



TITHE AN OIREACHTAIS

**An Comhchoiste um Airgeadas, Caiteachas Poiblí
agus Athchóiriú**

**Tuarascáil maidir le hÉisteachtaí i ndáil leis an
Dréacht-Scéim Ghinearálta an Bhille Airgeadais
(Coimisiún um Achomhairc Chánach)**

Aibreán 2015

HOUSES OF THE OIREACHTAS

**JOINT COMMITTEE ON FINANCE PUBLIC
EXPENDITURE AND REFORM**

**Report on hearings in relation to The Draft
General Scheme of the Finance
(Tax Appeals Commission) Bill**

April 2015

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CHAIRMAN'S PREFACE

On 17 December 2014, the Minister for Finance Mr. Michael Noonan T.D., submitted the General Scheme of a Finance (Tax Appeals Commission) Bill (hereafter, the 'General Scheme') to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform (hereafter, 'the Joint Committee'). The Joint Committee decided at its meeting on 20 January 2015 that they would undertake pre-legislative scrutiny in respect of this General Scheme.¹

The Government's stated intention in publishing the General Scheme is to reform the role, structure and functions of the Office of the Appeals Commissioners. The objective of the reform is to improve the administration of the tax system, and provide enhanced arrangements for an independent, efficient, well-defined, clear and transparent system for appeals relating to decisions of the Revenue Commissioners, while delivering value for money and increased certainty for both taxpayers and the State.

In carrying out its pre-legislative function on this proposed and welcome piece of legislation, the Joint Committee met with officials from the Department of Finance and the following stakeholders:

- Mr. Brian Keegan, Consultative Committees of Accountancy Bodies – Ireland (CCAB-I)
- Ms. Cora O'Brien, Irish Tax Institute
- Mr Brian Duffy, William Fry/Tax Ireland
- Mr John O' Callaghan, Tax Appeal Commissioner, Office of the Appeal Commissioners

I would like to express my appreciation to all the witnesses for their contributions, to the Committee Secretariat for their administrative support and to the members of the Committee for their work on this subject. I hope

¹ The correspondence received by the Joint Committee related to both the General Scheme and a proposed "new Part 40A of TCA" (see section 5 of this paper).

that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Liam Twomey T.D.

Chairman

April 2015



SECTION 1- INTRODUCTION

The Government's intention in publishing the General Scheme is to reform the role, structure and functions of the Office of the Appeals Commissioners. The objective of the reform is to improve the administration of the tax system, and provide enhanced arrangements for an independent, efficient, well-defined, clear and transparent system for appeals relating to decisions of the Revenue Commissioners, while delivering value for money and increased certainty for both taxpayers and the State.

Section 2 of this report provides a list of potential key issues and concerns which have been identified in relation to the General Scheme.

Section 3 provides an overview of the current appeals process for a taxpayer aggrieved by an assessment issued by the Revenue Commissioners. Also included is an overview of the service provided by the Office of the Appeal Commissioners and the access to that service.

Section 4 summarises the General Scheme of the Bill including the establishment of the Tax Appeals Commission, the appointment of Commissioners and temporary Commissioners and the provisions for removal, disqualification and resignation of Commissioners.

Section 5 describes the provisions in the proposed new Part 40A of the *Taxes Consolidation Act (TCA) 1997* ("*the 1997 Act*"). The new Part 40A will be inserted into *the 1997 Act* and outlines the legislative process to appeal an assessment by the Revenue Commissioners. It is distinct from the General Scheme of the Bill, which provides for the establishment of the Tax Appeals Commission, its method of funding and staffing; the appointment, removal, resignation and disqualification of Commissioners; and its reporting obligations.

SECTION 2 - ISSUES AND CONCERNS RAISED BY JOINT COMMITTEE

The identification of key issues and concerns is based on consideration of stakeholders' evidence and published secondary sources. The approach taken was to focus on the most pertinent themes rather than examine every Head within the General Scheme.

It may be noted that the two main areas of concern for stakeholders were the removal of the Circuit Court from the appeals process and the provision that envisages that hearings before the Appeal Commissioners would take place in public.

It should be noted that some of the issues and concerns refer to specific Heads within the General Scheme. Other key issues may refer to the general policy context within which the General Scheme sits.

