

Fair Procedures in Irish Tax Appeals

The Irish High Court¹ (the "Court") has again emphasised the self-assessment nature of the Irish taxation system, and the distinct basis of proceeding in tax appeals, when considering fair procedure complaints by taxpayers. It also confirmed that such complaints should be made, in the first instance, to the Appeal Commissioner at the Tax Appeals Commission (the "TAC"), as it has the obligation and jurisdiction to make appropriate rulings and directions.

The decision serves as another example of the Irish Courts' reluctance to interfere in the TAC's running of live tax appeals, and as a reminder to taxpayers to prepare and argue their full case before the TAC.

Background

Mr. Quigley (the "Applicant") was a fuel trader who sold market gas oil ("MGO" a.k.a. 'green diesel'). MGO is subject to a lower rate of excise duty and Value Added Tax ("VAT") than road diesel, provided certain conditions are met by the taxpayer, including good record-keeping. A 2015 Revenue Commissioners' (the "Revenue") audit revealed alleged inadequacies in the Applicant's records for the years 2009 - 2016; in particular, of 700 accounts investigated, 300 customers could not be identified, and the majority of the interviews with a sample of the other, identified 400 customers suggested irregularities (e.g. the

customer denied buying MGO from the Applicant). The Revenue was not satisfied that the MGO conditions were complied with and estimated that 2.7 million litres of fuel were used for non-permitted purposes. The Revenue consequently raised amended excise and VAT assessments across the seven years totalling approximately €1.65 million.

The Applicant appealed those assessments to the TAC and, in the appeal preparations, he repeatedly sought disclosure of information and documentation regarding the Revenue's audit and subsequent amended assessments, in particular:

- (a) a list of the 300 unidentifiable customers together with all documents regarding efforts to contact them; and
- (b) names, details, and particulars of the sample customers interviewed, together with related documents.

The Revenue eventually provided the list sought under first item but refused to provide vouching documents and, regarding the second item, refused the interview details, citing confidentiality concerns, public interest privilege, and informer privilege. The TAC scheduled a case management conference to hear and decide the issues. In its ruling, the Appeals Commissioner agreed with the Revenue's position, recording that though the burden of proof lay with the taxpayer, the self-

¹ *Quigley v. Revenue Commissioners & Anor.* [2023] IEHC 244

assessment nature of the tax system, and the fact that the information sought originated from the Applicant's own records, must be considered too. It also directed that the Applicant provide the Revenue with details of the 300 unidentifiable customers.

While the hearing of the appeal remained scheduled before the TAC, the Applicant applied to the Irish High Court for a judicial review of the Appeals Commissioner's decision on the grounds of fair procedures and constitutional justice, including fair notice of matters being proffered against him.

Decision

The Court considered Irish, European Court of Human Rights, and Court of Justice of the European Union decisions on the right to a fair trial, noting that they mirror one another to a very large extent. In particular, the Court observed that the various decisions provided for an ancillary right of access to documentation, but that it was not an unfettered right. Access to documentation could arise where there is an imputation against a taxpayer and the taxpayer needed access to the documents to respond or defend themselves.

The Court agreed with the TAC that though the burden of proof lay on taxpayers, the self-assessment nature of the Irish tax system was a fundamental consideration; in a tax appeal, a taxpayer demonstrates its tax compliance primarily by its own records, not by discrediting the Revenue's basis for its amended assessment. The Court also relied on caselaw that emphasised the distinct nature of the Irish tax regime and its key differences to civil litigation. As a result, taxpayers can be subject to audit, and can be required to establish their own tax compliance in an appeal, without any imputation of wrongdoing arising.

The Court stated the Applicant knew his own customer base and must have had his own records to demonstrate his compliance with the MGO rebate conditions. It was not certain that the Revenue would challenge the accuracy of those records by reference to the customer interviews. As a result, the details of those interviews were not necessary for the Applicant's tax appeal.

However, the Court observed that if the Revenue challenged the bona fides of those records, relying on the customer interviews, then the interviews would become relevant and the Applicant's fair procedure rights would be engaged. In those circumstances, the Appeal Commissioner could make appropriate rulings and directions to safeguard the fairness of the appeal and vindicate the Applicant's fair procedure rights; the Court did not need to intervene at this time.

As to the TAC's other direction - that the Applicant provide details of the 300 unidentifiable customers - the Court found that it was appropriate, as it simply required the Applicant to provide details in advance of part of his case, and so saving time and resources in the appeal.

Comment

The decision serves as a noteworthy reminder to taxpayers of particular features of the Irish tax appeal system:

- (a) Though taxpayers must demonstrate that an amended assessment is wrong, the focus of an appeal is not the Revenue's basis for the amended assessment; rather, the taxpayer typically shows the assessment is wrong by demonstrating its own tax compliance from its own records. If those records are challenged by the Revenue, then the evidential basis for that

challenge may be open to interrogation by the taxpayer.

- (b) The TAC must act according to principles of fair procedures and constitutional justice, including analogous European Convention on Human Rights and European law principles, and it has a wide range of directions and rulings available to it to do so. It seems a Court will be slow to interfere with the TAC's exercise of its discretion and, in particular, will not exercise its oversight prematurely.
- (c) Taxpayers with fair procedure complaints should make them to the TAC in the first instance. Moreover, all grounds and arguments should be ventilated at the TAC as the Court, in a judicial review, will be slow to hear any fresh points.

For the same reasons, the decision is a worthy reminder of the necessity for taxpayers to prepare their appeals before the TAC thoroughly and meticulously, and so engage their tax and disputes advisors promptly.

Further Information

If you would like further information, please liaise with your usual Maples Group contact or the members of our Tax Disputes team.

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