

Citizens Information Board Submission on Reform of the Tax Appeals System (January 2014)

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Department of Finance on the proposals to make changes to the operation of the Tax Appeal Commissioners. The Board supports the national network of Citizens Information Services and the Citizens Information Phone Service as well as the Money Advice and Budgeting Service (MABS). These services dealt with over 800,000 callers and clients in 2013 and over a million queries in relation to income supports and entitlements to services. The services recorded over 40,000 tax related queries nationally.

The Board considers that well-functioning appeals systems which are accessible to, and have the confidence of, the public are essential for ensuring that the rights of citizens are respected and implemented. While, ultimately, all citizens must have access to the courts to make decisions on disputes, the existence of non-judicial alternative disputes resolution mechanisms makes the resolution of disputes easier and less costly. Such alternative mechanisms must be accessible to all citizens and, in general, should be usable without the need to engage professional advisors.

This submission addresses the issues in the sequence outlined in the *Reform of the Appeals System for Tax Matters* published by the Department of Finance. The Board notes that the proposals in this document are broadly in line with the recommendations made by the Law Reform Commission in respect of the tax appeals system in its *Report on a Fiscal Prosecutor and a Revenue Court*.

Structure of Appeal Commissioners

The CIB considers that each of the options outlined has merit and does not have a strong view on which should be implemented. There are arguments in favour of having at least one full time Commissioner who is not involved in other work and who, therefore, would be

less likely to face conflicts of interest. There are arguments both for and against having part-time Commissioners. Part-time Commissioners are less likely to build up expertise and this may result in inconsistent decision making. On the other hand, they are likely to bring a fresh perspective to the issues which arise.

The CIB agrees that there should be provision for the appointment of temporary Commissioners to deal with unexpected increases in appeals or to deal with exceptional cases.

At present, it seems that the majority of appeals are heard by one Commissioner. The CIB considers that this should continue but would argue that there should be three Commissioners in complex cases.

Establishment and operation of the Appeal Commissioners

The Appeal Commissioners should be independent and be clearly seen to be independent. The CIB agrees that the body (under whatever name) should be established by legislation and that legislation should clearly specify its remit and that it is independent in the performance of its remit. The Law Reform Commission has already recommended that the independence of the Commissioners be explicitly stated in legislation.

The Board also considers that the tax appeal process should be totally separate from the Revenue Commissioners. The CIB recognises that the current appeals system is actually independent but the requirement to appeal through the Inspector of Taxes may give rise to a perception of lack of independence. Similarly, the power of the Inspector of Taxes to reject an appeal on the basis that the person making it is not entitled to appeal should be removed and this decision should be made by the Appeal Commissioners.

The Office of the Appeal Commissioners should be subject to the same rules as all public bodies in respect of having clear procedures and processes and providing adequate information about these. The Revenue Commissioners should continue to have a clear obligation to inform taxpayers about the existence of appeal mechanisms and the detailed time limits for making appeals. The Appeal Commissioners should then have the obligation to tell people about issues such as how to make the appeals; who is entitled to have an oral hearing; what to expect at an appeal hearing; who may represent the taxpayer at a hearing and whether or not the question of costs will be addressed.

Similarly, the Office should publish an Annual Report outlining, among other things, the number of cases heard; the delays, if any, involved in hearing cases; the number decided in favour of the taxpayer or Revenue; the number where the taxpayer was professionally represented and other relevant information.

The procedures and practices adopted by the Appeal Commissioners should be such that allow taxpayers to use the process without the requirement of using professional advisors. This should be the case particularly for PAYE income taxpayers. The CIB accepts that professional advice may be required for corporation and capital tax cases and for income tax cases involving complex tax reliefs but would argue strongly that professional advice should not be required for most income tax cases.

Appointment of Appeal Commissioners

Appeal Commissioners, whether part-time or full-time, should be appointed in accordance with best practice for public appointments and this should be set out in legislation. This means that the qualifications required should be clearly stated and that the process should be conducted by the Public Appointments Service. The appointments should be for a fixed term.

Determinations of the Appeal Commissioners

Best practice requires that the Appeal Commissioners issue reasoned written decisions which explain to the parties, but particularly to the taxpayer, why the decision was reached.

The CIB is strongly of the view that the decisions of the Appeals Commissioners should be published, subject to the requirement to preserve taxpayer confidentiality. At present, only a very small number are published and the choice of which to publish rests entirely with the Commissioners. This means that the Revenue Commissioners have knowledge of the results of all appeals while the taxpayer does not. This is potentially unfair to taxpayers. Publication of decisions would also show whether or not there is consistent decision making and would give taxpayers a better opportunity to assess whether or not they should appeal to the Courts.

Payment of Taxes

The CIB accepts that taxpayers should be required to pay the tax not in dispute.

Appeals from the Appeal Commissioners

The Department of Finance paper presents two options. On balance, the CIB would favour the three stage process because this leaves open the possibility of an appeal to the Circuit Court. This option is easier and cheaper for the taxpayer than a case stated to the High Court. It may be possible to distinguish between cases which are heard by one Commissioner and the more complex cases heard by more than one. In the latter cases, it may be that a case stated to the High Court would be the appropriate next stage.

The CIB accepts that the Revenue Commissioners should have the same rights of appeal as a taxpayer from decisions of the Appeal Commissioners.

There should be time limits on the bringing of appeals to the Courts, in particular, on cases stated for the High Court.