

**Seen by  
Minister for Finance**

# 00848-14: FB15#67 Amendments to the Tax Appeal System

<b>To:</b> Minister	<b>Author:</b> Kevin Nolan
<b>Status:</b> For Review by Minister	<b>Owner:</b> Sub_FIN Ministers Office
<b>Purpose:</b> For Decision	<b>Reviewers:</b> Kevin Nolan, Des O'Leary
<b>Division/Office:</b> Fiscal Division	
<b>Decision By:</b>	

## Action Required

Your approval is sought to the inclusion of measures in Finance Bill 2014 providing for wide range of amendments to the legislation governing appeals in relation to the various taxes under the care and management of the Revenue Commissioners.

## Executive Summary

**The reform of the tax appeals system involves two distinct strands (i) the establishment of the new Tax Appeals Commission [subject of a separate submission] and (ii) a broad range of reform measures, which are the subject of this memorandum. These reform measures arise from the reform of the tax appeals system announced in Budget 2014. The changes would take effect at the same time as the Act establishing the new Tax Appeals Commission comes into effect.**

- The proposed reform measures involve refinements of the current longstanding system and some fundamental and radical reforms.
- The reforms give effect to some of the new policy developments arising from a public consultation on reform, including:
  - the making of appeals directly to the Appeal Commissioners; rather than via Revenue as occurs at present,
  - public hearings of appeal cases,
  - the removal of the provision for a full rehearing of an appeal before a Judge of the Circuit Court,
  - the publication of Appeal Commissioners' determinations, and
  - a revised case stated procedure.

## Comments

## **1. "In camera" hearings**

Under current arrangements, appeal hearings at both Appeal Commissioner level and before a judge of the Circuit Court are held "in camera".

There were conflicting views on this issue during the consultation process. On the one hand, Revenue favour the replacement of 'in camera' hearings with public appeal hearings. Its view was that public hearings could enhance public confidence that the tax system was being administered and the law being applied in an even-handed way. It considered that the current appeals system was established many years ago and its 'in camera' hearing of appeals now appear to be out of line with modern developments in both international and Irish law. It referenced the practice in the UK for example where hearings in relation to tax appeals are generally held in public and also the Employment Appeals Tribunal, an Irish administrative appellate forum, where public hearings are the norm.

On the other hand, representative bodies have argued strongly that public hearings are not appropriate as they would deter individuals from appealing. They also argued that hearings sometimes require that information about third parties is divulged. They drew a distinction between the role of the Appeal Commissioners as part of the administration of taxation rather than of justice and argued that the principle enunciated in article 34 of the Constitution that court proceedings should be held in public does not apply to tax appeals.

There may be a mistaken public impression that a person's tax affairs enjoy some special degree of confidentiality. While section 851A of the Taxes Consolidation Act (TCA) 1997 obliges Revenue to treat taxpayer information as confidential, this legislative protection for a taxpayer relates only to the treatment of information obtained by Revenue in the course of carrying out its work. Revenue is not bound by such confidentiality in the case of legal proceedings,

including proceedings involving the Appeal Commissioners. Indeed, tax appeals heard by the High Court and the Supreme Court are in open court and are publicly reported.

Notwithstanding the reservations of the representative bodies, we support the case for public hearings and recommend that 'in camera' tax appeal hearings become the exception rather than the norm. The adoption of public hearings would be accompanied by safeguards in the case of certain types of appeals to be specified in the legislation. Thus, for example, public hearings would not apply in the case of appeals that might have implications for public order or national security or involving sensitive matters other than a person's financial affairs. The Appeal Commissioners would also have the flexibility to hear part of an appeal 'in camera' and to exclude certain parties from proceedings or part of proceedings. This would bring the tax appeal system into line with best practice, both internationally and nationally. A major plank of the reforms being implemented is the strengthening of the actual and perceived independence of the Appeal Commissioners. Public hearings would further strengthen such independence.



## ✎ 00103-15: Finance (Tax Appeals Commission) Bill

<b>To:</b> Minister	<b>Author:</b> Anita Kelly
<b>Status:</b> Completed	<b>Owner:</b> Anita Kelly
<b>Purpose:</b> For Information	<b>Reviewers:</b> Kevin Nolan, Des O'Leary
<b>Division/Office:</b> Tax Division	
<b>Decision By:</b>	

### Final Comment

Noted. 5th Feb. 2015. MN. (Refer copy attached)

### Action Required

For information only

### Executive Summary

This is to inform you that officials of the Department, together with officials from Revenue, attended the Oireachtas Joint Committee on Finance, Public Expenditure and Reform on January 27th for the Pre-Legislative scrutiny of the Heads of the Finance (Tax Appeals Commission) Bill.

Representatives of certain Stakeholders were invited before the Committee in a second session; the Institute of Taxation, the Consultative Committee of Accounting Bodies in Ireland, and William Fry Solicitors (Tax Partner).

