT** in CAT appeals where Revenue has a right of a re-hearing of an appeal before a Circuit Court Judge.

***Circuit Court  
Decision***

A person dissatisfied with a Circuit Court decision, may seek to have a case stated on the matter referred, on a point of law (or on a point of law and fact), for the opinion of the High Court.

***High Court  
Decisions***

Those dissatisfied with a High Court decision may appeal such decision to the Supreme Court.

## **2.3 Quantum appeals**

A 'quantum' appeal relates to an appeal against the amount (i.e., quantum) of income, tax or duty assessed. For example, an auditor may be of the view that a trader's income is €50,000 for the relevant tax year and enters/amends an assessment accordingly. The trader may appeal on the grounds that the amount of his income for

that year was €30,000. As the appeal relates to the amount of income to be assessed, the appeal is generally referred to as a 'quantum' appeal.

## **2.4 Technical appeal (sometimes also known as an argument appeal)**

A technical appeal is the name given to an appeal other than a quantum appeal. In general, technical appeals relate to some 'technical' issue such as the interpretation of a tax statute and/or whether the taxpayer may benefit from a relief, allowance, etc.

**Note** - Prior to the introduction of the self-assessment system for income tax, etc., there were significant numbers of 'quantum' appeals. However, since the introduction of self-assessment, there are far fewer appeals and most fall into the description of 'technical appeals'.

## Chapter 3

### Identifying the point at issue

#### 3.1 Overview

In dealing with contentious issues and appeals, it is important that the point at issue or matter in dispute between Revenue and the customer is established.

#### 3.2 Useful exercise to identify the point at issue [Fact v Law]

The following is a useful exercise that may help identify the point at issue in advance of raising an assessment or making a determination in cases likely to be contentious.

<b>Step 1</b>	<ul style="list-style-type: none"> <li>➤ Establish if the issue in question relates to           <ul style="list-style-type: none"> <li>▪ a deduction, relief, allowance or credit; or</li> <li>▪ the charging of something to a tax or duty; or</li> <li>▪ relieving something from a tax or duty charge [for example, by way of an exemption]; or</li> <li>▪ some other issue (e.g. determination, decision, withdrawal, refusal, etc.).</li> </ul> </li> </ul>
<b>Step 2</b>	<ul style="list-style-type: none"> <li>➤ Establish all the facts pertaining to the issue</li> </ul>
<b>2.1 Re claims for deductions, reliefs, allowances, credits, approvals, determinations, refusal, etc.</b>	<ul style="list-style-type: none"> <li>➤ Obtain all relevant documents.</li> <li>➤ Identify the criteria for entitlement <b>[LAW]</b>.</li> <li>➤ Does the claimant fulfil the criteria for entitlement? <b>[FACT]</b></li> </ul>
<b>2.2 Re a charge to tax or duty</b>	<ul style="list-style-type: none"> <li>➤ Obtain all relevant documents.</li> <li>➤ What is the <b>nature</b> (<i>description</i>) of the income or item to be charged to tax or duty? <b>[FACT]</b></li> <li>➤ What is the <b>source</b> of the income or item? <b>[FACT]</b></li> <li>➤ <b>Who</b> is entitled to the income or item? <b>[FACT]</b></li> <li>➤ What is the <b>status</b> of the recipient of the income / benefit vis a vis <b>residence, ordinary residence and domicile</b>? (relevant in some instances) <b>[FACT &amp; LAW]</b></li> <li>➤ Is the income, benefit or item either -           <ul style="list-style-type: none"> <li>▪ outside the charge to tax or duty? <b>[LAW]; or</b></li> <li>▪ within the charge to tax or duty [and what is the <b>charging provision</b>]? <b>[LAW]; or</b></li> <li>▪ within the charge to tax or duty but specifically relieved from that charge [and what is the <b>relieving provision</b>]? <b>[LAW]</b>.</li> </ul> </li> </ul>
<b>2.3 Re other issues</b>	<ul style="list-style-type: none"> <li>➤ Generally, these may relate to <b>FACT</b> and/or <b>LAW</b>.</li> </ul>
<b>Step 3</b>	<ul style="list-style-type: none"> <li>➤ Establish the <b>point at issue</b> [i.e. <b>what is the net issue in dispute?</b>].</li> <li>➤ Establish whether the point at issue is one of <b>fact</b> [and what is the <b>evidence</b> or <b>lack of evidence</b>] or of <b>interpretation of tax law</b>.</li> </ul>

Once the point at issue has been established, the next step is to identify whether or not:

- **the solution can be found in available sources of information; and**
- **the matter can be resolved without going the appeal route (e.g. does the customer accept the proposed Revenue solution).**

## Chapter 4

### Does a tax or duty appeal exist?

#### 4.1 Overview

Once the point at issue (See Chapter 3) has been identified, the next step is to identify whether or not an entitlement to appeal or a valid appeal exists in relation to that point at issue.

There is no basis in tax law for an appeal against differences of opinion arising from correspondence between Revenue and a customer. However, an appeal may arise against a notice of assessment, a determination, a decision (as provided for in a tax statute) or other such matter that may issue from Revenue and in respect of which a statutory right of appeal may exist.

#### 4.2 Identify whether an appeal exists

The following approach is considered useful.

##### 4.2.1 Identify what has issued from Revenue

Has any of the following been issued by Revenue -

- ⇒ a **determination** made by a Revenue official as regards claims for a repayment relating to a relief, allowance or deduction or as regards the imposition of a duty;
- ⇒ a **determination** as regards other matters such as **refusal** to grant a relief or an approval provided for in statute;
- ⇒ a **decision** - for example a decision re repayment time limits (Section 865 TCA 1997) or a **decision** as regards the application of customs legislation (see Par. 18.4);
- ⇒ a **refusal** to approve a person as an authorised warehousekeeper for excise purposes;
- ⇒ a **notice of assessment**;
- ⇒ a **notice of estimate**;
- ⇒ a **certificate of tax credits** issued under the PAYE Regulations;
- ⇒ a **PAYE Balancing Statement** (see Par. 18.2);
- ⇒ a **notice of withdrawal** (of, say, approval of a scheme);
- ⇒ a **notice** or a notice of exclusion from a tax (see Section 697F & 697G (Shipping tonnage tax)) or a notice of any determination re partnerships (see Section 1012 TCA 1997).

In addition -

- a customer can appeal against other issues such as the amount of tax deducted under Schedule E (See Section 948 TCA 1997);
- some sections of the TCA 1997 state that "*An appeal to the Appeal Commissioners shall lie on any question arising under this Part ....*" (see, for example, Section 372AT & Section 447).

**Note** - A determination means a formal determination (see Chapter 18) and not merely a response to a query.

Where legislation sets out the method for withdrawal of relief (e.g. withdrawal of BES/Film relief by way of a Schedule D Case IV assessment), the withdrawal of the relief should be by that method only (as any other method will not give effect to the withdrawal).

### **4.2.2 Identify whether a valid appeal exists**

To identify whether or not a valid appeal exists, the case should be explored along the following lines –

- has the customer or agent **lodged**, specifically, **an appeal** against any of the items such as those referred to Paragraph 4.2.1 above?
- is the **appeal in writing** [see, for example, Section 933(1)(a) TCA 1997 or Section 145(4) FA 2001]?
- does the appeal notice outline the **grounds of appeal** (see also Chapter 6)?
- is the appeal notice within the statutory **time limit** (but see also Chapter 8 re time limits late appeals)?
- has, where required for a right of appeal, the **necessary return been submitted or tax due been paid** [see, for example, Section 957(2)]?
- has, where required for a right of appeal, **the necessary duty been paid**?

### **4.3 Items not considered to be an appeal**

The following are NOT considered to be valid appeals -

- an appeal against “something” which has not happened (for example, a negative answer to a hypothetical query in relation to whether or not a person would be entitled to a relief, deduction, allowance, etc. if he/she were to expend money in relation to such a relief, deduction, etc.);
- general correspondence relating to an item where no formal assessment, determination, decision, etc. has actually issued;
- appeals outside the statutory time limits (unless a late appeal is to be admitted – see Chapter 8);
- a request for an Internal Review under Revenue’s Internal Review Procedures as set out in Statement of Practice (SP – Gen/2/99) – Revised January 2005;
- a complaint.

**Note 1** – In some instances, a person is precluded from appealing an assessment that reflects tax due in accordance with that person’s tax return [see, for example, Section 957(1)(b) TCA 1997].

**Note 2** - See Chapter 7 re a right of appeal where Revenue refuse to allow an appeal.

**Note 3** – See Chapters 28 to 31 re matters outside the tax and duty appeal structure.

## Chapter 5

### Applications to Appeal Commissioners versus Appeals to the Appeal Commissioners

#### 5.1 Background

Certain legislative provisions may provide that a claim for relief or other measure is granted by way of application to the Appeal Commissioners. Generally, such a position may exist following Revenue's refusal to grant such relief or other measure.

#### Examples

##### ***Application to admit a Late Appeal (see Chapter 8)***

An application to Revenue by a person to have a late appeal admitted is provided for in Section 933(7) TCA 1997. Where an application from an appellant to admit a late appeal is refused *"the applicant may by notice in writing require the inspector or other officer refer the application to the Appeal Commissioners"*. The application then becomes [see Section 933(7)(c) TCA 1997] an application to the Appeal Commissioners to admit a late appeal.

##### ***Relief from double assessment***

Section 929 TCA 1997 provides that where a person has been assessed to income tax or corporation tax and has, through error or mistake, been assessed on the same income for the same tax year, such person may apply for relief from double assessment to the Appeal Commissioners.

##### ***Registration of a person as an employer for PAYE purposes***

Section 988(1) TCA 1997 enables Revenue to register a person as an employer for the purposes of PAYE where that person had failed to do so. On receipt of the notice of registration, the person may claim that he/she is not an employer and *"require the claim to be referred for decision to the Appeal Commissioners and their decision on the claim shall be final and conclusive"*.

##### ***Monthly PAYE estimate (See Chapter 20)***

Section 989 TCA 1999 provides for the raising of a monthly PAYE estimate on an employer where Revenue have reason to believe that insufficient PAYE tax has been remitted by an employer. On receipt of the estimate, the employer may claim that he/she is not liable to remit any tax for that month and *"require the claim to be referred for decision to the Appeal Commissioners and their decision shall be final and conclusive"*.

#### 5.2 Relevance

Where a claim for relief or other measure is granted by way of application to the Appeal Commissioners, such application is **not** an appeal **unless** a relevant tax or duty statute states that such application shall be treated in like manner to an appeal. As regards applications to the Appeal Commissioners, an appeal to the High Court by way of case stated does not lie by implication but rather must be contained in statute.

For example, an application to the Appeal Commissioners to admit a late appeal is not an appeal and there is no right of a rehearing before a Circuit Court Judge nor is there a right for the appellant or for Revenue to seek a case stated for the opinion of the High Court against the Appeals Commissioner's decision to admit or not admit, as the case may be, the late appeal.

## Chapter 6

### Grounds of appeal

#### 6.1 Overview

There is a general view that a notice of appeal must specify the appellant's grounds of appeal. However, this may not be true in all circumstances.

In practice, grounds of appeal are generally specified whether or not there is a statutory requirement to specify such grounds. Indeed, grounds of appeal are generally the starting point to seek to settle appeals in advance of an appeal hearing.

#### 6.2 Practice & procedures re grounds of appeal

Notwithstanding the statutory position as outlined in Paragraph 6.3 to 6.4 below and in the relevant Tax and Duty Appeals Chapters in Part B of the Manual, the following is to apply in appeals where grounds of appeal are required to be stated by statute but have been omitted.

##### ***Appeals to the Revenue Commissioners (i.e. 'first stage' appeals re customs duty, excise duty and VRT)***

Where -

- ⇒ grounds of appeal are required by statute; and
- ⇒ the appellant fails (or refuses) to specify grounds of appeal,

then -

- (a) the statutory requirements should (where it exists) be brought to the attention of the appellant **and** his/her agent; and
- (b) where the failure continues, the appellant or agent should be informed that no appeal exists.

##### ***Appeals to the Appeals Commissioners***

Where -

- ⇒ grounds of appeal are required by statute; and
- ⇒ the appellant fails (or refuses) to specify grounds of appeal,

then -

- (a) the appeals should be admitted (assuming other necessary criteria exists);
- (b) the statutory requirements re specifying grounds of appeals should (where it exists) be brought to the attention of the appellant **and** his/her agent; and
- (c) where the failure continues, the appeal should be listed for hearing before the Appeal Commissioner and the matter of the appellant's failure to specify grounds of appeal should be brought to the attention of the Appeal Commissioners.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### **6.3 Summary of requirement for grounds of appeal to be specified**

#### **6.3.1 *Re appeals to which the Income Tax Self-Assessment provisions apply***

The notice of appeal in writing must, by virtue of Section 957(4) TCA 1997, contain grounds of appeal.

#### **6.3.2 *Re appeals in all other cases***

Unless the specific appeal provision indicates that either -

- ⇒ the appellant must specify grounds for appeal; or
- ⇒ Section 957 TCA 1997 applies,

then, there is no requirement for the appellant to specify grounds of appeal BUT see Paragraph 6.2 above re practice and procedures.

**Note** - Appeals in non-self assessment cases are covered by Section 933(1)(a) TCA 1997 and there is no mention of grounds of appeal in that provision.

### **6.4 General Rule**

As a general rule, every effort should be made to establish the appellant's grounds of appeal (even where not specifically required by statute) at an early stage of the appeal process with a view to seeking to resolve the appeal.

## Chapter 7

### Refusal to allow an appeal

#### 7.1 Background

Under Section 933(1)(a) TCA 1997, a person aggrieved by an assessment to income tax or corporation tax made on that person by an inspector or other Revenue officer is entitled to appeal that assessment to the Appeal Commissioners by giving notice, in writing, to the inspector or other Revenue officer.

Whilst the appeal is to the Appeal Commissioners, the notification of intent to appeal is to Revenue. This is still the position.

Prior to 1995, where an inspector or other Revenue officer formed the opinion that the person who has lodged a notice of appeal is not entitled to make an appeal, the taxpayer / customer -

- (a) did not have access to the Appeals Commissioners; and
- (b) could not advance his / her appeal other than, for example, going to the High Court to seek judicial review of Revenue's actions (see Chapter 28).

Following suggestions by the Appeals Commissioners and in line with the development of better customer service, Section 173 Finance Act 1995 [now Section 933(1)(c) TCA 1997] introduced a new concept – the right of appeal against Revenue's refusal to allow or accept an appeal.

#### 7.2 Refusal to accept an appeal

Under Section 933(1)(b) TCA 1997, where an inspector or other Revenue officer is of the **opinion** that the person who has lodged a notice of appeal is not entitled to make an appeal, the inspector or other Revenue officer **shall notify the person in writing accordingly specifying the grounds for refusing the application to appeal**.

Although not required by legislation, the notice of refusal should specify that -

- (a) the person has 15 days from the date of the refusal to appeal the **refusal** of his/her entitlement to appeal;
- (b) the appeal against the **refusal** to accept an appeal is by way of notice in writing directly to the Office of the Appeal Commissioner (N.B. – not to Revenue).

**Note** – At this stage, what is being appealed is the **refusal** to accept an appeal and **not** the relevant assessment, determination, decision, etc.

If the Appeal Commissioners find that the appeal should be admitted, then the appeal against the relevant assessment, determination, decision, etc. takes its normal course in like manner to an appeal made on time.

#### 7.3 Impact of Par. 7.2 above on other taxes and duties

The right of appeal against a refusal to allow or accept an appeal will apply to all appeals to the Appeals Commissioners where the relevant legislation specifies that Chapter 1 of Part 40 of the TCA 1997 applies to appeals for those other taxes and duties (which, generally, is the position).

**Note** – See also reference to applications to the Appeal Commissioners re the admittance of late appeals in Paragraph 8.6.1 in Chapter 8.

#### **7.4 Considerations re a decision to refuse to allow an appeal**

Before refusing to allow an appeal, officers should consider –

- that a person has a right of appeal against the refusal to allow an appeal; and
- the late appeal provisions contained in the next Chapter; and
- whether the grounds for refusing the appeal can be justified.

In this regard, the refusal to allow an appeal should be discussed with the officer's line manager.

## **Chapter 8**

### **Time limits / Late appeals**

#### **8.1 Procedure re time limits for appeals**

A late appeal is the term given to an appeal lodged outside the statutory time limits. The general procedures as regards time limits for submitting an appeal are -

**Step 1** – Check if appeal was lodged within the statutory time limit.

**Step 2** - If appeal is not lodged within the statutory time limit, check if a late appeal may be admitted.

**Before refusing to admit an appeal on time limit grounds, Revenue officers should consider Chapter 7 (right of appeal against a refusal to admit an appeal) and Paragraph 8.6.1 below.**

#### **8.2 Time limits - overview**

The time limit for appeals, and for actions regarding appeals, may differ across the various taxes and duties.

To determine the correct appeal time limit, one should refer to the relevant tax or duty appeal legislation.

The time limits for appeals for various tax and duty appeals are contained in the relevant Chapters 17 to 26 of this Manual.

**Caveat** – This Manual does not cover all possible appeals under the Taxes Acts so prudence dictates that, where a doubt exists, one should refer to the Taxes Consolidation Act 1997 (or to the Notes for Guidance to the Taxes Consolidation Act 1997).

#### **8.3 Posting a notice of appeal by registered post prior to the time limit ending but received after the time limit**

The posting by an appellant of a notice of appeal by registered post within the relevant time limit satisfies that time limit [*Criminal Assets Bureau v PMcS* (2002 ITR 574)]

#### **8.4 Ambiguity as regards time limit in self-assessment cases**

There was some ambiguity as to from which date the 30-day time limit applies in self-assessment cases. However, the Supreme Court case of *Keogh v Criminal Assets Bureau* (2004) decided that Section 957 TCA 1997 is subject to the 30-day limit imposed by Section 933.

#### **8.5 Late appeals - overview**

The provisions for allowing a late appeal is contained in Section 933 TCA 1997 and applies to income tax, corporation tax and capital gains tax.

Section 933 is contained in Chapter 1 of Part 40 of the TCA 1997. **Therefore, if the said Chapter applies to appeals in other tax and duty heads, then the TCA 1997 late appeal procedures apply, with any necessary modifications, to those other tax and duty heads.**

There is no specific form for making a late appeal (it is simply a standard appeal but made outside the relevant time limits). In *Criminal Assets Bureau v D(K)* 2002 ITR 79], it was determined that it is a matter for the appellant to indicate that a late appeal is being submitted.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## **8.6 Procedures to apply where a late appeal is submitted within 12 months of the notice of assessment [Section 933(7)(c) TCA 1997] and the relevant tax in the notice of assessment is either paid or, if not paid, is not the subject of enforcement action**

### **8.6.1 *Grounds for admittance of a late appeal***

A notice of appeal not submitted on time shall be regarded as submitted on time if –

- (a) the said notice is submitted within 12 months of the date of the notice of assessment;
- (b) the inspector or other Revenue officer is satisfied that owing to –
  - absence,
  - sickness; or
  - other reasonable cause,

the appellant was prevented from making an appeal within the necessary time limits and that the notice of appeal was thereafter made without undue delay.

### **8.6.2 *If admitted***

If a late appeal is admitted, the same procedures apply as if the appeal was made on time.

### **8.6.3 *If refused [N.B. – See also Chapter 7 re refusal to accept an appeal]***

If a late appeal is refused, then under Section 933(7)(b) TCA 1997, the Revenue officer must notify the appellant in writing that the late appeal application has been refused. Although not required by subsection (7)(b), the 'refusal' should inform the appellant of the provisions of Section 933(7)(c) TCA 1997.

Under Section 933(7)(c) TCA 1997, within 15 days of being informed that the late appeal is not being admitted, the appellant may, by notice in writing, request that the late appeal application be referred directly to the Appeal Commissioners. The Appeal Commissioners will decide whether or not the late appeal application may be admitted.

**Caveat** – In this instance, that which is before the Appeal Commissioners is an application to admit a late appeal – it is not an appeal which means that the right to go to the CCJ, High Court, etc. does not exist (although the person may seek leave by way of judicial review – see Chapter 28).

If the Appeal Commissioners find that the appeal should be admitted, then the appeal against the relevant assessment, determination, decision, etc. takes its normal course in like manner to an appeal made on time.