2.1 PUBLIC APPEAL HEARINGS AND PRIVACY CONCERNS

By legislating for public appeal hearings, the General Scheme is proposing to bring Ireland into line with tax appeal processes in other jurisdictions such as the USA. There are merits to hosting proceedings in public. It can be argued that it brings clarity to the Revenue Commissioners' decisions and makes the process more transparent for the general public. That said, caution is required to ensure that taxpayers are not unfairly dissuaded from pursuing appeals. During the pre-legislative scrutiny process, stakeholders aired concerns that taxpayers may be unwilling to pursue an appeal if their finances are to be placed in the public domain. Committee members felt also that there may be unintended consequences as low and middle income taxpayers could be reluctant to enter an appeals process that is public. The Committee considered the example of a small business owner whose business may be threatened by a local competitor if his financial situation became public knowledge. Therefore, 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. (See also section 5 re *Hearings*)

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

2.2 THE CIRCUIT COURT

There are currently no significant delays with the work carried out by the Appeals Commissioners. Once appeals are referred to them, they are dealt with quite efficiently. However, the option to apply for the rehearing of an appeal case to the Circuit Court should not be removed. While the number of appeal cases heard in the Circuit Court has been and is likely to remain small, it provides a taxpayer with reasonable protection in the event of an erroneous or disputed determination by an Appeal Commissioner, rather than be forced to countenance the far more expensive alternative of the High Court.

In addition, despite broad agreement among stakeholders that the Revenue Commissioners should have the same rights of appeal as the taxpayer, it may be unfair to expect the taxpayer to prove the facts of a case twice (if the Revenue Commissioners were allowed a right of appeal to the Circuit Court). As such it may be considered that in the scenario where the Revenue Commissioners were granted a full rehearing before that Court, the burden of proof should rest on them to disprove the taxpayer's case. (See section 5 re *Appealing Determinations of the Appeal Commissioner*.)

2.3 CHANGE OF TITLE

Stakeholders expressed concerns regarding the suggested connection between the terms *Office of the Appeal Commissioners* and *Revenue Commissioners*. In light of the necessity of improving not only the independence but also the perceived independence of the appeal process, the change of title from Office of the Appeal Commissioners to Tax

Appeals Commission may be considered a better signifier of independence. (See Section 4.1)

2.4 APPOINTMENT OF APPEAL COMMISSIONERS

The proposal in the General Scheme to legislate for the establishment of an open, formal selection and appointment process for future Appeal Commissioners through the Public Appointments Service has been broadly welcomed by stakeholders. However, greater clarity could have been provided by the General Scheme as to whether the term of appointment will be of 5 or 7 years duration. In line with similar appointments for Secretaries-General of Government Departments, the Governor of the Central Bank, City and County Managers, a term of 7 years may be preferable. (See section 4.2)

2.5 ESTABLISHMENT OF A PANEL OF TEMPORARY COMMISSIONERS

The General Scheme, as proposed, does not envisage a body of suitably qualified persons being formed from which a temporary commissioner will be appointed. The use of such a body to streamline the appointment of temporary commissioners and contribute to a more efficient process may merit consideration. (See section 4.3)

2.6 INDEPENDENCE OF THE REFORMED TAX APPEALS COMMISSION

One of the most important facets of the reform of the Office of the Appeal Commissioners is the strengthening of its independence. In this context, the addition of the word “independently” in the form of a declaration to be made by a Commissioner or a temporary Commissioner may act to emphasise the independence of the Office. (See section 4.4)

2.7 DISQUALIFICATION

The General Scheme proposes that a Commissioner will cease to be a Commissioner if that person is *inter alia* making a composition or arrangement with creditors. The question could be posed as to whether this provision requires modernisation in light of the number of citizens who are currently in arrangements with creditors in Ireland. (See section 4.5)

2.8 RESOURCES

The future success of the Tax Appeals Commission may well depend on the provision of adequate funding and resources. As a result, there may have to be a significant increase in the voted expenditure for the Office of the Appeal Commissioners in 2014, which stands at €477,000. (See section 4.6). The Tax Appeals Commissioners have pointed to the growing legal and technical complexity involved in their work and it will be important that staff have the correct level of training to carry out their work.

2.9 POWERS OF TAX APPEALS COMMISSIONER

The Revenue Commissioners may show discretion on certain rules such as acceptance of a late payment. Currently, Tax Appeals Commissioners may only decide on appropriate amount of tax to be paid. They may not decide on whether or not the Revenue Commissioners have exercised appropriate discretion. Consideration should be given to extending the Tax Appeals Commissioners powers to allow them to decide on whether the Revenue Commissioners have shown fair and appropriate discretion in their dealings with a taxpayer.

SECTION 3- CURRENT APPEALS PROCESS

There are two Appeal Commissioners at present. They are supported by two staff members (both on long term secondment from the Revenue Commissioners).

Under Section 850 of the *Taxes Consolidation Act 1997* ("the 1997 Act"), the Appeal Commissioners are appointed by the Minister for Finance. They are responsible for carrying out duties under the 1997 Act and related legislation, principally the hearing of appeals by taxpayers against decisions of the Revenue Commissioners concerning taxes and duties.

As well as hearing appeals related to Income tax, the Appeals Commissioners hear appeals relating to Corporation Tax, Value Added Tax, Capital Gains Tax, Stamp Duties, Capital Acquisitions Taxes (Gift Tax and Inheritance Tax), Residential Property Tax, certain Customs and Excise Duties, Motor Vehicle Registration Tax and sundry and certain other matters under the 1997 Act and related legislation.

