



Bill Digest

Finance (Tax Appeals and Prospectus Regulation)

Bill 2019

No. 45 of 2019

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Abstract

The [Finance \(Tax Appeals and Prospectus Regulation\) Bill 2019](#) deals with two unconnected subjects: tax appeals and prospectus regulation. The Bill provides that a chairperson can be appointed to the Tax Appeals Commission and it sets out the functions of the chairperson. It also makes procedural changes to taking appeals to the High Court following a determination of the Tax Appeals Commission. Part 3 of the Bill deals with prospectus regulation in the light of [Regulation \(EU\) 2017/1129](#) which is now in force. It increases the threshold above which an offer of securities must be made with a prospectus from €5,000,000 to €8,000,000.

Contents

Summary	1
Background.....	2
Summary of the Bill's provisions	3
Principal provisions	8
Appointment of Chairperson of the Tax Appeals Commission (TAC).....	8
Functions of Chairperson of the TAC.....	9
Issues around appealing a determination of the Tax Appeals Commission to the High Court..	10
Determinations alleged to be erroneous on a point of law must now include reason why determination is disputed.....	11
Presentation of documents for inclusion in the case stated.....	12
Prospectus regulations	13
Increased local offer threshold.....	15

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Summary

This [Finance \(Tax Appeals and Prospectus Regulation\) Bill 2019](#) deals mainly with two separate and unrelated issues: tax appeals and prospectus regulation. Pre-legislative scrutiny was carried out on the General Scheme of the Bill was carried out by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach¹ on 30th May 2019.

The Bill deals primarily with two unconnected matters: tax appeals and prospectus regulation. It makes changes to the [Finance \(Tax Appeals\) Act 2015](#)² and the [Companies Act 2014](#) among other Acts. Part 2 of the Bill sets out the procedure for the appointment of a chairperson for the Tax Appeals Commission (TAC). The functions of a chairperson are provided for along with standard procedures such as the resignation of the chairperson and the removal from office of the chairperson. It also makes changes to the procedures in relation to appeals to the High Court from a decisions of the Tax Appeals Commission (TAC).

Part 3 deals with prospectus regulation following the coming into force of [Regulation \(EU\) 2017/1129](#) and introduces several technical changes. The most substantial change is that It increases the threshold above which an offer of securities must be made with a prospectus from €5,000,000 to €8,000,000.

Background

Tax Appeals Commission

The Bill proposes to make changes to the Tax Appeals Commission³ (TAC) which was established by the *Finance (Tax Appeals) Act 2015*.⁴ It replaced the Office of the Appeal Commissioners. The Tax Appeals Commission attempts to settle tax-related disputes between Revenue and taxpayers. It hears appeals on Revenue decisions in relation to:

- refusal of a tax credit, allowance or relief;
- refusal of a claim for a repayment of tax;
- valuation of an asset for Capital Gains Tax (CGT) purposes;
- valuation of an imported car for Vehicle Registration Tax (VRT) purposes;
- decision that a person is tax-resident in Ireland;

¹https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2019-05-30/3/?highlight%5B0%5D=tax&highlight%5B1%5D=appeals&highlight%5B2%5D=2019

² A L&RS Bill Digest on the Finance (Tax Appeals) Bill is available http://vhlms-a01/AWData/Library2/billTaxAppeals240915_170903.pdf

³ www.taxappeals.ie

⁴ <http://www.irishstatutebook.ie/eli/2015/act/59/enacted/en/html>

- decision not to allow a claim for the deduction certain expenses;
- decision about whether a person is self-employed or an employee for tax purposes; and
- a determination on the rate of Value-Added Tax (VAT) chargeable.

The TAC's independence from Revenue is set out in section 10 of the *Finance (Tax Appeals) Act 2015*. The body currently comprises two Appeal Commissioners appointed by the Minister for Finance, a temporary Appeal Commissioner and administrative staff. Funding to the TAC was increased substantially in the last Budget – from €1,626,000 in 2018 to €3,208,000 in 2019.⁵

Appeals

The TAC's 2018 annual report⁶ states that:

“The Commission closed 1,440 appeals during 2018, compared to 693 in 2017; the quantum of tax involved in the closed appeals amounted to approximately €567 million.”

Table 1: Appeals from 2016-2018

Year Current Appeal Opened	No. of Current Appeals Received	No. of Current Appeals Closed	No. of Current Appeals remaining
2016	901	622	279
2017	1,751	666	1,085
2018	1,689	491	1,198
Total	4,341	1,779	2,562

Source: The TAC Annual Report 2018

Independent review of the Tax Appeals Commission 2018

An independent review of TAC was carried out in 2018 with the following terms of reference:

‘To conduct a review of the staffing structure, governance and operation structure of the Tax Appeals Commission (“TAC”).

The review will be informed in part by the output of an ongoing independent review commissioned by the TAC and comparison with similar domestic and international appeal models.