**8.7 A late appeal submitted within 12 months of the notice of assessment [Section 933(7)(c) TCA 1997] and the relevant tax in the notice of assessment is the subject of enforcement action**

Technically the appeal cannot proceed until the enforcement action has been completed [Section 933(9) TCA 1997]. The District should write to the appellant/agent as follows –

*"Enforcement action has commenced for recovery of the tax charged in the assessment / estimate which is the subject of your appeal. Consequently, I am precluded by Section 933(9)(a) TCA 1997 from admitting a late appeal until the tax and any attaching interest and costs have been paid."*

**NOTE – See, however, Paragraph 8.9 below re hardship cases**

**8.8 A late appeal submitted more than 12 months after the issue of the notice of assessment [Section 933(7)(d) TCA 1997]**

A late appeal made more than 12 months after the issue of a notice of assessment may be admitted where –

- (a) it would have been admitted if made within 12 months of the assessment (see Paragraph 8.6.1);
- (b) the tax return for the relevant year is submitted;
- (c) the tax return for the relevant year is accompanied by such statements of profits and gains and other information as in the opinion of the inspector or other Revenue officer, **would enable the appeal to be settled by agreement**; and
- (d) the tax (plus outstanding interest) due in accordance with the assessment to which the late appeal refers has been paid.

Where the Revenue officer is not satisfied that the information furnished would be sufficient to enable the appeal to be settled by agreement or if the tax and interest has not been paid, then, under Section 933(7)(e) TCA 1997, the Revenue officer must notify the appellant in writing that the late appeal application has been refused. Although not required by subsection (7)(e), the 'refusal' should inform the appellant of the provisions of Section 933(7)(f) TCA 1997.

Under Section 933(7)(f) TCA 1997, within 15 days of being informed that the late appeal is not being admitted, the appellant may by notice in writing request that the late appeal application be referred directly to the Appeal Commissioners. The Appeal Commissioners will decide whether or not the late appeal application may be admitted.

The Appeal Commissioners may allow such a late appeal made more than 12 months after the issue of the notice of assessment where –

- (i) at the time of the application to the Appeal Commissioners, the tax and outstanding interest for the relevant year has been paid; AND
- (ii) the information furnished to the inspector or other Revenue officer is such that in the opinion of the Appeal Commissioners, the appeal is likely to be determined on the first occasion on which it comes before them for a hearing.

As regards considering late appeals made more than 12 months late, it is important to note that one of the criteria for considering such a late appeal is that the full amount of the tax due per the assessment must be paid.

## **8.9 Concession re hardship cases**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## Chapter 9

### Action in Districts following receipt of an appeal

#### 9.1 Amending assessments

Part 40 of the TCA 1997 deals with appeals generally. The first Section in Part 40 is Section 932 which specifically prohibits the alteration of an assessment except –

- (a) on determination of an appeal and in accordance with that determination; or
- (b) where there is express authorisation elsewhere in the Taxes Acts which allows the assessment to be amended.

As regards (b), for example, Section 920 TCA 1997 allows an inspector or such other officer as the Revenue Commissioners shall appoint in that behalf to grant, in relation to an assessment, any allowance, deduction or relief authorised by the Income Tax Acts.

Section 920 also states

*(2) Whenever such inspector or other officer so grants such allowance, deduction or relief in relation to an assessment, such assessment shall be deemed to be amended accordingly.*

**For the taxes and duties not covered by the TCA 1997, the prohibition in Section 932 applies where, for example, an appeal provision of a tax or duty carries wording along the lines of “Chapter 1 of Part 40 TCA 1997 shall, with any necessary modifications, apply”.**

#### 9.2 Action required on receipt of the notice of appeal

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

#### 9.3 Follow up action

The general follow up action for an appeal is as follows –

- request any information or material likely to be relevant to the appeal and, in particular, likely to be relevant in efforts to settle the appeal (in particular, grounds of appeal – See Chapter 6);
- try and settle the appeal(s) by agreement (See Chapter 10); and
- failing the settling of the appeal, advance matters as expediently as possible to have the case listed for hearing before the Appeal Commissioners – see Chapters 11 and 12.

## **Chapter 10**

### **Methods of disposal of appeals**

#### **10.1 Assistance in dealing with appeals / counsel's opinion in advance of the appeal hearing**

See paragraphs 11.1 and 11.2 in Chapter 11.

#### **10.2 Disposal of appeal by agreement**

##### **10.2.1 Income Tax / Corporation Tax / Capital Gains Tax**

Under Section 933(3) TCA 1997, an appeal against an assessment (and other appeals that are treated in like manner to an appeal against an assessment) may be settled by agreement between Revenue and the appellant.

The settlement by agreement does not technically arise as regards assessments which -

- have been determined by the Appeal Commissioners; and/or
- have become final and conclusive in accordance with Section 933(6) TCA 1997.

Disposal of an appeal by agreement falls into two categories -

##### **(a) Written agreement**

Where, through written correspondence, the appeal is settled by agreement, Revenue should confirm such agreement in writing and ask the appellant to give his/her agreement in writing. Amending the assessment on its own is not sufficient.

If the appellant does not respond in writing to the agreement within a reasonable time, the appeal should be listed for determination before the Appeal Commissioners.

##### **(b) Oral agreement**

Where both sides agree orally on the settlement of the appeal, Revenue or the appellant should send written confirmation specifying the details of the agreement to the other side. (Section 933(3)(c) TCA 1997.)

The other side has 21 days to repudiate, or withdraw, from the agreement. Such repudiation or withdrawal from the agreement must be in writing.

##### **10.2.2 Other tax and duty appeals**

The provisions outlined in Paragraph 10.2.1 above apply where the appeals provisions of other taxes & duties carry wording along the lines of "*Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 shall, with any necessary modifications, apply as they apply for the purpose of income tax*".

#### **10.3 Appellant decides not to proceed with his/her appeal (withdrawal of appeal)**

Where an appellant decides not to proceed, such withdrawal of the appeal should be in writing. A written withdrawal of an appeal is treated in like manner as an appeal settled by agreement [see Section 933(3)(d) TCA 1997 and this applies to other tax and duty appeals where the appeals provisions of other taxes & duties carry wording along the lines of "*Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 shall, with any necessary modifications, apply as they apply for the purpose of income tax*"].

**10.4 No agreement/no withdrawal of appeal = Determination by Appeal Commissioner**

Where there is no agreement or withdrawal of an appeal, the appeal should be listed for hearing before the Appeal Commissioners for determination.

## Chapter 11

### Action Prior to an Appeal Hearing before the Appeal Commissioners

#### 11.1 Seeking assistance with an appeal

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

#### 11.2 Counsel's Opinion in advance of the appeal hearing

Engagement of, and contact with, Counsel is done only through the Office of the Revenue Solicitor.

It is possible for Revenue staff to request Counsel's opinion on an issue in advance of going to appeal or, indeed, in advance of raising an assessment in what is a potentially contentious and difficult issue. Such request can be made directly to the Office of the Revenue Solicitor but it is preferable if such requests are routed through the relevant RLS Division.

#### 11.3 Revenue Appeals Committee meeting and approval of counsel to support the Revenue officer

Requests for Counsel to assist a Revenue officer at an appeal hearing are referred to Revenue's Appeals Committee that meets (generally) once a month. This is covered in detail in Chapter 12.

#### 11.4 Case law

Tax and duty interpretative work and appeals invariably involves reference to tax and duty case law. The relevant tax case law generally referred to is -

Type	Official Name	Available on-line
<b><i>Irish Tax Case Law</i></b>	<ul style="list-style-type: none"> <li>Irish Tax Reports</li> </ul>	Yes – Lexis Nexis Butterworths
<b><i>UK Tax Case law</i></b>	<ul style="list-style-type: none"> <li>HMSO Tax Cases (i.e. UK tax cases)</li> <li>Simon's Tax Cases (also UK tax cases)</li> <li>Simon's Tax Cases Index</li> <li>Tolley's Tax Cases</li> <li>Tolley's VAT Cases</li> </ul>	Yes - Lexis Nexis Butterworths    Yes - Lexis Nexis Butterworths Yes - Lexis Nexis Butterworths
<b>Note</b> – The Tolley Tax and VAT cases are summaries of the cases		

If an appellant is quoting case law, it is useful to examine such case law before preparing the pre-hearing written submission (see Paragraph 11.8) to be submitted to the Appeal Commissioner.

**Note:** The 'search' on the on-line database for case law will also show up other cases where the case being quoted by the appellant has been used. It is useful to examine some of these more recent cases to determine the current 'value' of the courts on the case Revenue or the appellant wish to use.

In some instances – e.g. VAT, Excise Customs – decisions of the European Court of Justice may be relevant.

As regards case law –

- (a) the decision of the Supreme Court is finally declaratory of the law on the matter to which it relates and can be displaced only by new legislation;
- (b) a decision of any other court of appellate jurisdiction is binding on Courts subordinate to that court and to the Appeal Commissioners;
- (c) a decision of a UK court is not binding in this State where the UK law and the Irish law are the same as is the appeal issue, then, as a general rule, the relevant UK case law will carry persuasive weight at an appeal hearing.
- (d)

### **11.5 Database of opinions in the Office of the Revenue Solicitor**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### **11.6 Text books**

The information in some submissions from appellants and their agents is obtained from text books. Therefore, as regards appeal matters, it is useful to read relevant text books on the relevant subject under appeal as this may give a better understanding of the appellant's position.

Many such text books are available on-line (and some in hard copy) to Revenue officers.

**Note** – Staff dealing with appeals should familiarise themselves with the material (including text books) available on-line (contact the Librarian in the Revenue Training Branch for further information on this).

### **11.7 Getting the case listed for hearing / Form AH 1**

Once an appeal has been lodged, it is Revenue's responsibility to ensure that it is listed for hearing (i.e. by contacting the Clerk to the Appeal Commissioners). Although there is no specific time limit within which this must be done, there should be no undue delay.

The request for time for a hearing serves the dual purpose of indicating the time required and the subject matter of the argument. All requests for time must now be made on a standard form (Form AH1). This form is available on Revnet under Quick reference, Guidelines, AH1 Form.

The Form AH1 should be drafted by the Revenue officer dealing with the case and then sent to the appellant or his/her agent for agreement (a sample Form AH1 is attached at *Appendix 1*). The appellant or agent should be invited to indicate any revisions to the draft that he/she considers relevant and be asked to revert immediately to the District/Region with the Form AH1 revised.

The Form AH1 should, where possible, be agreed by both sides and copies should be dealt with as follows –

- (a) one copy is sent by the District to the Office of the Appeal Commissioners (to the Secretary of the Appeal Commissioners, Ms. Ema Geraghty - email address [egeraghy@revenue.ie](mailto:egeraghy@revenue.ie));
- (b) one copy to the appellant or agent;
- (c) one copy is retained in the District; and
- (d) one copy is sent to the Secretary of Revenue's Appeals Committee.**

**Note** - Where agreement cannot be reached and/or there is undue delay on the part of the appellant/agent in responding to a draft Form AH 1, on the issue(s) in dispute, the District should send **its version** of the AH1 to each party (as above).

The Form AH1 requires the presentation of certain minimum information to the Appeal Commissioners. The purpose of this information is to enable the Appeal Commissioners to identify the issues, the statute law and the case law involved in the appeal so that, if necessary, they may familiarise themselves with the relevant law in advance of the hearing of the appeal, as well as deciding the length of time to be made available for the hearing.

The Form AH1 should be completed in an objective manner. Whilst the details in the section "*Point(s) at issue*" should be as full as possible, it should not include any *ex parte* allegations, expressions of opinion, recommendations or any other matter which could be construed as prejudicial to the appellant.

In particular, the section "*Tax cases likely to be quoted*" should also include references to cases quoted by agents in correspondence and to any other tax case where a similar point has been decided by the Courts in favour of the taxpayer.

On receipt of the Form AH1, the current practice of the Office of the Appeal Commissioners is to -

- (a) inform Revenue to notify the appellant to make a written submission to the Appeal Commissioners no later than two months after receiving such notification from Revenue;
- (b) seek a copy of the notification at (a) issued by Revenue;
- (c) in general, set the date of the appeal hearing following receipt of the appellant's written submission.

Once Revenue are informed of the date of the appeal hearing, the officer will send Revenue's pre-hearing written submission to the Appeal Commissioners;

The Appeal Commissioners will, in general, direct both Revenue and the appellant to make contact with a view to exchanging copies of the written submission.

**Note** - The Office of the Appeal Commissioners will generally contact the Revenue officer dealing with the case UNLESS the Office of the Revenue Solicitor is involved in which instance the Office of the Appeal Commissioner will contact the relevant solicitor.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### **11.8 Pre-hearing written submissions to the Appeal Commissioners**

It is the practice of the Appeal Commissioners to seek full written submissions in appeal cases. Although the tax legislation does not specifically mention written submissions, it appears that the Appeal Commissioners are using Section 957(4) TCA 1997 as the basis for requesting written submissions -

(4) *Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal -*

- (a) *each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and*

- (b) *the grounds in detail of the chargeable person's appeal in respect of each such amount..*

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

## **Chapter 12**

### **Role and Purpose of Revenue's Appeals Committee**

#### **Submission of Cases to Revenue's Appeals Committee**

##### **12.1 Role of the Committee**

The role of the Committee is to identify significant issues that might give rise to concern about the quality and standard of Revenue's approach to argument appeals as well as to oversee and co-ordinate such appeals.

Specifically, it is responsible for:

- ⇒ implementing a consistent and effective approach to the selection and presentation of appeals for the higher courts;
  - ⇒ deciding on whether engagement of counsel should be approved in particular cases;
  - ⇒ ensuring a free flow of information throughout the Organisation regarding cases taken to appeal to the higher courts; and
  - ⇒ monitoring the timely passage of appeals through the appeal process and ensuring appropriate technical input is received from the RLS area.
- ⇒

Whilst this role refers to cases that follow the standard appeal route, it should be taken as referring also to appeals against determinations, etc. by non-standard route (e.g. judicial review proceedings, questions relating to the jurisdiction of the Appeal Commissioners, reopening of amnesty cases). **However, the Committee is not involved in prosecution cases.**

##### **12.2 Membership of the Committee**

Membership of the Committee consists of —

- ⇒ Principal Officers (with an interpretative function) in the Revenue Legislation Services (RLS) Divisions;
- ⇒ a representative from Large Cases Division;
- ⇒ a representative from the Revenue Solicitor's Office;
- ⇒ a representative from the Regions who will attend meetings for 2 years - this function is rotated between the Regions;
- ⇒ case managers who will attend for their particular cases;
- ⇒ the Committee Chairman (from the RLS); and
- ⇒ the Committee Secretary (from the RLS).

The Committee may occasionally call on the expertise of an officer in a specialist area to assist in the consideration of cases involving that branch of specialisation.

##### **12.3 Meetings of the Committee**

The Committee meets as often as is necessary (generally, once a month) to ensure that there is no undue delay in the processing of cases referred to it. It will hold twice yearly specific meetings to review the progress of cases in which the engagement of counsel has been approved. The Secretary will also produce an annual report.

## **12.4 Cases to be submitted to the Appeals Committee**

### **Note: Before a case is submitted to the Appeals Committee.**

Many cases submitted to the Appeal Committee involve interpretation of complex factual or legal issues. It is essential that Revenue present the full facts of such cases in a logical, coherent and comprehensive manner before the Appeal Commissioners to have the best chance of succeeding in its case. **Accordingly, before a case is submitted to the Appeals Committee, Regions/Districts should ensure they use their own local expertise in preparing cases and consider whether the assistance of an RLS Division is required – See [Paragraph 1.4](#) of this manual regarding seeking assistance from RLS Divisions.**

### **12.4.1 Importance of early submission of cases to the Committee**

Where a case is ready to be submitted to the Appeals Committee, it is essential that sufficient time is given to:

- The Appeals Committee, to consider the case, and thereafter,
- The Revenue Solicitors, to arrange for Counsel to be engaged and briefed.

Accordingly, such cases **must not** be listed for appeal hearing and Forms AH1 **must not** be issued to taxpayer/agent, **before** the case is considered by the Appeals Committee.

**Regions/Districts cannot expect to get Counsel for an appeal at short notice, where the above procedures are not followed.**

Regions/Divisions should bear in mind that no further evidence may be adduced at the High Court on a case stated.

Regions/Divisions should also bear in mind that it can, in practice, be difficult to overturn a decision of the Appeal Commissioners/Circuit Court Judge on appeal to the Higher Courts. For example, in the case of *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare (1997)* Hamilton CJ. stated that:

*"the Courts should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based upon an identifiable error of law or an unsustainable finding of fact by a tribunal such conclusions must be corrected. Otherwise it should be recognised that tribunals which have been given statutory tasks to perform and exercise their functions as is now usually the case with a high degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the Courts to review their decisions by way of appeal or judicial review."*

Therefore, it is most important that counsel is engaged at an early stage in appropriate cases.

**NOTE:** In all cases, other than those mentioned in Paragraph 12.4.3, the submission of the case to the Appeals Committee must be made before the AH1 is issued.

### **Form AH1**

A copy of the Form AH1 is to be sent to the Secretary of the Appeals Committee in **ALL** appeal cases – including cases not otherwise being referred to the Appeals Committee.

**12.4.2 Cases to be submitted to the Appeals Committee**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

**Cases to be considered by the Appeals Committee****12.4.3 Cases not submitted to the Committee before hearing**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

**12.5 Covering report with cases submitted to the Appeals Committee**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

**12.6 Procedures of the Appeals Committee**

Once all necessary material has been received, the Committee will consider the case. Cases received by the Appeals Committee are examined to determine whether the point at issue is

- ⇒ already awaiting hearing by the higher courts; or
- ⇒ has previously been dealt with in some other way [for example, by administrative action, RLS ruling etc.].

If so, the case will be returned to the Region/Division to await the outcome of the previous case or to deal with in accordance with the previous decision.

**12.7 Decisions of the Appeals Committee in cases referred**

Following the meeting of the Committee, the Secretary will report the decision in the case to the relevant officer in the Region/Division. The decision will be one of the following:

**12.7.1 Cases to be argued at Appeal Commissioners or Circuit Court**

The Region/Division will be informed of one of the following -

- (a) counsel has been approved to take the appeal;
- (b) the officer is to argue the case without counsel; or
- (c) the Committee will look for further information (for example, from the officer dealing with the case) or seek the opinion of the Revenue Solicitor, counsel or some other expert.

**12.7.2 Dissatisfaction expressed by Revenue (decision by Appeal Commissioners/Circuit Court Judge in favour of taxpayer)**

The Region/Division will be informed to either -

- (a) accept the decision of the Appeal Commissioners or Circuit Court Judge and not proceed to the High Court (The Committee may issue more detailed instructions at this point to the officer dealing with the case); or

- (b) make contact with the Office of the Revenue Solicitor re the preparation of 'case stated' for the opinion of the High Court

In general, Counsel prepares the draft of the 'case stated' and this is forwarded to the Office of the Revenue Solicitor which will consult with the relevant officer (or the RLS Division, as appropriate) dealing with the appeal. The draft is then sent to the other side for approval/amendment. Usually, a number of drafts are exchanged between the parties before agreement is reached.

#### **12.7.3 *Dissatisfaction expressed by appellant (decision by Appeal Commissioners/Circuit Court Judge in favour of Revenue)***

The Region/Division will be informed to refer the case stated for the opinion of the High Court to the Committee, when received from the appellant, or report any other developments in the case.

#### **12.7.4 *High Court decision NOT in Revenue's favour***

The Region/Division will be informed to either —

- (a) accept the decision of the High Court; or
- (b) appeal the decision to the Supreme Court

In the event of a High Court decision in favour of Revenue that is appealed to the Supreme Court, the Region/Division should report the decision in accordance with Paragraph 12.11

**Note:** Counsel must be briefed to appear in all High Court and Supreme Court cases.

#### **12.8 Procedure after engagement of counsel has been approved by the Committee**

In cases where engagement of Counsel has been approved, the Secretary of the Committee will:

- (a) prepare, in respect of each case, a certificate that is signed by the Chairman of the Committee;
- (b) notify the Revenue Solicitor's Office that counsel has been approved (and forward a copy of the certificate together with a copy of the Region's / Division's submission to the Appeals Committee to that Office);
- (c) notify the officer in the Region/Division -
  - (i) that counsel has been approved; and
  - (ii) that all relevant papers must be sent to the Revenue Solicitor's Office at least six weeks before the hearing of the appeal. The Revenue Solicitor will then deal with the relevant officer directly in relation to the appeal;
- (d) in conjunction with the Revenue Solicitor, assist in the engagement of expert witnesses.

#### **12.9 Procedure where Committee decides not to approve engagement of counsel**

The officer will be informed of;

- ⇒ the decision of the Committee; and
- ⇒ the suggested approach to be taken in the case.

Assistance in dealing with the appeal will be provided by the relevant RLS Division/Branch.

#### **12.10 Communication of decisions of the Appeals Committee**

Following each meeting, the Secretary will:

- ⇒ notify the relevant officer of the Committee's decision; and

⇒ post the decisions and the minutes of each meeting on Revnet under Quick reference, Guidelines, Appeals Committee.

