

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 40A

APPEALS

December 2021



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Notes for Guidance - Taxes Consolidation Act 1997

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PART 40A APPEALS

CHAPTER 1 *Interpretation and General*

949A Interpretation

Section 949A contains the interpretations and definitions for Part 40A. “The Acts” is defined to encompass the enactments governing the full range of the taxes and duties that are under Revenue’s care and management and “assessment” refers to an assessment to any of these taxes and duties. The various matters in relation to which there is a right of appeal are specified in the individual Acts themselves; the term “appealable matter” is used as a concise way of referring to all such matters. “Determination” refers only to the final decision on an appeal made by the Appeal Commissioners and not to any other decision. Depending on the particular context, “party” may refer to either or both the appellant or Revenue. Where there may be confusion in relation to the intended party, the party is, instead, referred to as the appellant, Revenue officer or Revenue Commissioners, as the case may be.

949B Delegation of acts and functions of the Revenue Commissioners

The Revenue Commissioners may delegate the acts and functions given to them by Part 40A to individual Revenue officers.

949C Electronic means

Summary

Section 949C contains provisions relating to the performance of functions by electronic means.

Acts and functions required to be performed by Revenue, the Appeal Commissioners or other persons such as appellants or their agents may be performed by way of electronic means. Examples include the online submission of information and email communication.

Revenue and the Appeal Commissioners may put arrangements in place to facilitate electronic communication and these must comply with the requirements contained in the Electronic Commerce Act 2000.

Details

Acts and functions required to be performed by Revenue, the Appeal Commissioners or other persons (such as appellants or agents acting for appellants) may be performed by way of electronic means, such as the online submission of information or communication by email. (1)

All kinds of documents may be sent by post or by electronic means, such as email. (2)

Revenue and the Appeal Commissioners may put arrangements in place for, or to approve, the use of electronic means for appeals. (3)

Revenue and the Appeal Commissioners shall require a person comply with the type (4)
of requirements contained in the Electronic Commerce Act 2000.

949D Persons acting under authority

Summary

Section 949D contains provisions relating to the way a person may act as an agent for an appellant in relation to the conduct of an appeal. Appellants who want a person to act as their agent must notify the Appeal Commissioners in writing and provide specified information in relation to the agent. They may revoke their agent's authorisation by notice in writing at any time. The Appeal Commissioners are to treat an agent as acting for an appellant until the appellant notifies them otherwise.

Details

An appellant who wishes another person to act as his or her agent shall notify the (1)
Appeal Commissioners in writing and provide specified information in relation to the agent.

An appellant may revoke his or her agent's authorisation to act for the appellant. (2)
Where this happens, the appellant must notify the Appeal Commissioners in writing.

The Appeal Commissioners shall continue to treat an agent as acting for an appellant (3)
until the appellant notifies them that the agent's authorisation has been revoked or has otherwise ceased to act for the appellant.

949E Directions

Summary

Section 949E contains provisions relating to the giving of directions by the Appeal Commissioners to the parties. Directions may be given for a variety of reasons such as (but not limited to) requiring a party to provide specified information, consolidating multiple related appeals, holding case management conferences and adjourning proceedings. Directions may be given on the initiative of the Appeal Commissioners or on application from either party. The failure to comply with a direction to provide specified information may lead to the dismissal of a taxpayer's appeal.

Details

The Appeal Commissioners may give directions to appellants and to Revenue in (1)
relation to how they must act during appeal proceedings. The parties can apply to the Appeal Commissioners for a direction.

A direction can be given for a wide range of matters, such as, (but not limited to): (2)

- to require a party to provide specified information,
- staying proceedings,
- to consolidate multiple appeals,
- to hold preliminary hearings, and
- to adjourn proceedings, and
- to extend the time that a direction must be complied by.

A party can apply to the Appeal Commissioners for a direction either: (3)

- in writing, or
- orally, during a hearing or preliminary hearing.

The application must include the reason for seeking the direction

The Appeal Commissioners may give directions orally. Where this occurs, the terms of the direction must be provided in writing as soon as possible unless the Appeal Commissioners deem this unnecessary. (4)

Unless there is a good reason not to do so, the Appeal Commissioners shall send a written notice of any direction to each party and any other person affected by that direction. (5)

Where a party believes a direction should not have been issued by the Appeal Commissioners or that the direction should be amended in some way, that party may apply to the Appeal Commissioners for a direction that will set aside, suspend or amend the original direction. (6)

An application made under subsection (6) must be made no later than 14 days after the date the party was initially notified of the original direction with which they were aggrieved. (7)

Where a direction contains terms that need to be complied with, it shall specify a date with which these terms are to be complied with, i.e. where a direction requires submissions to be made by one or both parties, it shall state the date by which such submissions should be made. (8)

Where a direction requires information or evidence to be provided, it may specify the format such items are to be provided in. (9)

Compliance with a direction is mandatory. (10)

A party applying for a direction from the Appeal Commissioners must notify the other party that it has applied for such a direction. (11)

949F Joining of additional parties to appeal

Summary

The Appeal Commissioners may make persons other than the appellant in a particular appeal a party to the appeal proceedings. This treatment applies where a Revenue decision may affect the tax liability of persons other than the appellant. This might happen, for example, where an item such as income or expenses has to be apportioned between more than one taxpayer.