- 1) Staffing resources required, including:
 - a) Consideration of the balance (if any) between temporary staff required to address the backlog of work and permanent staff required for the continuing operation of the TAC into the future, and
 - b) Staff requirements of varying grades, from Clerical Officer to Appeals Commissioner

⁵ During his Budget Speech 2019 Minister Donohue made the following statement in relation to the Tax Appeals Commission: Today I am publishing an independent review of the operations and resources of the Tax Appeals Commission, which I commissioned earlier this year. I fully support the recommendations of the review, which include the sanctioning of additional staffing resources at all levels and additional funding for improved IT systems, so that the commission can adequately address its caseload and remit. <https://www.gov.ie/en/campaigns/0941370210-budget-2019/>

⁶ <http://www.taxappeals.ie/fileupload/AnnualReports/Annual%20Report%202018%20-%20Final.pdf>

- 2) Governance structures, independence and accountability – is the existing governance model fit for purpose or could it be improved?
- 3) Internal operational structures and the potential to improve workflow and efficiency.
- 4) To note any potential legislative amendments, which could be considered to facilitate the work of the TAC, that are identified during the review process.’

Submissions⁷ to the review on the TAC were received from professional bodies and individuals.

The ‘Review of the Workload and Operations of the Tax Appeals Commission’⁸ proposed that steps⁹ be taken to:

- Progress the appointment of additional Commissioners;
- Legislate for the position of Chairperson of the Commission;
- Support the Commission in sourcing a new permanent head of administration;
- Sanction additional administration posts;
- Establish an administrative working group with representation from TAC, the Office of the Revenue Commissioners and the Department of Finance;
- Establish an IT working group to address software and hardware procurement needs; and
- Progress various potential legislative changes to improve the performance and efficiency of the Commission

Summary of the Bill’s provisions

Table 1 overleaf summarises the provisions of the *Finance (Tax Appeals and Prospectus Regulation) Bill 2019*. Further discussion of key provisions of the Bill can be found in the Principal Provisions section of the Bill Digest.

⁷ Submissions were received by the following: The Consultative Committee of Accountancy Bodies, Dearle, Deloitte, EY, HLB Ryan, Irish Tax Institute, Law Library, Law Society, Michael Hayes, Revenue, Tax Advice, and William Fry Solicitors. <http://www.taxappeals.ie/en/publications>

⁸<http://www.budget.gov.ie/Budgets/2019/Documents/18.%20Independent%20review%20of%20the%20workload%20and%20operations%20of%20the%20Tax%20Appeals%20Commission.pdf>

⁹ The Bill is not legislating for all the recommendations in the review, and not everything in the proposed Bill is based on a recommendation of the review.

Summary of the Bill's provisions

Table 1 below summarises the provisions of the *Finance (Tax Appeals and Prospectus Regulation) Bill 2019*. Further discussion of key provisions of the Bill can be found in the Principal Provisions section of this Bill Digest.

Table 1: Provisions of the *Finance (Tax Appeals and Prospectus Regulation) Bill 2019*

Section	Title	Effect
Part 1	Preliminary and General	
1.	Short title and commencement	The short title of the Act will be the <i>Finance (Tax Appeals and Prospectus Regulation) Bill 2019</i> . It provides that Part 3 of the Bill will come into operation on 21 July 2019. Parts 1 and 2 will be commenced by order of the Minister for Finance and different dates can be appointed for different purposes.
2	Definitions	This section provides that references to 'Act of 1997' means the <i>Taxes Consolidation Act 1997</i> , 'Act of 2014' means the <i>Companies Act 2014</i> and 'Act of 2015' means the <i>Finance (Tax Appeals) Act 2015</i> .
Part 2	Amendment of <i>Finance (Tax Appeals) Act 2015</i>	
3.	Amendment of section 2 of the <i>Finance (Tax Appeals) Act 2015</i>	Definition of Chairperson: this amends s.2 of the <i>Finance (Tax Appeals) Act 2015</i> to insert a definition of a 'chairperson' of the Tax Appeals Commission.
4.	Amendment of section 3 of the <i>Finance (Tax Appeals) Act 2015</i>	TAC has power to enter into contracts This amends s. 3 of the <i>Finance (Tax Appeals) Act</i> which deals with the establishment of TAC to confirm that TAC has the power to enter into contracts in its own right.
5.	Appointment and functions of chairperson	<p>Appointment and functions of chairperson</p> <p>This section inserts a number of new sections, (s.4A to s.4G) after s.4 in the <i>Finance (Tax Appeals) Act 2015</i> to provide for the appointment and functions of the chairperson.</p> <p>ection 4A gives the Minister for Finance the power to appoint a chairperson to the TAC from a panel of suitable candidates assessed by the Public Appointments Service.</p> <p>The section provides that:</p> <ul style="list-style-type: none"> • The Minister for Finance can appoint a chairperson to TAC for a term of no more than 7 years and restricts an individual from becoming chairperson for more than two 7 year terms. • Where a chairperson is appointed, who is not a serving Commissioner, they are deemed to be appointed as a Commissioner at the time of appointment as chairperson. • Suitable candidates will be selected based on requirements specified by the Minister for Finance. These requirements may include <ul style="list-style-type: none"> a minimum period of practical experience, a particular level of academic or professional qualification or

requirements in relation to age and health.