### **12.11 Progress reports to the Appeals Committee**

Where the Appeals Committee has authorised the engagement of counsel, a brief report of the hearing of the case at each appeal stage and the outcome of such hearings should be made to the Secretary of the Committee by the officer dealing with the case, together with the recommendation of the Region/Division as to how the case should progress.

In the event of a case that had been submitted to the Appeals Committee being settled between the parties prior to an appeal hearing, the Secretary of the Appeals Committee should be so notified by the officer dealing with the case.

Similarly, if an agreement is being negotiated in a case in which the Committee has already approved Counsel and the case has a precedent value, the Secretary of the Committee must be notified before an agreement is reached.

If at any other stage during the appeal process, an officer needs assistance in an appeal case, he/she may seek such assistance from the relevant RLS Division or from the Appeals Committee through the Secretary.

### **12.12 Report to the Revenue Board**

The Secretary of the Committee will prepare an annual report for the Board by the end of the first quarter and a half yearly report for the Committee.

The District Liaison Appeal Officers will be asked for a progress report on all cases in which Counsel has been approved before these reports are prepared.

## **Chapter 13**

### **The Appeal Hearing**

**NOTE** - The provisions of the *Taxes Consolidation Act 1997* referred to in this Chapter also apply to other tax and duties where the appeals provisions of those other taxes & duties carry wording along the lines of "*Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 shall, with any necessary modifications, apply as they apply for the purpose of income tax*".

However, in Customs, Excise and VRT appeals, Section 942 and 943 TCA 1997 (as regards a re-hearing of the appeal before a Circuit Court Judge) do not apply.

#### **13.1 Attendance at appeals**

Where neither side has legal representation, then the general position is that -

- (a) Revenue is represented by the local Revenue officer dealing with the case supported, as appropriate, by the relevant RLS Division; and
- (b) the appellant will represent him/herself or be represented by a tax practitioner.

However, as many tax appeals in recent times are what are known as technical appeals (as distinct from quantum appeals), it is likely that -

- (i) the appellant will be represented by Counsel (supported by a solicitor and a tax practitioner); and
- (ii) Revenue will be represented at the hearing by counsel (and usually, at the request of counsel, supported by the Revenue officer taking the appeals, the Office of the Revenue Solicitor and, as necessary, by an RLS officer).

#### **13.2 Can members of the public attend tax and duty appeal hearings?**

Although the tax legislation is silent on the matter, tax and duty appeals hearings before the Appeal Commissioners are held *in camera*. A possible reason for this is the content of the form of the Declaration made by an Appeal Commissioner under Schedule 27 TCA 1997.

In addition, appeals to the Circuit Court are heard *in camera* [Section 942(9) TCA 1997] so it would seem illogical not to have appeals before the Appeal Commissioners heard *in camera*.

#### **13.3 Appeal proceedings**

Whilst there are two Appeal Commissioners, an appeal may be heard and determined by one Commissioner.

The inspector or such other officer as the Revenue Commissioners may authorise may attend every appeal and is entitled [see Section 934(1) TCA 1997] -

- to be present during all the time of the hearing and at the determination of the appeal;
- to give reasons in support of the assessment; and
- to produce any lawful evidence.

The Appeal Commissioners may permit any barrister or solicitor to plead before them on behalf of the appellant either orally or in writing and shall hear any accountant who is a member of an incorporated society of accountants and persons who are associates of the Irish Taxation Institute [Section 934 (2)(a) TCA 1997].

The Appeal Commissioner may also allow any other person to represent the appellant provided he is satisfied that such permission should be given [Section 934 (2)(b) TCA 1997].

#### **13.4 Form AS1**

At the start of the hearing, the Form AS1 (copy at Appendix 2) should be handed to the Commissioner. This Form is used to record the result of the Appeal. At the conclusion of the appeal, the Commissioner will complete the form and return it to Revenue.

#### **13.5 Balance of 'proof'**

The balance of proof in tax appeal cases is '*on the balance of probabilities*' (as distinct from '*beyond reasonable doubt*' as required for criminal cases).

#### **13.6 Onus of proof**

Section 934(3) TCA 1997 states that "*where on appeal it appears to the Appeal Commissioners ..... that the appellant is overcharged by any assessment, the Appeal Commissioners shall abate or otherwise reduce the assessment accordingly, but otherwise the Appeal Commissioner shall determine the appeal by ordering that the assessment shall stand*"

Arising from this, the generally accepted view is that onus to prove that an assessment is incorrect rests with the appellant [See also Par 13.10 below re Section 934(3)].

#### **13.7 Protocol [formal/informal]**

The conduct of the hearing is quite formal.

The practice is that everyone present should stand when the Appeal Commissioner enters and leaves the room where the hearing is held. (This is similar to courtroom practice under which everyone present in a courtroom stands when a judge enters and leaves).

The appellant makes his/her case first. The Appeal Commissioner may question the appellant, but Revenue may not unless the appellant is a witness.

The appellant may call any witnesses to support his/her case. Once they have given their evidence, Revenue may question the witnesses and the appellant may re-examine them.

When the appellant has finished, Revenue will present its case. It is essential that Revenue be prepared to present factual evidence and witnesses to support Revenue's case and to counteract any evidence presented by the appellant. Evidence will, generally, be accepted by the Appeal Commissioner as true unless contradicted by evidence of equal weight.

The Appeal Commissioner may ask the appellant to respond to the Revenue case.

**Note** – Where, in the course of the hearing, certain matters cannot be ascertained, it is not unusual for an adjournment to be sought to enable such matters be ascertained and presented to the Appeals Commissioners at a later hearing.

**Note** – Where the appellant relies on 'case law', etc. in the course of an appeal, the general practice is for the appellant to provide copies for the Appeal Commissioner and for Revenue. Likewise, where Revenue rely on 'case law', etc., the Revenue officer in charge of the case should ensure that copies of case law, etc. are provided for the appellant and for the Appeal Commissioner. Where Revenue have engaged Counsel, preparation of copies of case law, legislation, statements, etc. will be done by the Office of the Revenue Solicitor.

### 13.8 Witnesses / examination under oath

The Appeal Commissioners may summon any person whom they think able to give evidence as respects an assessment made on another person to appear before them to be examined and may examine such person on oath (Section 939 TCA 1997).

There is no prohibition on either side calling expert witnesses to give evidence at an appeal hearing. Neither is there a prohibition on either side from cross-examining witnesses. In practice, examination of witnesses under oath is rare but either side may request the Appeal Commissioner to request a witness to take an oath as regards evidence.

### 13.9 Precepts

A precept is a writ or a warrant requiring a person to provide information. Section 935 TCA 1997 permits the Appeal Commissioners to issue a precept *"whenever it appears to them to be necessary for the purposes of the Tax Acts"*.

Whilst in practice, a Revenue officer may request an Appeal Commissioner to issue a 'precept', the statutory function rests with the Appeal Commissioners.

Where a person fails or neglects to deliver a schedule in accordance with a precept of the Appeal Commissioners, the Appeal Commissioners *"shall ascertain and settle according to the best of their judgement the sum in which the person chargeable ought to be charged"* (Section 940 TCA 1997).

### 13.10 Determination

Having heard the appeal, an Appeal Commissioner's determination (whether given at the hearing or reserved and given at a later date) may be, as regards assessments -

- to increase the assessment where it appears to him that the amount of the assessment (as distinct from the tax charged) is inadequate [Section 934(4) TCA 1997];
- to reduce the assessment [Section 934(3)]; or
- leave the assessment stand [Section 934(3)].

As regards other matters, the Appeal Commissioners will make a determination on the relevant point at issue.

The Appeal Commissioner shall record his determination in the prescribed form [i.e. recorded on the Form AS1] at the time of the determination. The Appeal Commissioner shall, within 10 days after the determination, transmit that form to the inspector or other officer [Section 934(7) TCA 1997].

### 13.11 Failure to attend the appeal hearing

Where the appellant does not attend the appeal hearing, the assessment made on that person shall **[subject to subsection (8) of Section 933]** have the same force and effect as if it were an assessment against which no notice of appeal has been given [see section 933(6)(b) TCA 1997]. This is more commonly known as N.A.N.O. [No Attendance – No Order (i.e. no order of determination of the appeal)].

Subsection (8) of Section 933 states that, where a person does not attend before the Appeal Commissioners at the time and place appointed for the hearing of that person's appeal, subsection (6) shall not apply where -

- (a) another person attends on behalf of the appellant and the Appeal Commissioners consent to hear that person;
- (b) the Appeal Commissioners postpone the hearing having received an application (in writing or otherwise) in that regard at or before the appeal hearing;
- (c) after the appeal hearing, an application in writing is received by the Appeal Commissioners and they are satisfied that, owing to absence, sickness or other

reasonable cause, the appellant was prevented from appearing before them, the Appeal Commissioners may treat the hearing as one which has not yet taken place (i.e. they will re-fix the hearing for a future date).

**Note** – If recovery action for the tax due has commenced (court proceedings or sheriff certificate), subsection (8) of Section 933 shall not apply until that collection process has been completed [See section 933(9) TCA 1997].

### **13.12 Dismissal of an appeal**

Where -

- (a) there is no application for an adjournment (or such application has been refused); and
- (b) the tax return for the relevant appeal year of assessment has not been submitted or, if it has been submitted,
  - (i) is incomplete;
  - (ii) relevant evidence has not been furnished;
  - (iii) information requested from the appellant by the Appeal Commissioners has not been submitted;
  - (iv) a precept issued by the Appeal Commissioners has not been obeyed; or
  - (v) any questions as to the assessments asked by the Appeal Commissioners under Section 938 have not been answered

then the Appeal Commissioner shall make an order dismissing the appeal against the assessment and the assessment shall be treated as if it were an assessment in respect of which no notice of appeal had been given [See Section 933(6)(c) TCA 1997].

**BUT**, the appeal will not be dismissed if, on the hearing of the appeal, the Appeal Commissioners are satisfied that sufficient information has been furnished by or on behalf of the appellant to enable them to determine the appeal at that time.

#### ***Note - Distinction between dismissal and determination of an appeal***

If an appeal is dismissed, the appellant cannot proceed to the higher courts (except, perhaps by way of seeking a judicial review of the Appeal Commissioner's actions).

If the appeal is determined against the appellant in his/her absence, he / she can proceed to the courts with his/her appeal [e.g. seek a re-hearing of the appeal before a Circuit Court Judge or seek a case to be stated for the opinion of the High Court, as appropriate].

### **13.13 Application for an adjournment to the appeal hearing**

An application for an adjournment of the proceedings on an appeal against an assessment, being an application made before or during the appeal hearing, shall not be refused before the expiration of 9 months from the earlier of -

- the end of the year of assessment or, as the case may be, accounting period to which the assessment appealed against relates; and
- the date on which the notice of assessment was given to the appellant

[see Section 933(6)(d) TCA 1997]

In summary, therefore -

**Scenario 1**

<b>Adjournment requested and not refused</b>
If appeal not settled by agreement or not withdrawn, case can be re-listed for hearing by the Appeal Commissioner

**Scenario 2**

<b>No application for adjournment</b>	<b>OR</b>	<b>Adjournment requested and refused</b>
	<b>AND</b>	
<b>Sufficient information to hand to determine appeal</b>		
<b>YES</b>		<b>NO</b>
Appeal shall be determined [This affords the appellant the right to a re-hearing before the CCJ, etc. if aggrieved by the determination.]		Appeal can be dismissed [The assessment will stand as if no notice of appeal had been given – i.e. there is no recourse to the CCJ, etc.]

## Chapter 14

### Consequences of outcome of an appeal heard by the Appeal Commissioners

**NOTE** - The provisions of the *Taxes Consolidation Act 1997* referred to in this Chapter also apply to other tax and duties where the appeals provisions of other taxes & duties carry wording along the lines of "*Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 shall, with any necessary modifications, apply as they apply for the purpose of income tax*".

However, in Customs, Excise and VRT appeals, Section 942 and 943 TCA (re a re-hearing of the appeal before a Circuit Court Judge) do not apply.

#### 14.1 Overview

A determination of the Appeal Commissioners is final and conclusive **unless** -

- (a) within 10 days of the determination of the Appeal Commissioners, the appellant (but see 'exceptions' in Par. 14.2 below) requires that the appeal be reheard by the judge of the Circuit Court in accordance with Section 942 TCA 1997; or
- (b) within 21 days of the determination of the Appeal Commissioners, the appellant or Revenue require the Appeal Commissioners to state and sign case for the opinion of the High Court on the determination [Section 933(4) TCA 1997].

#### 14.2 Request for a re-hearing of the appeal before a Judge of the Circuit Court (CCJ)

Where a determination of the Appeal Commissioners is not in favour of the appellant, the appellant may, by way of notice in writing to Revenue within 10 days, request a **rehearing** of the case before a Circuit Court Judge (CCJ) (Section 942 TCA 1997).

**Exceptions:** This option for a rehearing before a CCJ is **not available** -

- ⇒ to Revenue *except* in Capital Acquisitions Tax appeals;
- ⇒ to either party in Customs, Excise and VRT appeals cases.

**N.B.** See Chapter 15 re a rehearing of an appeal before a CCJ.

#### 14.3 Following Appeal Commissioner's determination - No request for a re-hearing before a CCJ

Immediately after the determination of an appeal by the Appeal Commissioners, either party may express dissatisfaction to the Commissioners with the decision as being erroneous on a point of law [Section 941(1) TCA 1997].

**Note:** Where the determination is given at a hearing, dissatisfaction, where appropriate, should be expressed at the hearing.

The person who expressed dissatisfaction may then, within 21 days after the determination, by notice in writing addressed to the Clerk to the Appeal Commissioners, require the Commissioners to state and sign a case for the opinion of the High Court. A fee of €25 must be paid to the Clerk of the Appeal Commissioners.

**N.B.** See Chapter 16 re High Court appeals.

#### 14.4 Tax due following an Appeal Commissioner's determination

Prior to 2 April 2007, tax was payable in accordance with the determination of the Appeal Commissioners, notwithstanding that a request to have the appeal re-heard before a Judge of the Circuit Court.

However, with effect from 2 April 2007, Section 20 of the Finance Act 2007 [now Section 934(6) and 941(9) TCA 1997] provides that the tax is not payable or repayable where an appeal is proceeding to the Circuit Court or to the High Court. If, following determination of the appeal, tax is found to have been overpaid, interest will be payable where the amount of interest is €10 or higher.

#### **14.5 No request for a re-hearing before a CCJ and no appeal to a higher court**

Where the Appeal Commissioner's decision is accepted by Revenue and the appellant, the inspector or such other officer shall give effect to the decision and, in the case of an assessment, if the determination is that the assessment is to stand or is to be amended, the assessment or the amended assessment shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given [Section 944(6) TCA 1997].

The 'appeal stop' should be released and the assessment amended to reflect the Appeal Commissioner's determination.

#### **14.6 Status of an Appeal Commissioner's decision**

The Office of the Appeal Commissioners is not a 'court of record' and determinations of the Appeals Commissioners are not regarded as being of a precedent nature.

However, in the taking of appeals before an Appeal Commissioner, one would consider previous decisions (where known) on similar issues to that currently under appeal.

#### **14.7 Publication of an Appeal Commissioner's decision**

Since 1998, Section 944A TCA 1997 permits the Appeal Commissioners to publish a report of their determinations where they consider it appropriate.

However, where a determination is published, Section 944A TCA 1997 requires that the report is in such form which, in so far as is possible, prevents the identification of the person whose affairs are dealt with in the determination.

## Chapter 15

### Option to seek a re-hearing of the appeal before a Circuit Court Judge

#### 15.1 Request for a re-hearing of an appeal

Where a determination of the Appeal Commissioners is not in favour of the appellant, the appellant may request a **rehearing** of the case before a Circuit Court Judge (CCJ) (Section 942 TCA 1997).

**Exceptions:** This option for a rehearing before a CCJ is **not available** -

- ⇒ to Revenue **except** in Capital Acquisitions Tax appeals;
- ⇒ to either party in Customs, Excise and VRT appeals cases.

#### 15.2 Format and time limit for requesting a re-hearing of an appeal

The appellant may, by giving notice in writing to the Revenue officer within 10 days of the Appeal Commissioner's determination, require that the appeal shall be **reheard** by a Judge of the Circuit Court (Section 942 TCA 1997).

In CAT appeal cases, Revenue may, by giving notice in writing to the Appellant within 10 days of the Appeal Commissioner's determination, require that the appeal shall be reheard by a judge of the Circuit Court [Section 67(5)(b) CAT Consolidation Act 2003].

#### 15.3 Is the appeal heard before a CCJ an appeal of the Appeal Commissioner's determination?

**NO.** It is important to note that a rehearing of an appeal before a CCJ is NOT an appeal of an Appeal Commissioners determination but rather **is a NEW hearing** of the appeal at which both sides may introduce new arguments and evidence.

#### 15.4 Getting a case listed for hearing before a CCJ

In general, either the Revenue District or the Office of the Revenue Solicitor write to the County registrar seeking time and venue for the rehearing of an appeal before a Judge of the Circuit Court.

#### 15.5 Format of hearing

The format is much the same as that for a hearing before the Appeal Commissioners. The Circuit Court will rehear the case with the same powers and authorities as the Appeal Commissioners. The ruling of the Circuit Court judge will be final and conclusive subject to a case being stated for the opinion of the High Court.

When a case is being heard before the Circuit Court, the same right of hearing by a barrister, solicitor, member of an accounting body or member of the Institute of Taxation applies as when the case was heard before the Appeal Commissioners.

Appeals to the Circuit Court are heard *in camera* [Section 942(9) TCA 1997].

The Appeal Commissioners should send to the Circuit Court any statement or schedule in their possession relating to the appeal. In practice, this is done either by Revenue or the appellant.

The Inspector must send the Appeal Commissioner's decision to the Circuit Court (i.e. the form AS1). This is generally done when seeking time for the rehearing of the appeal before a Judge of the Circuit Court. In some instances, it is handed to the Circuit Court Judge at the rehearing of the appeal.

### **15.6 Must Revenue have counsel to argue a CCJ appeal?**

There is no requirement that Revenue must have counsel and a Revenue officer may argue an appeal before a CCJ. The decision to engage Counsel in a case is a matter for Revenue's Appeals Committee (see Chapter 12).

### **15.7 Agreement before the CCJ hearing**

Section 942(8) TCA 1997 allows for the reaching of agreement on the appeal before the case is heard before the Circuit Court. Revenue will give effect to such agreement including, where necessary, amending the assessment.

### **15.8 Tax due**

Prior to 2 April 2007, tax was payable in accordance with the determination of the Appeal Commissioners, notwithstanding that a request to have the appeal re-heard before a Judge of the Circuit Court.

However, with effect from 2 April 2007, Section 20 of the Finance Act 2007 (now Section 934(6) and 941(9) TCA 1997) provides that the tax is not payable or repayable where an appeal is proceeding to the Circuit Court or High Court. If, following determination of the appeal, tax is found to have been overpaid, interest will be payable where the amount of interest is €10 or higher.

### **15.9 Status of a determination of a Judge of the Circuit Court**

The Circuit Court is not a 'court of record' and there is no obligation for CCJ determinations to be published.

### **15.10 Dissatisfaction with a determination of a Judge of the Circuit Court**

Where an appeal is reheard in the Circuit Court, either party may express dissatisfaction with the Judge's determination and require a case to be stated for the opinion of the High Court. In this case, the notice in writing and the payment of €25 must be sent to the County Registrar within 21 days.

The County Registrar is an officer of the court and is attached to the Circuit Court office in each county.

## Chapter 16

### Case stated for the opinion of the High Court

#### 16.1 Rules of Law / Point of Law / Point of Fact

In dealing with appeals to the High Court, there are two important 'rules' of law to consider.

Firstly, it is a rule of law that an appeal to the High Court by way of 'cases stated' does not lie unless expressly provided for in statute.

Secondly, a person cannot, as regards the determination of an appeal on a question of fact, demand a case to be stated for the opinion of the High Court. **However, it is a question of law as to whether there was evidence on which the findings of fact by the Appeal Commissioners (or the Circuit Court Judge) might be based.**

For example, the issue of whether an individual is either

- employed or self-employed; or
- carrying on a trade

is a question of **fact**. However, it is a question of **law** as to whether there was evidence on which the findings of fact by the Appeal Commissioners (or the Circuit Court Judge) might be based.

#### 16.2 Findings of Fact

Whilst a case stated for the opinion of the High Court may not include all the facts raised at a hearing, it should, to some extent, include the facts upon which the Appeal Commissioner or CCJ came to a conclusion.

