

Legal 500

Country Comparative Guides 2023

Ireland

Tax Disputes

Contributor

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Ireland.

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Ireland: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

An Irish resident taxpayer needs to register for taxes with the Irish Revenue Commissioners ("Revenue"). This is generally completed online, via the Revenue Online Service. Corporate taxpayers can register for Irish corporation tax, Irish payroll withholding tax and value added tax ("VAT") via the Revenue form TR2. Once registered, the taxpayer receives an Irish tax registration number.

On commencing a business in Ireland, a company should also notify Revenue via the Form 11F CRO Statement of Particulars. This notification must be made within 30 days of commencing a trade, profession or business in Ireland.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Generally, Irish taxpayers self-assess their tax liability and file their tax returns with Revenue on this basis. All taxpayers subject to self-assessment are obliged to submit a return for the relevant accounting period or tax year within a prescribed time period.

For example, a company is generally required to file its self-assessed corporation tax return in the ninth month following the end of its financial year-end, and no later than the 23rd of the month. An individual subject to self-assessment (eg, an individual with chargeable income other than Irish employment income) must generally file their tax return annually on 31 October, but this deadline is typically extended to mid-November where returns are filed online.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

A taxpayer can amend their self-assessed return in circumstances where:

- (i) there is an error or mistake in the return;
- (ii) the taxpayer wishes to claim an allowance, credit, deduction or relief and this is within the appropriate timelines; or
- (iii) the amendment is required to comply with Irish tax legislation.

The amendment to the tax return must be made in the same way as the tax return was original filed. As such, where the return was filed online, the return must also be amended online. Generally, a taxpayer has four years after the end of the chargeable period to which the return relates to amend the return. However, certain provisions of the Irish tax legislation impose shorter limitation periods for a taxpayer to claim a particular deduction or credit (eg, certain loss relief can only be claimed within two years of the year in which a loss arose). In such circumstances, a taxpayer cannot generally amend a tax return outside of the shorter limitation period.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

There are a number of different options available to Revenue in circumstances where it seeks to investigate or challenge a taxpayer's self-assessment. Revenue is entitled to disagree with the initial self-assessment and issue an alternative or amended assessment to the taxpayer.

Revenue has recently published an updated version of its Code of Practice for Revenue Compliance Interventions, in which it sets out the following three levels of compliance interventions:

Level 1 Compliance Intervention: Level 1 Compliance Interventions may involve Revenue issuing a notification to a taxpayer of outstanding tax returns, or issuing a request to the taxpayer to initiate a self-review of its filed returns. It is aimed at allowing taxpayers an opportunity to correct any potential errors without an in-depth inquiry by Revenue.

Level 2 Compliance Intervention: Level 2 Compliance Interventions generally involve a more formal audit or investigation of the relevant taxpayer. This can focus on a specific tax risk identified by Revenue in relation to the taxpayer, or a broader audit or examination of the taxpayer's affairs.

Level 3 Compliance Intervention: Level 3 Compliance Interventions are the most serious types of Revenue investigations and are generally only launched where Revenue believes that serious tax or duty evasion may have occurred.

Under Irish tax legislation, Revenue also has a specific entitlement to make enquiries or take action to investigate the amount of income, profit or gains on which taxpayer is chargeable to tax in a relevant period.

Further to such investigations, Revenue is entitled to raise a Revenue assessment on a taxpayer for a chargeable period in the amount that, according to the best judgment of the Revenue officer, should to be charged on the taxpayer.

5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)

On commencing a trade or business in Ireland, a company is obliged to inform Revenue of this commencement via the Form 11F CRO. A failure to file the Form 11F CRO within 30 days can expose the company to a fine.

Where the Form 11F CRO is not filed for a new Irish company, Revenue will be on notice of the failure to file, and can issue a demand to the taxpayer to file the return. A failure to comply can lead to the risk of strike-off from the register. As a taxpayer cannot meet their tax compliance obligations without registering for Irish tax, failure to register will expose a taxpayer to interest and penalties for non-compliance.

6. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty?)

