



## **REMOTE HEARING GUIDELINES**

### **1. INTRODUCTION**

[1.1] The Tax Appeals Commission (TAC) are introducing remote hearings of tax appeals, (in relation to preliminary and substantive matters) as an alternative mode of hearing to facilitate the ongoing delivery of an appeal process in taxation matters during the Covid-19 restrictive measures. These guidelines are intended to apply during the continuance of any restrictive measures adopted by the government and will continue following the lifting of those measures, if it assists in the efficiency and effectiveness of the TAC.

[1.2] A remote hearing is one in which the Appeal Commissioner and the participants (the parties, representatives, witnesses, stenographers, interpreters) do not gather physically at the same location and normally involves a video conferencing facility.

[1.3] The TAC will also continue to hold physical hearings at the offices of the TAC but the number of such hearings will be reduced due to current social distancing guidelines and other health and safety issues. Separate guidelines will issue to assist in relation to those physical hearings.

[1.4] The guidance and procedures prescribed in this document are intended to be applied flexibly. It is not intended to be exhaustive but rather to identify the minimum arrangements necessary to enable the TAC to continue to operate effectively during the Covid-19 restrictive measures. It may be necessary to revise this document from time to time, as circumstances change, and having regard to the experience of the TAC and the parties of how the arrangements operate in practice. The success of remote hearings will depend on the willingness of the parties to co-operate with the TAC.

## **2. OVERARCHING PRINCIPLES**

[2.1] Every remote hearing will be planned and conducted in a manner designed to safeguard the right of a fair hearing.

[2.2] The planning and conduct of every remote hearing will replicate, insofar as possible and with all modifications deemed appropriate by the TAC, physical hearings before an Appeal Commissioner. The ability of the TAC to replicate a physical hearing may, at times, be impaired by limited human, logistical and technological support and facilities.

[2.3] The overriding objective of section 6(4) of the Finance (Tax Appeals) Act, 2015 and section 949H of the Taxes Consolidation Act, 1997 applies to the planning and conduct of remote hearings.

## **3. PRE-HEARING**

### Selection of Appeal for Remote Hearing

[3.1] The TAC will undertake a review of appeals and evaluate the suitability of an appeal for a remote hearing. Where an appeal is considered suitable, the TAC will notify the parties and seek the consent of the parties to proceed by way of a remote hearing.

### Technical Requirements

[3.2] Where an appeal is selected for a remote hearing, the TAC will inform the parties of the minimum technology capability required for the successful delivery of a remote hearing and every participant will be required to confirm that they have access to this capability to participate in the remote hearing.

[3.3] TAC will conduct remote hearings through a virtual hearing room using a video streaming application called PEXIP. The inter-operability of PEXIP means the participants can join a PEXIP virtual hearing room from other video

conferencing services including Skype, Zoom, Cisco Webex, Microsoft Teams, Google Hangouts, without the requirement that all participants use the same service to connect.

[3.4] The TAC will provide the participants with the necessary technical information and details for the remote hearing in advance. The participants can liaise with the TAC to test the technology in advance of the scheduled remote hearing date and should inform the TAC of any technical issues.

#### Notification to the Parties

[3.5] The parties will be required to provide the TAC with the names and contact particulars (e-mail addresses and telephone numbers) of every participant who will be attending the remote hearing. This information should be sent to the TAC by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie) preferably by no later than **7 days** before the remote hearing. This information is essential because at the beginning of the remote hearing, the Appeal Commissioner will confirm all present as the participants notified to the TAC and any participant who has not been notified to the TAC may be excluded or removed from the remote hearing.

[3.6] Notifications will issue by the TAC to the parties and nominated representative on record with instructions on how to join the remote hearing at least **3 days** before the hearing. A participant or the nominated representative should ensure that they have received an e-mail invite to join the remote hearing from the TAC directly or from the parties or nominated representatives so they are ready to join the hearing in good time on the scheduled remote hearing date.

#### Documents for the Hearing

[3.7] In advance of the remote hearing, the parties will be directed to liaise with each other to provide documents and materials to the TAC no later than **7 days** before the hearing, which may include:

- an agreed Book of Documents (the documentary evidence that will be presented at the remote hearing);

- an agreed Book of Authorities (the statutory provisions, case law and commentary that will be relied upon at the remote hearing).