Details

The Appeal Commissioners may make persons other than the appellant in a particular appeal a party to the appeal proceedings. (1)

This treatment applies in specified circumstances where a Revenue decision may affect the tax liability of persons other than the person who is the subject of the decision. The specified situations are:

- the apportionment of an item between one or more persons,
- the treatment of certain lease premiums, and
- the use of a vehicle in a car-pooling arrangement.

A party affected by the Revenue decision may apply to the Appeal Commissioners for such treatment.

The provisions relating to the giving of directions by the Appeal Commissioners (2) apply to a person who is joined as a party to appeal proceedings.

949G Withdrawal and dismissal of appeals

Summary

Section 949G contains provisions relating to the withdrawal of an appeal by a taxpayer or the dismissal of appeals before they are determined by the Appeal Commissioners. Requests for a withdrawal must be made in writing.

In certain situations, an appeal is to be treated as if it had been dismissed. These are when an appeal has been settled by agreement between the appellant and Revenue, when the Appeal Commissioners refuse to accept an appeal and when an appellant fails to attend a hearing.

Details

A party withdrawing an appeal must give notice in writing to the Appeal Commissioners. (1)

Upon receipt of a notice to withdraw an appeal from a party, the Appeal Commissioners must then notify the other party of the withdrawal. (2)

An appeal shall be treated as dismissed where certain circumstances occur. These are: (3)

- the settlement of the appeal by agreement between the parties,
- the Appeal Commissioners' refusal to accept an appeal, and
- an appellant's failure to attend a hearing.

The terms of an agreement reached between the parties are not affected where an appeal is treated as dismissed under subsection (3). (4)

The Appeal Commissioners do not need to make a determination where an appeal is settled by agreement, withdrawn or dismissed. In such circumstances, the matter under appeal is treated as if it was never appealed. (5)

949H Flexible proceedings

Summary

The Appeal Commissioners shall try to conduct proceedings in as informal and flexible manner as possible to facilitate the settlement of appeals by agreement between the parties and to try to avoid undue delay in dealing with appeals.

Details

The Appeal Commissioners must try to conduct proceedings in as informal and flexible manner as possible. (1)

The Appeal Commissioners must facilitate the settlement of appeals by agreement between the parties and try to avoid undue delay in dealing with appeals, but not at the expense of giving proper consideration to a matter under appeal. (2)

CHAPTER 2

Making and acceptance of appeals

949I Notice of appeal

Summary

A taxpayer shall make an appeal by way of a written notice to the Appeal Commissioners. A notice of appeal is to contain specified particulars such as the taxpayer's name and address, tax reference number, the decision being appealed, the grounds for the appeal and any other particulars required by the Appeal Commissioners. A taxpayer is required to send a copy of the notice of appeal to Revenue.

It is important to include comprehensive grounds for an appeal in the notice of appeal as the Appeal Commissioners have the discretion, at a later stage in proceedings, not to allow an appellant to rely on grounds that were not included.

Details

An appeal shall be made by way of a written notice to the Appeal Commissioners. (1)

A notice of appeal shall contain: (2)

- the appellant's name and address,
- the appellant's relevant tax reference number,
- the appealable matter,
- the grounds of the appeal in detail, and
- any other particulars the Appeal Commissioners may require.

An appellant is also required to state in the notice of appeal whether any conditions necessary for the making of an appeal have been satisfied. (3)

Where an appeal is late, the notice of appeal shall state why the appeal was not made on time. (4)

The appellant must append a copy of the notice provided by Revenue in respect of an appealable matter (e.g. a notice of assessment) to the notice of appeal. (5)

An appellant may not rely on any grounds of appeal not stated in a notice of appeal unless the Appeal Commissioners are satisfied that there was a good reason for not stating those grounds. (6)

949J Valid appeal and references in this Part to acceptance of an appeal

Summary

A valid appeal is one that is made in relation to a matter in respect of which an appeal is allowed by statute and where any conditions that must be satisfied before an appeal is made have been satisfied. Such conditions are usually the submission of outstanding tax returns to Revenue and the payment of the part of the tax liability that is not in dispute.

The Appeal Commissioners are to decide whether or not to accept an appeal based on the facts and information available to them when an appeal is made. However, this

does not preclude them from reversing their decision if, and when, different facts and information become available.

Details

A valid appeal is one that is made in relation to an appealable matter (i.e. a matter in respect of which an appeal is allowed under the various taxation Acts) and where any conditions that must be satisfied before an appeal is made have been satisfied (for example, the submission of a tax return to Revenue). (1)

The Appeal Commissioners shall decide whether to accept an appeal based on the facts and information available to them when an appeal is made. However, this does not preclude them from reversing their decision if different facts and information become available. (2), (3) & (4)

949K Notification of appeal to Revenue Commissioners

The Appeal Commissioners shall send a copy of each notice of appeal, and any item appended to the notice, to Revenue as soon as practicable after they have received the appeal.

949L Objection by Revenue Commissioners

Summary

Revenue may object to the acceptance of an invalid appeal by way of written notice stating reasons for its objection to the Appeal Commissioners. The taxpayer must be notified of any objection made by Revenue.