A taxpayer aggrieved by an assessment issued by the Revenue Commissioners or by any other appealable decision of the Revenue Commissioners is entitled to appeal to the Appeal Commissioners on giving, within either 21 or 30 days (depending on the issue in dispute) after the date of the assessment or other decision, notice in writing to their Inspector of Taxes.

The Inspector of Taxes has the right to allow or to refuse the appeal. It should be noted that if an application to appeal is refused, this refusal may be appealed to the Appeal Commissioners.

A taxpayer may represent himself/herself at an appeal hearing or may choose to be represented by a barrister, solicitor, accountant, a member of the Institute of Taxation or any other person the Appeal Commissioners may permit.

Members of the public are not admitted to hearings and the Appeal Commissioners and Revenue Commissioners' staff are bound by oath to preserve the confidentiality of taxpayers' affairs.

The decisions of the Appeals Commissioners are based on findings of fact made from the evidence presented and interpretation of taxation law. The rules for statutory interpretation are set down by the Supreme Court and the High Court through decided cases. There is no register of precedents as the Tribunal is not a tribunal of record.

The decision or determination of the Appeal Commissioners may be given orally or in writing (at their discretion) either at the conclusion of the hearing or at a later date advised to the parties to the appeal. The reasoning behind the decision of the Appeal Commissioners is explained when the determination is handed down. In recent years no decisions of the Appeal Commissioner have been published. It is understood that this is mainly due to a lack of resources at the Office of the Appeal Commissioners. The total voted expenditure for the Office in 2014 was €477,000.²

If a taxpayer is not content with the determination of the Appeal Commissioners he/she may either seek a full rehearing by a judge of the Circuit Court or, if dissatisfied with the determination on a point of law, require a case to be stated for the opinion of the High Court on the determination.³

At present, the Revenue Commissioners do not have a right of appeal to the Circuit Court. An exception to this is in relation to Capital Acquisitions Tax, on which matters, the Revenue Commissioners may appeal to the Circuit Court. Under the current Appeals Process, the burden of proof rests at all times with the taxpayer, which is in contrast to the burden of proof in litigation generally, where it rests on the plaintiff or applicant in the case. However, the Revenue Commissioners may appeal to the High Court on a point of law.

² Meeting of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, p.18. 27/01/2015

Transcript available [here](#).

³ Website of the [Office of the Appeal Commissioners](#)

The taxpayer is not liable to pay the portion of moneys in dispute during the appeal process.

3.1 DELAYS IN THE PROCESS

Currently, taxpayers appeal directly to the Revenue Commissioners against assessments and decisions made by the Revenue Commissioners. A number of engagements may then take place in an attempt to settle the matter. Approximately 70% of cases are settled in this way.

The Appeals Commissioners only become aware of an appeal when the Revenue Commissioners, or in exceptional circumstances a taxpayer, requests a hearing. There is no fixed timeframe within which appeals are referred to the Appeal Commissioners and approximately only 20% of appeal cases get to the Appeals Commissioner stage. Approximately 10% of appeal cases proceed to the Circuit Court or High Court.

Delays in the appeal process from start to finish are generally the result of ongoing negotiation between the taxpayer and the Revenue Commissioners and in having dates set for either Circuit Court or High Court Hearings. There is currently no significant backlog of cases being dealt with by the Appeal Commissioners.

Under the new legislation it is proposed that taxpayers will appeal assessments directly to Tax Appeals Commissioners. In this way taxpayers will be more aware of the Tax Appeals Commissioners and their independent role at an earlier stage in the process. A taxpayer may seek an earlier date for a hearing if there are delays in how their case is being dealt with by the Revenue Commissioners.

SECTION 4 - GENERAL SCHEME (HEADS) OF BILL

Below considers in more detail the main issues and concerns in relation to the main sections of the General Scheme.

4.1 CHANGE OF NAME

Under Section 1, Structure of Appeal Commissioners, in the Department of Finance's Consultation document, *Reform of the Appeal System for Tax Matters*, it was noted that "consideration may be given to changing the name of the body (for example, to 'Tax Appeals Board', 'Tax Appeals Tribunal')".⁴

The General Scheme proposes to change the name of the responsible body from *The Office of the Appeal Commissioners* to *Tax Appeals Commission*. This may be as a result of some stakeholder comments regarding the suggested connection between the terms Office of the Appeal Commissioners and Revenue Commissioners. It was considered by certain stakeholders that an alternative designation would be an important signifier of independence.

4.2 APPOINTMENT

The General Scheme proposes that the Public Appointments Service assess and select suitable candidates for appointment as Commissioner. There is also a provision that a Commissioner shall be appointed for five/seven years and for no more than two consecutive terms.

Clarification as to whether the Commissioner will be appointed for five or seven years would be welcome.

