

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2020 edition

Part 40 Appeals

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Part 40 Appeals

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PART 40 APPEALS

CHAPTER 1

Appeals against income tax and corporation tax assessments

Overview

This Chapter is concerned with the various aspects of the appeals process. It deals, among other things, with the right of appeal to the Appeal Commissioners (*section 933*), the procedures relating to appeals (*section 934*), the right of appeal to the Circuit Court (*section 942*) and the stating of a case for the opinion of the High Court (*section 941*).

In the case of persons within the Self Assessment system the provisions of *Chapter 6 of Part 41A*, should be consulted so as to obtain a full picture of the provisions relating to appeals.

932 Prohibition on alteration of assessment except on appeal

Unless specifically sanctioned by *Part 41A* or elsewhere in the Tax Acts, it is not permissible to alter an assessment to income tax or corporation tax before the hearing of an appeal. Assessments which have been appealed against can only be altered in accordance with the determination of the appeal. Unauthorised alterations attract a €60 penalty.

933 Appeals against assessment

Summary

A person who is dissatisfied with an assessment to income tax or corporation tax made by an inspector is entitled to appeal that assessment to the Appeal Commissioners by giving written notice to the inspector within 30 days of the date of the assessment. A late application for appeal may be made and will be admitted if there is a reasonable explanation as to why the appeal was not made within the normal time limit. Appeals are heard from time to time by the Appeal Commissioners. Their decision is final and conclusive unless the person assessed requests a rehearing in the Circuit Court or unless a request is made for a case stated to the High Court.

Details

A person aggrieved by an assessment to income tax or corporation tax may appeal to the Appeal Commissioners by giving, within 30 days, notice in writing to the inspector or other officer who made the assessment. (1)(a)

If the inspector considers that the person is not entitled to appeal, the inspector will refuse the application and notify the person in writing and state the grounds for the refusal. (1)(b)

This refusal may be appealed to the Appeal Commissioners in writing within 15 days. (1)(c)

The Appeal Commissioners will request a copy of the notice of refusal and will either — (1)(d)

- refuse the appeal application, giving reasons;
- allow the appeal application and notify the taxpayer and the inspector; or
- notify the taxpayer and the inspector of a hearing to enable the Commissioners to decide whether or not to allow the appeal application.

The Appeal Commissioners must set times and places for the hearing of appeals and these are notified to the inspector who, in turn, is required to advise appellants of the time and date unless the appeal is settled by agreement. (2)

Where an assessment is under appeal and the inspector and the appellant come to an agreement that the assessment is to stand, be amended, be discharged or cancelled, the inspector must amend the assessment to reflect what has been agreed and the amended assessment has the same standing as if it were an assessment against which no appeal had been made. The agreement must be in writing and is deemed to be in writing where the terms of the agreement are set down by the inspector and not repudiated by the appellant within 21 days. An appellant may withdraw an appeal by giving written notice to the inspector to that effect and the assessment is then treated as agreed in the original amount assessed. An agent may act for an appellant in these procedures. (3)

All appeals against income tax and corporation tax assessments are to be heard and determined by the Appeal Commissioners and their determination on any appeal is final and conclusive unless an application is made for a rehearing in the Circuit Court or there is a request for a case stated to the High Court. (4)

One Appeal Commissioner may exercise the powers and functions of all the Appeal Commissioners. (5)

An assessment becomes final and conclusive if no appeal is made or if the appellant fails to attend at the appeal hearing. Where, at an appeal hearing, no application for an adjournment is made (or, if made, is not accompanied by accounts or other information sought by the Appeal Commissioners), the Appeal Commissioners must dismiss the appeal and the assessment is treated as one against which no appeal had been lodged. The Appeal Commissioners may not refuse an application for an adjournment if made within 9 months of the earlier of — (6)

- the end of the tax year or accounting period to which the assessment appealed against relates, or
- the date on which the notice of assessment was given to the appellant.

