Irish Tax Institute

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Reform of Non-Court Adjudicative Bodies and Appeals to Courts

Response to the public consultation

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About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

Executive Summary

The Institute welcomes the opportunity to contribute to the public consultation by the Law Reform Commission on the Reform of Non-Court Adjudicative Bodies and Appeals to Courts.

The focus of our submission is the Tax Appeals Commission (TAC) which is the statutory body responsible for adjudicating, hearing and determining appeals against decisions and determinations of the Revenue Commissioners (Revenue) concerning taxes and duties. The specific functions of the Appeal Commissioners are set out in section 6 of the Finance (Tax Appeals) Act 2015.

Appealing a tax assessment to the TAC is a critical component of the Irish tax system. Currently, where a taxpayer disagrees with a tax assessment issued by Revenue, they can lodge an appeal to have it independently reviewed in confidence by an Appeal Commissioner.

Under the existing rules governing the TAC, the default position is that tax appeal hearings are in public. Essentially, this means any taxpayer who desires a public hearing can have one. However, importantly, if a taxpayer wants to have their tax appeal heard in private, they must apply to the TAC, and the Appeal Commissioners must accede to this request.

Once a tax appeal hearing is held in private, the Appeal Commissioner’s determination of that appeal is anonymised to ensure the identity of the taxpayer is not disclosed. The publication of these detailed anonymised determinations strikes a careful balance between transparency and privacy, allowing non-binding precedents to develop and scrutiny to occur. It ensures that the wider public can understand how decisions are made, how the law is applied, and what reasoning underpins those decisions.

The Commission suggests adjudicators that are required to act fairly be granted a power to hold public hearings, to be exercised at the body’s discretion. In relation to adjudicators administering justice, the Commission suggests that hearings should generally be held in public although the Commission acknowledges that a body's statute may provide for circumstances in which a hearing may be held in private. Therefore, the Commission proposes that bodies administering justice that often deal with sensitive or private information publish redacted decisions.[1]

The courts have not explicitly held that the TAC administers justice within the meaning of Article 34 of the Constitution. However, even if the TAC is considered to be administering justice, we believe that Article 37 of the Constitution permits a calibrated approach in which hearings may be held in public or private as the interests of justice require. We strongly believe the current procedures for the hearing of tax appeals before the TAC already achieves a satisfactory position without sacrificing fairness or privacy.

The possibility of a move towards public hearing of tax appeals has been the focus of attention in recent months following the publication of the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2024 (Tax Appeals Bill). Head 5 of the Tax Appeals Bill proposes to make fundamental changes to the tax appeals process because of the 2021 Supreme Court judgment in the case of *Zalewski v. Adjudication Officer & Ors*[2]. A crucial issue in the *Zalewski* case was the fact that there was blanket prohibition on public hearings at the Workplace Relations Commission (WRC), with all WRC hearings required to be held in private.

The amendments proposed by the Tax Appeals Bill would grant the Appeal Commissioners with the discretion to decide if a tax appeal hearing should be held 'in camera' (private) and limit the redaction of TAC determinations to cases where there are "special and limited circumstances". Our members have profound concerns about fairness, privacy, and the effective functioning of the tax system should the proposed amendments proceed. These concerns are shared by the Oireachtas Joint Committee on Finance, Public Expenditure, Public Services Reform and Digitalisation, and Taoiseach

[1] Consultation Paper, Reform of Non-Court Adjudicative Bodies and Appeals to Courts, Law Reform Commission, 2025, page 125-126.
[2] [2021] IESC 24

which has stated that "*the proposed change would undermine the appeals process by causing potential appellants not to appeal for fear of personal details or commercially sensitive details being brought into the public domain.*"[3] The Oireachtas Committee has strongly recommended that no change should be made to the existing provisions in respect of public or private TAC hearings.