There is strong support for the proposal to legislate for the establishment of an open, formal selection and appointment process. The Irish Tax Institute supports the appointment of Appeal Commissioners for 7 years, in line with comparable terms of office for Secretaries-General of Government Departments, the Governor of the Central Bank, City and County Managers and the President of Ireland.

⁴ Department of Finance Consultation document: *Reform of the Appeal System in Tax matters*. Available [here](#)

4.3 TEMPORARY COMMISSIONERS

The General Scheme makes provision for the appointment of temporary Commissioners to carry out the function of a Commissioner where a specific requirement arises.

This proposal rectifies an anomaly in the existing legislation where, if all of the Appeal Commissioners recused themselves because of a conflict of interest, the appeal could not proceed.

While the proposed legislative changes allowing for the appointment of temporary Commissioners have been broadly welcomed by stakeholders, there are some concerns that safeguards to ensure against such appointments becoming quasi-permanent should be more robust.

4.4 INDEPENDENCE

The independence of the body responsible for adjudicating on tax disputes between taxpayers and tax collectors can lead to greater public confidence in the system.

For this and other reasons, the Revenue Commissioners would like to see a strong emphasis on the independence of the Tax Appeals Commission be established on a statutory basis in a manner that guarantees their independence.

During the pre-legislative scrutiny process the Revenue Commissioners called for the underpinning of the independence of the Commissioners through the use of a statutory statement that they are obliged to act independently in the performance of their duties, and the formulation of a revised oath of office that encompasses all the taxes and duties in relation to which they may hear appeals.

However, there is no inclusion of the word 'independently' in the form of a declaration to be made by a Commissioner or a temporary Commissioner (as provided for in the Schedule and the General Scheme).

Not only is the independence of the Appeal Commissioners of paramount importance but so too is their perceived independence. In this light it is considered that the Appeal Commissioners contact details should be specific to their office. The present system of using name@revenue.ie for officials in the Appeals Commissioners office may give the impression to taxpayers that the Appeal Commissioners and the Revenue Commissioners are one and the same. It may be considered preferable that the Appeal Commissioners have its own Administration/IT system.

4.5 REMOVAL/DISQUALIFICATION

At present, Appeal Commissioners are appointed by the Minister for Finance under s.850 of *the 1997 Act*. The Act does not deal with removal from the post. The General Scheme makes provision for the removal of an Appeal Commissioner in certain circumstances such as ill health, conflict of interest or if the Commissioner's removal is necessary or expedient for the effective performance by the Commission of its functions.

The proposed legislation also disqualifies a Commissioner from the post if he or she is adjudicated to be bankrupt or is making a composition or arrangement with creditors. This particular restriction may be considered somewhat outdated in light of the number of people in the State that currently have arrangements with creditors.

4.6 FUNDING

Lack of resources was cited as the reason why Appeal Commissioners are unable to publish their determinations at present, despite there existing, at present, a legislative basis for publishing. In addition to the requirement to publish determinations under the proposed legislation, the Appeal Commissioners also have to publish annual reports.

Stakeholders concurred that it was essential that the reformed Tax Appeals Commission be given adequate resources to carry out their duties effectively and that the future success of the Tax Appeals Commission will depend on the provision of adequate funding and resources. In this light there will may to be a significant increase in the voted expenditure for the Office of the Appeal Commissioners in 2014, which stood at €477,000.

4.7 ANNUAL REPORT

This section proposes that the Appeal Commissioners will report annually to the Houses of the Oireachtas. There is no provision for this at present.

SECTION 5- TAXES CONSOLIDATION ACT PROVISIONS

Below considers the provisions in the proposed new Part 40A of the *Taxes Consolidation Act (TCA) 1997* ("the 1997 Act") which outlines the legislative process to appeal an assessment by the Revenue Commissioners.

PART 40A

The new Part 40A being inserted is divided into seven chapters with provisions grouped, as far as possible, according to that particular stage of the appeal process.

CHAPTER 1 – INTERPRETATION AND GENERAL

Chapter 1 contains most of the definitions to be used in Part 40A. Included in Chapter 1 are also specific provisions that either apply throughout the Part or that do not belong in any other chapter. Chapter 1 provides

- for the delegation of acts and functions of the Revenue Commissioners to any one or more of their officers acting under their authority;
- for documents to be sent by electronic means;
- that Appeal Commissioners may hear and determine cases alone;
- for the Appeal Commissioners to give directions to a party or any other person in relation to the conduct or disposal of an appeal;
- and for the withdrawal and dismissal of appeals.

CHAPTER 2 – MAKING AND ACCEPTANCE OF APPEALS

Chapter 2 deals with the making of an appeal by a taxpayer, the notification of appeals to the Revenue Commissioners, and the matters to be taken into account by the Appeal Commissioners when deciding whether to accept or refuse an appeal.