Details

Revenue may send a written notice of objection (stating reasons for its objection) to the Appeal Commissioners in relation to the acceptance of an invalid appeal or a late appeal. (1)

Where Revenue wishes to object in accordance with subsection (1), it must send a notice of objection to the Appeal Commissioners within 30 days after it receives the Appeal Commissioners' notification of an appeal. Where this objection is submitted late, the Appeal Commissioners are not required to have regard to its objection (2)

The Appeal Commissioners must notify the appellant of any objection made by Revenue. (3)

949M Acceptance of an appeal

Where the Appeal Commissioners have no reason to believe that an appeal is not a valid appeal, they shall accept the appeal at the end of the 30 day period provided for in 949L.

This acceptance does not preclude the Appeal Commissioners from deciding at a later stage that the appeal is not a valid appeal.

944N Refusal to accept an appeal

Summary

The Appeal Commissioners shall refuse to accept any appeal they consider not to be

valid or to be without substance or foundation. Appeals may be refused on these grounds, even if the Appeal Commissioners had initially accepted the appeal. Where an appeal is refused, the Appeal Commissioners must notify the parties in writing and state the reasons for the refusal. The staff of the Appeal Commissioners have the authority to refuse appeals. Such refusals are subject to a declaration from the Appeal Commissioners that the refusal is final and conclusive.

Details

The Appeal Commissioners shall refuse to accept an appeal where they consider it not to be valid or to be without substance or foundation, even if they have already accepted the appeal. (1)

Where the Appeal Commissioners refuse to accept an appeal, they shall notify the parties in writing, stating the reason for their refusal. (2)

Where the Appeal Commissioners declare that their refusal is final, then that refusal shall be final and conclusive. (3)

The staff of the Appeal Commissioners have the authority to refuse to accept appeals. Such refusals are subject to a declaration by the Appeal Commissioners that the refusal is ‘final and conclusive’ as provided for in subsection (3). (4)

9490 Late appeals

Summary

The Appeal Commissioners may accept a late appeal where it is made within 12 months after the date allowed for making the appeal. The Appeal Commissioners must be satisfied that the reason the appellant could not make the appeal on time was because of absence, illness or some other reasonable cause and that the appeal was made without delay after the particular reason had ceased to apply.

The 12-month time limit can be extended where the same reasons for the inability to make a timely appeal apply subject to the satisfaction of the following additional conditions:

- Any outstanding tax returns have been submitted,
- Sufficient information to enable the Appeal Commissioners to determine the appeal has been provided, and
- Any tax charged by the disputed assessment has been paid.

The Appeal Commissioners may make whatever enquiries they consider necessary to decide whether or not to accept the appeal and they may hold a hearing for this purpose.

Details

The Appeal Commissioners may accept a late appeal where it is made 12 months after the date allowed for making that appeal. The Appeal Commissioners are required to be satisfied that the reason the appellant could not make the appeal on time was because of absence, illness or some other reasonable cause and that the appeal was made without delay after the particular reason had ceased to apply. (1)

The 12-month period outlined in subsection (1) is extended where the same reasons for the inability to make a timely appeal apply and where the following additional conditions are satisfied: (2) & (3)

- Any outstanding tax returns have been submitted,

- Sufficient information to enable the Appeal Commissioners to determine the appeal has been provided, and
- Any tax charged by the disputed assessment has been paid.

The Appeal Commissioners may make whatever enquiries they consider necessary, (4) including holding a hearing, to decide whether or not to accept a late appeal.

The provisions of section 949N relating to the refusal to accept appeals that are not (5) valid appeals also apply to the acceptance of a late appeals.

949P Effect of enforcement action for collection of tax

Summary

The Appeal Commissioners are precluded from accepting a late appeal where the disputed tax is subject to court or sheriff proceedings until the enforcement action has concluded. Even where a late appeal is accepted after the conclusion of the enforcement action, any legal or sheriff fees paid by an appellant cannot be refunded.

Details

The Appeal Commissioners are precluded from accepting a late appeal that is subject (1) to enforcement proceedings until the enforcement action has concluded.

An appellant shall not be entitled to any legal or sheriff fees paid by an appellant (2) where a late appeal is accepted after the conclusion of a particular enforcement action.

CHAPTER 3 *Pre-hearing proceedings*

949Q Statement of case

Summary

Certain information may be required to be provided by the parties to facilitate the adjudication of a matter under appeal. This information is referred to as a ‘statement of case’ and includes the relevant statutory provisions, the relevant case law and an outline of the relevant facts as well as any other information as the Appeal Commissioners consider necessary to enable them to schedule a hearing.

The Appeal Commissioners may request information via the ‘statement of case’ to learn whether there is scope for settling the matter by agreement with Revenue, whether the matter could be determined without holding a hearing or whether a public or a private hearing is sought.

Details

The Appeal Commissioners may direct that a party provide specified information (1) (referred to as a “statement of case”) after an appeal is accepted.

Information gathered by way of case stated assists the Appeal Commissioners in (2) deciding on the appropriate way to conduct the proceedings. Among other things, a party may be directed to provide:

- the relevant statutory provisions,

- the relevant case law,
- an outline of the relevant facts,
- an estimation of the likely duration of a hearing
- whether there is scope for settling the matter by agreement with Revenue,
- whether the matter could be determined without holding a hearing,
- whether a public or a private hearing is sought, and
- any other information as the Appeal Commissioners consider necessary to enable them to schedule a hearing.