An appeal not made within the 30 day limit may be made and will be admitted within 12 months of the date of the notice of assessment if the inspector is satisfied that the appellant was prevented (because of absence, illness or other reasonable cause) from meeting the normal deadline. If the inspector is not so satisfied, the applicant will be notified in writing that the request for admission of a late appeal is being refused. Such a refusal can be appealed to the Appeal Commissioners within 15 days. An appeal, outside the 12 month time limit, will be allowed only if a full return of income plus supporting accounts and other documentation and information needed to enable the appeal to be settled by agreement is submitted and the tax charged in the assessment, together with any interest due for late payment, is paid. If the inspector considers that the information needed to settle the appeal by agreement has not been provided or if the tax and interest mentioned have not been paid, the application must be refused and the applicant so informed. This refusal may be appealed to the Appeal Commissioners within 15 days and they may allow the application if — (7)

- the appeal would have been allowed within the 12 month extended period because of illness, etc,
- the tax and interest is paid when the application was referred to them, and
- the information given to the inspector is, in their opinion, likely to enable the appeal to be determined by them.

Where an appellant fails to attend at an appeal hearing, the assessment will not (as would be expected – see *subsection (6)* above) become final and conclusive if the Appeal Commissioners consent to hear another person who attends on behalf of the appellant, if (8)

they postpone the hearing on foot of an application, or if, after the hearing, a timely written application is made explaining why the appellant could not attend due to illness, absence, etc, and they direct that the appeal be re-listed for hearing.

Where recovery action (involving court or sheriff) for assessed tax is under way, a late appeal will not be permitted until that action is completed. If a late appeal is subsequently allowed, no repayment of court, sheriff or county registrar costs will be made. (9)

934 Procedure on appeals

Summary

This section covers various aspects of the appeal hearings and deals with, among other things, who may attend, who may represent the inspector and the appellant and how the Appeal Commissioners deal with assessments in the light of their determinations of appeals.

Details

An inspector is entitled to be present at every hearing and determination of an appeal, and may produce lawful evidence to support the assessment and give reasons in its support. (1)

Both the inspector and the appellant are permitted to have a barrister or solicitor to plead on their behalf and the Appeal Commissioners may also hear an accountant, a member of the Irish Taxation Institute or any other person representing the appellant whom they are satisfied should appear. (2)

Having heard evidence at the appeal, if it appears to the Appeal Commissioners that the appellant has been charged too much tax, they must abate or reduce the assessment but, otherwise, they must order that the amount assessed is to stand. (3)

If it appears to the Appeal Commissioners that the appellant has been undercharged, they must charge the person with the shortfall. (4)

In an appeal against income tax or corporation tax, if it appears to the Appeal Commissioners that — (5)

- the appellant was overcharged, they may reduce only the amount chargeable to income tax or corporation tax,
- the assessment is correct, they may order that the amount chargeable to income tax or corporation tax is to stand,
- the appellant was undercharged, they may increase only the amount chargeable to income tax or corporation tax.

Where the Appeal Commissioners have determined an appeal, the inspector must implement this determination, unless the appeal is to be reheard by a Circuit Court Judge or a case is required to be stated for the opinion of the High Court. Where the inspector implements the determination, the liability thus determined is then payable as if it were the amount contained in an assessment against which no appeal had been made. (6)

Every determination of an appeal by the Appeal Commissioners must be recorded by them and sent to the inspector within 10 days. (7)

935 Power to issue precepts

Summary

Where an appeal has been made against an assessment, the Appeal Commissioners may, if it seems necessary to them, issue a precept (that is, an instruction) to the appellant to deliver to them certain information relating to the appellant's property, profession or

employment, profits or gains, etc.

Details

Whenever it seems necessary to them in considering an appeal against an assessment, the Appeal Commissioners may issue a precept to the appellant ordering the appellant to provide them with a schedule giving particulars in relation to — (1)

- the appellant’s property,
- the trade, profession or employment carried on or exercised by the appellant,
- the appellant’s profits or gains, or
- any deductions made in determining those profits or gains.