Under the current legislation, a taxpayer aggrieved by an assessment issued by the Revenue Commissioners, must give notice in writing to the Inspector of Taxes if an appeal is sought. The Inspector of Taxes has the power to grant or refuse the application to appeal.

The General Scheme proposes that a taxpayer who wishes to appeal an assessment by the Revenue Commissioners shall do so in writing directly to the Appeal Commissioners.

It is considered that this is a welcome development in increasing the independence and transparency of the appeals process as the current

legislation provides that all appeals must first go through the Inspector of Taxes.

Further provisions are made within Chapter 2 to deal with objections by the Revenue Commissioners that an appeal is not valid, and late appeals.

CHAPTER 3 – PRE-HEARING PROCEEDINGS

Chapter 3 provides for the details in relation to how the Appeal Commissioners manage appeals in preparation for a hearing, or in deciding whether a hearing is indeed, necessary. Provision is made for adjudication by way of alternative means other than by way of a hearing.

CHAPTER 4 - HEARINGS

Chapter 4 outlines how hearings are to be conducted. It deals with how hearings will be held, the evidence to be heard, and the summoning and examination of witnesses.

A significant amendment to the existing legislation contained in the proposed legislation is the provision under s.949Y,

“Subject to subsection (2), every hearing of an appeal by the Appeal Commissioners (other than a preliminary hearing) shall be held in public.

The Appeal Commissioners may give a direction that a hearing, or part of a hearing, is to be held in camera if they consider that restricting access to the hearing is necessary -

- a) In the interests of public order or national security;
- b) To avoid serious harm to the public interest;
- c) To maintain the confidentiality of sensitive information;
- d) To protect an individual’s right to respect for his or her private and family life; or
- e) In the interests of justice.”

The main reason outlined to the Committee by Departmental officials justifying hearing appeals in public is that the current “in camera” appeals system would appear to be out of line with modern developments in both international and Irish law.

In the US, appeals against a tax liability are made to the United States Tax Court (TC). Hearings in the TC are held in public.

Appeals against decisions of the Canadian Revenue Authority (CRA) are made to an independent court of law called the Tax Court of Canada (TCC). Hearings are held in public.

Appeals against decisions of the Australian Tax Office (ATO) are made to an independent body called the Administrative Appeals Tribunal (AAT). Hearings are held in public [except in special circumstances](#).

It was submitted to the Joint Committee by the Irish Taxation Institute (ITI) that Ireland is most similar to New Zealand and that our legislation should be shaped by what is best for smaller countries such as New Zealand rather than much larger states.

In New Zealand, a taxpayer has the option of appealing against decisions of the Inland Revenue (IR) to either the Taxation Review Authority (TRA) or the High Court. The TRA is an independent body and hearings are held in private.

Cora O'Brien, Irish Tax Institute, noted that,⁵

"We need an appeals system that is suitable for our country. We are a small country in terms of population, no bigger than a mid-sized city in the UK. Countries such as New Zealand do not have publication. It is a small economy also and points to the fact that not everyone is going down this road."

The Revenue Commissioners informed the Joint Committee however, that the 'in camera' rule was removed from the High Court and the Supreme Court tax appeals in Ireland in the 1980s⁶ and suggested that has not had an effect on access to those courts. The Revenue Commissioners contended that measures to relax the 'in camera' rule and hold hearings 'in public' would bring the process into line with modern developments worldwide.

Furthermore, it was considered by the Revenue Commissioners that together with bringing Ireland into line with modern tax appeal processes in other jurisdictions, the proposed legislation would provide for greater transparency,⁷

"Public hearings and publication of decisions can enhance public confidence that the tax system is being administered and the law,

⁵ Meeting of the Joint Committee on Finance, Public Expenditure and Reform, 27/01/2015.

Transcript available [here](#)

⁶ Ibid, p.7, Mr. Gerry Smith, Department of Finance.

⁷ Revenue submission page 7

including the imposition of penalties, is being applied in an even-handed way.”

In presenting the second stage of the *Courts and Civil Law (Miscellaneous Provisions) Bill*, in the *Dáil* on 9 July 2013, then Minister for Justice, Alan Shatter, T.D., in reasoning for the amendments to the *in camera* rule in family law and child care proceedings, noted that,⁸

“The *in camera* rule is an exception to the fundamental principle of our law, guaranteed by the Constitution, that court proceedings should be held in public.”

It is noted that the proposal to abolish the “in camera” rule was not something mentioned in the public consultation on the proposed amendments to the tax appeal system by the Department of Finance.

As such, the consultation process does not address the issue. However, stakeholders presenting to the Joint Committee, such as the Irish Tax Institute (ITI), have serious concerns about the move towards public hearings. ITI characterised the system as moving from one extreme to the other, and that the requirement to host hearings in public will have a negative effect on a taxpayer’s willingness to appeal a perceived wrongdoing because a hearing may require the disclosure of one’s accounts. It was submitted that certain people will not appeal their case because of the requirement to bring their finances into the public domain.