949R Exchange of statement of case

A party who sends a statement of case, to the Appeal Commissioners must also send it to the other party, together with a copy of the relevant direction from the Appeal Commissioners. The party must then notify the Appeal Commissioners when they have done so.

949S Outline of arguments

The Appeal Commissioners may direct one or both parties to provide an outline of the arguments that a party intends to make at a hearing and to send a copy of this information to the other party. This is the type of information that would be required in the immediate lead-in to a hearing. A direction may impose a 14-day time limit immediately prior to the date of a hearing for the provision of the information. (1) & (2)

949T Case management conference

Summary

The Appeal Commissioners may direct a party to attend a case management conference. The purpose of a case management conference is to review how the appeal proceedings are progressing and to facilitate their completion in an expeditious and fair way. While the purpose of such conferences will generally be to progress matters to the stage of a full hearing, the Appeal Commissioners may determine the matter under appeal by means of a case management conference where both parties consent to the appeal being determined in this manner.

Details

The Appeal Commissioners may direct a party to attend a case management conference. The purpose of such a conference is to: (1)

- review the conduct of the proceedings and the actions that have been taken or remain to be taken,
- clarify any matters raised by the parties or by the Appeal Commissioners, and
- enable the Appeal Commissioners to give any directions that appear to be required to secure the expeditious and fair completion of the proceedings.

The direction to attend a case management conference will contain the date, time and location for the conference. (1A)

The Appeal Commissioners may determine a matter under appeal at, or following, a case management conference where both parties consent to the appeal being determined in this manner. (2)

The Appeal Commissioners may allow a party to participate in a case management conference by means of a telecommunications link instead of in person. (3)

949U Adjudication without a hearing

Summary

Where the parties agree, the Appeal Commissioners may dispense with the holding of a hearing to adjudicate on a matter under appeal and, instead, determine the matter based on written material from a party or discussions with a party. The Appeal Commissioners are however required to hold a hearing where they receive a request in writing from a party within 21 days after the notification of the Appeal Commissioners' proposal to dispense with the holding of a hearing.

A party's request for a hearing can be denied where the appeal relates to a matter which has been previously determined by the Appeal Commissioners as provided for in section 949AN(3).

Details

Where the parties agree, the Appeal Commissioners may dispense with the holding of a hearing to adjudicate on a matter under appeal and, instead, determine the matter based on written material from a party or discussions with a party. (1)

The Appeal Commissioners must notify the parties of their proposal to adjudicate on a matter under appeal without holding a hearing. (2)

The Appeal Commissioners are required to hold a hearing where they receive a request in writing from a party within 21 days after the notification of the Appeal Commissioners' proposal to dispense with the holding of a hearing. A party's request for a hearing can be denied where the appeal relates to a matter which has been previously determined by the Appeal Commissioners as provided for in section 949AN(3). (3)

949V Settlement of appeal by agreement

Summary

The parties may settle the appeal by way of agreement. In such circumstances, an appeal is treated as having been withdrawn. An agreement must be made in writing. A period of 21 days is subsequently allowed to the parties to reflect on the agreement and repudiate the agreement if so desired by a party.

Details

An 'agreement' means an agreement by way of settlement of the matter under appeal. (1)

An appeal is treated as withdrawn where the parties come to an agreement with each other before a hearing is held. (2)

An agreement must be made in writing. A period of 21 days is subsequently allowed to the parties to reflect on the agreement and repudiate the agreement if so desired by a party. (3)

Where an agreement is made, Revenue shall give effect to the agreement (for example, by amending an assessment to reflect the agreed tax liability) and notify the Appeal Commissioners that the agreement has been reached. (4)

949W Staying proceedings

Summary

The Appeal Commissioners may stay proceedings in an appeal at any stage for a variety of reasons. These are:

- where they wish to provide an opportunity for the parties to settle the matter by agreement,
- to give a party additional time to prepare for a hearing, or
- to allow a determination to be made in a separate appeal that raises issues that are common to both appeals or are otherwise related.

The Appeal Commissioners are required to specify a date by which the proceedings are to be resumed.

Details

The Appeal Commissioners may stay proceedings in an appeal at any stage for a variety of reasons. These are: (1)

- where they wish to provide an opportunity for the parties to settle the matter by agreement,
- to give a party additional time to prepare for a hearing, or
- to allow a determination to be made in a separate appeal that raises issues that are common to both appeals or are otherwise related.

Where the Appeal Commissioners wish to stay proceedings, they must give a direction staying the proceedings and specify a date by which proceedings are to be resumed. (2)

The Appeal Commissioners can stay proceeding, at the request of both parties, to allow a Mutual Agreement Procedure to proceed and reach a conclusion. (3)

The Appeal Commissioners are not required to specify a resumption date but can instead stay proceeding pending the outcome of the Mutual Agreement Procedure (4)

Where a party request the resumption of proceedings, stayed to allow a Mutual Agreement Procedure progress, the Appeal Commissioners will give a direction to resume proceedings. (5)

The Appeal Commissioners can give a direction to either party seeking an update on the progress of the Mutual Agreement Procedure. (6)

“Mutual Agreement Procedure” refers, in this section, to the procedure for reaching mutual agreement between competent authorities of the State and another jurisdiction. (7)

CHAPTER 4 *Hearings*

949X Time and place for hearing

Summary

This section requires the Appeal Commissioners to arrange hearings and to notify the

parties of the location and time of their hearing in writing. They can adjourn a hearing after it has been scheduled or commenced for whatever period they consider appropriate.