- A chairperson must retire on reaching retirement age.
- If the Minister for Finance does not re-appoint a chairperson for a second term the Minister for Finance must make a statement before Dáil Éireann as to the reason behind their decision.

S.4B provides that a chairperson may resign by writing to the Minister for Finance, generally with a notice period of 3 months.

S.4C allows for the removal of a chairperson of the TAC by the Minister for reasons including misbehaviour (this is not further defined), incapacity through ill health, significant conflict of interest or if the removal of the chairperson is necessary for the effective performance of the Commission.

S. 4D deals with the cessation of the chairperson's term of office, which will occur either on the expiration of their term as chairperson, their resignation or removal as either a chairperson or a Commissioner, or if the chairperson ceases to be a Commissioner.

S. 4E deals with a situation where the chairperson becomes temporarily incapacitated. It provides that the Minister can appoint another Commissioner to assume the role of chairperson for the duration of the period of incapacity.

Section 4F sets out the functions and responsibilities of the chairperson, as follows;

- The chairperson will be responsible for the management of the administration of the tax appeals system and the business output of the Tax Appeals Commission as a whole.
- The chairperson will be responsible to the Minister for Finance for ensuring that the tax appeals system is cost effective, efficient and that appeals are being processed, adjudged and determined in a timely manner.
- The chairperson, as accounting officer, will be responsible for the Commission's accounting and financial reporting system including control systems such as audit and risk committees.
- The chairperson will have the power to issue guidelines on the operation of the appeal system and to consult with the other Commissioners in relation to the business of the Tax Appeals Commission both informally and through a formal meeting structure.
- The chairperson will have responsibility for ensuring that the Tax Appeals Commission is compliant with its obligations under data protection law and the Freedom of *Information Act 2014*.
- The chairperson will have the authority to delegate certain functions to other Commissioners or staff of the Commission but ultimate responsibility for the performance of the function is with the chairperson. Not all functions can be delegated. The functions that can

		<p>be delegated are to do with the performance of the administrative function, the implementation of effective systems and procedures.</p> <p>S.4G allows the chairperson to request a report or reports from a Commissioner in relation to their work carried out on behalf of the TAC and in particular determinations of appeals.</p>
6.	Amendment of section 6 of the <i>Finance (Tax Appeals) Act 2015</i>	This relates to the functions of Commissioners before the establishment of the position of chairperson. The section being removed is a function which is now a specific function of the chairperson.
7.	Amendment of section 8 of the <i>Finance (Tax Appeals) Act 2015</i>	This amends section 8(2) of the <i>Finance (Tax Appeals) Act 2015</i> to include reference to the new section 4A(10) which provides that a person who is not a Commissioner will be automatically appointed as a Commissioner if they are appointed as chairperson.
8.	Amendment of section 13 of the <i>Finance (Tax Appeals) Act 2015</i>	14 year time limit: Section 8 of the Bill amends s.13 of the <i>Finance (Tax Appeals) Act 2015</i> and will limit to 14 years the total term that a person can serve as a Commissioner and as chairperson of the Tax Appeals Commission.
9.	Amendment to section 14 of the <i>Finance (Tax Appeals) Act 2015</i>	Section 9 of the Bill amends s.14 of the <i>Finance (Tax Appeals) Act 2015</i> to differentiate between the remuneration of a Commissioner and the remuneration of a chairperson.
10.	Insertion of a new section 14A into the <i>Finance (Tax Appeals) Act 2015</i>	Terms and conditions Section 10 inserts a new section 14A into the <i>Finance (Tax Appeals) Act 2015</i> . It gives the Minister for Finance the authority to set the terms and conditions of the chairperson's appointment, following consultation with the Minister for Public Expenditure and Reform.
11.	Section 11 amends section 21 of the <i>Finance (Tax Appeals) Act 2015</i>	Section 11 amends s.21 of the <i>Finance (Tax Appeals) Act 2015</i> in a few places to reflect that the Chairperson rather than the Commissioner will have the responsibility to ensure that the annual report of the TAC's annual report is prepared on time and contains required information. The chairperson will also have responsibility for the preparation of any other reports that the Minister requests under section 21.
12.	Section 12 amends sub-section (3) of section 949AP of the <i>Taxes Consolidation Act (TCA) 1997</i>	Section 12 of the Bill amends of section 949AP(3) of the <i>TCA 1997</i> which relates to appeals against a determination of the TAC. The amendment adds that a party dissatisfied with a determination must state the reason for the dissatisfaction, in addition to showing why the determination is erroneous on a point of law. The need to show why the determination is erroneous on a point of law is already in s. 949AP(3)
13	Section 13 amends section 949AQ of the <i>Taxes Consolidation Act 1997</i>	Section 13 amends section 949AQ of the <i>TCA 1997</i> by including new subsections (7A), (7B), (7C) and (7D). These specify that the party requesting a case stated for the purposes of appealing a decision of the TAC has the responsibility to compile a copy of the exhibits specified in the case stated if they have them in their possession or procurement. It also provides that, where the party does not have copies of the necessary exhibits, they