Discussion at both sessions focussed on two main issues, that of the proposed move to public hearings of tax appeal cases, and the dispensing with the Circuit Court stage of the appeal process.

Two main issues were deliberated upon; that of the proposed move to public hearings, and the dispensing with the Circuit Court stage of the appeal process.

Members of the committee questioned the justification for the move to public hearings, if this would in fact add value to the process, and whether it would discourage taxpayers from appealing, and particularly militate against smaller taxpayers.

Please find attached Revenue's comments on the ITI submission.

Regards

## Revenue comments on ITI Submission 12 march 2015

### **1. Public appeal hearings**

Revenue supports the move to public appeal hearings on the basis that it will result in a more transparent process and enhance public confidence that the system is independent..



# 00446-15: Publication of Report of FinPer Joint Oireachtas Committee on Heads Tax Appeal Reform Bill

<b>To:</b> Minister	<b>Author:</b> Anita Kelly
<b>Status:</b> Completed	<b>Owner:</b> Anita Kelly
<b>Purpose:</b> For Information	<b>Reviewers:</b> Kevin Nolan, Des O'Leary, Gary Tobin
<b>Division/Office:</b> Tax Division	
<b>Decision By:</b>	

## Final Comment

Letter signed by Minister 28/04/15

## Action Required

To note and acknowledge the the FinPER Committee's pre-legislative scrutiny report on the Tax Appeals reform process, which we received 16th April 2015.

## Executive Summary

- The Joint Committee undertook pre-legislative scrutiny on the general scheme of the Bill.
- They met with officials of the Department, Revenue and with stakeholders, being representatives of the Accountancy bodies, The Irish Tax Institute, William Fry, and Mr John O'Callaghan, incumbent Appeal Commissioner as part of this process.
- The Committees report, which has been laid before the Houses of the Oireachtas and published 16.04.2015, is attached, together with a letter from the Clerk of the Committee to you.
- The two main areas of concern for stakeholders were provisions for public hearings, and the removal of the Circuit Court stage of the Appeals process.

## Detailed Information

### 1. Public Hearings of Appeals and Privacy Concerns

The Heads of the Bill envisage that hearings before the Appeal Commissioners, heretofore held *in camera*, will be held in public session following enactment of the legislation. The following issues were among those considered as supporting this policy change

- Current process out of line with modern developments nationally and internationally
- Open hearings will bring transparency and improve confidence in the administration of the tax system and the tax appeal system
- Will bring clarity to Revenue decisions, and
- Build up a body of determinations informing and assisting taxpayers and practitioners of the interpretation of tax statutes

Concerns of stakeholders were noted including:

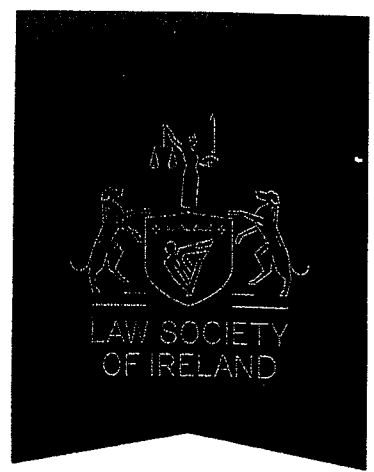
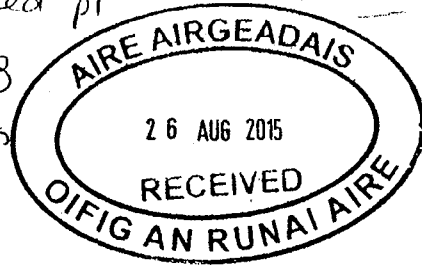
- reluctance of tax payers to take an appeal if in public,
- impacts for business regarding release of commercially sensitive information

The Committee concludes that, while the default position may be for public hearings, it is preferable, on balance, that if the appellant requests it, the hearing be held in private.

The Committee considers that transparency can be enhanced and clarity provided to taxpayers and the general public if all hearings are accompanied by written determinations, as is proposed. Appropriate redactions should be made to protect privacy.



Mr Des O'Leary  
referred pl  
Slyng  
27/8/15



Mr Michael Noonan, TD  
Minister for Finance  
Department of Finance  
Merrion Street  
Dublin 2

25 August 2015

**Re: Finance (Tax Appeals) Bill 2015**

Dear Minister,

I am writing to you in respect of the Finance (Tax Appeals) Bill 2015 ("**Bill**") published on 16 July.

While the Society is grateful to you and your officials for the opportunity we had to provide our input prior to the publication of the Bill having reviewed it we still have some significant concerns.

Whilst we welcome the sensible position being taken in relation to the *in camera* rule before the Appeal Commissioners, we are concerned with certain other aspects of the Bill. Many of these issues were raised with your officials in consultation but have not been addressed in the Bill.

Prior to addressing the reasons for these concerns, it may be worthwhile providing some background in relation to these matters.