Where a taxpayer has filed a self-assessment return for a chargeable period, and this return includes a full and true disclosure of all material facts relating to the

assessment, Revenue has four years from the end of the relevant chargeable period in which the return was filed to raise an amended assessment.

However, in circumstances where Revenue is of the view that the return filed by the taxpayer, did not contain a full and true disclosure of the relevant material facts, it is entitled to issue an amended assessment at any time. Similarly, in circumstances where a taxpayer fails to file a return, or Revenue has grounds to believe that fraud or neglect has been committed in relation to a particular tax return, Revenue is entitled to issue an assessment at any time.

7. How is tax fraud defined in your law?

The Irish tax code identifies certain fraudulent activities which constitute revenue offences. In particular, an offence is committed where a person is engaged in the "fraudulent evasion of tax." Fraudulent evasion of tax is defined as including (i) evading or attempting to evade any payment or deduction of tax; (ii) claiming or obtaining, a relief or exemption from tax to which the person is not entitled to, in circumstances where the person deceives, omits, conceals or uses other dishonest means. For example, this could involve providing false or misleading information to Revenue.

8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

Where Revenue suspect that a taxpayer may be involved in fraud and / or tax evasion, Revenue will generally initiate a Level 3 Compliance Intervention. Revenue will generally advise a taxpayer that they are subject to a Level 3 Compliance Intervention and, where Revenue obtains information that there is a risk of serious tax or duty evasion, Revenue will inform the taxpayer that criminal or civil prosecution will be considered.

The final decision as to whether criminal proceedings are commenced rests with the Irish Director of Public Prosecutions.

A person who is knowingly involved in the fraudulent evasion of tax may be guilty of a criminal offence for Irish tax purposes. Where a person is convicted of fraudulent evasion of tax they may be subject to a fine not exceeding €126,970, and / or to imprisonment for a term not exceeding five years.

9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

Revenue generally select cases for compliance intervention based on the level of risk. Revenue's Code of Practice on Compliance Intervention confirms that Revenue uses a range of analytics and data interrogation processes to review all available data, including data returned by third parties, to identify risks with a view to informing audit practices. As such, it is not possible to determine how often taxpayers are audited, instead the circumstances of the individual taxpayer and their practices impact on how likely it is that Revenue may commence an audit. For example, where a taxpayer fails to file a tax return by the relevant statutory deadline, this is likely to increase the risk that the taxpayer may be subject to an audit in the future. Revenue's annual report for 2022 confirms that Revenue undertook 428,316 compliance interventions in 2022.

10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Revenue has published a Code of Practice for Compliance Interventions which sets out what taxpayers can expect from Revenue in respect of compliance interventions. For example, it sets out the different levels of intervention that may be commenced by Revenue, and the disclosure opportunities provided to taxpayers in respect of such interventions to mitigate penalty exposure.

Revenue has also published a Customer Service Charter which sets out the values Revenue is obliged to uphold in its dealings with taxpayers. These values include a commitment by Revenue to deal with taxpayers courteously, and to administer tax law in a consistent, fair and reasonable way, based on the principles of human rights and equality.

Revenue has a Complaint and Revenue procedure in place which is designed to provide taxpayers with an open and transparent mechanism for making a complaint and seeking a review of Revenue's behaviour in respect of its handling of a specific case (see further Question 14 below).

11. Does the tax authority have the power to compulsorily request information? Does this

extend to emails? Is there a right of appeal against the use of such a power?

Revenue officials have the power to enter into premises or places where Revenue officials believe that a trade or profession, the profits or gains of which are chargeable to tax, is being carried on or records relating to such trades or professions are being kept. Revenue officials can then require persons at the premises to produce any records or property as requested. The Revenue officials can also search the premises for relevant records, and require the taxpayer to provide reasonable assistance in their activities. Where records are produced, Revenue officials are entitled to remove the records and retain them for further examination.

