



Tax appeals landscape in Ireland

11 July 2024

Insights from the 2023 Tax Appeals Commission Annual Report

The 2023 annual report from the Tax Appeals Commission (TAC) offers valuable insights into how the TAC operates. It also offers interesting statistics on cases going to appeal.

The TAC was set up in 2016 as an independent tribunal to manage appeals against tax assessments or decisions issued by the Revenue Commissioners (Revenue).

Since it was set up, the TAC has shown that it can process appeals efficiently and effectively. In fact, it has already processed tax appeals worth over €7.4 billion.

Key statistics from the TAC report

Cases received and their value

In 2023, 1,156 new appeals were lodged, representing €613 million of tax in dispute. This is a decrease of 20% in the number of appeals from 2022, but represents an increase of 207% in the amount of tax involved.

Outcome of appeals in 2023

There were 1,521 appeals in 2023, representing €1,386 billion in dispute. Of these:

- 219 were determined by the TAC
- 714 were settled
- 442 were withdrawn by appellants
- 74 were dismissed
- 72 were refused.

While the appeals process is efficient, the TAC tends to give parties only a short period to engage in settlement discussions. This is intended to foster timely and mutually agreeable outcomes in tax appeals. Its effectiveness can be seen in that about 47% of the appeals closed in 2023 were closed by way of settlement.

Hearings

The TAC listed 411 hearings in 2023, affecting 715 appeals worth €1.4 billion. This was a decrease from 2022 when 553 hearings worth €601m were scheduled for hearing.

Only 130 hearings proceeded in 2023. Of these, 103 matters were heard to their conclusion for determination by the TAC. The others were settled, adjourned or withdrawn.

The TAC report corroborates our experience of seeing the TAC continues to drive efficiencies in the tax appeals process. Some of our appeals have been scheduled for hearing within six months of the date the Notice of Appeal was filed.

The TAC has observed that hearings were becoming longer and more challenging, due to the complexity and multiplicity of the issues. Hearings lasted from half a day to three weeks.

Case management conferences

The TAC scheduled 28 case management conferences (CMCs) in 2023, affecting 40 appeals. This was a significant decrease from 2022, when it scheduled 91 CMCs, affecting 187 appeals.

While CMCs are a useful tool in narrowing the issues in dispute, the report confirms our experience that CMCs are becoming an uncommon feature in the appeals process. The TAC has instead been allowing parties to canvass both the preliminary and substantive issues in dispute at the hearing of the appeal.

TAC determinations

The TAC issued 175 determinations in 2023, representing €409 million in dispute. It also issued 30 written decisions, most of which were lengthy and complex. The decisions typically related to preliminary issues such as the validity of an appeal or the refusal of a request for an appeal to the High Court by way of a case stated.

TAC determinations and decisions give clarity on the interpretation and application of Irish tax law by the TAC. While they are not binding, they are a valuable resource to taxpayers who are involved in or are considering an appeal to the TAC.

Prominent tax types: income tax and corporation tax

The TAC has been actively addressing various appeals concerning different tax heads throughout 2023. Income tax appeals were particularly prevalent, accounting for 42% of the appeals in 2023 (valued at €39 million).

Although corporation tax appeals represented only 4% of appeals received in 2023, they involved the most significant financial amounts in dispute (€522 million collectively).

In relation to corporation tax, we have noted Revenue's increased focus on transfer pricing in compliance interventions. Revenue's 2023 annual report highlighted that amended corporation tax assessments totalling €44m arose from transfer pricing interventions, most of which are under appeal.

This underscores how critical it is for companies to ensure robust transfer pricing policies and documentation are in place to withstand the heightened scrutiny from tax authorities and to support the position in tax appeals should they arise.

VAT, CGT, VRT and more

The TAC also dealt with a wider range of appeals relating to value-added tax (VAT), capital gains tax (CGT) and vehicle registration tax (VRT), which made up 34% of the appeals on hand. The TAC also handled appeals

about:

- Covid-related financial support measures
- pay as you earn (PAYE)
- pay-related social insurance (PRSI)
- universal social charge (USC).

One in 10 appeals in 2023 involved multiple tax types, which shows the evolving nature and complexity of tax appeals.

The TAC has also noted an increase in appeals featuring the interplay between national and European law. These have resulted in extended appeal hearings and more detailed legal determinations.

It also reflects our experience that European Law, including the laws of the European Convention on Human Rights and/or EU treaties directives and regulations, is becoming increasingly relevant to domestic tax appeals in Ireland.

Common issues in determinations

In various determinations, the TAC stated it maintains flexibility in its rulings, as past decisions do not bind future cases. This allows the TAC to adapt to the unique circumstances of each case.

Several determinations reiterated that appellants carry the burden of proof. This means they must show on a balance of probabilities that tax assessments or Revenue's decision is incorrect. The taxpayer must present the TAC with evidence so it can make findings of fact to support their decisions.

The TAC also addressed other issues including:

- jurisdictional questions
- adherence to statutory time limits for Revenue in making assessments or enquiries, or for taxpayers in making claims for reliefs or refunds
- considerations beyond the initial grounds included in the notice of appeal.

Further appeals to the High Court

A TAC determination can only be appealed to the High Court on a point of law by way of a case stated – few such appeals arise.

In 2023, the TAC stated and signed 26 cases for the opinion of the High Court. Of those, 19 were requested by taxpayers and seven by Revenue. The TAC also refused eight case stated applications.

Cases stated in 2023 increased significantly from 2022, when the TAC stated and signed 16 cases. This further shows the ever-increasing complexity of tax appeals.

Advances in technology

The TAC launched a new case management system and an online portal, which have streamlined and simplified the appeals process.

The TAC also continues to hold remote hearings. This has facilitated accessibility and convenience in tax appeal proceedings. Of the 411 hearings scheduled in 2023, 162 appeals were held remotely.

Key actions businesses can take today

1. Efficiency of appeals process

The TAC has shown it can:

- improve its performance and productivity
- reduce its backlog of appeals
- issue determinations on complex and high-value cases
- enhance its transparency and accountability.

Taxpayers can expect that an appeal filed with the TAC will proceed efficiently. Any taxpayers going to appeal should be appeal-ready as, once an appeal is lodged, the TAC will issue directions for the preparation of the appeal to hearing. Typically, this leads to a swift outcome for taxpayers.

2. Preparation is key

The TAC continues to close a significant number of diverse tax disputes every year. Taxpayers should prepare their cases thoroughly, with clear and relevant evidence and arguments, and seek professional advice as early as possible so they can navigate the tax appeals process seamlessly.

3. Appeal complexity

The complexity of tax appeals continues to increase due to increased Revenue interventions, disputes about the interpretation of domestic tax law, and the increasing role of EU Law in domestic tax disputes. Professional advice is needed to properly navigate these complex tax matters.

4. Appeal settlement

Many appeals are resolved by way of settlement facilitated by the TAC. Taxpayers should consider the merits of exploring if they can reach a settlement with Revenue. This may save time and costs for all parties.

5. Appeals to the High Court

Parties dissatisfied with a TAC determination can lodge a further appeal through a case stated to the High Court. The case stated procedure is complex and any such appeal would be heard in public.

We are here to help you

Our multidisciplinary Tax Risk and Controversy team comprises ex-Revenue officials, a former Tax Appeal Commissioner, commercial litigators, barristers and tax professionals. It has extensive expertise in all facets of revenue interventions, tax disputes, appeals and proactive tax risk management. We are ready to guide you through the intricacies of Revenue interventions and disputes, ensuring both monetary and reputational risks are carefully managed. Contact us today for expert assistance.