		may request that the Appeal Commissioners instruct the other party to the appeal to provide a copy of the exhibits to the party requesting the case stated.
14.	Amendment to section 2 of the <i>Civil Service Regulation Act 1956</i>	Section 14 of the Bill amends s.2 of the <i>Civil Service Regulation Act 1956</i> and includes the chairperson of the Tax Appeals Commission as the appropriate authority in relation to disciplinary matters concerning the staff of the TAC.
Part 3 Prospectus Regulations		
15.	Section 15 amends section 1348 of the <i>Companies Act 2014</i>	<p>Section 15 amends s. 348 of the <i>Companies Act 2014</i> to update the definitions of 'EU Prospectus Law', 'Irish Prospectus Law', 'Prospectus Regulation' and 'local offer' to refer to the new Regulation (EU) 2017/1129. A local offer now has a threshold of €8 million (an increase from the €5 million. These changes mainly reflect the fact that Regulation (EU) 2017/1129 is now in effect.</p> <p>This section also provides for a number of consequential amendments to other definitions arising from the updated definitions to 'EU Prospectus Law', 'Irish Prospectus Law' and 'Prospectus Regulation'. This section amends the definition of 'expert' to provide for a more concise definition. This section is amended to include definitions for 'delegated act' which refers to level two measures adopted by the European Commission in accordance with Article 44 of the Prospectus Regulation. A new definition of 'Domestic Regulations' is also included in this section which refers to secondary domestic legislation necessary to give effect to the Regulation.</p>
16.	Section 16 amends section 1349 of the <i>Companies Act 2014</i>	Section 16 amends s.1349 of the <i>Companies Act 2014</i> , changing the reference to 'Irish Prospectus Law' to the new definition of 'Domestic Regulations'. This is a technical amendment.
17.	Section 17 amends subsection (1) of Section 1350 of the <i>Companies Act</i>	Section 17 amends s.1350(1) of the <i>Companies Act 2014</i> to give effect to Article 11 of Regulation (EU) 2017/1129. Article 11 requires Member States to ensure that no civil liability attaches to any person solely on the basis of the summary or the specific summary of an EU Growth prospectus including any translation thereof unless it is misleading or omits key information.
18.	Section 18 amends section 1351 of the <i>Companies Act 2014</i>	Section 18 amends s.1351 of the <i>Companies Act 2014</i> , changing the reference to 'Irish Prospectus Law' to the new definition of 'Domestic Regulations'. This is a technical amendment.
19.	Section 19 amends section 1354 of the <i>Companies Act 2014</i> ,	Section 19 amends s.1354 of the <i>Companies Act 2014</i> , changing the references to '2003 Prospectus Directive' and 'delegated acts' as a consequence of the new definition of 'EU Prospectus Law'. This is a technical amendment.
20.	Section 20 amends section 1357 of the <i>Companies Act 2014</i>	Section 20 amends s. 1357 of the <i>Companies Act 2014</i> , changing the references to 'Irish Prospectus Law' to the new definition of 'Domestic Regulations'. This is a technical amendment.
21.	Section 21 amends subsection (1) of section 1361 of the	Section 21 amends s. 1361(1) of the <i>Companies Act 2014</i> to provide for a category 3 offence to be applied to

	<i>Companies Act 2014</i>	<p>the offeror of a local offer if they are found to be in breach of the local offer requirements.</p> <p>This section also provides for additional local offer requirements and for a category 3 offence to be applied in the event of a breach of these additional requirements. The additional requirements are based on recommendations made by the Central Bank of Ireland as the competent authority for the purposes of the prospectus regulations.</p>
22.	Section 22 amends section 1363 of the <i>Companies Act 2014</i>	Section 22 amends s. 1363 of the <i>Companies Act 2014</i> and changes references to 'Irish Prospectus Law' to the new definition of 'Domestic Regulations' and updates references to 'EU Prospectus Law' and '2003 Prospectus Directive' because of the amendments to definitions contained in s. 15. This is a technical amendment.
23.	Section 23 amends section 1364 of the <i>Companies Act 2014</i>	Section 23 amends s. 1364 of the <i>Companies Act 2014</i> to deal with consequential amendments giving effect to the amendment of several definitions in Section 15. This is a technical amendment.
24.	Section 24 amends section 1551(11) of the <i>Companies Act 2014</i>	Section 24 amends s.1551(11) of the <i>Companies Act 2014</i> and amends the reference to 'Commission Regulation (EC) No. 809/2004 of 29 April 2004' to the definition of 'Prospectus Regulation' as set out in Section 15 [amending Section 1348]. This reflects the entry into force of Regulation (EU) 2017/1129.
25.	Section 25 provides for commencement of these amendment amendments on 21 July 2019 the date Regulation (EU) 2017/1129 enters into force and becomes directly applicable in Ireland.	It provides for transitional measures from the Prospectus (Directive 2003/71/EC) Regulations 2005 [SI No. 324/2005] to the new legislative regime as contained in Article 49 of Regulation (EU) 2017/1129. Prospectus that are approved before 21 July 2019 will not become subject to Regulation (EU) 2017/1129 until the earlier of 21 July 2020 or the end of the validity of the prospectus itself.