Additional precepts may, if necessary, be issued until all relevant particulars have been given by the appellant. (2)

One Appeal Commissioner may issue a precept which is to be complied with within the time specified in the precept. (3) & (4)

An inspector may examine, and take extracts from, the schedule of particulars. (5)

936 Objection by inspector or other officer to schedules

Summary

This section enables an inspector to object to a schedule referred to in *section 935* and sets out the consequences of such objection.

Details

An inspector, having examined a schedule mentioned in *section 935*, may, within a reasonable time, object to all or part of that schedule and set the cause of the objection down in writing. (1)

Written notice of the objection must be given by the inspector to the assessed person who may appeal against the objection. (2)

The inspector’s notice must be sealed and addressed to the assessed person. (3)

Any appeal against the objection must be heard and determined before an assessment can be confirmed or changed. (4)

937 Confirmation and amendment of assessments

Where the Appeal Commissioners disallow the inspector’s objection to a schedule, or, on hearing an appeal, they are satisfied with the assessment, or if, having received a schedule, they are satisfied with it, they must confirm or change the assessment in accordance with the schedule.

938 Questions as to assessments or schedules

Summary

When the Appeal Commissioners are not satisfied with a schedule or they need additional information, they may, by precept (that is, an instruction), ask questions in writing of the appellant about the schedule and what it contains or ought to contain and these questions must be replied to in writing within 7 days. The appellant may respond orally before the Appeal Commissioners in which case the answers will be written down and may be verified under oath.

Details

If the Appeal Commissioners are dissatisfied with a schedule or they need further information, it is open to them to address questions about the schedule – its contents or what it ought to contain – by precept to the appellant. A response – containing true and detailed answers – is required in writing within 7 days. (1)

The appellant may, instead of responding in writing, appear for oral examination in relation to the questions raised. The answers given are to be written down and called over to the appellant who may be required to verify the answers on oath. (2)

An agent who appears to answer on behalf of the appellant is subject to the same procedures. (3)

939 Summoning and examination of witnesses

Summary

The Appeal Commissioners may summon witnesses to give evidence in relation to an appeal and may examine them under oath. A penalty applies for failure to attend or for refusal to take an oath or answer lawful questions.

Details

If the Appeal Commissioners believe a person will be able to give evidence relating to an assessment made on another person, they can call on that person to appear before them and be examined under oath. An agent of the assessed person can be examined orally in the same way as the assessed person. (1)

The oath to be taken is that the evidence to be given relating to the appeal shall be the truth, the whole truth and nothing but the truth. (2)

A person who is summoned by the Appeal Commissioners but — (3)

- fails to appear at the hearing,
- appears but refuses to take the oath, or
- refuses to answer lawful questions,

is liable to a penalty of €3,000. This penalty does not apply to an agent of the person who refuses to take the oath or refuses to answer lawful questions.

940 Determination of liability in cases of default

The Appeal Commissioners will, in certain circumstances, determine, to the best of their judgement, the amount which ought to be charged on the appellant. These circumstances are where —

- the person does not file a schedule in response to the Appeal Commissioners' precept;
- an agent fails to appear following a summons;
- the appellant or an agent refuses to answer a question put by the Appeal Commissioners;
- an objection to a schedule has been made by an inspector but has not been appealed against or, if appealed against, has been allowed by the Appeal Commissioners.

941 Statement of case for High Court

Summary

Immediately following the determination of an appeal by the Appeal Commissioners, the appellant or the inspector – if they are dissatisfied with the determination as being erroneous on a point of law – may declare their dissatisfaction to the Appeal Commissioners. They may then ask the Appeal Commissioners to state a case for the opinion of the High Court which will subsequently hear and determine the case. An appeal may be made to the Supreme Court from the High Court’s decision.