The records within the scope of the Revenue production power are broadly defined and include written material, as well as records stored on electronic devices. As such, emails should be included. The records need to relate to the business carried on by the taxpayer or be records which the taxpayer is obliged to retain for Irish tax purposes. Revenue are not entitled to materials which are subject to legal professional privilege or contain professional advice of a confidential nature given to a client.

A search warrant is generally required to enter into a private residence.

12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

Revenue may serve notice in writing on a third party requesting a person to deliver books, records or other documents that are held by the third party, and which relate to the liability of a taxpayer. In order to request such information from third parties, the Revenue official must be of the view that the third party is likely to have information that is relevant to establishing the tax liability of a taxpayer. The taxpayer must also be informed where such a notice is served by Revenue.

Revenue also has broad powers to obtain information from financial institutions. Revenue can require a financial institution to deliver, within 30 days, books, records or other documents in the financial institution's possession which are relevant to establishing a taxpayer's tax liability.

While third parties and financial institutions do not have a specific right of appeal against such a Revenue notice,

Revenue has the power to apply to the High Court or the Tax Appeal Commission for an order requiring the third party to produce the information requested.

As Revenue is a statutory body, taxpayers may also have a right to judicially review a Revenue action in certain circumstances.

13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

Taxpayers can enter into a binding settlement with Revenue to resolve an audit without litigation. The Revenue Code of Practice on Compliance Interventions sets out how interest and penalties are calculated in circumstances where taxpayers have entered into agreed settlements with Revenue. Taxpayers may be able to limit their exposure to penalties based on the level of disclosure and cooperation with Revenue during the course of the audit or compliance intervention.

14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

Revenue's Complaint and Review Procedure is designed to provide taxpayers with an open and transparent mechanism for making a complaint in respect of Revenue's handling of the taxpayer's case. The taxpayer should, firstly, make a formal complaint to the Revenue office where its case is managed. If the taxpayer is not satisfied after the initial review, it can request a local review of the case, carried out by the manager of the local office or divisional office. Finally, the taxpayer can request that a review is carried out by an independent internal or external reviewer.

The function of the Complaint and Review Procedure is generally limited to the conduct of Revenue audits and investigations (eg, whether the Customer Service Charter and Revenue administrative procedures have been followed), rather than the substance of the tax matter under review.

The taxpayer may also have a right of appeal to the Tax Appeal Commission (the "TAC") in respect of a decision made by Revenue. As Revenue is a statutory body, taxpayers may also have a right to judicially review a decision by Revenue in certain circumstances.

15. If a taxpayer disagrees with a tax

assessment, does the taxpayer have a right of appeal?

A taxpayer generally has a right to appeal a Revenue assessment to the TAC. An appeal in respect of a Revenue assessment should be lodged with the TAC within 30 days of the date of the notice of the assessment by way of a Notice of Appeal. After receipt of the Notice of Appeal, the TAC should send the Notice of Appeal to Revenue, and Revenue is entitled to raise an objection to the TAC's acceptance of the appeal within 30 days. A taxpayer is entitled to respond to any objection raised by Revenue.

The TAC is only entitled to reject a Notice of Appeal on certain grounds specified in the legislation. In particular, an appeal may be rejected where (i) it does not meet the definition of a 'valid appeal'; (ii) the TAC concludes it is without substance or foundation; or (iii) it is a late appeal. The TAC has limited discretion in certain circumstances to accept a late appeal (eg, if the delay was due to illness or other reasonable circumstances).

16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The TAC is the independent statutory body with the responsibility for adjudicating on tax disputes. The TAC is not a court in the Irish judicial system, it is an expert tribunal for administering and resolving tax disputes. Generally, the procedures followed by the TAC are similar to that followed in the Irish courts, albeit with greater procedural flexibility.

17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

Taxpayers can elect for the hearing at the TAC to be held in camera (ie, not open to the public). This is key feature distinguishing the TAC from the courts and taxpayers generally elect for private hearings at the TAC. The TAC is obliged to publish its determination within 90 days of notifying the parties of its determination. The determinations are publicly available on the TAC website. However, as the TAC hearings are generally held in private, the determinations are redacted in respect of details which may identify the taxpayer. For example, the name of the taxpayer will be redacted and other identifying features (eg, business operations, the terms of

the relevant transaction, etc) may also be redacted where appropriate. Generally, the TAC will consult with the parties on the appropriate redactions to be made in advance of publication.