[3.8] All books must be indexed, tabbed and paginated in an agreed and consistent format between all parties. All documents in the books must be legible and complete. It is essential that the books are delivered in this format, otherwise it will become exceedingly difficult for an Appeal Commissioner and the other participants to reference and follow the documents during a remote hearing.

[3.9] TAC does not have the capacity or resources to make printed versions of documents sent electronically. The documents should continue to be delivered physically to the offices of the TAC and sent by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie)

[3.10] The late submission of documents and materials to the TAC has a significant impact on the efficient and effective conduct of a remote hearing. A remote hearing will not proceed where all the required documents and materials have not been provided to the TAC and exchanged between the parties in accordance with the directions from the TAC. The admissibility of any subsequent documents and materials will be a matter for the Appeal Commissioner.

#### Pre-Hearing Form for Completion

[3.11] The parties must complete the form set out in the appendix to these guidelines setting out the required information and send the completed form to the TAC by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie) preferably by no later than **7 days** before the remote hearing.

#### Preparations by the Parties

[3.12] The participants are responsible for selecting a quiet and private location for the remote hearing with a view to ensuring the integrity of the hearing. The Appeal Commissioner will assume that all parties respect the process and normal business attire is observed for any remote hearing.

[3.13] Remote hearings will replicate, insofar as possible, physical hearings before an Appeal Commissioner thereby preserving the benefits of a physical hearing by allowing the participants and the Appeal Commissioner to interact on a real-time basis. Representatives and parties will be expected to focus their evidence (if applicable) and submissions to promote the efficient use of the technology in a reasonable timeframe.

#### Recording of Hearing

[3.14] The recording or live streaming of remote hearings is strictly prohibited. No-one is permitted to make any video or audio or other recording or image whatsoever of any part of the hearing. This prohibition includes a 'screenshot' or 'screengrab' and all like or related mechanisms. Any arrangements for the attendance of a stenographer at a remote hearing must be notified to the TAC in advance and authorised by the Appeal Commissioner. If the Appeal Commissioner is conducting the remote hearing at the offices of the TAC, a stenographer may attend at the offices of the TAC or, alternatively, arrangements can be made for the stenographer to join a remote hearing at an offsite location. It is important that the parties inform the TAC as to which option is selected.

[3.15] At the beginning of the remote hearing, the Appeal Commissioner will seek confirmation from the participants that they will not engage in the unauthorised recording or live streaming of the hearing. If the Appeal Commissioner has reason to suspect that any participant is failing to comply with this requirement, the Appeal Commissioner may decide to terminate the hearing.

#### Data Protection

[3.16] The parties must take all necessary steps to ensure the confidentiality and security of any communications, documents or materials of a confidential or sensitive nature being transmitted electronically and will be responsible at all times for compliance with all applicable requirements of GDPR.

#### **4. HEARING**

##### Conduct of Hearing

[4.1] The 'presence' of every participant in a remote hearing entails physical attendance at the relevant offsite location and visible participation from beginning to end, unless otherwise directed by the Appeal Commissioner.

[4.2] The participants are required to follow the same procedures that apply to a physical hearing before an Appeal Commissioner. All mobile phones or other electronic devices not being used for the purpose of the remote hearing should be turned off for the duration of the hearing. The participants are prohibited from eating and smoking (cigarettes and/or e-cigarettes) during the hearing.

[4.3] The participants should be ready to join the virtual hearing room at least 15 minutes before the start of the remote hearing. The participants should make sure the electronic device is plugged in and fully charged. The device screen should be positioned at a landscape setting so the participant's face can be seen properly. Ideally the background should be blank or neutral. The Appeal Commissioner will invite participants to the virtual hearing room.

[4.4] Participants must ensure that they will not be interrupted or distracted during the hearing. Participants should have their cameras turned on at all times, unless otherwise directed by the Appeal Commissioner. Participants should not move away from the device screen during the hearing without the permission of the Appeal Commissioner.

