

Tax Appeals

Mark Lonergan BL FCA

Tax Appeals- 2016 Watershed.

- Background
- Old Style Pre- 2016
- 2016 onwards
- New Style

New Fiscal Dispute Environment

- Previously:
- Revenue involved “actively” in settlements
- Revenue keen to settle!
- Now Appeal Route more common.

New Tax Appeal

- Improvements
- Written Determinations
- Independent
- Legally Qualified Tax Appeal Commissioners

Improvements since 2016

- Written Determinations
Independent of Revenue
Legally Qualified Tax Appeal Commissioners
- More Clarity in procedures

Some Basics Steps

- Notice Of Appeal
- Statement of Case
- Legal Submission
- Hearing.

Getting Started

- Advice on Proofs
- Roadmap of evidence to be adduced & law applied to that evidence
- Adduce all evidence
- Burden of proof
- Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners

Burden Of Proof

- Very Important.
- Sets the Ground rules.
- Burden of Proof on Taxpayer
- Legal Burden/ Evidential Burden
- If Taxpayer does not adduce Cogent Evidence= Loses
- Tax Assessment Stands

Format of Submissions

- Follow format of S.949AJ & S.949AQ TCA 1997
- Structure
- Issues
- Evidence
- Law
- Application
- Conclusion

Evidence & legal submissions structured with goal in mind

- Working backwards
- What you need to prove
- Evidence checklist – Expert Evidence
- How to prove and underlying law required
- Irrelevant arguments undermine submissions

Costs

- No Costs Risk
- Costs for taxpayer can be considerable- High Court Scale?
- Taxpayer's Accountant- Key

When an appeal has been accepted, TAC may direct you to provide a **Statement of Case** relating to the matter under appeal.¹

The time allowed is normally 3 – 6 weeks, but this may be abridged or extended where TAC think it appropriate or necessary to do so.

TAC may direct that a Statement of Case be provided in a particular sequence:

- An outline of the relevant facts.
 - Describe, in simple terms, the facts related to the matter under dispute.
 - For example, if your appeal relates to the denial of a tax relief such as an expense deduction, or a tax credit, outline the facts that lead you to consider that all the conditions for the relief have been met.
 - There are often a number of conditions that must be satisfied in order for a relief to be availed of by a taxpayer. As you consider the facts, please outline those conditions that you believe have been met and those that you believe Revenue may be disputing.
 - As you analyse why you believe you meet the conditions for the relief, consider what written evidence you can produce to substantiate your position.
 - In your description of the facts of the appeal, we suggest that you identify those conditions which you believe are necessary for the relief to apply. Not all of these matters may be under dispute with Revenue.
 - Where you believe that the matter under dispute concerns your eligibility to meet some conditions of the relief, but that other conditions are not in dispute, you can state this in your appeal. You may then wish to focus in your Statement of Case on presenting the facts and evidence that relate to the relief conditions that are under dispute.
 - Where you believe you meet these conditions, describe as clearly as you can why this is and describe any evidence you intend to submit in addition to your Statement of Case that supports your belief.
 - It could be useful to cross reference your description of the facts to the written evidence you attach to the Statement of Case, as well as the description of the witnesses that you may seek to rely upon. In this way, we can more usefully link the evidence you intend to present with the facts in

the appeal. An example of this would be to include an index to the written evidence which you will submit along with your Statement of Case and include cross references to these materials as you describe the facts in your appeal.

- A list of, and copies of, any written documents upon which you intend to rely or which you intend to produce in the proceedings.
- Brief details of any witness who may be called to give evidence in the proceedings.
- Details of the statutory provisions to be relied upon.
 - You may seek to include additional section references which you consider are relevant. Please try to include a full list of the statutory references that you consider relate to the matter under dispute. Some examples on this are set out below:
 - If the matter under dispute relates to the denial of a tax relief or an exemption, include a reference to the tax section that gives the relief or the exemption;
 - If the matter under dispute relates to the clawback of a relief, include a reference both to the tax section(s) which grant the relief and the section(s) which describe what happens in certain events to cause the relief to be later denied, or the relief given to be clawed back;
 - If the tax under dispute is being charged based on the value of an asset, describe the tax section that imposes the charge together with the sections that set out the rules, if any, for valuing the asset for tax purposes;
 - If the tax under dispute is triggered when an asset is disposed of, include the sections that describe the disposal event related to the asset.