It is essential, therefore, that the full facts are brought out at the original hearing. Also, the best chance of succeeding in a case arises at that hearing. Thus, it is most important that counsel is engaged at an early stage in appropriate cases.

**Note** - In cases of likely precedent value and which are likely to 'turn' on questions of fact, it is important that Counsel and a stenographer are engaged for the hearing.

In general, the High Court will not interfere with a finding of fact by an Appeals Commissioner unless there is evidence to support such interference. For example, in cases of fact, the High Court may examine whether, **based on the evidence before them**, the Appeal Commissioners (or the CCJ) could come to the conclusion that they reached. An important point here is that a case stated for the opinion of the High Court can only include the evidence produced at the appeal hearing – **one cannot produce new facts and evidence.**

As stated in Chapter 12, it is difficult, in practice, to overturn a decision of the Appeal Commissioners/Circuit Court Judge on appeal to the Higher Courts. In the case of *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare*, Hamilton CJ stated that:

*"the Courts should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based upon an identifiable error of law or an unsustainable finding of fact by a tribunal such conclusions must be corrected. Otherwise it should be recognised that tribunals which have been given statutory tasks to perform and exercise their functions as is now usually the case with a high degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the Courts to review their decisions by way of appeal or judicial review."*

**Note** – The Irish tax cases of -

*Mara -v- GG(Hummingbird) Ltd.*; and

*O’Cualachain -v- McMullen Bros.*

are worth referring to on this matter.

### **16.3 Appellant’s or Revenue’s request for case to be stated for the opinion of the High Court (Section 941 TCA 1997)**

#### **16.3.1 Request for a ‘case stated’ for the opinion of the High Court arising from a determination of the Appeal Commissioners**

Section 941(2) TCA 1997 requires the Appeals Commissioners to state and sign a case for the opinion of the High Court.

Once an appeal has been determined by the Appeal Commissioners, either the appellant or the Inspector may express “*dissatisfaction*” with the decision as being **erroneous on a point of law** (but see Paragraph 16.1 above) and seek a case to be stated for the opinion of the High Court on the determination of the appeal.

Their dissatisfaction must be expressed to the Appeal Commissioner who heard the appeal *immediately* after his determination.

Having expressed “*dissatisfaction*”, the Revenue officer or appellant must, within 21 days, write to the Clerk of the Appeal Commissioners seeking the Appeal Commissioners to state and sign a case for the opinion of High Court on the determination of the appeal (more commonly referred to as seeking a ‘case stated’).

**N.B. A fee of €25 is payable to the clerk to the Appeals Commissioner by the dissatisfied party** [Section 941(3) TCA 1997].

It is important that in the statement of a case, the matters at issue should be fully and accurately set out. In this regard and by way of long standing practice, both Revenue and the Appellant have input to the draft of the case stated for the opinion of the High Court before the Appeal Commissioner ‘signs off’ on it

The general practice is for the person who requires the case stated to prepare a draft and send it to the other party for agreement. When agreed, the draft is sent to the Appeal Commissioners. Where both parties to the appeal cannot agree on the draft case stated, the drafts of both parties are sent to the Appeal Commissioners.

When the Appeal Commissioner has signed and stated the case -

- ⇒ Section 941(4) TCA 1997 states that the party who required the case stated shall transmit it to the High Court within 7 days of receiving it from the Appeals Commissioners; and
- ⇒ Section 941(5) requires the party who required the case stated to notify the other party that the case stated has been transmitted to the High Court (and to give that other party a copy of the case stated).

**NOTE** – It is important that the provision of Section 941 TCA 1997 are adhered to.

The Office of the Revenue Solicitor is responsible for the serving and filing of the ‘case stated’ for the opinion of the High Court.

#### **16.3.2 Request for a ‘case stated’ for the opinion of the High Court’ arising from a determination of a Circuit Court Judge**

Once an appeal has been determined by the Circuit Court Judge, either the appellant or the inspector may express “*dissatisfaction*” with the decision as being **erroneous on a point of law** (but see Paragraph 16.1 above) and seek a case to be stated for the opinion of the High Court on the determination of the appeal.

The person's dissatisfaction must be expressed to the Circuit Court Judge who heard the appeal *immediately* after the Judge's determination.

For advancement of such cases to the High Court, Section 943 TCA 1997 outlines that, as regards cases to be stated for the opinion of the High Court –

- (a) a reference to an Appeal Commissioner shall be construed as reference to a Circuit Court Judge; and
- (b) a reference to the Clerk of the Appeal Commissioner shall be construed as a reference to the county registrar.

Having expressed "dissatisfaction", the Revenue officer or appellant must, within 21 days, write to the county registrar seeking the Circuit Court Judge to state and sign a case for the opinion of High Court on the determination of the appeal (more commonly referred to as seeking a 'case stated').

**N.B. A fee of €25 is payable to the county registrar by the dissatisfied party** [Section 943(3) TCA 1997].

On receipt of the *case stated*, the party that requested the case stated must send it to the High Court within 7 days [Section 941(4) TCA 1997]. He/she must also send a copy to the other party [Section 941(4) TCA 1997].

In addition, under the Circuit Court Rules, Order 62 indicate that:

*It shall be the duty of the party who requires such a case to be stated to prepare a draft of the same and within three months from the date of the determination of the Judge to send the said draft to the County Registrar for transmission to the Judge, and to send a copy thereof to the appellant or inspector, as the case may be. (Rule 8)*

*In the event of failure to comply with the provisions of Rule 8, the successful, party, whether the appellant or inspector, shall be at liberty himself to prepare a draft of the Case Stated and to send the same to the County Registrar for transmission to the Judge, in which event a copy of the draft shall be sent to the party who had requested the statement of the case. (Rule 9)*

*In the event that no draft case stated has been sent by either party to the Judge within six months of the date of the notice required under section 428(2) ITA 1967, the Judge may himself fix the terms of the case stated and state and sign the same accordingly and in the alternative may extend the time for the preparation of the case .... (Rule 10)*

**NOTE** – It is important that the provision of Section 941 TCA 1997 are adhered to.

The Office of the Revenue Solicitor is responsible for the serving and filing of the 'case stated' for the opinion of the High Court.

#### **16.4 Role of the High Court**

The High Court must then hear and determine any *question of law* arising in the case.

It will affirm, amend or reverse the determination in respect of which the case has been stated or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the court may seem fit [Section 941(6) TCA 1997].

The High Court may cause the case to be sent back for amendment (thereupon the case shall be amended accordingly) and the judgement shall be delivered after it has been amended.

The decision of the High Court may be appealed to the Supreme Court.

It should be noted that the Appeal Commissioners or the Courts may decide to refer a case to the European Court of Justice (ECJ) if there is any EU dimension to it. The appeal then continues when the ECJ ruling has been received.

# **PART B**

## **APPEAL PROCEDURES RE SPECIFIC TAXES AND DUTIES**

## Chapter 17

### Income Tax/ Corporation tax / Capital Gains Tax Appeals

#### TCA 1997 - Lodging an appeal / acceptance of an appeal

#### 17.1 Right of appeal

##### 17.1.1 Appeals against an assessment

Section 933(1)(a) TCA 1997 affords a person aggrieved by an assessment made on that person by an inspector or such other officer as the Revenue Commissioners shall appoint in that behalf, a right to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer. (see Par 17.3 below).

##### 17.1.2 Other appeals

The relevant statutory provision will outline the right of appeal - for example, Section 824 as regards residence issues. Most such statutory provisions state that an appeal under that provision shall be treated in like manner to an appeal against an assessment.

#### 17.2 Time limits

##### 17.2.1 Appeals against an assessment

Section 933(1)(a) TCA 1997 states that a person shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the assessment, notice in writing to the inspector or other officer.

##### 17.2.2 Self-assessment cases

There was some ambiguity as to from which date the 30-day time limit applied in self-assessment cases. However, the Supreme Court case of *Keogh v Criminal Assets Bureau* (2004) decided that Section 957 TCA 1997 is subject to the 30-day limit imposed by Section 933.

##### 17.2.3 Other appeals

In other cases, the statutory provision containing the right of appeal will determine the time limit.

In some cases, no time limit might be specified as the relevant provision may specify that any appeals shall be treated in like manner as an appeal against an assessment. In such cases, the 30-day time limit for assessments applies.

**Note** The posting of a notice of appeal by registered post within the relevant time limit satisfies that time limit [*Criminal Assets Bureau v PMcS* (2002 ITR 574)]

#### 17.3 To whom is the appeal made?

The appeal is to the Appeal Commissioners by way of written notice to the inspector or such other Revenue officer and that officer will process the appeal.

#### 17.4 Notice of appeal against an assessment

The notice of appeal **shall be in writing**.

## 17.5 Grounds of appeal against an assessment [N.B. See also Chapter 5]

### 17.5.1 *Self-assessment cases*

Under Section 957(4) TCA 1997, a chargeable person for self-assessment purposes must specify in a notice of appeal against an assessment –

- **each** amount or matter in the assessment with which he/she is aggrieved; and
- the “grounds in detail” in respect of each such amount or matter.

Section 957(5) TCA 1997 states that, as regards an amount or matter to which a notice of appeal refers, where such notice does not comply with subsection (4), it shall be invalid and the appeal concerned, in so far as it relates to the amount or matter, be deemed not to have been brought. This sets out grounds for refusing to admit an appeal and a taxpayer has a right of appeal against such a refusal.

**N.B.** See -

- (a) Paragraph 5.2 in Chapter 5 re admitting an appeal where the grounds of appeal are not specified; and
- (b) Chapter 7 re ‘Refusal to Allow an Appeal’.

### 17.5.2 *Non-Self Assessment ‘assessment’ cases*

Section 933(1)(a) provides that a person aggrieved by an assessment shall be entitled to appeal to the Appeal Commissioners by giving notice in writing to the inspector or other officer. The subsection is silent as to what should be in the notice – the general practice is for the notice of appeal to specify the grounds of appeal.

However, where the relevant statute states that Section 957 TCA applies, then grounds of appeal are required.

**N.B. See Paragraph 5.2 in Chapter 5 re admitting an appeal where grounds of appeal not specified.**

### 17.5.3 *Other cases*

One should look to the relevant provisions under which the appeal is made as regards the requirement for specifying the grounds of appeal.

## 17.6 Relevance of submission of tax return and tax due for the relevant tax year as regards appeals

### 17.6.1 *Self-assessment cases [Section 958 TCA 1997]*

#### 17.6.1.1 *‘Normal’ assessments*

A ‘chargeable person’ cannot appeal against assessments made by reference to the chargeable person’s own figures or by reference to figures agreed with the chargeable person.

#### 17.6.1.2 *Estimated assessments*

A ‘chargeable person’ can appeal against an estimated assessment only where he / she has made a tax return for the relevant years and paid the tax due in accordance with that return.

### 17.6.2 *Non-self assessment cases*

Section 933 TCA 1997 makes no reference to returns or tax due having to be made before an appeal can be made.

## **17.7 Refusal to accept an appeal**

This is covered in detail in Chapter 7

## Chapter 18

### Appeals against –

- ⇒ **an assessment**
- ⇒ **a PAYE Balancing Statement**
- ⇒ **a notice in writing**
- ⇒ **a decision of a Revenue officer**
- ⇒ **a determination**

### 18.1 Assessments

Assessments arise mainly in the case income tax, corporation tax, capital gains tax, and VAT. Appeals against assessments are fairly straightforward and are covered in Chapter 17 of this Manual.

### 18.2 PAYE Balancing Statements

Prior to 25<sup>th</sup> March 2005, there was no provision under which a PAYE Balancing Statement (also known as a Form P21) could be appealed (but the taxpayer could have requested a notice of assessment against which he/she could appeal).

As regards a PAYE Balancing Statement issued on or after that date, such Statement can be appealed **BUT** only where it carries a direction and notice that such statement is to be treated in all respects as if it were an assessment [see Section 997(3) TCA 1997 as inserted by Section 26 FA 2005 with effect from 25<sup>th</sup> March 2005].

An appeal received is treated in like manner to an appeal against an assessment.

Note – In practice, assessments tend to issue where it is likely that an appeal is imminent.

### 18.3 Notices

In some instances, the withdrawal of an approval for, or a refusal to approve, a scheme by Revenue is by way of '**notice in writing**' from which, generally, lies a right of appeal. The giving of a notice must be in writing and should, generally, be along the lines of either –

- (a) a letter commencing with the words "*Under the provisions of Section ??? TCA 1997, I hereby give notice that.....*"; or
- (b) a letter which identifies clearly that the said letter is a 'notice'. For example –

#### **NOTICE**

*Under the provision of Section ?? TCA 1997, your certificate of ????? is withdrawn.*

and include details of the right of appeal.

The right of appeal against a 'notice' will, generally, be within the Section or Chapter of the Tax Acts relating to the approval of the relevant 'item'.

### 18.4 Decisions

In some instances, there is a right to appeal a decision of a Revenue officer (generally, against a decision of an authorised officer).

**This is NOT a general right of appeal against decisions made in the course of everyday correspondence** but rather the right of appeal contained in a specific provision of the TCA 1997 as regards a specific decision made by a Revenue officer.

For example, under Section 824 TCA 1997 (residence issues), an individual aggrieved by a *decision of an authorised officer* may –

- by notice in writing; and
- within **two** months of the authorised Revenue officer's decision,

make an application to have the relevant issue heard and determined before the Appeal Commissioners. In the instance of Section 824, such an application shall be treated in like manner to an appeal against an assessment.

## **18.5 Determinations**

### **18.5.1 Overview**

There are, generally, three types of determination from which an appeal may flow –

- a determination of tax credits and cut off points for the purposes of real time operation of PAYE;
- a determination contained in a specific provision as regards, for example, the approval or non-approval of a scheme for the purposes of the Taxes Acts; and
- the general determination as regards determination of claims to exemptions, allowances, deductions and reliefs for repayment of tax [see section 864 and 949 TCA 1997].

### **18.5.2 Determination of tax credits / standard rate cut off point**

The legislation relating to an appeal against a certificate of tax credits / standard rate cut off point is to be found in Regulation 12 of the Income Tax (Employment)(Consolidated) Regulations 2001 (located at the back of the Tax Acts).

However, Regulation 12 is, perhaps, unusual in an appeal context in that it deals –

- (a) firstly, with an **objection** (which is NOT an appeal); and
- (b) secondly, an appeal where **that** objection cannot be settled.

#### **Objection**

If a taxpayer is aggrieved by an inspector's determination of tax credits / standard rate cut off point for PAYE purposes, he or she may object to such determination by –

- (i) within 21 days, giving notice in writing to the inspector; and
- (ii) stating in the notice, the grounds of objection.

The matter will then proceed as follows –

- the inspector and taxpayer may settle the matter by agreement and that is the end of the matter (which is what happens in the majority of cases); or
- if there is no agreement, the taxpayer may appeal the matter to the Appeal Commissioners (this is done via Revenue).

In practice, in PAYE customer service areas, objections are treated in an informal manner and dealt with under normal customer service procedures.

#### **Appeal**

The appeal stems from the failure to resolve an objection to the determination of tax credits / standard rate cut off point **BUT** the appeal is actually against the determination itself (the determination is more commonly known as the certificate of tax credits).

Such an appeal is unusual in comparison to other tax appeals in that -

- there is no automatic right to appeal the determination of tax credits / standard rate cut off point issued for PAYE purposes – the taxpayer has to first lodge an 'objection';
- only on failing to resolve an objection, can an appeal be lodged;
- there is no time limit as regards lodging the appeal (although there is a 21 day time limit to lodge the objection);
- the appeal can be heard by an Appeal Commissioner BUT there is no further right of a re-hearing before a Circuit Court Judge nor is there a right of appeal to the High Court.

In practice, such an appeal can sometimes be of little benefit to the appellant as there is no further right of appeal. Therefore, it may be more appropriate and fair to raise an assessment and issue a notice of that assessment (or issue a duly endorsed PAYE balancing statement – see Par. 18.2) at the end of the tax year which the appellant may appeal so as not to restrict the appellant's right of appeal to the higher courts.

**18.5.3      *A determination contained in a specific provision as regards, for example, the approval or non-approval of a scheme for the purposes of the Tax Acts***

Certain provisions of the Tax Acts and other Acts provide for a determination in relation to that specific provision or in relation to the Chapter or Part containing that provision.

Take for example, the exemption commonly known as artists' exemption (Section 195 TCA 1997). Section 195(2) refers to an individual **determined** by the Revenue Commissioners to have written a work or works generally recognised as having cultural or artistic merit. Section 195(2)(b) states that "*The Revenue Commissioners shall not make a determination ... unless ...*".

Interestingly, the right of appeal in the artists' exemption tax legislation relates to where the Revenue Commissioners do NOT make a determination that the artists' exemption is due.

**18.5.4      *The general determination as regards determination of claims to exemptions, allowances, deductions and reliefs for repayment of tax [see section 864 and 949 TCA 1997]***

***Claims, matters & questions referred to in Section 864 TCA 1997***

Section 864 refers to -

- (a) all claims of exemption, allowance and deduction under the Tax Acts and Capital Gains Tax Acts;
- (b) all claims for repayment of income tax, corporation tax or capital gains tax under those acts;

Section 864 TCA 1997 outlines that claims referred to in that section shall be stated in such manner and form as the Revenue Commissioners may prescribe and shall be made to, **and determined by**, the Revenue Commissioners or such officer of the Revenue Commissioners (including an inspector) as they may authorise in that behalf.

An appeal against such a determination is provided for in Section 949 TCA 1997. Such appeal must be submitted within 30 days of the determination by way of notice in writing to Revenue.

Section 949 TCA 1997 grants a right of appeal not otherwise provided for and is subject to Section 957 TCA 1997 (see Par. 18.5.7 below).

**18.5.5 Are determinations still used?**

Formal determinations are the main appeal route for items such as the refusal by Revenue to approve a scheme or a relief.

However, whilst still provided for in tax law, determinations are rarely used as regards income tax reliefs, deductions, allowances and tax credits. In practice, claims are processed by way of either -

- a PAYE Balancing Statement ; or
- an assessment.

If a claim is to be refused, then generally it is omitted from the PAYE Balancing Statement or Assessment that the person may appeal [N.B. - See Paragraph 18.2 re appeals against a PAYE Balancing Statement].

**18.5.6 What is the format of a determination where a claim for a repayment of tax is being refused?**

Where tax law requires a Revenue officer to issue a determination, the officer should -

- formally 'determine' the claim (or request for approval, etc.); and
- send a notice of the determination to the claimant so that the claimant can lodge a 'formal' appeal.

Put another way, a determination can dispense with the need to raise an assessment. However, by way of a caveat, where the determination procedure is used, it is important that the determination is factual and correct.

A determination is issued by way of a letter and such letter should contain wording such as the following -

<b>Income Tax - Claim to repayment, allowance, etc</b>	
<b>Name:</b>	(Taxpayer's Name)
<b>Tax Ref:</b>	
<b>Tax Year :</b>	
<b>Nature of Claim:</b>	
<b>Determination:</b>	
	<i>I hereby give notice that I have determined the claim as follows:</i>
	Signed:
	Date:

**Note** - One of the perceived difficulties about using such a determination is getting the wording correct.

**18.5.7 Scope of Section 949 TCA 1997**

Section 949 TCA 1997 provides for a right of appeal for any person aggrieved by a determination of a claim made under Section 864 TCA 1997 where no other right of appeal exists. The main purpose of this section is to provide, in relation to such claims, rights of appeal similar to those that apply in the case of assessments.

The rationale for Section 949 TCA 1997 is that if a person claimed a relief, deduction, allowance or exemption, then, in the absence of an assessment, that person would have no right of appeal against an inspector's determination that the said allowance, etc. was not due.

The scope of Section 949 is that any person aggrieved by **any** determination by

(a) the Revenue Commissioners; or

(b) by such officer of the Revenue Commissioners (including an inspector) as they may have authorised in that behalf

on any

(i) claim;

(ii) matter;

(iii) question,

referred to in Section 864 TCA 1997 may

- by giving notice in writing to Revenue; and
- within 30 after notification of the determination

appeal to the Appeal Commissioners.

However, an appeal under Section 949 is subject to the provisions of Section 957 TCA 1997 (self-assessment appeal provisions).

## Chapter 19

### Relevant Contracts Tax Appeals

#### 19.1 Overview

A right of appeal exists against -

- (a) the failure by Revenue to issue a 'certificate of authorisation' (a Form C2) to a person [Section 531(17) TCA 1997];
- (b) the cancellation of a 'certificate of authorisation' [Section 531(17A) TCA 1997];
- (c) limits imposed on a 'relevant payments card' [Section 531(17B) TCA 1997];
- (d) an *inspector's estimate* of RCT due [Regulation 14 of the Income Tax (Relevant Contracts) Regulations 2000].