[4.5] Earphones or headphones with a microphone may be worn in order to enhance the quality of communication and if their use will assist in preserving the confidentiality of the hearing.

[4.6] Where practicable, the relevant representative, or party, will inform the Appeal Commissioner of (a) the arrival of any person not present at the beginning

of the remote hearing and (b) the proposed departure of any person from the remote hearing prior to its conclusion.

[4.7] While it will be important to conduct the hearing efficiently and in a reasonable timeframe it should be borne in mind – particularly in hearings of longer duration – that it may be appropriate to build in regular breaks in the hearing.

#### Procedure during Hearing

[4.8] At the beginning of the remote hearing, the Appeal Commissioner will outline the protocols and procedures to be followed during the hearing. It is a matter for the Appeal Commissioner to decide how the hearing will be conducted.

[4.9] The Appeal Commissioner will confirm all present as the participants notified to the TAC and confirm that the participants can hear the Appeal Commissioner. A remote hearing may not commence until all participants notified to the TAC as attending the remote hearing have joined the virtual hearing room. All participants attending the remote hearing will address the Appeal Commissioner seated, unless otherwise directed by the Appeal Commissioner.

[4.10] If a participant is unable to access the remote hearing, the participant should immediately inform the TAC by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie) or telephone number +353 86 033 4523. In such circumstances, the Appeal Commissioner will decide whether it is possible for the remote hearing to proceed or whether it should be re-scheduled to a later date.

[4.11] In the event of unforeseen and unavoidable technology issues, the Appeal Commissioner will temporarily adjourn the remote hearing to allow the issues to be addressed by the participant experiencing those issues. If the technical issues cannot be resolved such that all participants can partake effectively, the hearing will be adjourned. The hearing will be rescheduled to a later date.

[4.12] If a party who has been notified of the time appointed for the remote hearing does not join the hearing at the time appointed, the appeal shall be treated as if it had been withdrawn.

[4.13] The Appeal Commissioner will remind the participants to have their devices on mute at all times during the hearing and should only unmute when invited to speak by the Appeal Commissioner. Where a representative, or party, wishes to make an intervention, permission should be sought by raising a hand or other discreet mechanism.

[4.14] When invited by the Appeal Commissioner, the relevant representative, or party, will announce their appearance and provide particulars of every other participant attending the remote hearing. The language and forms of address used at the remote hearing should continue to be that of a physical hearing including the manner of addressing the Appeal Commissioner and referring to the other party's representatives.

[4.15] The Appeal Commissioner will request the representative, or party, to identify documents by title, tab number, page number and paragraph number, where appropriate. The parties should liaise in advance of the remote hearing to establish a common approach to identifying and accessing the documents and materials which will be opened during the hearing.

[4.16] The conventional sequence of oral presentations to the Appeal Commissioner will apply, unless otherwise directed by the Appeal Commissioner. The Appeal Commissioner will invite the Appellant representative, or party, to deliver an opening to provide background on the appeal. This will be followed by the presentation and examination of evidence (if applicable). When the evidence has concluded, the Appellant representative, or party, will be invited to make submissions. The Respondent representative, or party, will then be invited to make submissions. The Appellant representative, or party, will be given the opportunity to reply to the submissions made by the respondent representative, or party.



[4.17] At the end of the remote hearing, the Appeal Commissioner will direct that the hearing is concluded and the Appeal Commissioner will be the first to leave the virtual hearing room. The participants will then leave the hearing room.

#### Witnesses

[4.18] The oath or affirmation of a witness will be administered remotely. If the parties wish to swear an oath they should ensure they have the requisite religious texts in their possession prior to the oath taking. This is the responsibility of the parties and TAC has no responsibility in this regard.

[4.19] The Appeal Commissioner will ask a witness to confirm that he/she is alone in the room in which the evidence is being given and that there is no-one at hand physically or by electronic means to prompt him/her with answers during the presentation and examination of his/her evidence. The Appeal Commissioner may request the witness to move the camera around the room.

[4.20] The witness must ensure that he/she will not be interrupted or distracted for the duration of giving evidence. The witness must have the camera and microphone on for the duration of giving evidence.

