



The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

**47/49 Pearse Street,
Dublin 2.**

**Response to Public Consultation on the Rules & Procedures of the Tax
Appeals Commission**



1. About CCAB-I

The Consultative Committee of Accountancy Bodies – Ireland is the representative committee for the main accountancy bodies in Ireland. It comprises Chartered Accountants Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants in Ireland, and the Chartered Institute of Management Accountants.

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2. Progress in the Tax Appeal process to date

The Tax Appeals Commission (TAC) is in operation since March 2016. The general view is that the new system is an improvement compared to the former tax appeals system. For example, the publication of determinations, the publication of the first annual report of the TAC, the listing of rules and procedures on the website, and an online facility to make appeals are positive enhancements to the appeals system. Most significantly, appeals now go directly to an independent body rather than to Revenue in the first instance, as was the case prior to March 2016.

According to the Annual Report of the TAC, there were 448 cases concluded in 2016 and 153 cases were listed for hearing, producing 41 determinations. The tax appeals process has always been a ‘trickle down’ process where a relatively low level of appeals made, compared to the volume of audits, produces a discrete number of adjudicated cases. However, a consistent message from our members is that Revenue’s internal review and external review procedures are not seen as fit for purpose and therefore an independent body such as the TAC is a crucial redress mechanism. Therefore it is fitting that the office of the TAC should regularly review its procedures to ensure that it is fulfilling its essential role.



The CCAB-I hopes that this practice will be carried out regularly and the findings from such reviews are actioned by way of a change in procedure or a change to the Finance (Tax Appeals) Act 2015 if necessary.

We note the sentiment expressed in the consultation document that each appeal is different and that ‘one size does not fit all’ as regards the progression of a case through the system. The following submission puts forward general observations on how the tax appeals process can be improved upon notwithstanding that similarity across cases is rare.

3. Settlement of taxpayer disputes before appeal hearing

Revenue’s extensive powers are increased year on year in Finance Acts. Our members find interactions with Revenue to be increasingly fractious as Revenue’s powers expand. Frustrations are further compounded by difficulties in making contact with Revenue to discuss tax technical matters via MyEnquiries and the Revenue Technical Service. This is the backdrop from which many tax disputes coming before the TAC emanate. We have received reports that Revenue can also be unwilling to engage in settlement negotiations with a taxpayer before an appeal hearing takes place even though this facility is provided for under section 949V TCA 1997.

The introduction of alternative dispute resolution approaches such as formal mediation may encourage Revenue to engage in settlement negotiations instead of simply listing cases for appeal. The TAC could take a more direct approach to actively encourage the parties to settle disputes before the appeal hearing in circumstances where a variety of resolution mechanisms are available. We understand that the TAC is already receptive in circumstances where the parties indicate they are in negotiations and, for example, more time is needed to progress negotiations to a conclusion. We recognise that the TAC will require further resources to drive greater uptake of earlier dispute resolution.



4. Delays in the Tax Appeals System

A significant challenge encountered by the TAC in 2016 was the transfer from Revenue of a large number of legacy appeals during the period August to December 2016. We welcome the appointment of temporary commissioners to assist in the progression of such appeals.

However, a fundamental review of the appeals process is necessary to look for ways of reducing the timeframes between the various stages in the process. For example, delays frequently arise between the appeal hearing and delivery of the written determination. Sections 949AF and 949AJ TCA 1997 provide that the Appeal Commissioner may make an oral determination on conclusion of a hearing, with the requirement to issue the determination in writing no later than 21 days following the hearing. This timeline is not always observed in practice. Given that the hearing is the only chance for the taxpayer to argue against Revenue's legal submissions/expert evidence, the importance of the hearing should not be potentially undermined by the period of time taken to prepare and release a determination in relation to the hearing.

In cases where there are undue delays and the statutory time limits have not been maintained by Revenue or the TAC, the statutory interest clock should be suspended.

5. Interactions by the TAC

Determinations should be published on the TAC's website as soon as possible after they have issued to the parties to ensure that the tax advising community has prompt knowledge of the new insight contained therein.

There should be greater visibility in relation to the expected timing of delivery of the written determination, e.g. by publishing a schedule of pending determinations on the TAC website. This could be done within the current powers afforded to the TAC in accordance with the discretion afforded to it under the Finance (Tax Appeals) Act 2015.



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The online system for interacting between TAC/Revenue/Agents for taxpayers has been useful. It could be enhanced by facilitating all parties to a case to view correspondence and documents uploaded by one party on the one platform with e-mail notifications to Revenue/Agent when there is a new item of correspondence.

The TAC's customer service delivery could improve by committing to responding to routine requests from parties during the appeals process within a prompt timeframe. For example, where a taxpayer requests an extension of time to comply with a direction to prepare a statement of case, it is suggested that the TAC should commit, as a matter of practice, to respond to such requests within one week of their receipt. This would help to minimise the uncertainty for taxpayers during the process and would also enhance the efficiency and smooth operation of the process by enabling taxpayers to proceed with their efforts to comply with the direction without any undue delays in waiting on the confirmation of the extension from the TAC. The CCAB-I is mindful that administrative responsibilities were placed on the TAC which were not part of the pre-March 2016 system and we therefore recognise that the TAC should be supported with further resources to make the necessary customer service delivery improvements.

6. Procedure for in camera hearings

The Finance (Tax Appeals) Act 2015 introduced a rather cumbersome system for the appellant to state if he or she wants the appeal to be heard otherwise than in public in accordance with various deadlines. It would be useful to know whether any appellant has requested a public hearing by default i.e. by not requesting a private hearing. We note that there are a number of practical stages along the procedural process where a taxpayer can so indicate, so that the taxpayer will not by default or accident find themselves airing their private affairs (which may relate to family circumstances e.g. in a CAT situation) in public at an appeal hearing.



7. Case management conferences/certain directions

In respect of longer appeals, it could be efficient to hold case management conferences for the purposes of setting directions and timetables e.g. for the parties to submit an agreed statement of the facts, or to submit written evidence of witnesses intended to be called (particularly expert witnesses e.g. engineers).

8. Conclusion

CCAB-I considers this review to be helpful and timely. We believe there is merit in reviewing the TAC process routinely to ensure that delays are the exception rather than the norm. Taxpayers are under inordinate pressure to keep up with an ever increasing tax compliance burden. It is usually the most compliant class of taxpayer who come before the TAC for redress as tax evaders are dealt with in the criminal courts. At a time when so much is demanded of the compliant taxpayer, nothing less than a highly efficient and effective tax appeals process is acceptable.