Ms. Cora O’Brien, Irish Tax Institute, stated that,⁹

“Taxpayers may feel that they have a genuine case to appeal but they are going to be forced to reveal the most personal aspects of their finances in order to enter the appeals process.”

The other consideration is for commercial businesses. It was submitted to the Joint Committee by ITI that by hosting hearings in public, certain commercially sensitive matters may be brought into the public domain, which may in turn have a knock-on effect on business profitability. This may, in certain cases, encourage taxpayers to pay “go-away” money to The Revenue Commissioners, rather than face a public hearing, despite their objections to the decisions passed down to them.

Mr. Brian Keegan, CCAP-I, noted that¹⁰,

⁸<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013070900036?opendocument>

⁹ Meeting of the Joint Committee on Finance, Public Expenditure and Reform, 27/01/2015.

Transcript available [here](#)

¹⁰ Ibid

“...from time to time in the course of appeal hearings matters which may be commercially sensitive might be discussed, such as the kind of margins the taxpayer’s business has, or some research and development it is engaging in which, if it was discussed in open court, could damage the business. We need to be careful when we talk about hearings in open court that we do not damage those kinds of commercial considerations.”

It was considered whether there should be limits placed, below which hearings will be held in camera. ITI submitted to the Joint Committee that a limit could be placed at €50,000, whereby any dispute over a sum of money lower than this would allow the Hearing to be held in private. Officials from the Department of Finance submitted that the advice received from the Attorney General in relation to this particular point was that on equity grounds, implementing a threshold, below which hearings would be held ‘in camera’, would mean that the process would be more favourable to those disputing lower sums than higher sums.

Mr. Des O’Leary, Department of Finance, stated,¹¹

“The Office of the Attorney General has advised us that, on equity grounds, one would leave taxpayers with a much larger case in a less favourable position than the person who had a small amount at stake.”

As the hearings would be held in public, there would be no limitation on media presence. It was submitted to the Joint Committee by Mr Brian Duffy, William Fry/Tax Ireland that there should be media limitations similar to those in family law proceedings, whereby a party can apply to have a reporter excluded.

Mr Duffy explained that,¹²

“For example, in family law proceedings, although reporters are allowed access to hearings, their reporting cannot identify parties expressly or implicitly. In addition, a party to the proceedings may apply to the court to have reporters excluded on the basis that the facts of the case are so specific that any degree of reporting would identify the parties.”

CHAPTER 5 - DETERMINATIONS

Chapter 5 deals with the timing, format and publication of determinations made by Appeal Commissioners.

¹¹ Ibid

¹² Ibid

The Appeal Commissioner will be required to publish a report of their determinations on the internet not later than 90 days after notifying the parties in accordance with section 949AH of the General Scheme.

The publication of determinations is of vital importance in respect of transparency in the process. Previously only the Revenue Commissioners knew the case law pertaining to appeals taken to the Appeals Commissioners as it was a party to each case, which may have given rise to a perception of bias in favour of the Revenue Commissioners. Now as each appeal will be the subject of a report published on the internet, the case-law will be a matter of public record. This is considered, by all stakeholders, including Revenue, to be a welcome departure from the existing legislation which, under s.944A of the *TCA 1997*, stated that, "The Appeal Commissioners may make arrangements for the publication of reports..."

Provision is also made in this section for the determination of appeals without holding a hearing. This may arise if, for example, the Appeal Commissioners consider that the arguments in the case have already been borne out by a previous determination, negating the need for a fresh hearing.

CHAPTER 6 – APPEALING DETERMINATIONS OF THE APPEAL COMMISSIONERS

Chapter 6 deals with appeals against determinations of the Appeal Commissioners.

The Department of Finance's Consultation document, *Reform of the Appeal System for Tax Matters*, outlined two options for consideration for appeals from the Appeal Commissioners.¹³

1. A three stage process
 - An appeal to the Appeal Commissioners
 - A right of rehearing of the appeal by a Judge of the Circuit Court
 - A right of appeal from the Circuit Court to the High Court and Supreme Court on a point of law by way of case stated.
2. A two stage process
 - An appeal to the Appeal Commissioners
 - A right of appeal from the Appeal Commissioners to the High Court and Supreme Court on a point of law by way of case stated.

¹³ Department of Finance Consultation document: *Reform of the Appeal System in Tax matters*. Available [here](#)

The General Scheme proposes to remove the opportunity to appeal a decision of the Appeal Commissioners to the Circuit Court for a full rehearing.

Chapter 6 – 949AM – (1) states that,

“The Appeal Commissioners’ determination on an appealable matter shall be final and conclusive subject to the parties appealing a determination to the High Court.”

This precludes cases from being appealed from a determination of the Tax Appeals Commission on the facts of the case, or put simply, the right to a full rehearing of the case. The General Scheme proposes to only allow cases to be appealed to the High Court on a point of law. Provision is also made for appeals to be made from the High Court to the Supreme Court.