18. Is the procedure mainly written or a combination of written and oral?

The procedure is a combination of written and oral proceedings. The TAC may decide to adjudicate on a matter without holding a hearing, based solely on the written materials submitted by the parties. However, this is subject to the consent of the parties.

The volume of written proceedings largely depends on the complexity of the dispute before the TAC. In general, parties will be required to submit a Statement of Case which requires the parties to identify the relevant statutory provisions and case law applicable to the dispute and to provide an outline of the relevant facts and an estimation of the duration of the appeal.

In addition, the TAC typically requests the parties to exchange a detailed Outline of Arguments in advance of the hearing. These submissions require the parties to provide an outline of the legal arguments they intend to raise at the hearing, referencing the case law and legislation that will be relied on.

19. Is there a document discovery process?

There is no formal document discovery process before the TAC. The TAC may, at any time during the appeal process, give directions to the parties in respect of the conduct of the appeal. This may include a direction that the parties agree and submit to the TAC a Book of Core Documents in advance of the hearing. As such, the parties will generally be required to exchange the documentary evidence on which they intend to rely prior to the hearing. The TAC is entitled to admit evidence whether or not the evidence would be admissible in Irish court proceedings. Moreover, the TAC also has discretion to exclude certain evidence if it was not provided in the time specified in any directions issued by the TAC or if the TAC considers that it would be unfair to admit the evidence.

20. Are witnesses called to give evidence?

Witnesses are often called to give evidence in TAC hearings. Similarly witnesses may provide written statements or expert reports. The TAC may summon any person to appear before them to be examined once the

TAC considers that they person is in a position to give evidence on the matter in question.

21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

In generally, the burden of proof is on the taxpayer to challenge the assessment raised by Revenue. However, it can depend on the particular provision of the tax code in dispute.

22. How long does an appeal usually take to conclude?

The length of proceedings depends on the specific circumstances and complexity of the case involved and, in particular, the engagement of the parties in progressing the appeal. The TAC process generally proceeds more quickly than court proceedings. The TAC's 2022 Annual Report confirms that a record 2,661 appeals were closed during 2022 resulting in drop in appeals in hand from 2,709 to 1,502.

23. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

As a self-assessment system generally applies in Ireland, the taxpayer should have lodged its tax return, and paid the amount of tax the taxpayer considers due, in advance of any assessment being raised.

Generally, there is no requirement on the taxpayer to pay the amount raised in the Revenue assessment pending the outcome of the appeal. However, if the taxpayer is unsuccessful, interest will be calculated on the outstanding amount. Interest mitigating options may be available to taxpayers in certain cases.

24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

A taxpayer is entitled to be represented by a barrister, solicitor or any person who is a member of one of the professional bodies specified in the Irish tax legislation (eg, accountancy body, Irish Tax Institute, Irish auditing and Accounting Supervisory Authority, Law Society of Ireland). A taxpayer is not entitled to assistance or aid in respect of fees incurred on professional representation before the TAC.

The TAC may exercise its direction, and allow a person

who is not a member of a professional body to appear and represent the taxpayer. There is no requirement for the taxpayer to have a representative before the TAC.

25. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

Each party bears their own costs in a dispute before the TAC. However, an appeal of a determination of the TAC to the Irish superior courts follows the normal court procedures on costs (ie, ‘loser pays’ is the default position).

26. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

Alternative forms of dispute resolution outside TAC are not generally available. However, the TAC is vested with certain legislative powers which are aimed at assisting the parties to resolve tax disputes in an expeditious and fair way. In particular, the TAC has the power to direct that a case management conference (“**CMC**”) be held to progress a case. A CMC may be held with a view to progressing the case to full hearing, or the TAC may use the CMC process to help the parties resolve the matter without proceeding to a full hearing.

