

Reform of the Appeal System for Tax Matters

Public consultation on proposed amendments to the appeal system for tax matters, including a reform of the role, functions and structure of the Appeal Commissioners.

The Minister for Finance, Mr Michael Noonan TD, invites interested parties to make submissions regarding a proposed reform of the Office of the Appeal Commissioners. The intended changes are set out on the following pages. Interested parties are invited to respond to the changes proposed.

Any legislation which is published following the consultation process may contain provisions not included in the outline below, or may omit certain provisions included in the outline below.

- **The closing date for the receipt of submissions is 16 January 2014.**
- **Any submissions received after this date cannot be considered.**
- **Submissions received will be published on the Department's website.**
- **Respondents should be aware that the Department is subject to the provisions of Freedom of Information legislation, and submissions received may be released as a result of an application for records made under the Freedom of Information Act 1997 as amended.**
- **If a submission contains confidential material, it should be clearly marked as confidential, and a version of the submission should be provided which can be used for publication.**
- **The Department may include the information contained in submissions in forthcoming reports and elsewhere as required. Any party submitting information to the Department shall have sole responsibility for the contents of such information.**

The public consultation will be open for submissions from 16 October 2013, and will close on 16 January 2014.

Submissions may be emailed to:

appealcommissionersreform@finance.gov.ie

or posted to:

'Appeal Commissioners Reform Consultation',
Fiscal Policy Division,
Department of Finance,
Government Buildings,
Upper Merrion Street, Dublin 2

Proposed Amendments to the Existing Tax Appeals System

1. Structure of Appeal Commissioners

A number of options are proposed for consideration:

- Three Appeal Commissioners are appointed on a full time basis; they are not allowed to undertake work outside their Appeal Commissioner duties.
- A “Chairperson of the Commissioners” is appointed on a full time basis, who is not allowed to undertake work outside her/his official duties; along with a panel of suitably qualified persons, who will be paid on a per case basis and who are not restricted in undertaking outside work.
- A panel of suitably qualified persons to be appointed as Appeals Commissioners, who are not restricted in undertaking work outside the Appeals Commissioner duties, and who will be paid on a per case basis. Panel members will have no entitlement to sit on any particular case or number of cases.
- Provision would be made for the appointment of temporary Appeal Commissioners if necessary for a short period or for a particular case or cases.
- Consideration may be given to changing the name of the body (for example, to “Tax Appeals Board”, “Tax Appeals Tribunal”).

2. Establishment and operation of the Appeal Commissioners

- The Appeal Commissioners will be established on a statutory basis in a manner which guarantees their independence in relation to the Tax and Customs Acts.
- The Appeal Commissioners will manage the tax appeal process in a manner which is separate from Revenue.
- The Office of the Appeal Commissioners should have full independence and be responsible for its own staffing, IT systems, administration, listing of appeals and all related matters.
- As at present, one of the Commissioners will be appointed by the Minister for Finance to be the Accounting Officer for the Vote.

- The Office of the Appeal Commissioners would be responsible for developing processes and guidance to minimise delays; for developing Customer Service standards including relating to the timing and location of appeal hearings.
- The Office will present an annual report to the Minister for Finance.
- The Appeal Commissioners will be accountable to the Minister for Finance for their own performance and the performance of the Office while independent in exercising their statutory responsibility to adjudicate on appeals.
- Appeal Commissioners would recuse themselves in cases of conflict of interest or where they may know the parties to the Appeal hearing.
- Explicit provision could be made for more than one Commissioner to sit in appropriate cases.

3. Appointment of Appeal Commissioners

- The establishment of an open and formal selection and appointment and removal process for future Appeal Commissioners will be legislated for and put in place.
- Appointment as an Appeal Commissioner will require a professional qualification with a minimum period of experience in law, accountancy or taxation and also that the candidate is otherwise well qualified.
- Appeal Commissioners will be appointed for a fixed term which can be renewed. The term could be 5, 6 or 7 years. In this context, consideration will be given to what safeguards may be necessary to ensure the independence of the each Commissioner.
- A transparent recruitment and selection process for the nomination of suitable candidates to be appointed as Appeal Commissioners will be conducted under the auspices of the Department of Finance.
- The process, which could involve the Public Appointments Service or the Top Level Appointments Committee or both, will present a shortlist of suitable candidates from which the Minister for

Finance will make appointments. These bodies, as a matter of course, will engage any expertise needed.

- In accordance with existing practice for civil service appointments, canvassing will disqualify.

4. Determinations of the Appeal Commissioners

- The Appeal Commissioners will control the record of their own decisions, and make them available to the parties as of right.
- The Appeal Commissioners will issue a concise reasoned determination in all cases within a short period (ideally three months) of the determination, including a summary of the facts and giving reasons for the decisions.
- An effective system for the reporting of decisions of the Appeal Commissioners will be established.
- Every appropriate decision of the Appeal Commissioners will be published.
- Access to decisions of the Appeal Commissioners will be simultaneously available to the parties.

5. Appeal Commissioners Jurisdiction

The jurisdiction of the Appeal Commissioners may be extended by the Minister for Finance from time to time by way of legislation.

6. Payment of Taxes

In all cases taxpayers should be required to pay the tax not in dispute. It may be timely to consider whether, based on the outcome of the appeal, the relevant tax or duty should be paid or repaid as the case may be at the end of each stage of the appeal process.

7. Appeals from the Appeal Commissioners

Two options are proposed for consideration. These may need to be reviewed in the context of the forthcoming establishment of the Court of Appeal. In both options, the Revenue Commissioners should have the same rights of appeal as a taxpayer from decisions of the Appeal Commissioners.

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