Section 531(18) TCA 1997 provides that Appeals in relation to (a), (b) and (c) above are treated in like manner to an appeal against an income tax assessment.

Regulation 14(4) of the Income Tax (Relevant Contracts) Regulations 2000 provides that Appeals in relation to (d) above are treated in like manner to an appeal against an income tax assessment.

A slightly different procedure applies in respect of a monthly RCT estimate provided for in Regulation 13 of the Income Tax (Relevant Contracts) Regulations 2000.

#### 19.2 RCT Estimates

Note the distinction between -

- (a) a monthly RCT estimate [the purpose of which is to estimate the tax due where no return or tax submitted for a month (or more than one month)]; and
- (b) an inspector's estimate (generally, a yearly estimate the purpose of which is to estimate the tax due where Revenue are of the view that insufficient RCT has been remitted).

#### 19.3 Monthly RCT Estimate [Regulation 13 of the Income Tax (Relevant Contracts) Regulations 2000].

##### 19.3.1 Issue of a monthly estimate

Regulation 13(1) of the Income Tax (Relevant Contracts) Regulations 2000 provides for the issue by Revenue of a monthly estimate on a person (a 'principal' or former 'principal') as regards RCT due and not paid by that person for a relevant month.

Regulation 13(3) allows for Revenue to extend an 'estimate' to two or more months.

##### 19.3.2 Grounds of Objection to a monthly RCT Estimate [See Chapter 6 re Grounds of appeal]

A **claim** under Regulation 13(2)(a) that the estimated RCT in the monthly estimate is not due is not, in itself, an appeal in the strict sense.

Regulation 13(2) of the Income Tax (Relevant Contracts) Regulations 2000 provides that where a person **claims** not to be liable to remit tax for the month to which the notice refers, that person may, by notice in writing to the Revenue Commissioners, require that the claim be referred to the Appeal Commissioners whose decision is final and conclusive (i.e. there is no right of a re-hearing before a Circuit Court Judge nor a right to a case stated for the opinion of the High Court).

The only grounds for the claim are that the person is not liable to remit tax for the month to which the notice refers.

**19.3.3 Time limit for a Regulation 13(2) Claim (Objection)**

The time limit for such a claim is 14 days from the service of the notice (estimate).

**19.3.4 Discharge of an RCT Monthly Estimate**

Regulation 13(2)(c) outlines that a monthly estimate will stand discharged where the person submits the relevant returns and pays the tax due (together with interest and any costs which may have been incurred in connection with the default).

However, Regulation 13(2)(d) outlines that where action for recovery of the tax has commenced, the monthly estimate will stand discharged only where directed by the Revenue.

**19.4 Inspector's (yearly) RCT estimate** [Regulation 14 of the Income Tax (Relevant Contracts) Regulations 2000].**19.4.1 Issue of an Inspector's (yearly) RCT estimate**

Regulation 14(1) of the Income Tax (Relevant Contracts) Regulations 2000 provides for the issue of an Inspector's estimate where Revenue believe that the amount of tax a 'principal' was liable to remit in respect of the respective income tax months in any tax year is greater than the amount (if any) actually remitted.

Section Regulation 14(5) allows for Revenue to issue a yearly estimate before the end of the tax year and also to extend an 'estimate' to two or more years.

**19.4.2 Appeal of an Inspector's (yearly) RCT estimate**

Regulation 14(2)(a) of the Income Tax (Relevant Contracts) Regulations 2000 provides that where the principal claims that the amount of tax or the balance remaining unpaid is excessive, he/she may, by notice in writing to the Revenue Commissioners, appeal to the Appeals Commissioners.

**19.4.3 Grounds of appeals against an Inspector's (yearly) RCT estimate [see also Chapter 6]**

The only grounds of appeal are that the amount of tax in the estimate, or the balance remaining unpaid, is excessive.

**19.4.4 Time limit for an appeal against an Inspector's (yearly) RCT estimate**

Regulation 14(2) provides that the time limit for such an appeal is 30 days from the service of the notice (estimate).

**19.4.5 Procedures re an appeal against an Inspector's (yearly) RCT estimate**

Regulation 14(3) provides that the provisions of Part 41 of the TCA 1997 (i.e. the income tax self-assessment provisions) shall apply to the making or amending of a Regulation 14 estimate **as if** -

- (a) the RCT estimate is an assessment on a chargeable person; and
- (b) the reference in Part 41 to a return is a reference to the return required to be made by a principal under Section 531 of the TCA 1997.

In addition, Regulation 14(4) states that the provisions of the TCA 1997 as regards appeals shall, with any necessary modifications apply as if an appeal against an RCT estimate is an appeal against an assessment to income tax.

Therefore, the income tax appeals provisions including the right of a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court apply to an appeal against an RCT inspector's (yearly) estimate.

## **19.5 Appeals relating to the granting and cancellation of a 'certificate of authorisation' (a Form C2)**

### **19.5.1 Overview**

A right of appeal exists against -

- (a) the failure by Revenue to issue a 'certificate of authorisation' (a Form C2) to a person [Section 531(17) TCA 1997];
- (b) the cancellation of a '*certificate of authorisation*' [Section 531(17A) TCA 1997];

### **19.5.2 Grounds of appeal [see also Chapter 6]**

#### **19.5.2.1 The failure by Revenue to issue a 'certificate of authorisation' (a Form C2) to a person [Section 531(17) TCA 1997]**

Subsection (17) of Section 531 TCA 1997 does not mention the word appeal but rather outlines that the person may, by way of notice in writing to the Revenue Commissioners, apply to have his/her application for a Form C2 heard and determined by the Appeal Commissioners. However, subsection (18) refers to matters in subsection (17) as an appeal.

#### **19.5.2.2 The cancellation of a 'certificate of authorisation' (Form C2) [Section 531(17A) TCA 1997]**

Subsection (17A) states that any person aggrieved by the cancellation of a certificate of authorisation may, by way of notice in writing to the Revenue Commissioners, appeal such cancellation to the Appeal Commissioners. However, subsection (17A) is silent as to grounds of appeal.

Subsection (17A) also provides that the cancellation remains in place pending the decision of the Appeal Commissioners (unless, of course, Revenue re-instates the certificate).

### **19.5.3 Time limit for appeals**

The time limit mentioned in Section 531(17) and (17A) is 30 days.

## **19.6 Limits imposed on a 'relevant payments card' [Section 531(17B) TCA 1997]**

### **19.6.1 Appeal**

Subsection (17B) states that any person aggrieved by the imposition of a specified limit in relation to relevant payments may, by way of notice in writing to the Revenue Commissioners, appeal the imposition of such a limit to the Appeal Commissioners. However, subsection (17B) is silent as to grounds of appeal.

Subsection (17B) also provides that the limits imposed remain in place pending the decision of the Appeal Commissioners (unless, of course, Revenue wish to re-instate the certificate).

Subsection (19) provides that the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard for as regards the matter under appeal.

### **19.6.2. Time limits for appeals**

The time limit mentioned in Section 531 (17B) is 30 days.

## **19.7 Procedures**

Section 531(18) treats matters in subsections (17), (17A) and (17B) of Section 531 TCA 1997 as if they are appeals against an assessment to income tax and also provides that "*the provisions of the Income Tax Acts relating to such an appeal (including .....)* shall apply accordingly with any necessary modifications".

Therefore, the income tax appeals provisions including the right of a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court apply to an appeals against -

- (a) the failure by Revenue to issue a 'certificate of authorisation' (a Form C2) to a person [Section 531(17) TCA 1997];
- (b) the cancellation of a '*certificate of authorisation*' [Section 531(17A) TCA 1997];
- (c) limits imposed on a '*relevant payments card*' [Section 531(17B) TCA 1997].

Subsection (19) of Section 531 TCA 1997 provides that the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under that Section.

## **Chapter 20**

### **Employer PAYE Estimates**

#### **Re non-operation of PAYE by an employer**

#### **Procedures re Appeals of Employer PAYE Estimates (re non-operation of PAYE by an employer)**

### **20.1 Overview of PAYE Estimates**

There are two types of PAYE estimates -

- (a) monthly estimates (Section 989 TCA 1997); and
- (b) yearly estimates (Section 990 TCA 1997).

### **20.2 Monthly PAYE Estimates**

**Note** – Monthly PAYE Estimates are rarely used. The more common practice is to issue yearly PAYE estimates (see Paragraph 20.3 below)

#### **20.2.1 Issue of a monthly estimate**

Section 989(2) TCA 1997 provides for the serving by Revenue of a notice of estimated tax due (an 'estimate') on an employer as regards the PAYE tax that should have been deducted from employees and remitted by that employer for a relevant month.

Section 989(3)(e) allows for Revenue to increase an estimate.

Section 989(5) allows for Revenue to extend an 'estimate' or amended estimate to two or more months.

#### **20.2.2 Claim re a monthly PAYE Estimate**

Section 989(3)(a) provides that where a person **claims** not to be liable to remit tax for the month to which the notice refers, that person may, by notice in writing to the Revenue Commissioners, require that the claim be referred to the Appeal Commissioners whose decision is final and conclusive (i.e. there is no right of a re-hearing before a Circuit Court Judge nor a right to a case stated for the opinion of the High Court – see Par. 20.2.6 below).

#### **20.2.3 Grounds of Claim [see also Chapter 6]**

A claim under Section 989(3)(a) is not an appeal in the strict sense and the only grounds for the claim are that the person is not liable to remit tax for the month to which the notice refers.

#### **20.2.4 Time limit for a Section 989(3) Claim**

The time limit for such a claim is 14 days from the service of the notice (estimate).

#### **20.2.5 Discharge of a monthly PAYE estimate**

Section 989(3)(c) provides that a PAYE estimate can be discharged where the employer submits the relevant return (i.e. a Form P30) and pays the tax due.

However, Section 989(3)(d) provides that where proceedings for the recovery of the tax due in the monthly estimate have commenced, the estimate cannot be discharged prior to completion of the recovery proceedings unless the Revenue Commissioners otherwise direct.

### **20.2.6      *Treating a claim under Section 989(3) in like manner to an appeal against an income tax assessment***

Section 992 TCA 1997 provides that the provisions of the Income Tax Acts relating to appeals shall, with any necessary modifications, apply to a claim under Section 989(3) **BUT** only in so far as those provisions apply to appeals to the Appeal Commissioners.

Therefore, the income tax appeals provisions regarding the right of a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court **do NOT apply** as regards monthly PAYE estimates (but do apply for yearly PAYE estimates – see Paragraph. 20.3.4 below).

**Note** – As the Income Tax Acts relating to appeals shall, with any necessary modifications, apply to a claim under Section 989(3)(a), the income tax appeals provisions relating to –

- (a) an appeals against the refusal by a Revenue officer to accept an appeal (see Chapter 7); and
- (b) late Appeals (see Chapter 8)

also apply to Section 989(3)(a) claims.

## **20.3      Yearly PAYE Estimate**

### **20.3.1      *Issue of yearly PAYE estimates***

Section 990(1) TCA 1997 provides for the serving by Revenue of a notice of estimated tax due (an 'estimate') on an employer as regards the PAYE tax that should have been deducted from employees and remitted by that employer for a relevant year.

Section 990(1A)(d) allows for Revenue to amend an estimate.

Section 990(3) allows for Revenue to extend an 'estimate' or amended estimate to two or more years.

### **20.3.2      *Appeal against a yearly PAYE Estimate***

Section 990(2) provides for a right of appeal to the Appeal Commissioners against a yearly PAYE estimate by way of notice in writing to Revenue. **However, since 2001, this right of appeal is limited in that an employer may only appeal the estimate if the end of year Form P35 was submitted prior to the estimate being issued.**

See, however, Paragraph 20.3.6 re the discharge of an estimate.

### **20.3.3      *Grounds of appeal against a yearly PAYE estimate [see also Chapter 5]***

The only grounds of appeals under Section 990(2) are that the estimate is excessive.

### **20.3.4      *Treating an appeal under Section 999(2) in like manner to an appeal against an income tax assessment***

Section 992 TCA 1997 provides that the provisions of the Income Tax Acts relating to appeals shall, with any necessary modifications, apply to an appeal under Section 990(2).

Therefore, the income tax appeals provisions including the right of a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court apply to an appeal under Section 990(2) against a yearly PAYE estimate.

### **20.3.5      *Time limit for an appeal against a yearly PAYE estimate***

The time limit for such an appeal is 30 days from the service of the notice (estimate).

**Note** – In practice, where the employer submits the relevant Form P35, the amount due in the 'estimate' is replaced by the amount due in accordance with the

Form P35 (assuming, of course, that the amounts in the Form P35 are acceptable).

**20.3.6      *Discharge of a yearly PAYE estimate***

Section 990 (1A) TCA 1997 allows for the discharge of a yearly PAYE estimate by the submission of the end of year Form P35 where

- (a) such Form was not submitted at the time the estimate issued; and
- (b) was submitted, together with outstanding tax due plus interest and costs, within 14 days of the issue of the PAYE estimate.

However, where action for the recovery of the tax due has commenced, the estimate cannot be displaced unless the Collector General so directs.

## Chapter 21

### VAT Appeals

#### 21.1 VAT Interpretation Branch, Indirect Taxes Division

The Indirect Taxes Division is part of the Revenue Legislation Services and is based in Dublin Castle. The Division provides:

- (a) assistance to Revenue Regions / Districts with the practice, procedures and general 'working' of VAT appeals; and
- (b) provides administration services with regard to appeals including maintaining and publishing a list of all argument appeals, extracting general principles from the decisions given by the Appeal Commissioners or Judges and publishing statistics.

#### 21.2 Overview of VAT appeals

The general provisions relating to VAT appeals are contained in Section 119 of the Value-Added Tax Consolidation Act 2010. In addition, there are specific appeal provisions in Sections 51, 109 and 111 of that Act. There is also a 'claim' mechanism in place as regards Section 110 VAT estimates which are treated in like manner to an appeal.

Section of the VAT Consolidation Act 2010	Nature of the Appeal	Time Limit for submitting an appeal NB – see also Chapter 8 re time limits
Section 51(6)	An appeal against a determination under Section 51(1), by the person who applied for the determination, as regards either an exempt activity or the rate of VAT to apply.	21 days from the date of service of the notice of determination on the appellant.
Section 51(7)	An appeal against a determination under Section 51(1) or (2), by any person, as regards either an exempt activity or the rate of VAT to apply.	21 days from the date of publication of the determination in Iris Oifigiúil.
Section 109(2)	An appeal against a Revenue requirement under Section 109 to provide security	21 days from the date of service of the notice requiring security
Section 110(2)(a)	A claim by the person on whom a VAT 'estimate' notice is served that he/she is not an accountable person. Note: Section 110(2) does not mention the word 'appeal'. However, Section 119(4) treats Section 110(2)(a) claims in like manner to an appeal.	14 days from the date of service of the 'estimate' notice.
Section 111(2)(a)	An appeal against a notice of assessment of the amount of VAT due	21 days from the date of service of the notice of assessment

Section of the VAT Consolidation Act 2010	Nature of the Appeal	Time Limit for submitting an appeal
Section 119(1)(a)	The treatment of one or more persons as a single taxable person in accordance with Section 15.	21 days from the date of the notification of the determination
Section 119(1)(b)	An appeal against the treatment of a person who allows supplies to be made on land owned, occupied, or controlled by that person, as jointly and severally liable with another person, in accordance with section 17(1).	21 days from the date of the notification of the determination 21 days from the date of service of the notice of determination
Section 119(1)(c)	An appeal against a determination that certain normally exempt sporting facilities provided by non-profit making organisations are taxable. [Section 18(1)].	21 days from the date of the notification of the determination
Section 119(1)(c)	An appeal against a determination of the market value of a supply [Section 38].	21 days from the date of the notification of the determination 21 days from the date of service of the notice of determination.
Section 119(1)(d)	An appeal against the refusal by the Revenue Commissioners to issue the required authorisation to a person to act as a tax refunding agent for the purpose of the retail export scheme or the cancellation of an authorisation [Section 58].	21 days from the date of the notification of the determination 21 days from the date of service of the notice of determination of refusal.
Section 119(1)(e)	An appeal against a liability to VAT arising out of (a) the issue of an invoice bearing excess tax [Section 69(1)]; <b>or</b> (b) the issue of an invoice by an unregistered person [Section 69(2)].	21 days from the date of the notification of the determination
Section 119(1)(f)	An appeal against a refusal (partly or wholly) of a claim for refund of tax under Section 101 (intra-community refunds).	21 days from the date of the notification of the determination

Section of the VAT Act	Nature of the Appeal	Time Limit for submitting an appeal
Section 119(1)(g)	An appeal against a refusal to treat a person as an accountable person in accordance with Regulations	21 days from the date of the notification of the determination

An appeal cannot be lodged simply to resolve a dispute between Revenue and a taxpayer – there must be a specific item such as an estimate, assessment, determination, formal refusal or similar decision in respect of which flows a right to appeal.

### **21.3 Applying Income Tax appeals provisions to VAT appeals**

Section 119(4) of the Value-Added Tax Consolidation Act 2010 applies, subject to certain modification, certain income tax appeals provisions to

- ⇒ a claim under Section 110 of the Value-Added Tax Consolidation Act 2010; and
- ⇒ appeals under Section 51, 109, 111, and 119 of the Value-Added Tax Consolidation Act 2010.

including

- (a) the right of a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court;
- (b) the refusal to allow an appeal (see Chapter 7); and
- (c) late appeals (see Chapter 8).

### **21.4 Appeals under Section 51, 109, 111 and 119 of the Value-Added Tax Consolidation Act 2010**

#### **21.4.1 Right of appeal**

An appeal under Sections 51, 109, 111 and 119 of the Value-Added Tax Consolidation Act 2010 is, by way of notice in writing to Revenue, an appeal to the Appeal Commissioners.

#### **21.4.2 Grounds of appeal [but see also Chapter 6]**

Section 119(6) provides that a taxable person who appeals against an assessment or an amended assessment must specify:

- (a) the amount or matter in respect of which he/she is aggrieved
- (b) the grounds in detail of the appeal in respect of the amount or matter.

Section 119(7) provides that the taxable person cannot rely on any grounds of appeal that are not stated in the notice of appeal unless:

- (a) the Appeal Commissioners are satisfied or,
  - (b) in the case of a rehearing of the appeal, the Circuit Court judge is satisfied,
- that the grounds could not reasonably have been stated in the appeal.

#### **21.4.3 Time limits [but see also Chapter 8]**

The appeal time limit is 21 days from the date of the notification, determinations, etc.

As regards a determination made under Section 51(2), the appeal time limit is 21 days from the date of publication of the determination in *Iris Oifigiúil*.

In addition, Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the time limit) and this applies to VAT appeals via Section 119(4) of the Value-Added Tax Consolidation Act 2010.

**21.4.4 Section 111 assessments**

Section 111(2)(b) provides that in the absence of an appeal, or on determination of the appeal, the tax due or the revised amount due is payable as if it were tax which the person was liable to pay for the taxable period during which the period of 14 days from the date of the service of the notice of assessment expired or the appeal was determined whichever taxable period is the later.

Section 111(3) provides that where a person appeals against a section 111 assessment he/she must pay the amount which he/she believes to be due and if-

- (a) the amount paid is greater than 80% of the amount of the tax found to be due on the determination of the appeal, and
- (b) the balance of the amount found to be due is paid within one month of the date of such determination,

interest in accordance with Section 114 shall not be chargeable from the date of raising of the assessment.

**21.5 VAT estimates – Section 110 of the Value-Added Tax Consolidation Act 2010****21.5.1 Right of appeal**

Section 110 of the Value-Added Tax Consolidation Act 2010 provides for the issue by Revenue of an estimate on a taxable chargeable person as regards VAT due and not paid.

Whilst Section 110 does not mention the word 'appeal', subsection (2)(a) allows, by notice in writing, the person on whom the estimate notice is served -

- (a) to claim that he/she is not a taxable person; and
- (b) to require that such claim be referred for decision to the Appeal Commissioners.

In addition, Section 119(4) applies the income tax appeal provisions to Section 110 VAT estimates.

**21.5.2 Grounds of appeal [but see also Chapter 6]**

The claim under Section 110(2)(a) should state that the person is claiming that he/she is not a taxable person and requires that such claim be referred to the Appeal Commissioners for a decision.

**21.5.3 Time limits [but see also Chapter 8]**

The appeal time limit is 14 days from the serving of the notice ('estimate').

In addition, Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the time limit) and this applies to claims made under Section 110(2)(a) via Section 119(4) of the Value-Added Tax Consolidation Act 2010.

**21.5.4 Amendment of estimate and recovery of VAT**

Section 110(2)(b) provides that in the absence of a claim that the person is not an accountable person, the tax charged in the estimate is treated as being tax recoverable as if it were tax due per a true and correct return for the relevant period.