The Department of Finance consultation document, *Reform of the Appeal System in Tax matters*, stated the intention to reform the process to ensure that the Revenue Commissioner should have the same rights of appeal as a taxpayer from decisions of the Appeal Commissioners,¹⁴ an issue on which there was general consensus among stakeholders.

However in relation to appeal being heard by the Circuit Court, the Revenue Commissioners considers that it can have the effect of undermining the Appeal Commissioner stage of the appeal process where a taxpayer does not fully engage and uses the initial hearing as a ‘dry run’ for the Circuit Court. On the basis that a reformed appeal process would render an appeal to a Circuit Court Judge unnecessary and would make for speedier resolution of appeals, Revenue’s preferred option is for the shorter two-stage appeal process and the elimination of the Circuit Court stage of the process.

The Revenue Commissioners also consider that allowing an appeal to the Circuit Court, where a Circuit Court Judge does not have the same experience in tax matters may undermine the reformed process and undermine the reformed *Tax Appeals Commission*. Furthermore, a complete rehearing can cause additional delay, particularly in relation to appeals outside Dublin where it is more difficult to get a case listed for hearing.

However, it was submitted by stakeholders that the Circuit Court is an important option for taxpayers because of the high costs involved in

¹⁴ Ibid

taking a case to the High Court. Losing a case in the High Court usually costs a minimum of €100,000.¹⁵

Stakeholders submitted that the removal of an appeal to the Circuit Court would effectively give the taxpayer only one chance to have an appeal heard and this would seem unduly harsh for a taxpayer appealing against a State body.

Furthermore Mr. Brian Duffy, William Fry/Tax Ireland noted that,¹⁶

“It is my experience that Circuit Court judges have ample experience to deal with that [appeals from Appeal Commissioner determinations]. They are intelligent people and I have not had a problem so far.”

It should be noted however, that if provision was made for access to the Circuit Court then there would also need to be changes with regards to The Revenue Commissioners’ access to the Circuit Court coupled with a change in the prescription that it is the taxpayer upon whom the burden of proof lies.

Finally, between 2010 and 2014, 40 cases were won in the Circuit Court by the Revenue Commissioners and 6 cases were won by the taxpayer. Without recourse to the Circuit Court, some or all of these 6 cases would not have been won by the taxpayer.

CHAPTER 7 – PENALTIES AND SANCTIONS

Chapter 7 provides for penalties and sanctions that can be imposed in relation to the conduct of an appeal.

Provision is made under s.949AQ for a penalty of €3,000 for a person who fails or refuses to appear before the Appeal Commissioners at the time of a scheduled hearing. The penalties are in line with existing provisions under s. 939 of *the 1997 Act*.

¹⁵ Ms. Cora O’Brien, Meeting of the Joint Committee on Finance, Public Expenditure and Reform, 27/01/2015, p.7

