

## CONTENTS

What Should I do if I receive a Notice of Assessment?	1
What happens after the Notice of Appeal has been delivered and stamped?	3
Contact	4

## ■ NOTICE OF ASSESSMENT AND NOTICE OF APPEAL

### What should I do if I receive a Notice of Assessment?

Receiving a Notice of Assessment from the Revenue Commissioners can be a stressful and daunting experience. There is a relatively tight timeline of 30 days (not business days) from the date of issue of the Notice of Assessment within which a Notice of Appeal must be filed. If the Notice of Assessment is not appealed within the statutory time limit, it becomes “final and conclusive” and there are only limited circumstances in which it can be appealed, therefore, it is important to deal with any Notice of Assessment promptly when you receive it.

With the Government raising less revenue through tax than before, we expect the Revenue Commissioners to actively pursue more tax cases. Taxpayers may also be more willing in these times to dispute an assessment to reduce their tax costs. This will probably result in more tax disputes being litigated than previously.

#### *What are the time limits to a Notice of Assessment?*

The 30-day time limit starts when the Revenue “issue” a Notice of Assessment. This is the day on which the Notice of Assessment is signed and dated by Revenue. By the time the Notice has been put in the post and delivered to you, taking into account weekends, up to six days of the 30-day time period may have elapsed.

The 30 day time limit can be extended to 12 months from the date of a Notice of Assessment but only if the inspector is satisfied that “owing to absence, sickness or other reasonable cause” the taxpayer was prevented from giving the Notice of Appeal within the time limit. To be able to appeal, the taxpayer must show that his Notice of Appeal was filed within the extended period without unreasonable delay.

#### *Initial decisions on receiving a Notice of Assessment*

When you receive a Notice of Assessment you should note the date on which it is issued, the amount assessed and whether there is any explanation sent with the Notice of Assessment. The amount stated on the Notice of Assessment will usually refer to a matter which you have been discussing with the Revenue.

You could simply pay the amount stated on the Notice of Assessment in which case there is no need to consider an appeal. Unless you are absolutely sure that the amount assessed is due, you should investigate it further as a matter of good corporate governance (even if you do not ultimately make an appeal). If you do make a payment you should make it clear that the payment relates to that assessment only, so that the Revenue cannot apply the payment to any other tax liability you may have.

If you are in any doubt about the assessment (e.g. amount / validity etc) or if you are simply unsure what it relates to, you should investigate lodging a Notice of Appeal within the 30-day time limit.

2

## What considerations apply if I decide to appeal?

In determining whether you should make an appeal you should consult your legal advisors, as well as your tax compliance advisors. Your tax compliance advisors will give you a view on whether they consider that the amounts assessed on the Notice of Assessment are correct and valid. You should speak to your legal advisors as, if you decide to appeal, a legal process commences. Tax is a legal discipline as it is governed by legislation and case law. Legal advisors are uniquely placed to deal with legal processes and to exploit and manage those processes to their clients' best advantage. An accounting firm has particular expertise in tax compliance and, in some cases tax planning, but may not have sufficient legal expertise to manage an appeals process.

## Where do I start?

You should hold a meeting with or speak to your legal advisers to discuss whether to appeal the Notice of Assessment. In order to be valid the Notice of Appeal must set out "in detail" the grounds for appeal, so you should draft your Notice of Appeal carefully to ensure that it is valid.

To make an appeal, the taxpayer is obliged to bring its tax affairs for the particular year up to date (i.e. filing return and paying the tax based on the facts in those returns). This must be done within the 30-day period for permitting an appeal, thereby creating additional time pressure if the taxpayer is not already up to date.

## Do I need Counsel?

Depending on the complexity of the matters at issue, it may be necessary to instruct Counsel. For simple cases this is not usually necessary. Your legal advisors would be best placed to recommend appropriate Counsel to your requirements.

## Who else should I involve?

Regardless of how you decide to proceed, it may be necessary that the matter of the assessment, and possible appeal, be brought to the attention of the board of directors. It may be a condition stated within your loan documentation to notify the lender of such an appeal.

## What goes into the Notice of Appeal?

On preparing the Notice of Appeal, your legal advisors can advise on whether it is appropriate to:

- (a) state that you have insufficient information to give the grounds of appeal at this stage and seek further information from the Revenue; or
- (b) set out the grounds of appeal and associated arguments in some detail, as this document can be brought before the Appeal Commissioners; or
- (c) include any wider policy implications in relation to the issue. For example, if the Revenue succeed in the litigation on a point of principle, would it have adverse effects for the Revenue in other areas?

## How should I ensure my Notice of Appeal is delivered on time?

By the time a Notice of Appeal is prepared, you will be nearing the end of the 30-day period and we would recommend that a Notice of Appeal be delivered by hand and stamped as received by the relevant Inspector's office. We would also recommend that Notices of Appeal should be delivered a couple of days prior to the expiry of the 30-day period so that there is no doubt over day counting (whether to count the date of issue of the notice or the date of delivery of the Notice of Appeal). We would work with you to ensure the Notice of Appeal is appropriate, comprehensive and delivered on time.

## What happens after the Notice of Appeal has been delivered and stamped?

### Can the Revenue refuse to allow an appeal?

The tax inspector may decide that the taxpayer is not entitled to make an appeal. If so, the inspector must notify the taxpayer setting out the grounds for such refusal. The taxpayer can appeal that decision to the Appeal Commissioners. The time period for that appeal is 15 days from the issue of the notice denying the right to appeal. A hearing then takes place before the Appeal Commissioners as to whether an appeal may be made by the taxpayer.

Given the time limits involved in this process it is important to inform your advisors promptly of any communication you have with the Revenue to ensure that the most appropriate response is given.