Principal provisions

As the summary of the Bill's provisions above describes every section of the Bill, this section of the Digest only deals with the most substantive parts of the Bill.

Appointment of Chairperson of the Tax Appeals Commission (TAC)

Section 5 proposes to amend section 4 of the *Finance (Tax Appeals) Act 2015* (which deals with membership of the TAC) to provide that the Minister for Finance will appoint a Chairperson to the TAC.

The appointment of a Tax Appeals Commissioner to be the Chairperson of the TAC was a recommendation made by the *Review of the Workload and Operations of the Tax Appeals*

*Commission.*¹⁰ The review noted that: “a basic difficulty [with TAC] appears to be that none of the Commissioners is *primus inter pares*¹¹ in relation to the duties of the Commission” and went on to say that: “the fact that all Commissioners are independent in their activities and not accountable to each other means that there is no structural mechanism to establish, monitor and enforce standards in relation to the performance of functions by individual Commissioners under the Act.”

The review envisaged that in addition to a Commissioner being the Chairperson, he or she would be the head of organisation in all respects and would be the Accounting Officer for the funds voted to the TAC. It also stated that “it may be appropriate, as for other similar bodies, for the Chairman to receive additional remuneration in respect of these additional duties.”

Functions of Chairperson of the TAC¹²

Section 5 of the Bill inserts a new section 4F into the *Finance Tax Appeals Act 2015* and sets out the functions of the chairperson. The overall function of the chairperson is to carry on and manage, and control generally, the administration and business of the Commission and such other functions as are assigned to him or her by or under this Act.

Section 4F also outlines specific functions of the chairperson. He or she must ensure the integrity of the Commission’s accounting and financial reporting systems, and ensure that there are appropriate systems of control in places, especially for:

1. risk management;
2. financial and operational control, and
3. legal compliance.

The chairperson must also ensure that the obligations of the Commission under the *Freedom of Information Act 2014*¹³ and under data protection law are complied with.

The chairperson must establish and maintain efficient and effective systems and procedures to secure the processing, adjudication and determination of appeals in a timely and effective manner. This includes determining the priority as between appeals, having regard to the interests of justice and the efficient operation of this Act and Part 40A of the Act of 1997. He or she must also ensure that the functions of the Commission are performed efficiently.

The chairperson must convene a meeting with the other Commissioners at least once in each year to conduct a review of the performance by the Commissioners of their functions under this Act. He or she will be the accounting officer in relation to the appropriation accounts of the Commission for the purposes of the *Comptroller and Auditor General Acts 1866 to 1998*, and will be accountable to

¹⁰ <http://www.budget.gov.ie/Budgets/2019/Documents/18.%20Independent%20review%20of%20the%20workload%20and%20operations%20of%20the%20Tax%20Appeals%20Commission.pdf>

¹¹ This means first among equals

¹² These functions have been substantially expanded on from the General Scheme of the Bill

¹³ <http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>

the Minister for the efficient and effective management of the Commission and for the due performance of his or her functions.

The Digest does not cover the following parts of section 5 of the Bill: section 4B (resignation of chairperson), 4C (removal from office of chairperson), 4D (cessation of term of office of chairperson), 4E (temporary incapacity of chairperson), 4G (reporting to chairperson) as they are standard provisions and are described in the summary of the Bill's provisions.. It does not cover Section 10 (terms and conditions of chairperson's appointment) for the same reason. It also does not cover sections 6, 7, 8, 9, or 11 of the Bill as they are technical amendments and are described in the summary of the Bill's provisions.

Issues around appealing a determination of the Tax Appeals Commission to the High Court

Sections 12 and 13 of the Bill deal with quite technical issues about appealing a determination of the TAC to the High Court. It is hoped that these changes will mean that the appeals process will be quicker and more cases can be disposed of.

The TAC's 2018 Annual Report¹⁴ states that:

“Section 949AP TCA provides that a party who is dissatisfied with a TAC determination on the grounds that the determination is erroneous on a point of law, may require the Appeal Commissioner to state and sign a case stated for the opinion of the High Court.