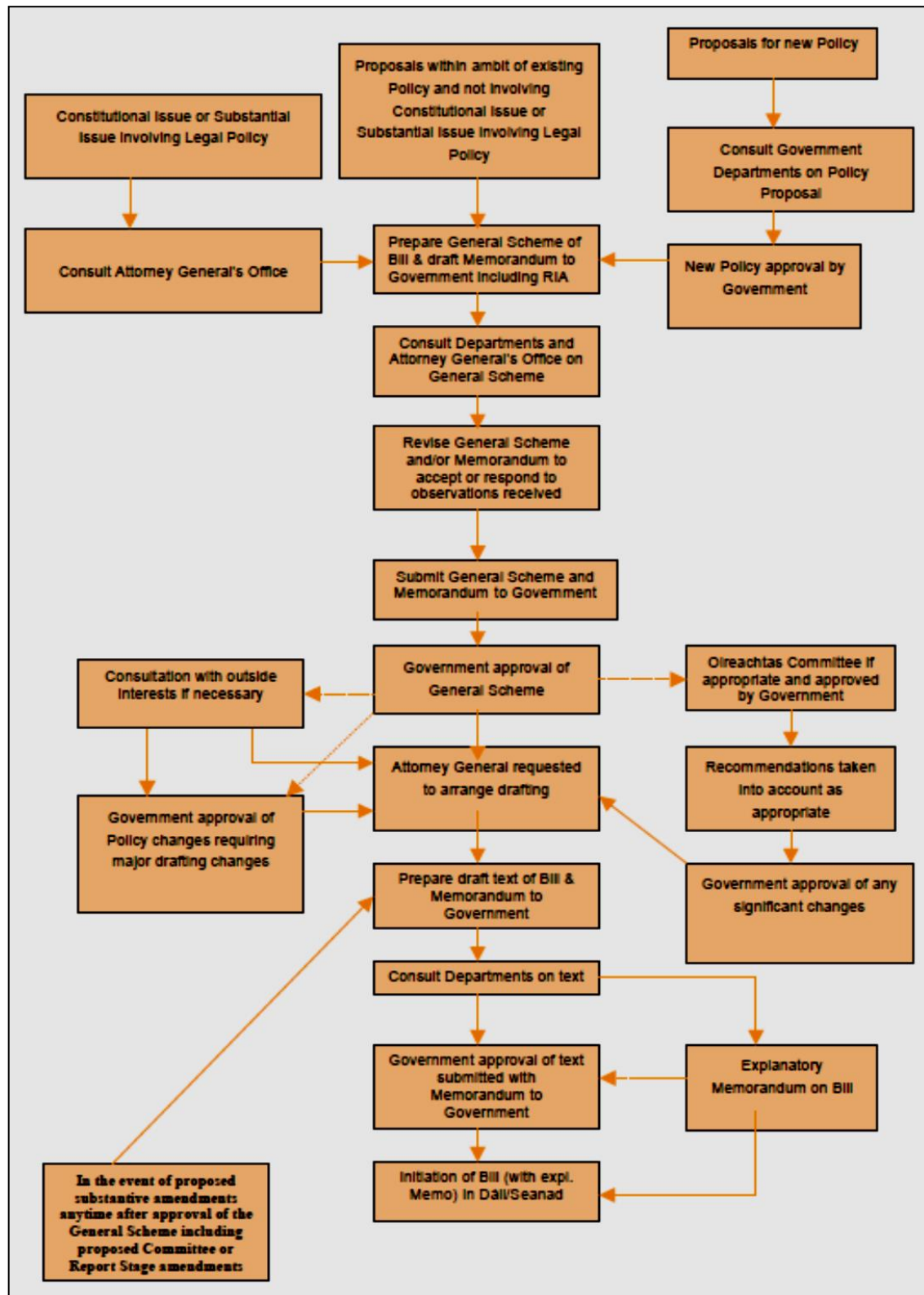
Transcript available [here](#)

¹⁶ Meeting of the Joint Committee on Finance, Public Expenditure and Reform, 27/01/2015.

Transcript available [here](#)

APPENDIX 1

PREPARATION OF LEGISLATION



Source: Department of the Taoiseach Cabinet Handbook. Available at http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/CABINET_HANDBOOK2007.pdf

APPENDIX 2

JOINT COMMITTEE MEMBERS

Deputies:	Tom Barry (FG)
	Richard Boyd Barrett (PBP)
	Ciaran Cannon (FG)
	Ciara Conway (LAB)
	Michael Creed (FG)
	Pearse Doherty (SF)
	Regina Doherty (FG)
	Stephen S. Donnelly (IND)
	Timmy Dooley (FF)
	Alan Farrell (FG)
	Seán Fleming (FF)
	Ciarán Lynch (LAB)
	Mary Lou McDonald (SF)
	Michael McGrath (FF)
	Paul Murphy (SP)
	Kieran O'Donnell (FG)
	Pat Rabbitte (LAB)
	Arthur Spring (LAB)
	Peadar Toibín (SF)
	Liam Twomey (FG) (Chairman)
	Brian Walsh (FG)
Senators:	Seán D. Barrett (IND)
	Marc MacSharry (FF)
	Paul Coughlan (FG)
	Michael D'Arcy (FG)
	Aideen Hayden (LAB) (Vice-Chair)
	Tom Sheahan (FG)

APPENDIX 3

JOINT COMMITTEE'S TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2). The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3). Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such-
 - (a) Bills,
 - (b) Proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) Other matters

as shall be referred to the Select Committee by the Dáil, and

- (e) Annual Output Statements, and
 - (f) Such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,

- (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion

made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

APPENDIX 4

WITNESS LIST

Pre-Legislative Scrutiny on the General Scheme of a Finance (Tax Appeal Commission Bill) meetings took place on 27 January and 25 February 2015

Meeting 27 January 2015

Session A

Name	Organisation
Gary Tobin, Assistant Secretary	Department of Finance
Des O'Leary	Department of Finance
Kevin Nolan	Department of Finance
Anita Kelly	Department of Finance
Gerry Smyth, Assistant Secretary	Revenue Commissioners
Jean Kennedy	Revenue Commissioners

Session B

Name	Organisation
Mr Brian Keegan, Director of Taxation	CCAB-I
Ms Cora O'Brien, Director of Technical Service	Irish Taxation Institute
Mr Brian Duffy, Tax Partner	William Fry / Tax Ireland
Ms Mary Dineen	William Fry / Tax Ireland

Meeting 25 February 2015

Name	Organisation
Mr John TC O'Callaghan	Office of the Appeal Commissioners

APPENDIX 5

LINK TO TRANSCRIPT OF HEARINGS

First Meeting 27 January 2015

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015012700001?opendocument>

Second Meeting 25 February 2015

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015022500001?opendocument>