### What happens after my notice of appeal has been accepted?

The Inspector usually acknowledges the receipt of your Notice of Appeal and will provide you with an AH1 Form setting out details in relation to this appeal and the Revenue position. If you have provided a level of detail in the Notice of Appeal setting out your position then you should ask for that to be provided to the Appeal Commissioners along with the AH1 Form. You are entitled to submit comments on the AH1 Form, which may or may not be accepted by the Inspector. Sometimes the taxpayer submits his own AH1 Form. The AH1 Form will set out whether Counsel will be appearing for either side, and requests both parties to give details of any witnesses they intend to call.

Once the wording of the AH1 form has been agreed between the parties, the Inspector will file the AH1 Form with the Appeal Commissioners who will set a date for the hearing. However it is worth noting that according to a recent Irish Taxation Institute survey, it can take up to six months from the delivery of the Notice of Appeal to the Revenue to the conclusion of the Form AH1 procedure. You are entitled to apply directly to the Appeal Commissioner if the Inspector delays in setting a date.

## What happens at the hearing before the Appeal Commissioner?

An Appeal Commissioner's hearing is marginally less formal than a full court hearing, although the Appeal Commissioners must clearly adhere to fair procedure and respect the constitutional rights of the parties. The Appeal Commissioner's hearing differs from Court procedures in that it is held in private, but is similar to Court procedures in that evidence is given under oath and the normal rules of evidence apply. The function of the Appeal Commissioner is to decide whether the taxpayer's assessment should be increased, decreased or whether it should stand.

There is no official recording procedure at the hearing before the Appeal Commissioner, and where the matter is particularly complicated and likely to be appealed further; it may be worthwhile engaging the services of a stenographer.

If the taxpayer does not attend a hearing, the Appeal Commissioners can declare the Notice of Assessment final and binding. In addition if you do not wish to appeal the decision of the Appeal Commissioner, any outstanding tax must be paid within 21 days of the hearing.

### Can the Appeal Commissioner refuse my appeal?

In addition to the substantive issues to be litigated, the Appeal Commissioner may refuse your appeal if:

- (a) you have not made the tax return for the year; or
- (b) you did not provide all the information you were asked to provide; or
- (c) you do not answer questions asked by the Appeal Commissioners.

## What if I don't agree with the Appeal Commissioner?

If you don't agree with the Appeal Commissioner, you must declare your dissatisfaction with the decision "immediately after the determination of the appeal" to initiate the next step in the Appeal process. Unless the taxpayer wins on all points before the Appeal Commissioner, to avoid any doubt on whether it is possible to appeal, the taxpayer should express dissatisfaction with the decision and make known his intention to appeal (even if ultimately no appeal is taken).

## Where can I appeal the decision of the Appeal Commissioner?

You (but not the Revenue) can elect to have the case re-heard in the Circuit Court, and an appeal to do this must be lodged in the Circuit Court within 10 days of the Appeal Commissioner's determination. This is a full re-hearing before a Circuit Court judge. Alternatively you or the Revenue can appeal directly to the High Court on a point of law on the basis of an agreed set of facts.

You can appeal the decision of the Circuit Court to the High Court on a point of law, and every case in the High Court has a right of appeal to the Supreme Court. In rare situations, you can take your case to the European Court of Justice.

## Why is the Appeal Commissioners hearing so important if appeals can be made further up?

The Appeal Commissioners have specialist knowledge of the taxation system, which a judge in any of the relevant courts is unlikely to have. Where an Appeal Commissioner makes a finding

as to facts and the case is not reheard in the Circuit Court, the facts found by the Appeal Commissioners will be accepted by the High Court. The High Court will only decide on points of law. This means that putting the correct facts in front of the Appeal Commissioners is crucial, even where you envisage a further appeal. In addition, both the Circuit Court and High Court will give deference to the Appeal Commissioners as a body with expert specialist knowledge in the area.

## Who pays costs?

Each side bears their own costs in regard to a hearing before the Appeal Commissioners. In the Circuit Court, the judge has the jurisdiction to award costs, but may not necessarily do so. In the case of appeal to the High or Supreme Court, although the Court has a discretion as to costs, in almost all cases costs follow the award i.e. the loser usually bears the costs. This is an important consideration to bear in mind as the costs of appealing can often outweigh the initial tax liability.

4

## Contact

For further information please contact one of the following lawyers, or your usual Arthur Cox contact:



### FINTAN CLANCY

**Partner**, Dublin  
Tax Department  
Tax Disputes Group

Tel: +353 (0)1 618 0533  
[fintan.clancy@arthurcox.com](mailto:fintan.clancy@arthurcox.com)



### EVE MULCONRY

**Partner**, Dublin  
Litigation Department  
Tax Disputes Group

Tel: +353 (0)1 618 0455  
[eve.mulconry@arthurcox.com](mailto:eve.mulconry@arthurcox.com)

### DUBLIN

Earlsfort Centre  
Earlsfort Terrace  
Dublin 2  
Ireland

T: +353 1 618 0000  
F: +353 1 618 0618

[mail@arthurcox.com](mailto:mail@arthurcox.com)  
[www.arthurcox.com](http://www.arthurcox.com)

### BELFAST

Capital House  
3 Upper Queen Street  
Belfast BT1 6PU  
Northern Ireland

T: +44 28 9023 0007  
F: +44 28 9023 3464

### LONDON

12 Gough Square  
London EC4A 3DW  
England

T: +44 20 7832 0200  
F: +44 20 7832 0201

### NEW YORK

300 Park Avenue  
17th Floor  
New York NY 10022  
USA

T: +1 212 705 4288  
F: +1 212 572 6499