Details

The Appeal Commissioners shall arrange hearings and notify the parties of the location and time of their hearing in writing. (1)

The Appeal Commissioners may adjourn a hearing after it has been scheduled or commenced for whatever period they consider appropriate. (2)

949Y Public hearings

Summary

Section 949Y contains provisions relating to whether a hearing, or part of a hearing, is to be held in public or private. By default, all hearings are to be held in public, subject to certain conditions. A hearing must be held in private at the request of an appellant.

Details

Subject to subsections (2) and (3), all hearings are to be held in public, (1)

The Appeal Commissioners may direct to hold a hearing, or part of a hearing, in private in certain specified circumstances. These are where they consider the giving of such a direction is necessary: (2)

- in the interests of public order or national security,
- to avoid serious harm to the public interest,
- to maintain the confidentiality of sensitive information,
- to protect an individual's right to respect for his or her private and family life, or
- in the interests of justice.

The Appeal Commissioners must hold a hearing or part of a hearing in private where an appellant request they do so. Requests can be made by way of application for a direction or can be included in the statement of case. (3)

An appellant can submit request a private hearing up to 14 days after being notified of a hearing. (4)

949Z Exclusion from hearings

Summary

The Appeal Commissioners may exclude certain persons from a hearing or part of a hearing. These include disruptive persons, those who might hinder the giving of evidence by another person and those aged under 18 years. A witness can be excluded from a hearing until he or she is required to give evidence.

Details

The Appeal Commissioners may exclude certain persons from a hearing or part of a hearing. These include any person: (1)

- whose conduct is disruptive or may be disruptive,
- whose presence is likely to prevent a person from giving evidence freely,
- whose attendance would defeat the purpose of that hearing, or
- who is under the age of 18 years.

The Appeal Commissioners may exclude a witness from a hearing until the witness is required to give evidence. (2)

The Appeal Commissioners may give directions in relation to how a person is to be excluded from a hearing (3)

949AA Parties' attendance at hearings

Summary

An appellant is required to attend a hearing unless the Appeal Commissioners excuse them from attendance and appeal is treated as withdrawn where they (or their representative), fail to attend (except where the Appeal Commissioners are satisfied the absence was due to specified conditions and this was communicated to the Appeal Commissioners as soon as the reason for non-attendance ceased).

A Revenue officer may choose whether to attend a hearing and may give evidence or reasons in support of the matter under appeal.

Third parties who are made a party to an appeal are entitled to attend its hearing (or part thereof) subject to certain restrictions.

Details

An appellant is required to attend a hearing unless the Appeal Commissioners excuse him or her from attendance. (1)

An appeal shall be treated as withdrawn where an appellant, or their representative, fails to attend a hearing, unless the Appeal Commissioners are satisfied that subsection (3) applies. (2)

An appeal may continue where an appellant, or their representative, fails to attend a hearing, where an application is made by the appellant in writing and, on receipt of the written application, the Appeal Commissioners are satisfied that the reason for the non-attendance was because of absence, illness or another reasonable cause and that the application was made as soon as possible after the reason for non-attendance had ceased. (3)

A Revenue officer may attend the hearing and the determination of an appeal but has discretion about whether or not to attend the hearing. The officer may give evidence or reasons in support of the matter under appeal. (4)

Where a Revenue officer believes that an appellant ought to be charged in an amount exceeding the amount contained in an assessment that is under appeal, the officer may give evidence or reasons in support of that higher amount. (5)

Where a third party is made a party to an appeal, that person may not, without the consent of the other parties to the appeal, attend any part of a hearing where the proceedings do not involve the person's tax liability. (6)

949AB Parties' representatives

The Appeal Commissioners shall hear a barrister, solicitor, accountant or tax practitioner who represents a party. They also have discretion to hear any other person who represents a party. (1) & (2)

949AC Evidence

The Appeal Commissioners have discretion to allow oral or written evidence and to adopt a more informal approach to that of a court in relation to admission of evidence. They may also exclude certain evidence, for example, where it was not given in a timely manner or in the manner that was requested.

949AD Oath

Summary

The Appeal Commissioners may require a person giving evidence to swear an oath in relation to the evidence. They must inform the person swearing the oath of the consequences of swearing a false oath, which is the same punishment as that applicable to persons convicted of perjury. (1) & (2)

949AE Summoning and examination of witnesses

Summary

The Appeal Commissioners may summon a person for examination where they believe the person can give evidence relating to the matter under appeal. A person who is summoned must be:

- given at least 21 days notice before a hearing is scheduled,
- informed of his or her entitlement to object to the summons or to have its terms varied or set aside, and
- informed that the consequence of failure to comply with the summons is a possible penalty of €3,000.