- Details of the case-law that will be relied upon.
 - You are requested to include here a list of the relevant case law which you consider will support your appeal, if you know of any.
 - In this section, simply list the case law references that you will rely on (and if known to you) in support of your legal arguments. You are not required in this section of the form to outline detailed legal arguments in support of your appeal.
- Whether you agree to documents being furnished and notices given by e-mail or other electronic means.
- Whether you agree to the appeal being determined without a hearing.
- Your estimate of the likely duration of a hearing;
- Whether you wish the hearing to be heard in camera.
- Whether you consider that the matter under appeal is one that could be settled by way of an agreement with the other party.

Your Statement of Case (including all documents attached thereto) must be provided to TAC within the time period specified.

You must also at the same time furnish Revenue with a copy of the Statement of Case and any attached documents, and must confirm in writing to TAC that this has been done.

Notice of Appeal Form

The appeal must be made on the Notice of Appeal form which can be downloaded from www.taxappeals.ie

The form must include:

- Your name, address and PPS number or tax reference number.
- The appealable matter in respect of which the appeal is being made.
- The grounds for the appeal.
- Confirmation that any statutory preconditions to the bringing of an appeal have been satisfied.
- A copy of the Revenue notification in respect of the matters the subject of the appeal.
- If the appeal is a late appeal, the reason why you were prevented from making the appeal within the time allowed by statute.
- Any notice of objection received from the Revenue and the grounds of such objection.
- Any response to the Revenue's notice of objection received from the Appellant.

TAC send a copy of the notice of appeal, and any documentation appended thereto, to Revenue.

Any Revenue objection to the acceptance of the appeal⁴ must be communicated to TAC by notice in writing, stating their reason for the objection, no later than 30 days after the date on which the copy of the notice of appeal has been sent to them.

A decision not to accept an appeal will only be made where TAC is satisfied that:

- the appeal is not a valid appeal⁵, or
- the appeal is without substance or foundation, or

- where the appeal is a late appeal, the requirements have not been satisfied.¹

In deciding whether or not an appeal should be accepted, TAC may make such enquiries as they consider necessary and may hold a hearing for the purposes of so doing.

A decision not to accept an appeal will be notified in writing to you and to Revenue, and the notification will specify the reason(s) why the appeal has not been accepted.

TAC may declare that a decision not to accept an appeal is a final decision and, where they do so, that decision is final and conclusive.

The appeal may be settled by withdrawal or agreement.²

Once an appeal is accepted, TAC must hear the evidence and make a determination.³ TAC may:

- Summon and examine witnesses.⁴
- Direct you to provide documents, explanations, records etc.⁵
- Require you to attend a case management conference.⁶

If dissatisfied on a point of law, you may request TAC to state a case for the opinion of the High Court.⁷



In the years leading up to retirement

After you have retired

The income you need for the Second Life you want

Use our calculator to work out your ideal retirement income.

Think about the things you'll want to enjoy when you've said goodbye to the nine-to-five. Then just tick the items on this list that match those ideas. The calculator automatically estimates how much income you're likely to need.

☒ Basic living costs -
€15,158



☒ 2 week holiday each
year



☒ 4 weeks in the sun each
winter



☒ A car + 5 yearly upgrade



☐ Health club membership



☐ A concert, play or show
once a month



☒ Weekly dinner or drinks
with friends



☐ Shopping trips for you +
family



☒ Home improvements



Experts suggest you aim for 2/3 of your
current income once you retire.

To enjoy the lifestyle you've chosen, we
estimate you'll need (after tax each year)
around:

€35,382
after tax each year

How do we work out the basic cost of living
amount?

- State pension 12,000
 - Dependent relative pension 12,000
 - 4% drawdown from the ARF 12,000
 - Annual – no tax 36,000 – 3k per month
-
- Aim – 400k in pension (generous tax relief on the way in) – drawdown 25% tax free – 100,000
 - 300k remaining and moved into an ARF, drawdown 4% each year

