

Tax Advice Services

**Public Consultation
Rules & Procedures of the Tax Appeals Commission**

Submission

Mary Farrell
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Public Consultation Paper

Rules & Procedures of the Tax Appeals Commission

Submission

Background Information on Mary Farrell

I was an Inspector of Taxes for almost 40 years. In that capacity, I took appeals on behalf of Revenue. These appeals were heard before Commissioners Val Dikken, Paddy Russell, Jimmy Whooley and Ronan Kelly. I have a number of open appeals in my practice at present. Some are arising from my own practice and some arising from other practices, where I am acting on behalf of another practitioner.

Appeal Commissioners Function.

The role and function of the Appeal Commissioners are, in my view, wider and more important than simply judicial.

The resources and powers held by the Revenue Commissioners are formidable. In an adversarial situation with a citizen, the balance of power is always with the Revenue Commissioners.

The Appeals Commissioners are part of the checks that seek to ensure that the balance is not sufficiently skewed to lead to injustice.

Revenue Powers

In 1998 under the Chairmanship of Cathal Mc Domhnaill., Revenue issued a Charter of Rights. This was taken so seriously by the then Chairman that he instructed that a copy be prominently displayed in all offices. In the intervening years the Charter has quietly disappeared and many of the public offices are closed. "Customers" must engage on –line.

In addition Revenue has taken on additional powers. For example the power to break the four year barrier on the basis of an opinion rather than just fraud and neglect.

The hearing of penalty cases in public, which undermines the confidentiality of the taxpayer.

As Revenue increases its powers the role of the Appeal Commissioners is even more important as part of the balancing mechanisms in place between citizens' rights and State powers.

"Reforms" of 2015

These reforms, were in my view, over influenced by Revenue. It appears to have taken a view contrary to the principle of accessibility of the Appeal Commissioners. In particular, I would identify its attempt to have the hearings held in public, as indicative of the negativity with which Revenue approached the right of the taxpayer to access the independent system.

A public hearing where either details of family business (certain reliefs and Capital Acquisitions Tax issues) or business matters (Mark-up ratios, wages ratios) , would become public property, is sufficient to put many clients off defending their position. Thankfully Revenue had only limited success in this attempt and while the default position is public hearings that can be "opted out". I include it to illustrate the lack of commitment of Revenue today to accessible independent hearing. This is in marked contrast to a former ethos which was profoundly respectful of the rights of the taxpayer

Independence- Accessibility- Appealability.

The appeal procedure, historically, was an independent third-party mechanism to resolve disputes between Revenue and the taxpayer. It was intended to be accessible and have a degree of informality not appropriate or available to the Courts. It was intended to be cost effective, with the taxpayer feeling able to self-represent or be represented by his/her usual tax agent. It was open to the taxpayer to appeal to the Circuit Court for a rehearing of the case.

Independence

I have no reason to doubt the independence of the revised process.

Accessibility

This is an area of concern to me as a practitioner. I am not going to reference delays as I have no doubt this will come from others.

Appeal Grounds

Insisting that only grounds identified in the initial submission of the Appeal will be admitted is damaging access to the process. This provision worries even practitioners. For a taxpayer attempting to self-represent this is too onerous.

Statement of Case

Less formal terminology is required. The mere wording intimidates. This could be replaced by asking the appellant to set out the issues in bullet points.

“Over Formalising” of the Appeal Process

The combination of the above is leading to a belief that the process can only be accessed effectively if the taxpayer is represented by a barrister. This runs counter to the entire principle on which the Appeal process was founded and developed.

VRT/Property Tax and Excise Cases

The requirement to pay the tax upfront is a disincentive which makes the process potentially inaccessible.

In dealing with VRT cases in particular I find that Revenue officials will not examine the evidence and simply state that an appeal is open to the client. I am now finding that Revenue is even challenging my right to look for an administrative review of cases, where the evidence has not been examined. This is on the basis that the decision is appealable and a review may not be open to me.