Details

The Appeal Commissioners may summon a person for examination where they consider that the person can give evidence relating to the matter under appeal. (1)

A person who is summoned must be: (2)

- given at least 21 days notice before a hearing is scheduled,
- informed of his or her entitlement to object to the summons or to have its terms varied or set aside, and
- informed that the consequence of failure to comply with the summons is a possible penalty of €3,000.

The Appeal Commissioners may limit the number of witnesses whose evidence a party may put forward. (3)

949AF Oral determinations

The Appeal Commissioners may make an oral determination at the conclusion of a hearing. This determination must be followed up with a written determination. An oral determination is subject to the same rules as a written determination.

CHAPTER 5 *Determinations*

949AG Appeal Commissioners to have regard to same matters as Revenue Commissioners

949AH Mode of proceeding if appeal adjudicated on by way of a hearing

When holding a hearing, the Appeal Commissioners must determine the matter under appeal by examining an appellant or by hearing other evidence.

949AI Incomplete information

Where a party or another person fails to comply with directions to provide information and documentations (as provided for in section 949E(2)), the Appeal Commissioners have the discretion to determine an appeal to the best of their judgement. In such circumstances, the Appeal Commissioners also have the option of dismissing an appeal under section 949AV.

949AJ Determinations and their notification

Summary

The Appeal Commissioners must make a determination as soon as practicable after they have completed their adjudication. Written determinations must be given to the parties within 21 days after the date on which the determination is made. Written determinations must contain specified information such as the relevant facts and the reasons for the determination.

Determinations must be made by an odd number of Appeal Commissioners must determine an appeal so there can be a majority determination in all cases.

Details

The Appeal Commissioners must make a determination as soon as practicable after they have completed their adjudication. (1)

Determinations must be made by an odd number of Appeal Commissioners must determine an appeal so there can be a majority determination in all cases. (2)-(4)

The Appeal Commissioners must provide the written determination to the parties within 21 days after the date on which the determination and the determination must contain certain specified information. (5)

The components of a determination are: (6)

- the determination itself,
- the relevant facts as found by the Appeal Commissioners,
- the reasons for the determination,
- the name of the appellant and
- the date of the determination.

949AK Determinations in relation to assessments

Summary

This section sets the parameters on what Appeal Commissioners may determine in relation to an assessment.

Details

Where the Appeal Commissioners consider that the amount charged by an assessment is: (1)

- too high, they are to determine that the relevant assessment is to be reduced,
- too low, they are to determine that the relevant assessment is to be increased, or
- neither too high nor too low, they are to determine that the relevant assessment is to be left unchanged.

The Appeal Commissioners are not required to determine the tax to be charged by the assessment and may confine their determination to increasing or reducing the amount to be assessed as chargeable to tax. (2)

Where an appeal is made against an assessment on the grounds that a Revenue officer made or amended the assessment outside of the permitted 4-year time limit for doing so, the Appeal Commissioners shall first determine whether the Revenue officer was either bound or not bound by this time limit. An appeal against the quantum of an assessment rather than the making of the assessment is to be dealt with as a separate matter. (3) & (4)

949AL Determinations other than in relation to assessments

Summary

This section sets the parameters on what Appeal Commissioners may determine in relation to appealable matters other than an assessment.

Details

In relation to a Revenue decision, determination or other matter, the Appeal Commissioners are required to determine either that the matter stand or be varied, even if a variation is to the disadvantage of an appellant. (1)

Where an appeal is made against an action or enquiry outside of the 4-year time limit for doing so, the Appeal Commissioners are required to determine either that the officer was so precluded or was not so precluded. (2)

949AM Revenue Commissioners to give effect to determinations

Summary

Revenue must give effect to the Appeal Commissioners' determinations unless a determination is appealed to the High Court on a point of law. This usually involves Revenue calculating the actual tax liability and amending an assessment to reflect this amount.

Where the Appeal Commissioners determine that a Revenue officer was precluded from making an enquiry or taking an action because of the permitted 4-year time limit

for doing so, the officer is obliged to cease the enquiry or action.

Details

Revenue must give effect to the Appeal Commissioners' determinations unless a determination is appealed to the High Court on a point of law. (1)

Revenue to calculate the tax to be charged by an assessment where the Appeal Commissioners determine the amount that is chargeable to tax. (2)

An assessment that is to stand or that is to be amended, because of an Appeal Commissioner's determination is final and conclusive, unless the determination is appealed to the High Court on a point of law. (3)

Where the Appeal Commissioners determine that a Revenue officer was precluded from making an enquiry or taking the action, the officer is obliged to cease the enquiry or action and the appellant does not have to act upon that enquiry or action. (4)

949AN Appeals raising common or related issues

Summary

This section covers the circumstances under which The Appeal Commissioners may take account of a previous determination in determining a subsequent appeal and determine the subsequent appeal without holding a hearing.

Details

The Appeal Commissioners may take account of a previous determination in determining a subsequent appeal that: (1)

- raises issues that are common to both appeals, or
- is related to the previous appeal.

The Appeal Commissioners may determine the subsequent appeal without holding a hearing where they consider it appropriate to do so.