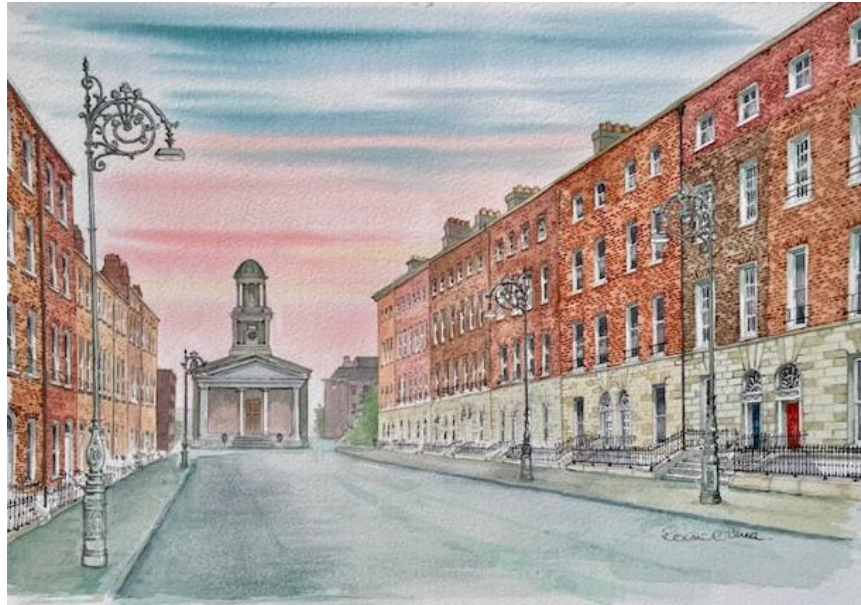
Partnership / Sole Practitioner

- **Sell**
 - Speak with your partners
 - Transfer of files to solicitor
 - Senior employee
 - Consultancy post-retirement
- **Close**
 - Regulatory issues
 - Roles held – executorship, trusteeship
- **Merge**
 - Cost savings
 - New service lines

- **Pension**
 - Value – 1M, 25% drawdown
 - 200k – tax free
50k – 20% tax
 - 750k to an ARF, drawdown 5% per annum
- **Capital account of the practice**
 - Tax free



- Liable to CGT
 - Retirement Relief
 - Entrepreneur Relief
 - No tax benefit immediately for the acquirer
 - Disponer may not have a base cost



- **Premises**
 - A business asset
 - Accidental ‘investment asset’
 - If not sold along with the business
 - ER – 3 of the last 5 yrs, 2yrs window to sell?

Year of Cessation – Tax

- Accounts year end April 2022 – profit 170,000
- Accounts year end April 2023 – profit 180,000
- Tax year 2022 – assessable profits 170,000
- Tax year 2023 – assessable profits are from 1 Jan to date of cessation – retire April 2023 – 4 months = $4/12 \times 180,000 = 60,000$
 - (180k – 60k = 120k drop out from income tax)
 - (beware of post cessation receipts)

Retirement Relief....55yrs

- 750k to external party, no limit for family
- 500k, 3m limits apply when 66yrs
- Qualifying assets are defined as “chargeable business assets” which apart from tangible, moveable property are owned and used for a period of not less than 10 years ending with the disposal.
- Chargeable Business Assets – assets used in the business for 10yrs (excl moveable property eg office equipment which is often replaced within 10 yrs)
- Can apply to premises
- Does not apply to cash, work in progress, debtors
- Partnership assets - Relief can apply to the interest of an individual in the assets of a partnership in which he or she is a partner, where those assets were used for the purposes of a qualifying business carried on by the partnership and the individual was actively involved in the business

Entrepreneur Relief

- CGT rate of 10% on the first 1m
- Assets owned and used in the business for 3yrs of the last 5yrs (could this give time to sell a premises)

CAT – Business Relief

- Reduces taxable value of the relevant business property by 90%
- 6 year claw-back period
- “property consisting of a business or an interest in a business”
- Disponer held for 5 yrs (gift case)...2yrs (inheritance case)
- Favourite neice/nephew – Group A (335,000) as opposed to Group C (16,250)
- Can apply to premises
- Partnership assets – Relief can apply to the interest of an individual in the assets of a partnership in which he or she is a partner, where those assets were used for the purposes of a qualifying business carried on by the partnership and the individual was actively involved in the business
- Sole trader – every asset/liability that is used ‘wholly and mainly for the purposes of the business’

Merger

- WIP
 - How to value
 - Split fee with new merged entity
- Premises
 - Rent, investment asset
- Change of accounting date
 - Profits can drop out



Practice management

[Practising Certificate](#) >

[Insurance \(PII\)](#) >

[Business Hub](#) >

[Opening a Practice](#) >

[Buy Sell Merge](#) >

[Closing a practice](#) >

[Quote - opt in](#) >

[Diversity and Inclusion](#) >

[Hiring staff](#) >

[Hiring a trainee](#) >