During 2018, the Commissioners signed 11 cases stated pursuant to section 949AQ TCA 1997 to enable determinations to be appealed to the High Court. In addition to the foregoing 11 cases stated, the TAC had 43 pre-establishment cases stated (i.e. appeals which were determined and where requests for a case stated were made by a dissatisfied party prior to the establishment of the TAC) and 2017 cases stated on hand at the beginning of 2018. Four of these requests for case stated were withdrawn during 2018. A further 12 appeals have confirmed that they intend to proceed via case stated.

Correspondence is ongoing in relation to a further 27 requests for pre-establishment cases stated and the position in relation to these is, as yet, unconfirmed. These pre-establishment cases stated are being processed by the TAC in accordance with the transitional provisions contained in sections 29 and 30 of the *Finance (Tax Appeals) Act 2015*.”

¹⁴ http://www.taxappeals.ie/_fileupload/AnnualReports/Annual%20Report%202018%20-%20Final.pdf

Box 1: What is case-stated?

Murdoch and Hunt's Encyclopedia of Irish Law defines case stated as

"A statement of the facts in a case submitted for the opinion of a higher court, clearly identifying the point of law upon which opinion is sought. It is consultative in that the lower court seeks the assistance of the higher court."¹⁵

"Case stated" procedure

The provisions of the Act of 2015 and the Act of 1997 that provide for a "case stated" procedure reflect a long established legal mechanism known as "appeal by way of case stated" or simply a "case stated". It is, essentially, an appeal on a point of law from an inferior court or decision maker to a higher court. Under section 2 of the *Summary Jurisdiction Act 1857* (as amended by the *Courts (Supplemental Provisions) Act 1961*), a decision of the District Court can be appealed by way of case-stated to the High Court. This procedure is commonly used.

An "appeal by way of case-stated" derives from the text of the Act itself. It provides that an unsuccessful party in the District Court is empowered, "if dissatisfied with [a] determination as being erroneous on a point of law, to apply in writing within fourteen days after such determination to the said justice to **state and sign a case** setting forth the facts and the grounds of such determination for the opinion thereon of the High Court." [emphasis added]. A District Court judge is required to state the case unless he or she considers it frivolous.

There is also a limited form of appeal on a point of law from the Circuit Court to the Court of Appeal. However, this can only be done in relation to a ruling of the trial judge in the course of the trial. It must be raised at the time. The trial is then stopped pending the Court of Appeal's ruling on the point of law. This is called a "consultative case-stated". A consultative case-stated is also available in the District Court.

Source: L&RS

Determinations alleged to be erroneous on a point of law must now include reason why determination is disputed

Section 12 amends section 949AP of the *Taxes Consolidation Act 1997* which deals with appealing determinations of the TAC. This section provides that the appealing party must now **state their disagreement/dissatisfaction in relation to the determination received**, as well as stating in what respect the determination is alleged to be erroneous on a point of law. A case should only be appealed to the High Court where there has been an error on a point of law, rather than where the appellant does not agree with TAC's finding.

The rationale given by the Department of Finance for this section is that currently the reason for making an appeal (i.e. the reason for the dissatisfaction with the determination) to the High Court does not have to be given prior to the hearing. This means that cases which may not have a basis for an appeal are being presented for appeal.

Currently, a s.949AP notice must:

¹⁵https://www.bloomsburyprofessionalonline.com/view/murdoch_hunt/case_stated.xml?rskey=OXg4X5&resu<it=1

- (a) state in what particular respect the determination is alleged to be erroneous on a point of law,
- (b) be sent to the Appeal Commissioners within 21 days after the date of the notification of their determination under section 949AJ(1), and
- (c) be sent to the other party when it is being sent to the Appeal Commissioners.

Section 12 amends the current notice requirements to add that a person must now 'state in what particular respect the party concerned is dissatisfied with the determination' in the section 949AP(2)¹⁶ notice to appeal to the High Court. The Department's explanatory notes to the General Scheme of the Bill noted that:

"It is difficult for a Commissioner to draft a case stated because the grounds of appeal are not specified in the s.949AP(2) notice and where the legislative requirements of a s.949AP(2) notice have not been met, a question as to the validity of the case stated appeal will arise."¹⁷

Presentation of documents for inclusion in the case stated

Section 13 of the Bill amends section 949AQ¹⁸ of the *Taxes Consolidation Act 1997* which deals with cases stated to the High Court.

This section sets out that that the appealing party must present all relevant exhibits to a case stated to the High Court, rather than relying on the TAC to provide them. It is expected that the proposed change will increase efficiencies in case management. The Department of Finance has stated that "the current legislation is being interpreted by some parties as requiring that the Commissioners should prepare, photocopy and collate the exhibits as part of the preparation of the case stated."