Section 110(2)(c) provides that if, following the issue of an estimate, the person furnishes a return and pays the tax due together with any interest and costs the estimate shall stand discharged.

## **21.6 Appeal matters referred to the European Court of Justice**

It should be noted that in some VAT cases, the Appeal Commissioners or the Courts may decide to refer a specific point of European law to the European Court of Justice. When the ECJ ruling has been received the appeal continues in the tribunal that referred the point of law to the EC (see also Chapter 31 re EU matters).

Decisions by the European Court of Justice on VAT matters are binding on the Member States.

## Chapter 22

### Appeal procedure relating to Customs Matters

#### 22.1 Who can appeal?

Any person who is aggrieved by a written decision by the Revenue Commissioners or an officer of the Revenue Commissioners in relation to a customs matter covered by EU customs legislation may appeal such decision.

Article 243 of the Community Customs Code (Council Regulation (EEC) No. 2913/92) provides that *any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.*

#### 22.2 Statutory basis for Customs appeals

The statutory basis for customs appeals can be found in Statutory Instrument No. 355 of 1995 which inserts the European Communities (Customs Appeals) Regulations 1995 into Irish domestic law.

#### 22.3 What decisions may be appealed?

Examples of decisions that may be appealed include:

- ⇒ rulings in relation to binding tariff information (BTI) or binding origin information (BOI);
- ⇒ rulings in relation to liability for a customs duty paid or payable;
- ⇒ refusal of relief or exemption from, or repayment or remission of, customs duty;
- ⇒ the amount of customs duty being demanded;
- ⇒ customs approval or non-approval of a particular treatment or use of goods (e.g. the placing of goods under a customs procedure, such as their release for free circulation); and
- ⇒ any other decision arising from the implementation of The Community Customs Code may also be appealed.

Decisions in cases involving criminal proceedings or the seizure of goods may not be appealed under this procedure.

#### 22.4 Overview of Customs appeals

Customs appeals differ from tax appeals in that -

- (a) an appeal is, in the first instance, made to the Revenue Commissioners and such appeal is determined by a Revenue Designated Appeals Officer (DAO) [this appeal is also known as a 'first stage' appeal]; and
- (b) a determination of the DAO may be appealed to the Appeal Commissioners [this appeal is also known as a 'second stage' appeal].

#### 22.5 Appeals to the Revenue Commissioners [The 'first stage' appeal]

##### 22.5.1 How is an appeal made?

*The person appealing a customs matter should set out, in writing, the basis of the appeal and forward it, together with any relevant documentation (or copies), to the Revenue officer who issued the written decision which is the subject of the appeal.*

*Where the decision being appealed concerns the payment of customs duty, the payment of the duty is not a prerequisite to the acceptance of the appeal or to the*

*commencement of the appeal process. (i.e. an appeal can be accepted and processed even though the duty has not been paid).*

*However, the lodging of an appeal does not suspend the obligation to pay the duty involved but, in this context, one must have regard for Article 244 of the Community Customs Code. In brief, that Article provides that the decision being appealed shall be suspended in whole or in part where -*

- the decision appears to be erroneous and inconsistent with customs legislation, or*
- the decision might cause irreparable damage to the person concerned.*

*Where the disputed decision is 'suspended', suspension of the obligation to pay such duty shall be subject to the provision of security. In such cases, security in the form of a guarantee from a financial institution may be accepted.*

*The requirement to provide security may be waived where its provision would, owing to the appellant's circumstances, be likely to cause serious economic or social difficulties. Any request for a waiver of security should be supported by copies of audited accounts, bank statements, etc. of the person (or business). Where it is accepted that the appellant is unable to provide a security for the full amount of the duty, a guarantee to secure a part of the duty may be considered.*

#### **22.5.2      *Appellant's Notice of Appeal***

Paragraph 4(5) of Statutory Instrument No. 355 of 1995 provides that an appeal shall be by way of notice in writing.

#### **22.5.3      *Grounds of appeal [but see also Chapter 6]***

Paragraph 4(5) of Statutory Instrument No. 355 of 1995 provides that the notice in writing shall specify in detail the grounds of appeal.

**Note** – As this is a 'first stage' appeal is to the Revenue Commissioners, grounds of appeal are necessary to enable the D.A.O. to make a determination.

#### **22.5.4      *Time limits: paragraph 4 S.I. 355/1995 [but see also Chapter 8]***

Paragraph 4(6) of Statutory Instrument No. 355 of 1995 states that an appeal must be lodged –

- (a) within 30 days of the event giving rise to the appeal; or
- (b) within such longer period as the Revenue Commissioners may allow.

#### **22.5.5      *Refusal to allow an appeal***

Under Section 933(1)(b) TCA 1997, where an inspector or other Revenue officer is of the opinion that the person who has lodged a notice of appeal is not entitled to make an appeal, the inspector or other Revenue officer shall, accordingly, notify the person in writing specifying the grounds for refusing the appeal.

However, this applies only in relation to Customs appeals to the Appeal Commissioners (i.e. the 'second stage' appeals – see Paragraph 22.6.5) and does not apply to Customs Appeals to the Revenue Commissioners (i.e. the 'first stage' appeals).

#### **22.5.6      *What to do on receipt of a customs appeal***

On receipt of a customs appeal, staff should, immediately by way of e-mail, contact

Own Resources Section,  
Revenue Customs Appeals  
Customs Division

## Nenagh

The letter of appeal and copies of any relevant correspondence should then be forwarded to that Section without delay.

The Own Resources Section of Customs Division Nenagh will allocate a Designated Appeals Officer (DAO) to determine an appeal. The DAO will be an officer at Assistant Principal level from the Customs Division who is unconnected with the decision being appealed. Paragraph 8(c) of Statutory Instrument No. 355 of 1995 states that a DAO cannot determine an appeal against a decision made by him/her.

### **22.5.7      *Determination of the appeal***

The DAO will contact the appellant directly and acknowledge receipt of the appeal. He/she may also contact the Regional Customs official responsible for the case and any other officer involved in the case and request further information relating to the decision being appealed.

The DAO will not commence determination of the appeal until any customs duty arising from the decision being appealed has been paid, secured or a decision has been made by the Own Resources Section, Nenagh, to waive the requirement for security.

If the decision is to dismiss the appeal, the DAO will inform the appellant of –

- (a) the reasons for reaching his/her decision; and
- (b) the right of appeal to the Appeal Commissioners.

The Regional Customs official responsible for the case will also be notified of the DAO's decision.

### **22.5.8      *Time limits under which a DAO must determine an appeal***

Under Paragraph 4(7) of Statutory Instrument No. 355 of 1995, the DAO has 30 days in which to determine the appeal. However, this period may be extended if he/she requires further information from the appellant or for other reasons that must be advised to the appellant.

However, where an appeal has not been determined within the time limits provided for in Paragraph 4(7) of Statutory Instrument No. 355 of 1995, Paragraph (4) 10 of that S.I. states that a decision not to uphold the appeal shall be deemed to have been made on the last day of the period. This means that an appellant can, if he or she so chooses, then proceed to the second stage of the appeals procedure. **BUT** this deeming ceases to have effect, however, if a decision is subsequently made by Revenue before the Appeal Commissioners make their determination.

### **22.5.9      *Outcome of a Revenue DAO's decision***

Where an appeal is dismissed by Revenue, the appellant has 30 days from the date of DAO's decision to give written notice of his/her intention to appeal to the Appeal Commissioners. Such notice should be addressed to the DAO who determined the appeal.

Where an appeal is dismissed by Revenue and the appellant fails to notify the DAO of his/her intention of appealing the dismissal to the Appeal Commissioners within 30 days, any customs duty due as a result of the appealed decision, and not already paid, should be collected promptly.

## **22.6 Appeal to the Appeal Commissioners [The 'second stage' appeal]**

### **22.6.1 Overview**

A person aggrieved by a determination of the Revenue Commissioners under Paragraph 4 of Statutory Instrument No. 355 of 1995, Section 145 FA 2001 may, under Paragraph 5 of that S.I., appeal to the Appeals Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive UNLESS a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

### **22.6.2 Appellant's Notice of Appeal**

Paragraph 5(3) of Statutory Instrument No. 355 of 1995 provides that an appeal shall be by way of notice in writing.

### **22.6.3 Grounds of appeal [but see also Chapter 6]**

Paragraph 5(3) of Statutory Instrument No. 355 of 1995 provides that the notice in writing shall specify in detail the grounds of appeal.

### **22.6.4 Time limits: Paragraph 4 S.I. 355/1995 [but see also Chapter 8 re time limits and late appeals and Par. 22.6.6 ]**

Paragraph 5 S.I. 355/1995 states that the time limit within which notice of the intention to appeal may be given shall be within 30 days of the notification of the Revenue Commissioners' determination.

In addition, Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to claims made under Section 22(2)(a) via Paragraph 5(5) S.I. 355/1995.

### **22.6.5 Application of the appeals procedures in the Tax Acts to Customs appeals**

Paragraph 5 S.I. 355/1995 states that the provisions of Part XXVI (as amended), other than section 429 and 430 (re a re-hearing of an appeal before a Circuit Court Judge) and section 431 (re communication of a decision of the Appeal Commissioners) of the Income Tax Act 1967 shall, with any necessary modifications, apply as they apply for the purpose of income tax.

**Note** - The ITA 1967 has been replaced with the Taxes Consolidation Act 1997 and reference to Part XXVI ITA 1967, etc. may be read as Part 40 of the Taxes Consolidation Act (TCA) 1997 [other than sections 942 & 943 re re-hearing of an appeal before a Circuit Court Judge] and Section and Section 944 re publication by the Appeal Commissioners of their decisions.

Therefore, the income tax 'rules' re appeals apply to customs appeals once such appeals reach 'second stage'. In particular, such provisions include procedures relating to -

- ⇒ late appeals [Section 416(7) ITA 1967 and now Section 933(7) TCA 1997];
- ⇒ an appeal against a Revenue officer's refusal to accept an appeal [then Section 416 ITA 1967 & now Section 933(1)(b) TCA 1997].

In it also important for *Methods of Settling an Appeal* (See Chapter 9 of this Manual) and *Procedures at an Appeal Hearing* (see Chapter 13 of this Manual)

### **22.6.6 Late appeals in Customs cases**

Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to Customs appeals via Paragraph 5 S.I. 355/1995.

**N.B.** See Chapter 8 of this Manual re the conditions that apply as regards -

- (a) a late appeal submitted within 12 months of the date of an assessment; and
- (b) a late appeal made outside of 12 months of the date of an assessment.

#### **22.6.7        *Refusal to allow an appeal***

This is covered in detail in Chapter 7.

#### **22.6.8        *Action on receipt of an appeal to the Appeal Commissioner***

Upon receipt of a notification of intention to appeal to the Appeal Commissioners, the DAO will notify the Own Resources Section (in Nenagh) which will acknowledge its receipt to the appellant.

That Section will then send a summary of the case at appeal to Revenue's Appeals Committee (see Chapter 12).

The Own Resources Section will arrange with the office of the Appeal Commissioners the date and venue (usually that which best suits the appellant) for the hearing of the appeal and will inform the Regional Customs official responsible for the case and the appellant of the arrangements.

The Appeal Commissioners may request written submissions concerning the issue(s) under appeal from both parties and will fix a date for receipt of these.

The submission should be compiled in conjunction with the relevant policy area(s) in the Customs Division.

Assistance of the Office of the Revenue Solicitor is generally sought in compiling the written submission and, where assigned, the advice of Counsel may also be obtained. Again, where Counsel has been assigned, the Office of the Revenue Solicitor may organise a consultation to be held shortly before the date of the hearing of the appeal. The case manager will be expected to attend such consultation

#### **22.6.9        *Re the appeal hearing***

See -

- |                   |   |
|-------------------|---|
| <b>Chapter 11</b> | Action prior to an appeal hearing before the appeal Commissioners |
| <b>Chapter 12</b> | Role and purpose of Revenue's Appeals Committee                   |
| <b>Chapter 13</b> | The Appeal Hearing  |
| <b>Chapter 14</b> | Consequences of outcome of an Appeal Hearing                      |
| <b>Chapter 16</b> | Case stated for the opinion of the High Court                     |

When the appeal has been fully heard, the Appeal Commissioner's formal determination may be given at the hearing or, more usually, reserved and given at a later hearing.

This determination is final unless either party request a case to be stated for the opinion of the High Court on a point of law. Unlike tax cases, the appellant has no right of a re-hearing of the appeal before a Circuit Court Judge.

Occasionally, the Appeal Commissioner may decide to adjourn his decision and to refer the matter for a judgement by the European Court of Justice. Such adjournments tend to be lengthy, and it is important to ensure that any security that has been put in place remains valid throughout the period of adjournment.

If the Appeal Commissioner rules in favour of the appellant, any refund of customs duties already paid should be processed promptly.

If his decision is against the appellant, any outstanding customs duty that has not been paid should be collected without delay.

**22.6.10      *Is there a right of re-hearing of a Customs appeal before a Circuit Court Judge (CCJ)?***

No. Following a determination of the Appeals Commissioner, neither side has the right to a re-hearing of the appeal before a CCJ [as Paragraph 5(5) Paragraph 5 S.I. 355/1995 states precludes Section 942 TCA 1997 applying to customs appeals].

**22.6.11      *Dissatisfaction with a determination of the Appeal Commissioners***

See Chapter 16.

**22.7      *Assistance with customs appeals***

Revenue staff may contact the Own Resources & Customs Appeals Section, Customs Division, Nenagh.

VPNs: 63211 and 63210; e-mail (internal): Revenue Customs Appeals.

## **Chapter 23**

### **Appeals Relating to Excise Matters**

#### **23.1 Statutory basis for Excise appeals**

The statutory basis for Excise appeals is found in Sections 145 and 146 of the Finance Act 2001.

#### **23.2 Scope of Excise appeals**

The excise appeal procedure consists of a two - stage process in which certain decisions made by the Revenue Commissioners relating to excise matters can be appealed.

In brief -

- (a) an appeal is, in the first instance, made to the Revenue Commissioners under Section 145 Finance Act 2001 (also known as a '*first stage*' appeal); and
- (b) a person aggrieved by a determination of the Revenue Commissioners under Section 145 Finance Act 2001 may, under Section 146 of that Act, appeal such determination to the Appeal Commissioners (also known as a '*second stage*' appeal).

The first stage of the process consists of the re-examination/assessment of the matter under appeal by a senior officer within Revenue who was not involved in the original decision. If the person affected is dissatisfied with the outcome of this process, he or she may appeal further to the Appeal Commissioners.

All excise duties are covered by this procedure and these include excise duty on:

- ⇒ Alcoholic Beverages (Beer, Spirits, Wines etc.);
- ⇒ Tobacco Products;
- ⇒ Mineral Oils;
- ⇒ Betting.

The Excise appeals procedure also covers Vehicle Registration Tax which is dealt with in Chapter 24.

#### **23.3 Excise matters that may be appealed**

Matters to which the appeal process relates include:

- ⇒ liability to payment, and the amount of, excise duty;
- ⇒ refusal of a repayment of excise duty, or the amount of a repayment;
- ⇒ refusal of a relief or an exemption from excise duty.

Where an appeal relates to the payment of duty, the duty under appeal must be paid before the appeal can be processed: see section 147 of Finance Act 2001.

In addition, the following can be appealed:

- ⇒ refusal/revocation of a tax warehouse or authorised warehousekeeper approval under Section 109 Finance Act 2001;
- ⇒ refusal/revocation of the approval of a person as a tax representative under Section 113 Finance Act 2001;
- ⇒ refusal/revocation of the registration of a trader under Section 116 Finance Act 2001.

Matters involving criminal proceedings or the seizure of a vehicle may not be appealed under sections 145 and 146, as there are separate procedures for such matters under the legislation.

## **23.4 Appeals to the Revenue Commissioners – Section 145 FA 2001 (also known as a ‘first stage’ appeal)**

### **23.4.1 Revenue Appeals Officers**

The Revenue Commissioners have appointed specific Revenue Appeals Officers to determine appeals on their behalf.

### **23.4.2 Consideration of Appeals**

Where an excise appeal is received in a Revenue District, it should be referred to one of the Region’s Appeals Officers.

### **23.4.3 Appellant’s Notice of Appeal**

Section 145(4) Finance Act 2001 states that the appellant’s appeal shall be in writing.

### **23.4.4 Grounds of appeal [but see also Chapter 6]**

Section 145(4) Finance Act 2001 states that the appellant’s notice of appeal shall set forth in detail the grounds of appeal.

### **23.4.5 Time limits for Excise appeals under Section 145 FA 2001**

Section 145(5) Finance Act 2001 allows an appeal to be made within 2 months for the date of payment of excise duty, or the notification from Revenue calling for the payment of duty, or the repayment of excise duty, or the refusal of a repayment, or a decision of the kind referred to in Paragraph 22.3 as the case may be.

A longer period for the making of an appeal may, however, be allowed in exceptional cases.

### **23.4.6 On receipt of an appeal**

On receipt on an appeal, the appointed Appeals Officer should –

- ⇒ record details of the case in an Appeals Register;
- ⇒ acknowledge in writing the receipt of the appeal.

The numbering system of the local Appeals Register should run on an annual basis to include the type of excise appeal, details of the appellant and the determination of the Appeals Officer.

The appeals statistics should be returned on a quarterly basis through the Regional office to the Secretary of the Appeals Committee, RLS Divisional Office, Stamping Building, Dublin Castle, Dublin 2.

### **23.4.7 Consideration of an appeal by the Appeals Officer**

The Appeals Officer must review all the original papers relating to the case and should, where it is considered necessary to do so, request the appellant to provide additional information in writing and/or to produce supporting documentation or any goods or samples involved for examination. Once the review has been completed the appellant must be informed, in writing, of the outcome of the appeal and the reason for the determination.

Where the decision is that duty has been overpaid, the appellant should be reimbursed without delay. Where, however, the decision is that additional duty is payable, the appellant will normally be required to make payment within 1 month.

#### **23.4.8 Time limit for a Revenue Appeals Officer to make a determination**

Section 145(6) Finance Act 2001 requires that an appeal be determined within a period of 30 days from its lodgement. If an appeal is not determined within that period, section 145(12) provides that a decision not to uphold the appeal shall be deemed to have been made on the last day of the period. This means that an appellant can, if he or she so chooses, then proceed to the second stage of the appeals procedure. This deeming ceases to have effect, however, if a decision is subsequently made by the Revenue Appeals Officer before the Appeal Commissioners make their determination.

### **23.5 Appeals to the Appeal Commissioners – Section 146 FA 2001 (also known as a ‘second stage’ appeal)**

#### **23.5.1 Overview**

A person aggrieved by a determination of the Revenue Commissioners under Section 145 FA 2001 may, under Section 146 FA 2001, appeal to the Appeals Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

#### **23.5.2 Appellant’s Notice of Appeal**

Section 146(2) Finance Act 2001 provides that notice to Revenue of intention to appeal to the Appeal Commissioners shall be in writing.

#### **23.5.3 Grounds of appeal [but see also Chapter 6]**

Section 146(2) Finance Act 2001 is silent as to grounds of appeal but the grounds of appeals would have already been stated in the ‘first stage’ appeal (see Par. 23.4.4 above).

#### **23.5.4 Time limits for Excise appeals under Section 146 FA 2001 (see also Chapter 8 and Paragraph 22.6.4 below).**

Section 146(2) Finance Act 2001 states that the time limit within which notice of the intention to appeal may be given to Revenue shall be -

- (a) within 30 days of the notification of the Revenue Commissioners’ determination (i.e. a determination under Section 145 FA 2001); or
- (b) within 30 days of the expiry of the time limit for Revenue to make a determination,

whichever is the earlier.

#### **23.5.5 Application of the appeals procedures in the Tax Acts to Excise Appeals**

Section 146(3) FA 2001 states that -

- ⇒ Part 40 of the Taxes Consolidation Act (TCA) 1997 [other than sections 942 & 943 re re-hearing of an appeal before a Circuit Court Judge and Section 944 re publication by the Appeals Commissioners of their decisions];
- ⇒ Section 957 TCA 1997

shall, with any necessary modifications, apply as they apply for the purpose of income tax.

Therefore, the income tax 'rules' re appeals apply to excise appeals once such appeals reach 'second stage'. In particular, such provisions include procedures relating to -

- ⇒ late appeals;
- ⇒ an appeal against a Revenue officer's refusal to accept an appeal.

It is also important for *Methods of disposal of an Appeal* (See Chapter 10 of this manual) and procedures at an Appeal Hearing (see Chapter 13 of this manual)

#### **23.5.6      *Late appeals in Excise cases***

Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to excise appeals via Section 146(3) FA 2001.

