



PAC - Information to be supplied by the Tax Appeals Commission following meeting on Thursday 28 June, 2018 (Your Ref: PAC32- I -1006)

Info

to:

PAC, Kieran Lenihan

18/07/2018 16:22

Cc:

Brenda McVeigh

Hide Details

From: Info <Info@taxappeals.ie>

To: PAC <PAC/Oireachtas@oireachtas.ie>, Kieran Lenihan <Kieran.Lenihan@Oireachtas.ie>,

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History: This message has been replied to.

4 Attachments



PAC Follow Up Query Letter - 4 July 2018.pdf



PAC - Question 1 - Response.pdf



PAC - Question 2 - Response.pdf



PAC - Question 3 - Response.pdf

PAC Ref: PAC32- I -1006

Re: Tax Appeals Commission – Vote 10

Dear Ms Falvey,

I refer to the Public Accounts Committee meeting on Thursday 28 June, 2018 and your subsequent letter dated 4 July, 2018 seeking further information that the Tax Appeals Commission agreed to undertake to supply to the Committee on three matters.

Attached please find a response to each matter identified. If you have any queries please do not hesitate to contact me.

Kind regards

Paddy

Paddy O’Keeffe | Tax Appeals Commission |

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Question 1 - A NOTE ON THE MONEY ACCRUED AS A CONSEQUENCE OF APPEALS RECEIVED IN 2016 AND 2017.**(Excluding Legacy appeals.)**

Data compiled as of 10/07/2018

The below table displays the accrued “quantum in dispute” for appeals received by the Tax Appeals Commission in 2016 and 2017. This quantum figure should only be viewed as an estimate because the figure recorded in each appeal could be the amount according to the Appellant in dispute or the amount in dispute according to the Respondent or the difference between the two, depending on what is recorded on the Notice of Appeal received.

This table does not include the details of the Legacy appeals transferred to the TAC on 21 March, 2016 as that data was provided by the Office of the Revenue Commissioners. Details regarding the Legacy appeals have been included in relation to Question 3.

Range in € (Euros)	Total No. of Appeals	Total Quantum	Active Appeals		Closed Appeals	
			No. of Active Appeals	Quantum	No. of Closed Appeals	Quantum
> € 100 million	4	€474,861,067	3	€361,501,486	1	€113,359,581
> € 10 million	14	€349,642,038	14	€349,642,038	-	-
> € 1 million	80	€210,146,233	61	€165,589,207	19	€44,557,026
> € 100k	335	€106,983,909	247	€83,127,387	88	€23,856,522
> € 10k	546	€20,578,430	344	€13,144,091	202	€7,434,339
> € 1k	866	€3,330,844	526	€2,184,346	340	€1,146,497
< € 1k	342	€160,703	103	€55,336	239	€105,366
Amount is not under appeal*	275	-	104	-	171	-
No amount specified**	191	-	93	-	98	-
Totals	2,653	€1,165,703,225	1,495	€975,243,891	1,158	€190,459,331

* Following an initial analysis in responding to the Public Accounts Committee query, no amount was identified in these appeals. This could be due to the fact that not all appeals have a monetary value (e.g. *RCT Rate, Tax Clearance Cert*).

** These appeals have no amount specified because the Appellant may have omitted the amount from the initial appeal, or the final amount under dispute has not yet been identified (e.g. *Revenue VRT Assessment Vs Appellant VRT Assessment*).



Issues for consideration in re Finance Bill or amending legislation

Section 949U TCA 1997

This section allows Commissioners, in certain circumstances, to make a determination without a hearing by reference to the material submitted to the TAC in support of either party's position.

Increasingly, the TAC is aware of appeals where a section 949U would be the rational and expeditious approach to take, but parties, possibly at the end of a long period of argument or non-engagement, decline to agree to proceed on this basis.

We believe the TAC should have the authority to take the final decision on whether a case is determined in accordance with section 949U. As hearings take a considerable time to prepare and run (notices to parties, awaiting confirmation of suitability of hearing dates for all involved, time taken at the hearing etc), the fewer that have to be conducted, the more time that can be given to preparation of an ever-growing body of determinations, in relation to these and all appeals.

Section 949AN TCA 1997

This section permits Commissioners to have regard to previous determinations made by them when considering a new appeal that raises common or related issues. If a Commissioner deems it appropriate, he or she can determine the new appeal in light of the previous determination without holding a hearing. However, in outline, the Commissioner must seek the opinion of the appellant(s) and Revenue before progressing towards determination in the manner suggested and if one or both parties objects, the legislation is not completely clear as to whether we can proceed as intended, without a hearing. It appears to be a drafting issue, but as the Act stands currently, we err on the side of caution and accept parties' objections, if raised, and allow matters to proceed towards a hearing.

Section 949E TCA 1997

This is the section that gives the TAC authority to issue directions to parties in the appeals. For example, directions can be to attend for hearing, to produce documents, or to give more time to parties to afford settlement discussions between them.