Details

If the inspector or the appellant is dissatisfied with the determination of an appeal by the Appeal Commissioners as being in error on a point of law, either party can immediately declare their dissatisfaction to the Appeal Commissioners who dealt with the appeal. (1)

The dissatisfied party has 21 days in which to send a written notice to the Clerk to the Appeal Commissioners requiring the Appeal Commissioners to state and sign a case for the opinion of the High Court. (2)

A fee of €25 is payable to the Clerk before the aggrieved party is entitled to have the case stated. (3)

The case stated must set down the facts and the Appeal Commissioners’ determination and must be transmitted to the High Court by the party which sought it within 7 days after it is received. (4)

At or before this time, the party requiring the case stated must notify the other party in writing that the case has been stated and must send the other party a copy of the case stated. (5)

The High Court must hear and determine any question of law arising on the case, and must reverse, affirm or amend the Appeal Commissioners’ determination. It may also remit the matter to the Appeal Commissioners with an opinion of the Court and any orders in relation to costs, etc may also be made. (6)

The High Court may send the case back for amendment following which judgement is to be delivered. (7)

The decision of the High Court may be appealed to the Supreme Court. (8)

When a case stated is finally determined by the High Court or Supreme Court, any tax overpaid will be refunded with interest while any underpayment will be treated as arrears of tax to be paid by the appellant. (9)

942 Appeals to Circuit Court

Summary

Any person aggrieved by a determination of the Appeal Commissioners may require that the appeal be reheard by a Circuit Court judge. Written notice to this effect must be given to the inspector within 10 days of the Appeal Commissioners’ ruling. The ruling of the Circuit Court judge will be final and conclusive unless a case is required to be stated for the opinion of the High Court. Appeals to the Circuit Court are heard in camera.

Details

A person aggrieved by the Appeal Commissioners’ determination may call for the appeal to be reheard by a judge of the Circuit Court. Notice in writing must be given to the inspector within 10 days of the ruling by the Appeal Commissioners. The Appeal (1)

Commissioners must transmit to the judge any statement or schedule that was given to them for the appeal.

The inspector is required to send to the judge the Appeal Commissioners' ruling in the form in which it is recorded. (2)

The Circuit Court judge must rehear and determine the appeal with the same powers and authorities as the Appeal Commissioners. The judge's determination will, subject to a statement of a case for the High Court, be final and conclusive. (3)

The same right of hearing by a barrister, solicitor, etc as applied before the Appeal Commissioners (see *section 934(2)*) applies in the case of a rehearing in the Circuit Court. (4)

The judge must make a declaration in the form required by the Act to be made by an Appeal Commissioner. (5)

Where the judge has determined an appeal, the inspector must implement this determination, unless a case is required to be stated for the opinion of the High Court. Where the inspector implements the determination, the liability thus determined is then payable as if it were the amount contained in an assessment against which no appeal had been made. (6)

If, following the application for a rehearing of an appeal by a Circuit Court judge, there is a written agreement (see *section 933(3)*) between the inspector and the taxpayer in relation to the assessment, the inspector will implement the agreement that the assessment is to stand or be amended. The assessment will then have the same standing as if it were an assessment against which no appeal had been made. (8)

Every rehearing of an appeal in the Circuit Court is to be held in camera. (9)

943 Extension of *section 941*

Summary

The provisions of *section 941* concerning the stating of a case by the Appeal Commissioners for the opinion of the High Court apply also to a determination given by a judge of the Circuit Court.

Details

The provisions of *section 941* apply, subject to this section, to a determination of a Circuit Court judge made under *section 942*, and a case stated by a Circuit Court judge must set out the facts as well as the determinations of the Appeal Commissioners and the judge. (1)

The written request for a case stated must be addressed to the county registrar and must be sent within 21 days. (2)

A fee of €25 is payable to the country registrar before the aggrieved party is entitled to have the case stated. (3)

944 Communication of decision of Appeal Commissioners

If the Appeal Commissioners, having heard an appeal, postpone giving their determination to enable them to consider their decision or to give the appellant the chance to submit further evidence, then, unless they consider that a further hearing is necessary, they may post their ruling to the parties to the appeal. In these circumstances, a declaration of dissatisfaction in connection with having a case stated for the opinion of the High Court or a notice requiring a rehearing by a Circuit Court judge must be made within 12 days after the determination is posted.