In particular the TAC may direct the parties to attend a CMC in order to:

- review the conduct of the proceedings and the outstanding actions to be taken;
- clarify any matters raised by the parties to the TAC; and
- allow the TAC to give any directions to secure the expeditious and fair completion of proceedings.

Where the TAC directs that the parties attend a CMC, it will inform the parties as to the date and location of the CMC in advance, and may allow parties to attend remotely.

27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

A determination can be appealed to the High Court. An appeal to the High Court can be on a point of law only.

Consequently, the TAC determination should not generally be set aside unless the determination represents a mistaken or erroneous view of the law. TAC’s findings of primary facts should not generally be set aside by the High Court unless there was no evidence to support them (see *O’Culachain v McMullan Brothers*).

Decisions of the Irish High Court may also, in certain circumstances, be appealed to the Court of Appeal and, in certain cases, the Supreme Court.

28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

The maximum and minimum tax penalties applicable depends on the nature of the default and the particular taxing provision at issue in the case.

In Ireland, the primary penalty provisions for filing incorrect tax returns, or failing to file tax returns, apply tax geared penalties. As such, the minimum and maximum penalties applicable are dependent on the outstanding tax liability of the taxpayer in question.

A key factor in determining the applicable penalty is whether the taxpayer’s default is categorised as ‘deliberate’ or ‘careless’. For example, the penalty for careless behaviour without significant consequences is calculated as is 20% of the tax liability in circumstances where the taxpayer does not make a qualifying disclosure to Revenue. In contrast, the penalty for deliberate behaviour is 100% of the tax liability in circumstances where the taxpayer does not make a qualifying disclosure to Revenue. Interest will also generally be applicable.

29. If penalties can be mitigated, what factors are taken into account?

Taxpayers can mitigate tax penalties by making a prompted or unprompted qualifying disclosure to Revenue in relation to the investigation. In order to avail of the reduced penalties, the taxpayer also needs to have fully cooperated with Revenue throughout the compliance intervention.

A qualifying disclosure is defined for Irish tax purposes as a disclosure of complete information in relation to, and full particulars of, all matters in relation to the liability to tax. The disclosure must be made in writing, and accompanied by full payment of all tax and any interest applicable to the subject matter of the disclosure.

An unprompted qualifying disclosure will enable the taxpayer to avail of the maximum mitigation in respect of tax penalties. An unprompted qualifying disclosure can only be made within a specific time window, generally prior to the taxpayer being notified of a Revenue compliance intervention. In contrast, a prompted qualifying disclosure can be made by a taxpayer after the notification of an audit or investigation and generally results in a lower level of penalty mitigation for the taxpayer. Where a taxpayer has made previous qualifying disclosures to Revenue, the level of mitigation available can be restricted.

30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

In its annual report for 2021, Revenue recorded a yield €1.3 billion from compliance interventions, noted to be the biggest annual compliance yield recorded to date. In its report, Revenue also identified a number of areas of focus in its compliance activities:

(i) Targeted transfer pricing audits and other transfer pricing interventions are increasing. Revenue has stated that such interventions are seen as important in the

increasingly international tax environment. IN the period 2015 to 2022 51 transfer pricing compliance interventions had been initiated resulting in a yield of €676 million. Revenue confirmed that transfer pricing compliance interventions have led to amended corporation tax assessments of approx. €82 million, the majority of which are now under appeal by the relevant taxpayers.

(ii) Continued focus on the construction sector in light of the continued increase in construction activities in Ireland, and the risk to the tax system from a VAT, relevant contracts tax and payroll perspective. The construction sector accounted for approx. 2% of all yield from compliance interventions.

(iii) Finalisation of program checking compliance by employers who availed of the Temporary Wage Subsidy Scheme during the COVID-19 pandemic.

(iv) Focus on traders engaged in e-Commerce activities, in particular due to the growth in online sales during the COVID-19 pandemic. Revenue's interventions largely focused on VAT compliance and in particular VAT declared by registered non-resident businesses. This is a pan-European effort that will see reporting obligations for cross-border payment service providers becoming effective from 1 January 2024.

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