Consideration should be given to permitting the TAC to specify the time period within which a party may apply to set aside a direction; currently, the legislation allows 14 days. It would be more practical if the TAC could stipulate the time period when issuing the direction, as otherwise we are impeded from issuing directions for matters that need to be done quickly.

Sections 949I, 949J & 949K TCA 1997

These sections provide the basis for "appealable matters". They require the Appellant in the Notice of Appeal ("NOA") to specify the basis for same – in particular, "*the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds*". The NOA also has to state the provisions of the Taxes Consolidated Acts which specify the conditions to be satisfied before an appeal can be made and to confirm if those



conditions have been met. An appeal is only deemed valid if it is made in relation to an appealable matter and any conditions that are required by the Tax Acts are satisfied.

The TAC receives a large volume of appeals where the matter does not appear “appealable” and therefore is not valid. However, other sections of the 2015 Act appear to conflict with the provisions in 949I and 949J, in that the TAC should be able to advise the potential Appellant that the matter is not valid and therefore not accepted, without having to notify Revenue in the first instance, as the other potential party to such an appeal. The notification to Revenue is provided for at section 949K.

We believe these provisions need to be amended, so that where a matter is clearly not appealable, the TAC can deem it invalid and notify same to the potential appellant. A considerable amount of time and effort is taken in the processing of appeals and that time would be better spent in dealing with matters that have substance. If there is concern that decisions on some of these matters could be taken erroneously, a safeguard could be built in to provide for the potential appellant asking for a second and final decision from the Appeal Commissioners.

Chapter 6 – Cases Stated

The TAC considers the provisions in Chapter 6 need to be amended to allow us request both parties to furnish us with a draft case stated, which a Commissioner may then amend/alter as appropriate. It would also be preferable if the case stated was sent to the High Court by the TAC and not by the requesting party. If that is accepted, the TAC would require the authority to direct the party requesting the case stated to prepare and include all the exhibits and any booklets of documentation that have to be sent with the case stated.

Currently, notification of a case stated has to be included in a determination published on the TAC’s website. It would seem prudent for the notification of the case stated to be published only after it has been signed by the Commissioner and sent to the High Court because, in some instances, the cases stated are withdrawn during the drafting and preparation process.

[DESCRIPTION REDACTED] Appeals

Under the terms of the current legislation, it appears to the TAC that we may not have the statutory jurisdiction to deal with a particular category of appeals. This has been discussed with the relevant State body and with Revenue. We believe this is an urgent matter that requires review by the Department of Finance.

Priority Appeals

The TAC should have the authority to decide appeals that warrant priority consideration, without fear of allegations of discrimination or preference. To a large extent, the consideration of this has stemmed from our consideration of a particular category of appeals.

General Matters

- (1) Somewhat, but not exclusively related to the processing of appeals proposals above, the TAC considers that it needs the authority (and resources) to engage specialist or consultant advice from time to time to assist with particular appeals or other matters that affect the efficient functioning of the office. There are a number of issues in this, including queries about our authority to enter into contracts. This has been raised previously by the Office of the Chief State Solicitor. We believe the legislation needs to make clear our authority in this regard, as it calls into question our independence and our ability to operate optimally. Although we have access to the Government Procurement Framework when seeking to engage consultants or advisers, this can



prove uneconomical and slow if we are seeking advice on a very defined matter. In any case, the question of our authority to enter into contracts must be assured.

- (2) Consideration should be given to providing the TAC with the authority to make decisions in relation to the retention, return or destruction of appeals-related files. We currently store a significant amount of same and believe the space could be better utilised to accommodate more staff, if additional resources are provided. In any case, there are questions around security and confidentiality of files, as well as data protection, such that it seems prudent, if at all possible, to either return or destroy the files in matters where the appeal has been settled. The default position should be to return the file. In circumstances where we have tried to do so but have been unable to reach the Appellant, provision could be made for us to make three attempts to correspond with the Appellant and if that proves unfruitful, we then destroy the files. The alternative is to provide for a significant and costly remedial action of scanning all the files onto an electronic platform and then either returning or destroying the hard copies. Whereas the scanning of documents should be a consideration in respect of all current or new appeals, it seems a costly and burdensome exercise to undertake in relation to appeals that have been closed for some time.
- (3) It has come to our attention that for the purposes of various pieces of legislation, largely relating to our compliance obligations, we are not a designated body. Of note (but not exclusively) is the Public Service Management Act 2004. A provision is required to designate the TAC in respect of relevant pieces of legislation as they are applied to other Civil Service bodies.
- (4) Consideration should be given to the requirements and safeguards we should put in place in relation to any additional, temporary Appeals Commissioners who may need to work off-site, given the constraints we face in our current office space. The pressure in relation to office space and what may be needed in terms of working off-site will become more acute if or when we appoint the additional staff we believe are needed. It requires consideration around data protection and confidentiality, reporting mechanisms and general HR issues, such as recording of attendance for work.
- (5) In an equitable and fair system, sanctions should apply equally to all parties. Currently, the TAC can only dismiss an appeal where an appellant has failed to comply with a direction. We do not have an effective remedy of there is a default on the part of the Revenue Commissioners. This has become more transparent in relation to issues of compliance with directions from the TAC.
- (6) Confidentiality of taxpayer information – section 815A of the TCA provides that taxpayer information is confidential and is to be treated as such by Revenue. The disclosure of information, except in accordance with the provisions of the Act, shall be an offence. Given that the TAC is in receipt of the taxpayer information, an obligation in re confidentiality should be provided for in respect of the TAC.