Section 13 provides that the party requesting the case stated must:

- (a) compile a copy of the exhibits specified in the case stated, and
- (b) include the copy of the exhibits so compiled with the case stated when sending it to the High Court in accordance with 949AQ(7)

The section also sets out where the party requesting the case stated needs copies of an exhibit but does not have them then the party can apply to the Tax Appeal Commissioners to request that the

¹⁶ Section 949AP(2) of the *Finance (Tax Appeals) Act 2015* provides that a party who is dissatisfied with a determination as being erroneous on a point of law may by notice in writing require the Appeal Commissioners to state and sign a case (in this Chapter referred to as a 'case stated') for the opinion of the High Court. <http://www.irishstatutebook.ie/eli/2015/act/59/enacted/en/print.html>

¹⁷ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2019/2019-06-18_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-finance-tax-appeals-amendment-bill-2019_en.pdf

¹⁸ <http://www.irishstatutebook.ie/eli/1997/act/39/enacted/en/print#part40>

Commissioners instruct the other party to the appeal provide a copy of the exhibit to the party requesting the case stated.

Prospectus regulations

Sections 15 to 25 of the Bill deal with prospectus regulations and are not related to tax appeals. The Bill will amend Part 23 of the *Companies Act 2014* as part of the transposition of the Regulation (EU) 2017/1129 on prospectus regulation (the Regulation).¹⁹ The transposition deadline was the 21 July 2019.²⁰

The Regulation states that:

“The aim of this Regulation is to ensure investor protection and market efficiency, while enhancing the internal market for capital. The provision of information which, according to the nature of the issuer and of the securities, is necessary to enable investors to make an informed investment decision ensures, together with rules on the conduct of business, the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make that information available is to publish a prospectus.”

Much of the regulation has been adopted into Irish law by *S.I. No. 380/2019 - European Union (Prospectus) Regulations 2019*.²¹ The Department of Finance²² noted that:

‘It had originally been intended to complete the transposition through consolidated secondary legislation. However, elements related to Irish prospectus law are also contained in Part 23 of the *Companies Act 2014*. While the changes are predominantly technical in nature, legal advice received from the Attorney General has indicated that they can only be made through primary legislation.’

Sections 15, 16, 18, 19 and 20 of the Bill make several consequential amendments to other definitions in the *Companies Acts 2014* to reflect the updates in this Bill of the definitions of ‘EU Prospectus Law’, ‘Irish Prospectus Law’ and ‘Prospectus Regulation’ in Sections 15, 16, 18, 19 and 20 of the Bill.

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1129>

²⁰ EU Prospectus Regulation (Regulation (EU) 2017/1129 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1129>

²¹ <http://www.irishstatutebook.ie/eli/2019/si/380/made/en/print>

²² https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/submissions/2019/2019-05-30_opening-statement-deirdre-donaghy-principal-officer-business-tax-policy-department-of-finance_en.pdf

Box 2: What is a prospectus?

A prospectus is a document that issuers are required to publish when making a public offer of securities or seeking securities admission to trading on a regulated market in the European Union.

The prospectus provides key information about an investment and is intended to assist potential investors in making suitably informed investment decisions. The current prospectus regulations have been in force in Ireland since 2005.

The regulations are an important part of the overall investor protection regime as they set out the minimum information and disclosure requirements that apply to offers of securities in Ireland and ensure that the information provided to prospective investors is accurate and not misleading through either the omission of key information or deliberate misstatement. The regulations ensure the integrity and stability of the Irish market as a leading exchange in Europe for new securities listings.

Source: Department of Finance

The Department of Finance provided the following information²³ to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach:

'The current Prospectus Regulations²⁴ have been in force in Ireland since 2005. The Regulations are an important part of the overall investor protection regime as they set out the minimum information and disclosure requirements that apply to offers of securities in Ireland and ensure that the information provided to prospective investors is accurate and not misleading through either the omission of key information or deliberate misstatement. The Regulations ensure the integrity and stability of the Irish market as a leading exchange in Europe for new securities listings.

In 2017, the EU agreed a new Prospectus Regulation that will have direct application in Member States from 21 July 2019. Within the EU Regulation there are specific Member State discretions that must be implemented through national legislation.

To ensure the continued and effective operation of Ireland's prospectus regime after the 2017 Regulation enters into force, it is essential that these discretions are fully transposed before that date.

It had originally been intended to complete the transposition through consolidated secondary legislation. However, elements related to Irish Prospectus Law are also contained in Part 23 of the *Companies Act 2014*. While the changes are predominantly technical in nature, legal advice received from the Attorney General has indicated that they can only be made through primary legislation.

These amendments will update references in Part 23 of the Companies Act to refer to the 2017 EU Regulation and the relevant legal definitions. It will also transpose provisions

²³https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2019-05-30/3/

²⁴ Current Central Bank: A guide to prospectus approval in Ireland (19 November 2018) <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/securities-markets/prospectus-regulation/prospectus-handbook/prospectus-handbook.pdf?sfvrsn=10>

contained in Article 11 of the Regulation that restrict the civil liability of certain persons involved in the security offering.’