Where the Appeal Commissioners believe they should act in accordance with subsection (1), they must give the parties a copy of the relevant previous determination (suitably redacted where the hearing was held in private) and allow the parties a 21 day period to submit arguments in writing in order to persuade the Appeal Commissioners that it would not be appropriate to act in accordance with subsection (1). (2)

The Appeal Commissioners may make a determination in accordance with subsection (1) where the parties do not object to this proposed course of action or where, following the consideration of any arguments, the Appeal Commissioners are not persuaded by the arguments. (3)

949AO Publication of determinations

Summary

This section contains provisions relating to the publication of Appeal Commissioners' determinations.

Details

The Appeal Commissioners must publish a report of a determination on the internet (1) within a period of 90 days after they notify the parties of the determination.

A published report must contain: (2)

- a copy of the determination itself,
- the date it was notified to the parties,
- whether it was appealed to the High Court and
- any other information that the Appeal Commissioners consider to be relevant to that appeal.

The Appeal Commissioners are not required to publish all determinations in relation (3) to appeals involving issues that are:

- common to more than one appeal, or
- related to other appeals.

and where determinations in such appeals have been made by reference to previous determinations in other appeals.

Where a hearing was held in private, the Appeal Commissioners shall publish a report containing a single determination together with a statement of the number of appeals to which the determination applies.

Where a hearing was held in public, the Appeal Commissioners shall publish the names of all of the appellants to whom the determination applies.

The Appeal Commissioners must, insofar as this is possible, publish a report in a way (4) that conceals the identity of a person whose affairs were treated as confidential in the conduct of an appeal or where the hearing of the appeal was held in private.

CHAPTER 6

Appealing determinations of the Appeal Commissioners

949AP Appealing against determinations

Summary

This section provides for a right of appeal to the High Court on a point of law by a party who is dissatisfied with an Appeal Commissioner's determination.

Details

An Appeal Commissioner's determination is 'final and conclusive' (i.e. not (1) appealable), except where an appeal is made to the High Court in the manner outlined in this Chapter.

A party who is dissatisfied with an Appeal Commissioner's determination may appeal (2) to the High Court.

The grounds for such an appeal are restricted to situations where the party considers that the Appeal Commissioners erred in making their determination in relation to a point of law and not in relation to the facts. The party is required to send a written notice to the Appeal Commissioners requesting them to prepare a 'case stated'.

The notice sent to the Appeal Commissioners requesting a ‘case stated’ must: (3)

- state how the party considers the determination to have erred in relation to a point of law, i.e. the particular point(s) of law must be identified,
- be sent to the Appeal Commissioners within a period of 21 days after the Appeal Commissioners have sent their determination to the parties, and
- be sent by the party requesting the ‘case stated’ to the other party when it is being sent to the Appeal Commissioners.

No appeal shall lie to the High Court where a provision of the Acts (other than this section) provides that the determination of the Appeal Commissioners in relation to that matter shall be final and conclusive. (4)

949AQ Case stated for High Court

This section sets out requirements for a ‘case stated’ relating to its components and the manner of its preparation and completion.

Details

Subsection (1) sets out the required components of a ‘case stated’. These are: (1)

- the relevant facts as found by the Appeal Commissioners,
- an outline of the arguments made by the parties,
- the case law relied on by the parties,
- the determination of the Appeal Commissioners and the reasons for the determination, and
- the point of law on which the High Court is to give its opinion.

The party who has requested the ‘case stated’ is precluded from stating an additional or an alternative point of law to that already stated once the 21 day period within which the ‘case stated’ must be requested has passed.

The Appeal Commissioners are responsible for drafting a ‘case stated.’ Although the Appeal Commissioners may give the parties an opportunity to make representations in relation to the draft, they must not delegate the task of drafting the ‘case stated’ to the parties. (2)

The Appeal Commissioners shall, not later than 3 months after receiving the request for a ‘case stated’, send the draft of the ‘case stated’ that they propose referring to the High Court to the parties and allow them a period of 21 days to submit written representations on that draft. (3)

The Appeal Commissioners shall consider any representations on a draft ‘case stated’ submitted by the parties but, are not obliged to make any amendments after considering them. (4)

A party who makes representations on a draft ‘case stated’ shall send a copy of the representations to the other party when submitting the representations to the Appeal Commissioners. (5)

The Appeal Commissioners shall complete and sign the ‘case stated’ within 21 days of the time provided by parties to make their representations on the draft ‘case stated’. (6)

A party who has requested a ‘case stated’ shall send the completed and signed ‘case stated’ to the High Court within 14 days after the date on which it was sent to the (7)

party by the Appeal Commissioners.

(7A)

(7B)

(7C)

(7D)

Time limits are not necessarily absolute in all cases (e.g. postal delays).

(8)

949AR Determinations of High Court

Summary

The section sets out requirements relating to the role of the High Court when a ‘case stated’ is referred to it by a party who is dissatisfied with a determination made by the Appeal Commissioners.

Details

The High Court shall hear and determine any question of law that is referred to it by way of a ‘case stated’. In doing so, it may: (1)

- reverse, affirm or amend the determination of the Appeal Commissioners,
- remit the matter to the Appeal Commissioners with its opinion on the determination, or
- make any other order that it considers proper.

The High Court may also make an order about costs.