Question 3. Number of Cases on Hand and Age Analysis of Legacy Appeals.**Live Appeals.**

On 06 July 2018, the Tax Appeals Commission has 3,224 live appeals (including Current, Legacy and Pre-Established). This does not include active appeals that are Case Stated, which currently amounts to 51 in total.

Age Analysis of Legacy Appeals

The following table is sourced from data provided to the Tax Appeals Commission in early 2017.

Of the 2,731 Legacy appeals initially transferred to the TAC, approximately 670 appeals were resolved by the Revenue Commissioners (e.g. settled/withdrawn) in advance of the final transfer to the TAC, resulting in 2,058 appeals being forwarded to the TAC.

The TAC identified that 1,568 of the appeals transferred from the Revenue Commissioners represented multiple appeals by appellants and could be consolidated accordingly. A review took place resulting in the 2,058 legacy appeals transferred by the Revenue Commissioners being consolidated by the TAC into 1,163 appeals. Below is an Age Analysis of the Legacy appeals that were transferred to the Tax Appeals Commission during 2016, according to the Revenue Commissioners.

Year	No. of Legacy Appeals received by Revenue Commissioners
2001	3
2002	1
2003	1
2004	2
2005	12
2006	1
2007	5
2008	16
2009	59
2010	20
2011	174
2012	182
2013	211
2014	409
2015	493
2016	469
Total	2,058

Note: 2,058 legacy appeals were transferred by the Revenue Commissioners to the TAC in 2016 who consolidated this number into 1,163. Since 2016, 368 appeals have closed (e.g. determined, withdrawn or settled) leaving the number of active legacy appeals with the Tax Appeals Commission, as at 2 July, 2018, amounting to 795. Please revert to the Revenue Commissioners to ascertain current quantum figures regarding legacy appeals.

Table 2. Year Assessment/Issue being appealed according to the Revenue Commissioners

Year	Number of Legacy Appeals	Total Disputed Amount by Year Assessed
1976*	1	€7,147,832
1980	3	€9,771,907
1988	3	€2,203,511
1990	1	€2,695,018
1994	1	€723,819
1995	2	€950,652
1996	2	€1,193,749
1997	4	-€58,765
1998	57	€776,774
1999	15	€16,749,606
2000	5	€510,117
2001	7	€5,132,149
2002	25	€23,487,689
2003	38	€29,250,171
2004	55	€450,013,125
2005	85	€86,462,221
2006	134	€82,511,749
2007	182	€101,783,464
2008	347	€98,940,063
2009	265	€116,198,518
2010	300	€116,736,786
2011	238	€56,119,417
2012	215	€21,459,062
2013	50	€2,764,756
2014	15	€3,511,781
2015	5	€0
2016	3	€200
Total	2,058	€1,237,035,371

*This appeal spans 24 years to 1999.

Note: 2,058 legacy appeals were transferred by the Revenue Commissioners to the TAC in 2016 who consolidated this number into 1,163. Since 2016, 368 appeals have closed (e.g. determined, withdrawn or settled) leaving the number of active legacy appeals with the Tax Appeals Commission, as at 2 July, 2018, amounting to 795. Please revert to the Revenue Commissioners to ascertain current quantum figures regarding legacy appeals.

Table 3. Instances of Taxheads involved according to the Revenue Commissioners

TaxHead	Number of Legacy Appeals
IT	1568
CGT	163
CT	116
VAT	76
PREM	43
CAT	42
PAYE	22
CUST	12
DWT	4
ELEV	4
LPT	3
C&E	2
RCT	2
EXLI	1
Total	2,058

Note: 2,058 legacy appeals were transferred by the Revenue Commissioners to the TAC in 2016 who consolidated this number into 1,163. Since 2016, 368 appeals have closed (e.g. determined, withdrawn or settled) leaving the number of active legacy appeals with the Tax Appeals Commission, as at 2 July, 2018, amounting to 795. Please revert to the Revenue Commissioners to ascertain current quantum figures regarding legacy appeals.

The number of active appeals with the Tax Appeals Commission varies each day but there were approximately 3,282 active appeals under its remit, as at 2 July, 2018. This figure is broken down as follows:

Appeals received 2016:	339
Appeals received 2017:	1,182
Appeals received 2018:	737
Legacy Appeals:	795
Pre Establishment:	178
Cases Stated received from Office of the Appeal Commissioners on 21 March 2016:	43
Cases Stated in 2017:	3
Cases Stated in 2018:	5
Total	3,282