Revisiting of access to independent third party hearing in this type of case is required

(I will supply documentation if required. I need to be careful of FOI requests and protecting client confidentiality so I am not including now.)

Evidence underpinning Assessments

I am at present dealing with a case where Revenue is refusing point blank to provide me with the evidence on which an assessment is based. In response to my protests they rely on the fact that the onus of proof is on the appellant. In fact this morning, this case progressed. Following my formal application for a review of the decision, Revenue now tells me I will have the material 28 days before the hearing. I am offered no explanation for the continued delay.

(I will supply documentation if required.)

This question of evidence needs urgent examination. Cases are becoming too frequent where Revenue acts on the basis of an unsubstantiated opinion and knows that the taxpayer cannot refute evidence not produced

Commissioner Jimmy Whooley took the position that Revenue had to produce the evidence on which an assessment stood. At that point the “onus of proof” was with the appellant. If the appellant refuted the evidence with other material the “burden of proof” shifted to Revenue and back and forth as evidence was submitted/refuted.

I am at present dealing with a case where the Auditor simply states that she is not accepting the evidence and gives no grounds for this rejection.

(I will supply documentation if required)

She is threatening assessments and I am very concerned that I will have a client forced through an expensive Appeal Hearing. In this case I would have to call witnesses and probably go through a three day hearing to cover all the material. The potential cost is terrifying the client.

If the Appeal Commissioners took a position that Revenue had to provide the evidence on which assessments stood at an early stage it would save a lot of time.

Quantum Cases-Argument Cases

Where the issue is the quantum of the tax arising from audit or other enquires the case should be heard by an experienced accountant. This is a significant lack in the present system.

Technical Issues

Where the point is technical the use of correspondence rather than a full hearing should be considered. I have a case at present where the tax involved is €800.00 but there is a significant technical point. The client is not willing (understandably) to pay the costs of Appeal

To make the Appeal system accessible in this type of small case requires a capacity to deliver a ruling based on written submissions.

(I will supply documentation if required.)

Volume of Cases

This is not unprecedented. A similar volume was a factor in moving Ireland from an administrative based assessment system to a self-assessment system

Appealability

The removal of the right to appeal to the Circuit Court Judge (CCJ) was the most far reaching and serious consequence of the 2015 changes. No evidence was produced that the CCJ option created a bottleneck. In my view, this was a case of Revenue deciding not to waste a good crisis and remove an irritant. This has significantly removed accessibility to third party hearing. Knowing that if the appeal is lost, the only available access to appeal is the High Court is a disincentive to lodging an appeal in the first place.

While I have every confidence in the Appeal Commissioners, no one gets it right 100% of the time. For the time when the Appeal Commissioners do not get it right the citizen should be entitled to a Circuit Court hearing, in camera, where the tax in question is within the figures that the Circuit Court can rule on.

Similarly the Revenue should have a right to appeal to the Circuit Court within similar limits.

Summary

- 1- Amending the system to categorise cases as “Quantum Cases” and “Technical Case”
- 2- Appointing qualified experienced accountants to hear quantum cases
- 3- Introducing a system of simplified processes at initial appeal level and statement of case level
- 4- Introducing a system of dealing with small technical cases on a written submission basis
- 5- Altering the “Onus of Proof” provisions to require Revenue to set out it’s evidence in quantum cases, before the case proceeds to hearing and in reasonable time before that date
- 6- Making it a requirement on revenue that where evidence refuting the basis of the proposed assessment is submitted, this evidence must be refuted before proceeding.
- 7- Restricting the right to raise assessment to officers of sufficient seniority and expertise.
- 8- Ensuring accessibility for VRT and Excise cases
- 9- Restoring an ability to have a hearing at CCJ level.

Conclusion

I remain concerned that the present volume of cases will be used by Revenue to further erode the rights of taxpayers and citizens. Whatever solutions are found the Appeal Commissioners must retain their role as the balance between citizen and State in tax cases

Yours sincerely

Mary Farrell
21st Sept 2017