[4.21] The witness should be familiar with the documents and materials that will be referred to during the evidence. Any documents and materials referred to by the witness should be in the same format as the books delivered to the Appeal Commissioner.

#### Communications between Parties and Representatives

[4.22] If a party is represented at the remote hearing, it will be necessary for the representative and party to agree how they will communicate confidentially during the hearing. The Appeal Commissioner should be afforded the courtesy of being informed what method is being used to obtain instructions during the hearing.

[4.23] As in physical hearings, permission to confer privately may be requested of the Appeal Commissioner by a representative at any stage. In such event, the Appeal Commissioner will make appropriate directions to facilitate the privacy of such communications. If either party requires a break for any reason, they should indicate to the Appeal Commissioner during the remote hearing and any such request will be addressed in the usual course of proceedings.

## **5. POST-HEARING**

### Documents

[5.1] If a stenographer attended a remote hearing, the transcript should be delivered to the TAC by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie) and physically delivered to the offices of the TAC.

[5.2] In exceptional circumstances, if the Appeal Commissioner accedes to a request or decides that further documents and materials should be submitted after the remote hearing, the Appeal Commissioner will give a direction orally at the hearing on the documents and materials to be delivered and specify the date by which the direction must be complied with by the parties. Failure to comply with the direction may result in a determination being delivered in any event.

### Determination

[5.3] The determination of the Appeal Commissioner will be notified to the parties electronically. The determination will be published on the website of the TAC not later than 90 days after notifying the parties of the determination.

## Appendix



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TAX APPEALS COMMISSION

### **Remote Hearing Form**

*(If consenting to proceed by way of a remote hearing)*

Appellant / Revenue	
TAC Reference Number	
Appeal Name	
Technical capability to join the virtual room that is using the video streaming application called PEXIP	[ Yes / No ]
<i>NB: The TAC will email participants with the necessary technical information and organise individual connectivity tests in advance of the remote hearing.</i>	

**List of Participants** – preferably no later than 7 days before the remote hearing

<b>Name</b>	<b>Title</b>	<b>Email Address</b>	<b>Telephone Number</b>

**I/We also agree to the following:**

**Documents for the Hearing**

[1] Parties must liaise with each other to provide documents and materials to the TAC no later than 7 days before the hearing, which may include:

-an agreed Book of Documents (the documentary evidence that will be presented at the remote hearing);

-an agreed Book of Authorities (the statutory provisions, case law and commentary that will be relied upon at the remote hearing).

[2] All books must be indexed, tabbed and paginated in an agreed and consistent format between all parties.

[3] All documents in the books must be legible and complete.

[4] Documents should be delivered physically to the offices of the TAC and sent by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie)

[5] A remote hearing will not proceed where all the required documents and materials have not been provided to the TAC and exchanged between the parties in advance of the scheduled date.

**Preparations by the Parties**

[1] Participants are responsible for selecting a quiet and private location.

[2] Any video or audio or other recording or image whatsoever of any part of the hearing is strictly prohibited.

[3] Stenographers can attend a remote hearing similar to any participant.

**Conduct of Hearing**

[1] All mobile phones or other electronic devices not being used for the purpose of the remote hearing should be turned off for the duration of the hearing.

[2] Participants should be ready to join the virtual hearing room at least 15 minutes before the start of the remote hearing.

[3] The device screen should be positioned at a landscape setting so the participant's face can be seen properly.

[4] Participants should have their cameras turned on at all times, unless otherwise directed by the Appeal Commissioner.

### **Procedure during Hearing**

[1] If a participant is unable to access the remote hearing, the participant should immediately inform the TAC by e-mail to [scheduling@taxappeals.ie](mailto:scheduling@taxappeals.ie) or telephone number +353 86 033 4523.

[2] If a party who has been notified of the time appointed for the remote hearing does not join the hearing at the time appointed, the appeal shall be treated as if it had been withdrawn.

### **Witnesses**

[1] The oath or affirmation of a witness will be administered remotely.

[2] If the parties wish to swear an oath they should ensure they have the requisite religious texts in their possession prior to the oath taking.