944A Publication of determinations of Appeal Commissioners

This section permits the Appeal Commissioners to publish, where they consider it appropriate, details of determinations made by them in tax appeal cases. However, where they decide to exercise this discretion, it will be incumbent on the Appeal Commissioners to protect the identity of the taxpayers involved.

CHAPTER 2

Appeals against capital gains tax assessments

945 Appeals against assessments

This section provides that a person aggrieved by a capital gains tax assessment can appeal to the Appeal Commissioners within 30 days of the notice of the assessment. If an appeal is not made within the 30 days, the assessment is to be final and conclusive. All the rules and procedures relating to income tax appeals are applied by the section for the purposes of capital gains tax appeals.

946 Regulations with respect to appeals

This section provides that the Revenue Commissioners may make regulations governing the conduct of capital gains tax appeals. The regulations may deal with entitling certain persons to attend appeals, the time within which appeals may be made, means of determining the market value of an asset in certain circumstances and authorising an official to disclose details of the market value of an asset where the determination of that value affects a person's liability to tax. Regulations made must be laid before the Dáil and may be annulled by resolution of the Dáil. No such regulations have been made.

CHAPTER 3

Miscellaneous

947 Appeals against determination under sections 98 to 100

Summary

This section provides machinery enabling both a lessor and lessee and any other affected persons to take part in legal proceedings to determine the taxable amount of a premium or similar payment under a lease where the determination of the inspector may affect the liability to tax of more than one person.

Details

Notice of determinations under sections 98 to 100

The inspector is obliged to inform those affected by his/her determination of the amount of any liability to tax arising under **section 98** (treatment of premiums, etc as rent), **99** (charge on assignment of lease at undervalue) or **100** (charge on sale of land with right to reconveyance). The inspector is required to set out the amount which he/she proposes to treat as taxable and to inform those concerned of their rights under this section. In setting out the taxable amount, the inspector is not bound by any restrictions on the disclosure of information and is, therefore, free to outline the grounds on which a determination affecting the various parties is based. The inspector may also require a person to provide any information necessary to assist him/her in deciding whether a notice should issue in (1), (6) & (7)

the first place.

Right of objection

There is provision enabling persons notified by the inspector to object to the proposed determination within 21 days after the date of the notice, and **section 933(7)** (provision for late appeals in certain circumstances) is applied for cases where the person is prevented from objecting within that time limit. Where an objection is lodged, the issue of liability is to be settled at an appeal hearing before the Appeal Commissioners. (2) & (4)

Absence of objection

In the absence of an objection, the inspector is free to proceed with the determination of tax liability in accordance with the notice issued earlier. In such cases liability as determined by the inspector is final and cannot be appealed. However, there is explicit provision to ensure the right of appeal by a person affected by the determination to whom notice of determination is not given by an inspector. (3)

Appeal hearings

All the recipients of the inspector's notice can be joined in the appeal proceedings and the decision on the appeal is binding on them all (even if they have not taken part in the proceedings) and on their successors in title. (5)

948 Appeals against amount of income tax deducted under Schedule E

This section provides for the right of appeal for those charged to tax under Schedule E. Where an appeal arises, the full appeals machinery, including provision for the rehearing of an appeal and a statement of a case to the High Court, is to apply as it applies in the case of Schedule D.

949 Appeals against determinations of certain claims, etc.

This section provides for the right of appeal for any person aggrieved by a Revenue decision in relation to any claim for exemption, deduction, relief or repayment for which no express right of appeal exists. The option to appeal must be exercised within 30 days of notification of the Revenue decision and in such cases the full appeals machinery applies. The general rules relating to failure to give notice of an appeal and failure to attend an appeal hearing are specifically applied for the purposes of an appeal under this section.