Increased local offer threshold

Section 15 is the most substantive section in Part 3 of the Bill. It deals, among other matters, with an amendment to the definition of ‘local offer’ in Section 15(a)(v)(a) of the Bill and ups the current offer of securities which can be made without a prospectus from €5,000,000 to €8,000,000.

The term ‘local offer’ will now mean “an offer of securities to the public in the State where: (a) the offer expressly limits the amount of the total consideration for the offer to more than €100,000 and less than €8,000,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by the Domestic Regulations in relation to analogous limits specified by the Domestic Regulations for any purpose).”

The Department of Finance²⁵ has stated that the increase will:

“allow smaller firms easier and less costly access to capital markets funding and reduce their reliance on bank financing. Given the increased exemption threshold and following consultation with the Central Bank of Ireland, additional investor protection requirements will also be inserted into the local offer regime under Part 23. As the EU regulation enters into direct force on 21 July 2019, the amendments to Part 23 must be enacted prior to that date to ensure there are no legislative gaps in Ireland's prospectus regime and to meet our European commitments to have the required legislation in place by that date.”

At the pre-legislative scrutiny meeting by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, Mr Paul Murphy T.D. asked if the rationale for increasing the prospectus from €5 million to €8 million could be explained. Mr Oliver Gilvarry from the Department of Finance replied²⁶ that:

“The prospectus is an information document, published before a company issues securities on the general market. Under the existing framework, the threshold was €5 million and any issuance under that amount was not subject to the requirements of the prospectus framework as set out in Europe, though it was subject to Part 23 of the Companies Act, which deals with local offers and which gives certain protections. The rationale for increasing it to €8 million and allowing discretion at European level was to make it easier for smaller businesses to raise money. Big corporates were able to access the markets but this left smaller entities relying on bank financing. The increase gives smaller businesses a choice. They do not have the same level of disclosure requirements as a company such as CRH but a company that has a track record of a number of years can issue debt securities

²⁵https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2019/2019-06-18_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-finance-tax-appeals-amendment-bill-2019_en.pdf

²⁶ Ibid

or equity. Balancing that is the fact that we have increased certain protections. People who invest in these companies do not get the full framework of the prospectus regulation but they will get disclosure of a company's track record over recent years, and information as to whether someone was guaranteeing a product, at what level they were doing so and who he or she was.”

Mr Gilvarry went on to state²⁷ that:

“Throughout the negotiations on the prospectus regulation up to 2017, we had called for the increase because the €5 million was set when the negotiations started in 2003 and the directive was agreed in 2005. This reflected the changing market. Following the crisis, banks pulled back from the market and the capital markets union, CMU, project attempted to deepen Europe's capital markets by giving different options for companies. A large number of other member states have increased the threshold to €8 million.

The United Kingdom, France, Denmark, Finland and Italy have set the threshold at €8 million, while some six or seven other member states have set it at approximately €1 million. These include Romania and Bulgaria, which have smaller markets²⁸. An sum of €1 million is significant for an SME business in Romania or Bulgaria, compared to here and other places.”

Deputy Paul Murphy T.D. also asked²⁹ the following:

“According to the figures that are online, the mode is €5 million. Approximately 12 states have a threshold of €5 million, including Germany, which is not subject to a very small market, as well as Austria, Belgium, and other states with large economies. Why does it make sense for Ireland to increase its threshold to €8 million when the likes of Germany are staying at €5 million?”

Mr. Gilvarry³⁰ answered that:

“Germany has a €5 million base threshold but it has the option of going up to €8 million, at which point the issuer must produce and publish a securities information sheet approved by BaFin, the German financial regulator. That is offered in conjunction with investment advice or brokerage by an investment firm. Part 23 basically sets out the requirements for the entity. Germany has gone at this a bit differently, in that they say the threshold is €5 million but one can go up as far as €8 million with these protections. What we have done is set it at

²⁷ Ibid

²⁸ https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193_prospectus_thresholds.pdf This chart sets out prospectus thresholds throughout the EU. Germany and Romania apply 2 different thresholds, for example Germany and

²⁹ https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2019/2019-06-18_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-finance-tax-appeals-amendment-bill-2019_en.pdf

³⁰ Ibid

€8 million with these protections and disclosures that must be done. If there is an intermediary in Ireland selling that security, whether it is a MiFID entity or an Investment Intermediaries Act authorised entity, there is a conduct of business rules requirement for which the Central Bank is the competent authority. That is why we feel comfortable moving it up to €8 million and made that recommendation.”

The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach’s Report on Pre-Legislative Scrutiny of the General Scheme of the Finance (Tax Appeals) Amendment Bill 2019³¹ recommended that in relation to transposition of the Prospectus Regulation and the proposed threshold of €8 million:

- the balance between the desirability of ensuring access to capital markets for smaller companies on the one hand, and the protection of the interests of potential investors in the case of offers securities that are exempt from the Prospectus Regulations on the other, is kept under review
- there is adequate oversight and monitoring of such offers to ensure that an adequate level of protection is maintained for those investing in such securities.

³¹ Ibid



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