The High Court may refer a ‘case stated’ back to the Appeal Commissioners to be amended. Where this happens, the Appeal Commissioners must comply with the High Court request. Following the required amendment, the High Court must then act in accordance with subsection (1). (2)

949AS Appeal to Court of Appeal

This section provides for a right of appeal to the Court of Appeal against a decision of the High Court

949AT Revenue Commissioners to give effect to decisions of High Court, Court of Appeal and Supreme Court

Revenue shall give effect to determinations of the Appeal Commissioners that have been reversed, affirmed, or amended by the High Court, except where a decision of the High Court is appealed to the Court of Appeal.

Revenue is not required to give effect to a determination where the appeal process continues after the determination has been made.

CHAPTER 7

Penalties and Sanctions

949AU Summoning and examination of witnesses

Summary

This section contains provisions relating to the failure to comply with directions given by the Appeal Commissioners in relation to the summoning and examination of witnesses.

Details

A person who: (1)

- fails to comply with a summons to attend a hearing, or
- who refuses to swear an oath or to answer any lawful questions at a hearing,

may be liable to a penalty of €3,000.

A person is not liable to a €3,000 penalty under subsection (1) where the person is an employee or agent of an appellant or who is otherwise confidentially employed in the appellant's affairs. (2)

A document signed by the Appeal Commissioners setting out the relevant 'offence' that was alleged to have been committed is to be accepted as evidence of the 'offence', subject to this presumption being rebutted in proceedings relating to the application of a penalty. (3)

Where the taxpayer does not agree he or she is liable to the penalty or where the taxpayer has failed to pay that penalty, the Appeal Commissioners shall send a penalty notice to that taxpayer. (4)

A notice must contain:

- details of the provision under which the penalty arises,
- the circumstances of the penalty,
- the amount to which the person is liable, and
- any other details as the Appeal Commissioners consider appropriate

The Appeal Commissioners may apply to the District Court for them to determine the penalty where the taxpayer does not: (5)

- agree with the notice referred to in subsection (4) in writing, or
- make a payment to the Appeal Commissioners of the penalty amount,

within 30 days of the date of the notice.

The Appeal Commissioners shall provide the taxpayer with a copy of any applications sent to the District Court under subsection (5). (6)

949AV Dismissal of an appeal

Summary

This section contains provisions relating to the dismissal of an appeal by the Appeal Commissioners.

Details

The Appeal Commissioners may dismiss an appeal where an appellant has failed to comply with their direction to provide the type of information and documentation described in section 949E(2), a statement of case (949Q(1)), an outline of arguments (1)

(949S(1)) or to attend a case management conference (949T(1)).

Before dismissing an appeal, the Appeal Commissioners must give an appellant (2) written notice of the proposed dismissal together with the reason for the dismissal and give the appellant the opportunity to object to the dismissal or to comply with the direction to provide the specified information or documentation to the Appeal Commissioners' satisfaction.

The Appeal Commissioners may consider any objection to their proposed dismissal of (3) an appeal but may, nevertheless, proceed to dismiss the appeal. Their decision to dismiss the appeal is final and conclusive and, therefore, cannot be further appealed.

An appeal may continue where an appellant, or their representative, fails to attend a (4) case management conference, where an application is made by the appellant in writing and, on receipt of the written application, the Appeal Commissioners are satisfied that the reason for the non-attendance was because of absence, illness or another reasonable cause and that the application was made as soon as possible after the reason for non-attendance had ceased.

If the Appeal Commissioners are not satisfied with the application provided by the (5) party they shall dismiss the appeal and their decision is final and conclusive.

CHAPTER 8

Appeal Commissioner vacating office before completion of appeal

949AW Appeal Commissioner vacating office: prior to determination

Where an Appeal Commissioner vacates office where a hearing has commenced but is not completed, or a hearing is completed but a determination has not been made, the appeal must be reheard as if a previous hearing had not taken place or be determined without a hearing by another Appeal Commissioner

949AX Appeal Commissioner vacating office: prior to completion and signing of case stated

Summary

This section contains provisions where an appeal has been determined and a 'case stated' for an appeal to the High Court has been requested but not been completed, another Appeal Commissioner may rehear the appeal; adjudicate on the appeal without a hearing; or proceed with the completion of the 'case stated'. The High Court is given the discretion not to deal with such a 'case stated' where it considers that justice would not be served by it's doing so and may instead order that the appeal be reheard by the Appeal Commissioners.

Details

The Appeal Commissioners must request each of the parties to state whether they (1) wish the appeal to proceed by way of:

- a rehearing by a new Appeal Commissioner
- adjudicated without a hearing by a new Commissioner, or
- the remaining steps in completing the 'case stated' to be taken.

Both parties are required to opt for the same treatment for the Appeal Commissioners (2) to proceed in that way.

Another Appeal Commissioner may complete the case stated where both parties opt (3) for a different treatment or do not state a preference to the Appeal Commissioners on how they would like to proceed

The High Court has discretion not to deal with a ‘case stated’ that had been completed (4) & (5) and signed by an Appeal Commissioner other than the Appeal Commissioner whose determination was being appealed, where it considered that justice would not be served by its proceeding to deal with the appeal. The High Court may then order that the appeal be reheard by the current Appeal Commissioners