**N.B.** See Chapter 8 of this Manual re appeals time limits.

#### **23.5.7      *Refusal to allow an appeal***

This is covered in detail in Chapter 7 of this Manual.

#### **23.5.8      *Re the appeal hearing***

See -

<b>Chapter 11</b>	Action prior to an appeal hearing before the Appeal Commissioners
<b>Chapter 12</b>	Role and purpose of Revenue's Appeals Committee
<b>Chapter 13</b>	The Appeal Hearing
<b>Chapter 14</b>	Consequences of outcome of an Appeal Hearing
<b>Chapter 16</b>	Case stated for the opinion of the High Court

#### **23.5.9      *Is there a right of re-hearing of an excise appeal before a Circuit Court Judge (CCJ)?***

No. Following a determination of the Appeal Commissioner, neither side has the right to a re-hearing of the appeal before a CCJ [as Section 146(3) FA 2001 precludes Section 942 TCA 1997 applying to excise appeals].

#### **23.5.10     *Dissatisfaction with a determination of the Appeal Commissioners***

See Chapter 16.

## Chapter 24

### Appeal Procedures relating to Vehicle Registration Tax

#### 24.1 Vehicle Registration Tax

Section 132 Finance Act 1992 states -

**132.**—(1) *In addition to any other duty which may be chargeable, subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, .....*

Therefore, VRT appeals are treated in like manner to excise appeals.

#### 24.2 Statutory basis for VRT appeals

The statutory basis for VRT appeals can be found in Sections 145 and 146 of the Finance Act 2001.

#### 24.3 Scope of VRT appeals

The scope of VRT appeals is that -

- (a) an appeal is, in the first instance, made to the Revenue Commissioners under Section 145 Finance Act 2001; and
- (b) a person aggrieved by a determination of the Revenue Commissioners under Section 145 Finance Act 2001 may, under Section 146 of that Act, appeal such determination to the Appeal Commissioners.

The following matters relating to Vehicle Registration Tax (VRT) can be appealed:

- ⇒ the amount of VRT charged in respect of the registration of a vehicle (typically these are matters arising from the valuation of vehicles or their classification for VRT purposes. **The VRT due in such cases must be paid before an appeal can be entertained**);
- ⇒ the refusal of a repayment or remission of VRT or the refusal to grant an exemption from VRT;
- ⇒ a decision to delete an entry from the register (i.e. the deregistration of a vehicle);
- ⇒ the determination of an open market selling price (OMSP) by Revenue which supersedes a declaration of OMSP made by authorised distributor;
- ⇒ the refusal or revocation of a VRT authorisation.

Any matters involving criminal proceedings or the seizure of a vehicle may not be appealed until a determination of such proceedings has been finalised.

#### 24.4 Appeals to the Revenue Commissioners – Section 145 FA 2001 (also known as a ‘first stage’ appeal)

##### 24.4.1 Areas of responsibility

Where a VRT appeal is received in a Vehicle Registration Office (VRO) or in a Revenue District, the appeal should be dealt with by one of the Region’s Designated Appeals Officers (DAO).

***Appeals dealt with by the Central Vehicle Office (CVO)***

Appeals against –

- ⇒ the amount of VRT charged on registration of a vehicle; or
- ⇒ the classification of a vehicle for VRT purposes,
- ⇒ a decision to deregister a vehicle; or
- ⇒ the determination of an open market selling price (OMSP) by Revenue which superseded the original declaration by an authorised distributor are processed in the CVO.

should be sent to the –

Central Vehicle Office (CVO),  
Office of the Revenue Commissioners  
Rosslare Harbour,  
Co. Wexford

which deals with such appeals.

***Appeals dealt with by the Central Repayments Office (CRO)***

Appeals against the refusal –

- ⇒ of a repayment of VRT involving short-term car hire or leasing of vehicles; or
- ⇒ to grant VRT relief for disabled drivers and passengers.

should be sent to the

Central Repayments Office (CRO)  
Office of the Revenue Commissioners  
Coolshannagh,  
Monaghan

which deals with such appeals.

***Appeals dealt with at District/Regional level***

Appeals against –

- ⇒ the refusal to grant exemption from VRT under transfer of residence or temporary exemption provisions; and
- ⇒ the refusal or revocation of a VRT authorisation,

are dealt with in the District / Region where the initial decision to refuse the application was made.

**24.4.2      *Appellant's Notice of Appeal***

Section 145(4) Finance Act 2001 states that the appellant's appeal shall be in writing.

**24.4.3      *Grounds of appeal [but see also Chapter 6]***

Section 145(4) Finance Act 2001 states that the appellant's notice of appeal shall set forth in detail the grounds of appeal.

**Note** – As this is a 'first stage' appeal is to the Revenue Commissioners, grounds of appeal are necessary to enable the DAO to make a determination.

**24.4.4      *Time limits for VRT appeals under Section 145 FA 2001***

Section 145(5) Finance Act 2001 states that the time limit within which an appeal may be lodged is either –

- (a) within 2 months from the date of payment of VRT on registration in valuation cases, the notification of a refusal of a repayment of VRT, the notification to refuse to grant an application for exemption from VRT, a determination to

deregister a vehicle or to alter the OMSP supplied by an authorised distributor;  
or

- (b) "within such longer period as the Revenue Commissioners may, in exceptional cases, allow".

#### **24.4.5      *Time limit for a Revenue Appeals Officer to make a determination***

Section 145(6) requires that an appeal be determined within a period of 30 days from its lodgement.

If an appeal is not determined within that period, section 145(12) provides that a decision not to uphold the appeal shall be deemed to have been made on the last day of the period. This means that an appellant can, if he or she so chooses, then proceed to the second stage of the appeals procedure. This deeming ceases to have effect, however, if a decision is subsequently made by Revenue before the Appeal Commissioners make their determination.

#### **24.4.6      *Action in relevant area of responsibility on receipt of an appeal***

On receipt on an appeal, the appointed appeals officer should –

- ⇒ record details of the case in an Appeals Register;
- ⇒ acknowledge in writing the receipt of the appeal.

The numbering system of the local Appeals Register should run on an annual basis to include the type of VRT appeal, details of the appellant and the determination of the appeals officer. The appeals statistics should be returned on a quarterly basis through the Regional office to the Secretary of the Appeals Committee, RLS Divisional Office, Stamping Building, Dublin Castle, Dublin 2.

#### **24.4.7      *Action by the relevant Revenue Appeals Officer***

The appeals officer should examine the original papers relating to the case on which the refusal / revocation was based. If the officer is not in a position to make a determination based on the letter of appeal from the appellant or an agent, the officer can seek to have the grounds for appeal clarified in writing and seek further supporting documentation. The officer should be aware that their determination has legal implications under the appeals process and make every effort to research the legal provisions of the case.

Note – See also Paragraph 24.4.5 above re time limits for making a determination.

#### **24.4.8      *Informing appellant of determination***

When the Revenue DAO has made a determination, the appellant or their agent should be informed in writing of such determination.

### **24.5      *Appeals to the Appeal Commissioners – Section 146 FA 2001 (also known as a 'second stage' appeal)***

#### **24.5.1      *Overview***

A person aggrieved by a determination of the Revenue Commissioners under Section 145 FA 2001 may, under Section 146 FA 2001, appeal to the Appeals Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive UNLESS a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

#### **24.5.2      *Appellant's Notice of Appeal***

Section 145(4) Finance Act 2001 provides that the appeal shall be by way of notice in writing.

**24.5.3      *Grounds of appeal [but see also Chapter 6]***

Section 146(2) Finance Act 2001 is silent as to grounds of appeal but the grounds of appeals would have already been stated in the 'first stage' appeal (see Par. 21.5.4 above)

**24.5.4      *Time limits for VRT appeals under Section 146 FA 2001 [see also Chapter 6 and Paragraph 24.5.6 below]***

Section 146(2) Finance Act 2001 states that the time limit within which notice of the intention to appeal may be given shall be -

- (a) within 30 days of the notification of the Revenue Commissioners' determination (i.e. a determination under Section 145 FA 2001); or
- (b) within 30 days of the expiry of the time limit for Revenue to make a determination,

whichever is the earlier.

**24.5.5      *Application of the appeals procedures in the Tax Acts to VRT appeals***

Section 146(3) FA 2001 states that -

- ⇒ Part 40 of the Taxes Consolidation Act (TCA) 1997 [other than sections 942 & 943 re re-hearing of an appeal before a Circuit Court Judge and Section 944 re publication by the appeals Commissioners of their decisions];
- ⇒ Section 957 TCA 1997

shall, with any necessary modifications, apply as they apply for the purpose of income tax. Therefore, the income tax 'rules' re appeals apply to VRT appeals once such appeals reach 'second stage'. In particular, such provisions include procedures relating to

- ⇒ late appeals;
- ⇒ an appeal against a Revenue officer's refusal to accept an appeal.

**24.5.6      *Late appeals in VRT cases***

Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to excise appeals via Section 146(3) FA 2001.

**N.B.** See Chapter 8 of this Manual re the conditions that apply as regards -

- (a) a late appeal submitted within 12 months of the date of an assessment; and
- (b) a late appeal made outside of 12 months of the date of an assessment.

**24.5.7      *Refusal to allow an appeal***

This is covered in detail in Chapter 7.

**24.5.8      *Re the appeal hearing***

See -

- Chapter 11**      Action prior to an appeal hearing before the appeal Commissioners
- Chapter 12**      Role and purpose of Revenue's Appeals Committee
- Chapter 13**      The Appeal Hearing
- Chapter 14**      Consequences of outcome of an Appeal Hearing
- Chapter 16**      Case stated for the opinion of the High Court

**24.5.9      *Is there a right of re-hearing of a VRT appeal before a Circuit Court Judge (CCJ)?***

No. Following a determination of the Appeals Commissioner, neither side has the right to a re-hearing of the appeal before a CCJ [as Section 146(3) FA 2001 precludes Section 942 TCA 1997 applying to VRT appeals].

**24.5.10      *Dissatisfaction with a determination of the Appeal Commissioners***

See Chapter 16.

**24.6      *Re imported cars being refused Transfer of Residence (TOR) relief***

Under Transfer of Residence [TOR] rules, a vehicle can be imported and registered without the payment of VRT. However, where the VRT Transfer of Residence [TOR] relief is refused, the person importing the car has, on payment of the VRT and import charges, a right of appeal as above against the refusal to grant such relief.

## Chapter 25

### Appeal Procedure Relating to Capital Acquisition Tax

#### 25.1 Introduction

The CAT appeal procedures are provided for in Part 8 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA) which covers:

- appeals regarding value of real property (Section 66 CATCA 2003)
- appeals in cases other than appeals regarding value of real property (Section 67 CATCA 2003)
- conditions before an appeal may be made (Section 68 CATCA 2003)

#### **Note - additional requirements (Section 68 CATCA 2003)**

Section 68 sets out additional requirements in relation to gifts or inheritances taken on or after 12 February 1998. Before an appeal can be made under either Section 66 or Section 67 CATCA, the appellant must first -

- ⇒ lodge a self-assessment return complying with Section 46(2) CATCA 2003, otherwise than as to time limits; and
- ⇒ pay the tax in accordance with that return.

#### 25.2 CAT appeals in cases other than appeals regarding value of real property (Section 67 CATCA 2003)

##### 25.2.1 *Right of appeal*

Section 67 (1) defines the Appeal Commissioners and the appellant.

Section 67 (2) provides that a person aggrieved by a CAT assessment may appeal such assessment to the Appeal Commissioners.

##### 25.2.2 *Notice of Appeal*

Whilst Section 67 (2) provides that an appeal is to the Appeal Commissioners, Section 67(4) provides that such an appeal is by way of notice in writing to the Revenue Commissioners.

##### 25.2.3 *Time limit [see also Chapter 8]*

Section 67(4) CATCA 2003 provides that the appeal time limit is within 30 days after the date of such assessment.

##### 25.2.4 *Grounds of Appeal*

Section 67 is silent as to grounds of appeal.

##### 25.2.5 *Application of appeal provisions of the Taxes Consolidation Act 1997 to CAT appeals*

Section 67(5) CATCA 2003 lists **certain** provisions of the Taxes Consolidation Act 1997 in regard to appeal procedures that shall, with the necessary modifications, apply to appeals under Section 67 CATCA 2003. In particular, such provisions include procedures relating to -

- ⇒ late appeals;
- ⇒ an appeal against a Revenue officer's refusal to accept an appeal.

It is also important for *Methods of Disposal of an Appeal* (See Chapter 10 of this manual) and procedures at an Appeal Hearing (see Chapter 13 of this manual)

### **25.2.6 *Late appeal against a CAT assessment***

Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to CAT assessments via Section 67(5)(viii) CATCA 2003.

**N.B.** See Chapter 8 of this Manual re the conditions that apply as regards –

- (a) a late appeal submitted within 12 months of the date of an assessment; and
- (b) a late appeal made outside of 12 months of the date of an assessment.

### **25.2.7 *Refusal to accept an appeal against a CAT assessment***

This is covered in detail in Chapter 7.

### **25.2.8 *Re the appeal hearing***

See -

<b>Chapter 11</b>	Action prior to an appeal hearing before the appeal Commissioners
<b>Chapter 12</b>	Role and purpose of Revenue's Appeals Committee
<b>Chapter 13</b>	The Appeal Hearing
<b>Chapter 14</b>	Consequences of outcome of an Appeal Hearing
<b>Chapter 16</b>	Case stated for the opinion of the High Court

### **25.2.9 *Decision of the Appeals Commissioners***

The decision of the Appeal Commissioners in CAT assessments is final unless the appeal is required to be reheard by the Circuit Court or is submitted to the High Court on a point of law (or on a point of law and fact) – see Chapter 12.

**N.B** – In CAT appeals, **both** Revenue and the taxpayer have a right of a re-hearing of the appeal before a Circuit Court Judge (CCJ).

## **25.3 CAT appeals regarding value of real property (Section 66 CATCA 2003)**

### **25.3.1 *Overview of CAT appeals regarding value of real property***

Section 66 (1) CATCA 2003 provides that persons aggrieved by a decision of the Revenue Commissioners as to the market value of any real property may appeal against the decision in the manner prescribed by Section 33 of the Finance (1909-1910) Act 1910 [as amended by the Property Values (Arbitration and Appeals) Act 1960 and the Property Values (Arbitration and Appeals) Rules 1961].

Section 33(1) of the 1910 Act states “.....*any person aggrieved may appeal within such time and in such manner as may be provided by this section*.....”.

Section 33(5) of the 1910 Act states that “*provision shall be made by rules under this section with respect to the time within which and the manner in which an appeals may be made to .....*”

The ‘rules’ referred to in Section 33(5) are found in Land Values (Referees) (Ireland) Rules 1911 [as amended by the Property Values (Arbitration and Appeals) Act 1960 and the Property Values (Arbitration and Appeals) Rules 1961].

Appeals in relation to the market value of any real or leasehold property are heard by a property arbitrator appointed by the Land Values Reference Committee [such Committee is appointed under the Property Values (Arbitration and Appeals) Act 1960].

**25.3.2 Time limit**

Whilst Section 66 CATCA 2003 does not mention a time limit, the time limit for an appeal under Section 66 is 30 days.

This 30-day time limit is found, via Section 33 Finance (1909-10) Act 1910, in Rule 5 of the Land Values (Referees) (Ireland) Rules 1911.

Rule 6 of such Rules allows the Reference Committee absolute discretion to extend the 30-day time limit.

**25.3.3 Appellant limited to grounds of appeal**

Rule 9 of the Land Values (Referees) (Ireland) Rules 1911 states that the appellant cannot rely on any grounds not set out in the notice of appeal. However, the Rule also allows the referee (arbitrator) discretion, if he/she thinks it just in the circumstances, to allow the notice of appeal to be amended.

**25.3.4 Appeal to the High Court**

Section 33(4) Finance (1909-10) Act 1910 states that any person aggrieved by a decision of a referee (arbitrator) may appeal such decision to the High Court within the time and manner directed by the Rules of Court.

**25.3.5 Interaction with Stamp Duty documents re evidence**

Section 66 (2) CATCA provides that particulars of any transfer or lease which are presented to or obtained by Revenue under section 12(2) of the Stamp Duties Consolidation Act 1999 shall, in any appeal under this section, be received as *prima facie* evidence of all matters and things stated in such particulars.

## Chapter 26

### Appeal Procedure Relating to Stamp Duties

#### 26.1 Introduction

Part 4 of the Stamp Duties Consolidation Act 1999 contains the provisions relating to the adjudication of instruments and appeals against stamp duty assessments. Adjudication is the process whereby Revenue formally assesses the liability of an instrument to Stamp Duty. A person has the right of appeal against a stamp duty assessment raised by Revenue.

#### 26.2 Assessment of Stamp Duty by Revenue (Section 20 of the SDCA 1999)

This section enables Revenue to assess the amount of duty chargeable on an instrument and assessments may be raised at the discretion of Revenue or at the request of any person. Revenue may call for evidence in order to verify that all the facts and circumstances, relating to the liability of the instrument to duty, have been disclosed.

#### 26.3 Overview of Stamp Duty appeals (Section 21 SDCA 1999)

The Stamp Duty appeal procedures are provided for in Section 21 Stamp Duties Consolidation Act (SDCA) 1999 which covers:

- appeals in cases other than appeals regarding value of real property [Section 21(2) SDCA 1999].
- appeals regarding value of real property [Section 21(5) SDCA 1999].;

#### 26.4 Application of Chapter 1 of Part 40 (Appeals) of the Taxes Consolidation Act 1997 to Stamp Duty appeals

Section 21(4) SDCA 1999 states that Chapter 1 of Part 40 (Appeals) of the Taxes Consolidation Act 1997 shall, with any necessary modifications apply as they apply for the purpose of income tax. As regards Stamp Duty, this is important in the context of -

- ⇒ the appellant's right to a re-hearing of the appeal before a judge of the Circuit Court;
- ⇒ late appeals;
- ⇒ an appeal against a Revenue officer's refusal to accept an appeal.

It is also important for *Methods of Disposal of an Appeal* (See Chapter 10 of this manual) and procedures at an Appeal Hearing (see Chapter 13 of this manual)

#### 26.4 Stamp Duty appeals in cases other than appeals regarding value of real property [Section 21(2) SDCA 1999]

##### 26.4.1 Right of Appeal

Section 21(2) SDCA 1999 provides that an accountable person (i.e. the person liable to pay the stamp duty) who is dissatisfied with a stamp duty assessment may appeal such assessment to the Appeal Commissioners.

**Note** - Section 21(2) SDCA 1999 requires that the stamp duty, as assessed, must be paid prior to lodging the appeal.

##### 26.4.2 Notice of appeal

Whilst an appeal is to the Appeal Commissioners, Section 21(3) provides that the appeal is by way of notice in writing to the Revenue Commissioners.

**26.4.3 Grounds of appeal**

The section is silent as to grounds of appeal.

**26.4.4 Late appeal against a Stamp Duty assessment [see also Chapter 7]**

Section 933(7) TCA 1997 covers the admission of late appeals (i.e. appeals made outside of the 30-day time limit) and this applies to Stamp Duty assessments via Section 21(4) SDCA 1999.

**N.B.** See Chapter 8 of this Manual re the conditions that apply as regards -

- (a) a late appeal submitted within 12 months of the date of an assessment; and
- (b) a late appeal made outside of 12 months of the date of an assessment.

**26.4.5 Refusal to accept an appeal against a Stamp Duty appeal**

This is covered in detail in Chapter 7.

**26.4.6 Re the appeal hearing**

See -

<b>Chapter 11</b>	Action prior to an appeal hearing before the appeal Commissioners
<b>Chapter 12</b>	Role and purpose of Revenue's Appeals Committee
<b>Chapter 13</b>	The Appeal Hearing
<b>Chapter 14</b>	Consequences of outcome of an Appeal Hearing
<b>Chapter 16</b>	Case stated for the opinion of the High Court

**26.4.7 Determination of the Appeal Commissioners**

The determination of the Appeal Commissioners in Stamp Duty assessments is final unless the appeal is required to be reheard by the Circuit Court or is submitted to the High Court on a point of law (or on a point of law and fact) – see Chapter 16.

**N.B.** – In Stamp Duty appeals, **both** Revenue and the taxpayer have a right of a re-hearing of the appeal before a Circuit Court Judge (CCJ).

**26.5 Stamp Duty appeals regarding value of real property [Section 21(5) SDCA 1999]****26.5.1 Overview of Stamp Duty appeals regarding value of real property**

Section 21(5)(a) SDCA 1999 provides that persons aggrieved by a decision of the Revenue Commissioners as to the market value of any real property may appeal against the decision in the manner prescribed by Section 33 of the Finance (1909-1910) Act 1910 [as amended by the Property Values (Arbitrations and Appeals) Act 1960].

Section 33(1) of the 1910 Act states “....any person aggrieved may appeal within such time and in such manner as may be provided by this section....”.

Section 33(5) of the 1910 Act states that “provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to .....”

The ‘rules’ referred to in Section 33(5) are found in Land Values (Referee) (Ireland) Rules 1911.

An appeal in relation to the market value of any real or leasehold property will be heard by a property arbitrator appointed by the Land Values Reference Committee under the Property Values (Arbitration and Appeals) Act 1960.

**26.5.2      *Time limit***

Whilst Section 21(5)(a) SDCA 1999 does not mention a time limit, the time limit for an appeal under Section 21(5) is 30 days.

This 30 day time limit is found, via Section 33 Finance (1909-10) Act 1910, in Rule 5 of the Land Values (Referee) (Ireland) Rules 1911.

Rule 6 of such Rules allows the Reference Committee discretion to extend the 30-day time limit.

**26.5.3      *Appellant limited to grounds of appeal***

Rule 9 of the Land Values (Referee) (Ireland) Rules 1911 states that the appellant cannot rely on any grounds not set out in the notice of appeal. However, the Rule also allows the referee (arbitrator) discretion, if he/she thinks it just in the circumstances, to allow the notice of appeal to be amended.

**26.5.4      *Appeal to the High Court***

Section 33(4) Finance (1909-10) Act 1910 states that any person aggrieved by a decision of a referee (arbitrator) may appeal such decision to the High Court within the time and manner directed by the Rules of Court.

## Chapter 27

### Appeals against the refusal by the Collector General to issue a Tax Clearance Certificate

#### 27.1 Overview

A Tax Clearance Certificate (TCC) is a written confirmation from Revenue that a person's tax affairs are in order at the date of issue of the certificate. In some instances, a certificate may be issued to a customer who has tax arrears provided such arrears are covered by an instalment arrangement that has been agreed with Revenue.

Section 1094 TCA 1997 provides for the issue of a tax clearance certificate in relation to certain licences and Section 1095 TCA 1997 provides for the 'general scheme' relating to the issue of tax clearance certificates.

**Note** – The reference to a refusal to issue a tax clearance certificate and the appeal mechanisms relating to such refusal are contained in Section 1094 and these also apply to Section 1095 by virtue of Section 1095(6).

#### 27.2 Issue of a Tax Clearance certificate

Section 1094(5) states that an application for a tax clearance certificate is made to the Collector-General in a form prescribed by the Revenue Commissioners or in such other form as Revenue may allow.

Section 1095 is silent as to the precise nature of the application other than that a person who is in compliance with his or her tax obligations *vis a vis* the payment of tax and the submission of returns may apply to the Collector-General for a tax clearance certificate.

#### 27.3 Refusal to issue a Tax Clearance Certificate

Where an application for a tax clearance is refused by the Collector-General, he/she must "*as soon as is practicable communicate in writing such refusal and the grounds for such refusal to the person concerned*" [see Section 1094(6)].

Although not required by statute, the refusal should also inform the applicant that –

- (a) within 30 days of the refusal, he/she may, by notice in writing to the Collector-General, apply to have his/her application for a tax clearance certificate referred to the Appeals Commissioners; and
- (b) the said notice in writing shall be valid only if -
  - (i) that notice specifies -
    - the matter or matters with which that person is aggrieved; and
    - the grounds in detail of the person's appeal as respects each such matter; and
  - (ii) any amount of tax due to be remitted or paid, and which is not in dispute, is remitted or paid.

#### 27.4 Application to have an application for a tax clearance certificate referred to the Appeal Commissioners

The application by a person to have his or her application for a tax clearance certificate referred to the appeals Commissioners is not, in strictness, an appeal but is, by virtue of Section 1094(7)(c), treated in like manner to an appeal against an assessment to income tax.

The importance of this is that the income tax appeals provisions apply to the refusal by the Collector-General to issue a tax clearance certificate. In this regard, officers dealing with Tax Clearance Certificate refusals should be familiar with all the general tax appeal procedures contained in Part 1 of this Manual and, in particular –

Chapter 6	Grounds of appeal
Chapter 7	Refusal to allow an appeal
Chapter 8	Time Limits / Late Appeals

### **27.5 Important matters**

The 'appeal' mechanism as regards the refusal by the Collector-General to issue a tax clearance certificate is subject to two important matters –

- (a) the process is NOT an appeal mechanism to appeal the quantum of tax due [the appeal process in that regard is an appeal against the relevant estimate, assessment, etc. - see section 1094(7)(a) TCA 1997]; and
- (b) on the hearing of an appeal as regards the refusal of the issue of a tax clearance certificate, the Appeal Commissioners shall have regard for all matters that the Collector-General is required to have regard vis a vis the issue of a tax clearance certificate [see section 1094(d) TCA 1997].

### **27.6 Other appeal routes**

Tax clearance certificates are mentioned in a variety of Acts and Regulations. In some instances, a right of appeal may lie against the refusal to issue a tax clearance certificate under an Act or Regulations other than the Taxes Consolidation Act 1997. See, for example, Regulation 7 of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999.

## **PART C**

# **MATTERS OUTSIDE THE NORMAL TAX AND DUTY APPEAL STRUCTURE**

## **Chapter 28**

### **Person claims that a Tax / Duty statute contravenes natural justice**

#### **Judicial Review**

##### **28.1 Overview**

Where a person -

- ⇒ claims that Revenue's procedures are unjust and contravene natural justice; or
- ⇒ disagrees with a tax/duty statute (e.g. there is no disagreement with the interpretation of the statute but rather with the statute itself),

that person may seek, in the High Court, a judicial review of the particular 'infringement'.

##### **28.2 What is judicial review?**

According to the Attorney General's Manual (see Paragraph 28.4 below),

*Judicial Review is the procedure by which the High Court can scrutinise and supervise how Ministers, Government Departments, public bodies and the lower courts and tribunals exercise their powers or carry out their duties. The courts play an important role in ensuring the operation of good administration and preventing the improper exercise of power. Hence, persons affected may seek the protection of the court and an appropriate remedy.*

##### **28.3 Outcome of judicial review**

The remedies available to the High Court in judicial review cases include -

- ⇒ an order setting aside a decision of a statutory body;
- ⇒ an order declaring a decision to be unlawful;
- ⇒ an order compelling a public body to perform a duty required by statute (Mandamus);
- ⇒ an order prohibiting a public body from performing a duty (Prohibition);
- ⇒ an injunction;
- ⇒ damages.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

##### **28.4 Legal Manual for Government Departments and Offices: Judicial Review (Compiled by the Office of the Attorney General)**

##### **28.5 What to do on receipt of judicial review papers from a taxpayer's solicitor**

Matters pertaining to Judicial Review should be referred **IMMEDIATELY** for guidance to the Office of the Revenue Solicitor (with copies to the relevant RLS Division).

However, on occasions where a person lodges the necessary papers in the High Court seeking judicial review, the solicitor acting for that person may, in some instances, inform the Office of the Revenue Solicitor rather than the District.

## **Chapter 29**

### **Person claims that a tax or duty statute is unconstitutional**

#### **29.1 Overview**

A person may claim that a tax statute is unconstitutional. In such cases, the interpretation of the relevant statute is not, in general, in dispute. The point at issue is that the statute contravenes the Constitution. In some instances, the person has been successful. See, for example –

- ⇒ the *Murphy* and *Muckley* cases from the early 1980s concerning the taxation of married couples; and
- ⇒ the *Daly* case from 1993 concerning the off-set of Professional Services Withholding Tax.

## **29.2 What to do?**

Claims under this heading should be referred for guidance to the relevant RLS Division, which, in turn, will consult with the Office of the Revenue Solicitor. Such cases are not generally appeal cases heard before the Appeal Commissioners but rather are taken to the High Court by way of judicial review.

However, on occasions where a person lodges the necessary papers in the High Court seeking judicial review, the normal practice is for the solicitor acting for that person to contact the Office of the Revenue Solicitor.

## **29.3 Background note re the presumption of constitutionality**

Article 15.4.1. of the Constitution states that -

*"the Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof".*

It has long been accepted that statutes enacted after the Constitution came into being in 1937 have the presumption of constitutionality. The presumption of constitutionality appears to be particularly strong in the case of taxation statutes.

In the case of *Lowth v. Minister for Social Welfare* [1999] 1 ILRM, Hamilton C.J. stated -

*"It has long been established that the burden of establishing the unconstitutionality of a law is a formidable one. In Pigs Marketing Board v. Donnelly [1939] IR 413 Hanna J set down the standard in the following terms (at p. 417):*

*When the court has to consider the constitutionality of a law it must, in the first place, be accepted as an axiom that a law passed by the Oireachtas, the elected representatives of the people, is presumed to be constitutional unless and until the contrary is clearly established."*

In the case of *Madigan v. Attorney General* [1986] ILRM 136, O'Hanlon J stated that

*"in challenging the validity of a taxation statute enacted by the Oireachtas, it appears to me that a plaintiff faces an uphill battle. In the first place, there is the presumption of constitutionality, which exists in favour of an Act of the Oireachtas. .... Secondly, it has been recognised .... that tax laws are in a category of their own, and that very considerable latitude must be allowed to the legislature in the enormously complex task of organising and directing the financial affairs of the State"*

In *Browne v. Attorney General* [1991] 2 IR 58, Murphy J. stated -

*".. the burden, therefore, falls on the plaintiffs to satisfy the court that the impugned legislation does in fact conflict with the Constitution."*

## **Chapter 30**

### **Person claims that a tax statute contravenes the Equal Status Acts**

#### **30.1 Overview**

An individual may claim that a tax statute contravenes the Equal Status Acts 2000-2004.

#### **30.2 What to do**

Claims under this heading should be referred for guidance to the relevant RLS Division, which, in turn, will consult with the Office of the Revenue Solicitor.

#### **30.3 Background note re claims that a tax statute contravenes the Equal Status Acts 2000-2004**

Tax and Duty laws are introduced by ways of Bills laid before both Houses of the Oireachtas and signed into law by The President.

It is the Revenue view that tax statutes remain enactments until repealed by the Oireachtas or 'struck down' by the courts.

Tax law as passed by the Oireachtas and as contained in the various Tax and Duty Acts may contain distinctions as regards the status of individuals (including marital status). Following on from this, various allowances, credits and reliefs are determined by the personal status of individuals (e.g. married, separated, lone parent, widowed, single, etc.).

It is the Revenue view that, in complying with the various Tax and Duty Acts (including implementing tax statutes that differentiate on say, marital status), their officers do not contravene the provisions of the Equal Status Acts 2000-2004. Revenue's basis for this is Section 14 of the Equal Status Act 2000 -

*14. Nothing in this Act shall be construed as prohibiting –*

*(a) the taking of any action that is required by or under –*

*(i) any enactment .....*

## **Chapter 31**

### **Person claims that a tax or duty statute contravenes EU Law / Directives**

#### **31.1 Overview**

From time to time, a taxpayer may claim that a tax or duty statute contravenes

⇒ EU Law; or

⇒ an EU Directive / Regulation (e.g. a VAT Directive or a Customs Regulation),

or that it fails to reflect a ruling of the European Court of Justice (ECJ).

Whilst direct taxes (e.g. income tax, corporation tax and capital gains tax) are not harmonised, they may still contravene EU law if they conflict with certain rights guaranteed by EU law such as free movement of persons, freedom of establishment and free movement of capital. In addition, EU member states have agreed a number of Directives covering direct taxes (e.g. Parent and Subsidiaries Directives covering dividends, interest and royalties) relating to cross-border business.

#### **31.2 What to do**

Claims under this heading should be referred to the relevant RLS Division for guidance.

#### **31.3 EU Directives**

Irish domestic tax and duty legislation is, generally, amended to give effect to EU Directives and ECJ rulings.

#### **31.4 What to do where a taxpayer claims that a tax or duty statute contravenes EU law/Directive/Regulation**

A claim by a person that an Irish domestic tax or duty law contravene EU Law/Directive / Regulation should be brought to the attention of the relevant RLS Division.

Where the issue arises in the course of a tax or duty appeal, the Appeal Commissioners or the Courts may refer it the relevant EU office of the ECJ.

(In some instance, taxpayers have written directly to the relevant EU office complaining that a tax or duty statute contravenes EU law/Directive/Regulation).

#### **31.5 Legal Manual for Government Departments and Offices: Aspects of European Union Law (Compiled by the Office of the Attorney General)**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

# **PART D**

## **INTERACTION OF TAX AND DUTY APPEALS WITH 'REVIEW' MECHANISMS**

### **Chapter 32**

#### **Interaction of tax and duty appeals with 'review' mechanisms**

**32.1 Can a person lodge a tax or duty appeals and at the same time seek judicial review on the same issue?**

A person can lodge a tax or duty appeal if such appeal is provided for in tax or duty legislation.

The question of whether the High Court will accept a claim for judicial review whilst there is an 'open' tax or duty appeal on the same issue is a matter for the High Court.

**32.2 Can a person lodge a tax or duty appeal whilst at the same time seek to have an internal review undertaken under *Statement of Practice SP-GEN/2/99 Revenue Internal Review Procedures (Revised January 2005)* on the same issue?**

Paragraph 3.6 of the Internal Review Statement of Practice states

*Where the subject matter of a review is a legal or technical issue, the taxpayer should submit an analysis of what he or she considers is the proper interpretation. The analysis should be supported, as appropriate, by reference to the legislation and case law. If there is a difference of opinion between a Revenue officer and the taxpayer on a point of law, the reviewers will intervene only where they consider that the Revenue opinion is clearly incorrect. It is the function of the Appeal Commissioners and the Courts to adjudicate on points of law.*

It is a matter for the

Internal Review Unit  
Stamping Building  
Dublin Castle

rather than the relevant District / Division to determine whether or not an internal review will be undertaken.

### 32.3 Can a person lodge a tax or duty appeal whilst at the same time submit a complaint to the Office of the Ombudsman on the same issue?

Generally, complaints to the Ombudsman relate to administrative issues than but there may be instances where the Ombudsman may enquire as to the correct interpretation of a tax statute.

However, Section 5(1) of the Ombudsman Act 1980 states

**5.—(1) The Ombudsman shall not investigate any action taken by or on behalf of a person—**

**(a) if the action is one in relation to which—**

- (i) the person affected by the action has initiated in any court civil legal proceedings and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded,**
- (ii) the person affected by the action has a right conferred by or under statute (within the meaning of [section 3](#) of the [Interpretation Act, 1937](#) ), of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court), or**
- (iii) the person affected by the action has a right of appeal, reference or review to or before a person other than a Department of State or other person specified in Part I of the First Schedule to this Act,**

Part 1 of the First Schedule of that Act includes the Revenue Commissioners. However, Part 2 of the First Schedule of that Act states

*The reference in Part I of this Schedule to the Revenue Commissioners does not include a reference to the Appeal Commissioners of Income Tax or their staff.*

In strictness, the Office of the Ombudsman may not examine a complaint in a matter that is the subject of an 'open' tax or duty appeal to be heard before the Appeal Commissioners but that is a matter for that Office.

In practice, where a complaint is lodged with the Ombudsman in relation to an issue that is also the subject of an 'open' appeal, the fact that the issue is the subject of an 'open' appeal should be brought to the attention of Revenue's Ombudsman Liaison Office when responding to that liaison officer. Such liaison officer will bring this matter to the attention of the Ombudsman.

## Appendix 1

### Form AH1

To: The Appeal Commissioners  
Fitzwilton House (Floor 8),

Wilton Place,  
Dublin 2

**I wish to have time made available for an appeal as follows –**

APPELLANT'S NAME:

REGISTRATION NUMBER:

TAX TYPE:

AGENT(S):

LEGISLATION INVOLVED:

YEARS OF ASSESSMENT/ACCOUNTING PERIOD(S):

GROUND(S) FOR APPEAL AS STATED BY THE APPELLANT:

POINTS AT ISSUE:

TAX CASES LIKELY TO BE QUOTED:

ESTIMATED TIME INVOLVED:

WHETHER COUNSEL WILL APPEAR FOR EITHER SIDE:

OTHER RELEVANT DETAILS OR REMARKS:

\_\_\_\_\_  
(Revenue Officer)  
Revenue Region  
District

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## Form AS1

**TAX APPEAL**

APPELLANT'S NAME .....

APPELLANT'S ADDRESS .....

.....

AGENT(S) .....

YEAR ACCOUNTING PERIOD	OR TAX TYPE	DESCRIPTION OF PROFITS OR INCOME ASSESSED	AMOUNT OF ASSESSMENT OR SUBJECT OF CLAIM
<p style="text-align: center;">DETERMINATION OF APPEAL COMMISSIONER(S)</p> <p style="text-align: right;">Signature(s) of Appeal Commissioner(s)..... Date .....</p>			
<p style="text-align: center;">DETERMINATION OF THE CIRCUIT COURT JUDGE</p> <p style="text-align: right;">Judge's Signature..... Date .....</p>			

Details of interim hearings are recorded overleaf.

**TAX APPEAL**

APPELLANT(S).....

.....

**INTERIM LISTINGS**

DATE	VENUE	NOTES AND INTERIM RULINGS	INITIALS OF APPEAL COMMISSIONER OR CIRCUIT COURT JUDGE

## **Appendix 3**

### **Sample written submission**

#### **THE APPEAL COMMISSIONERS**

**JOHN DOE**

**Appellant**

**-and-**

#### **THE REVENUE COMMISSIONERS**

**Respondent**

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

#### **Preliminary**

1. *A brief introduction to the issues in dispute between the parties.*

#### **Facts**

2. *This section should only include provable facts that are not in dispute between the parties, e.g. "The Appellant is engaged in a news agency business. The Respondent, pursuant to a Revenue audit commenced on \_\_\_\_\_, understands that the Appellant did not include all of his cash sales in his financial accounts. The Respondent considers that the omitted sales are taxable receipts of the trade chargeable to income tax.. This is disputed by the Appellant who contends that \_\_\_\_\_. The Respondent issued an amended assessment in respect of the year ended 31/12/2006. The Appellant has lodged an appeal against the assessment on the grounds that it is excessive and this is the subject matter of this Appeal"*

#### **The Legislation**

3. *All the relevant legislation should be referenced here,  
The sections of the law referred to should be written out in full, e.g.*  
Section X provides: "XXXXXXX"  
Section X provides: "XXXXXXX"  
Article X of the VAT Directive provides: "XXXXXXX"

#### **Basis of amended assessment**

4. *A brief description of the reasons the Revenue auditor decided to amend the assessment, and full details of the assessments (dates, amounts, etc)*

#### **Appellant's grounds of claim**

5. *Very brief description of the grounds of appeal as stated by the Appellant. Extracted from notice of appeal.*

**Revenue Response**

6. *Full details of Revenue's defence to the appeal, including arguments concerning disputed facts and evidence, the application of legislation, and the interpretation of case law and precedent.*
  
7. *A summary of the Revenue case, e.g.: "The Respondent submits that the provisions of section ??? apply to the omitted receipts and that income tax is chargeable on the full amount received by the Appellant. It is submitted that the Commissioner should determine that the omitted receipts are chargeable to income tax in the year ended 31/12/2006.*

*Reserve the right to add to the submission e.g.: "The Respondent reserves the right to make more detailed and further submissions at a later date, including at the hearing."*

## Report to Appeals Committee - Case Outline

<b>1. Taxpayer's Name &amp; PPS /Tax Reference</b>	<b>Name: PPS/Tax Reference:</b>
<b>2. Revenue Branch/District:</b>	
<b>3. Agent:</b>	
<b>4. Court Stage (e.g. AC , CCJ,)</b>	
<b>5. Year(s) of assessment/ Chargeable Period(s).</b>	
<b>6. Tax/Duty Head (e.g. IT, CT, CAT, VAT, Customs, Excise)</b>	
<b>7. Amount(s) of tax/duty involved</b>	
<b>8. Point(s) at issue:</b>	
<b>9. Relevant Legislation</b>	
<b>10. Details of case law likely to be quoted.</b>	
<b>11. Grounds for appeal as stated by Taxpayer/ Agent.</b>	
<b>12. Name of case manager. Telephone No. Fax No.</b>	
<b>13. Has Appellant Engaged Counsel or indicated that s/he will?</b>	
<b>14.Length of time the officer estimates may be required for the hearing</b>	

<b>15.Facts of the case (Summary)</b>	
<b>16.Revenue Views on the Point(s) at issue</b>	
<b>17.Taxpayer's /Agent's views on the points at issue</b>	
<b>18. Has RLS been consulted? If YES, identify the relevant RLS contact.</b>	YES/NO Name of RLS Contact:

**Additional information, as necessary, should be added to this case outline (See Paragraph 12.5)**