The Institute believes the Supreme Court judgment in *Zalewski* does not necessitate the removal of the right for a taxpayer to select to have their tax affairs independently reviewed in confidence by the Appeal Commissioners. In fact, the remarks by Justice O'Donnell in the case provide significant judicial support for maintaining private hearings in tax disputes. Justice O'Donnell in his judgment states: "*There is a justification for calm, quiet, and private resolution of many disputes which may be of particular sensitivity for the participants, and it may even be permissible to have a presumption in favour of private hearings at first instance....*"

We consider that the review of a tax assessment by the TAC falls squarely within the type of dispute which Justice O'Donnell envisaged as justifying a private hearing at first instance. Tax matters are inherently private, involving sensitive personal and commercial information that is not ordinarily subject to public scrutiny. Public release of this information could cause significant harm to individuals and businesses.

Tax disputes often arise from differing interpretations of complex legislation, genuine errors, or legitimate disagreements about tax treatment. Privacy in tax matters is not a shield for wrongdoing; it is an acknowledgment that tax affairs, by their nature, contain intimate details that citizens reasonably expect the State to treat with discretion.

We also believe that a 'calm' and 'quiet' resolution as envisaged by Justice O'Donnell would be impossible given the media attention which would inevitably result from public hearings. Discourse around taxation tends to be emotive and complex disputes about

[3] Report on Pre-Legislative Scrutiny of the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2024, Oireachtas Joint Committee on Finance, Public Expenditure, Public Services Reform and Digitalisation, and Taoiseach, May 2025.

the technical application of rules could end up being inaccurately portrayed as aggressive tax avoidance or moral failing, thus negatively impacting an individual or a company's reputation.

The ability to appeal tax assessments is fundamental to the integrity and effectiveness of the Irish self-assessment tax system. Self-assessment relies on taxpayers accurately reporting their liabilities, but it also presumes that errors or disputes can be resolved fairly. An effective appeals process provides a critical safeguard, ensuring that taxpayers have recourse when they believe an assessment is incorrect. This mechanism not only protects individual rights but also reinforces confidence in the system as a whole. If taxpayers are prevented from accessing the appeals process because of privacy concerns, trust in the fairness of tax administration will be undermined and voluntary compliance weakened, which is the cornerstone of self-assessment.

It should be recognised that the possibility for a taxpayer to have a private hearing of their tax appeal is in line with the position which exists in other EU Member States. Within the EU, private hearings and appeal proceedings which are conducted largely or entirely in writing, thereby limiting public disclosure, are common, and that the publication of anonymised decisions is the norm, not the exception. In Australia and New Zealand, which like Ireland are common law jurisdictions, tax appeal hearings are also generally held in private. This demonstrates that the availability of private hearings in tax disputes is neither unusual nor inconsistent with modern standards of transparency and accountability.

Of the EU Member States that generally hold tax appeal hearings in public, most provide the taxpayer with either, the option for a review of the underlying tax issue before appealing the matter to an independent tribunal/body, or the option to avail of arbitration. Similarly, common law jurisdictions which have public hearings of tax appeals such as Canada and the UK, also provide robust alternative avenues for taxpayers to resolve their dispute in private before resorting to a public hearing of their appeal. This is in stark contrast with the position in Ireland where the TAC is the sole avenue available for a taxpayer to resolve disputes regarding tax assessments with

Revenue.[4]

In considering any proposals for a more coherent system of decision-making processes and procedures for non-court adjudicative bodies, it is vital that the unique functions carried out by certain adjudicative bodies, such as the TAC, is taken into consideration. We strongly urge the Commission to ensure that any proposals which are adopted are sufficiently flexible to ensure that the option for taxpayers to elect to have their tax appeals heard in private before the TAC remains.

The sanction of having one's name published by Revenue, which currently applies to certain tax defaulters, should not become the penalty for simply disagreeing with a Revenue assessment. Removing the entitlement to have a TAC hearing in private would not only discourage genuine appeals but also expose taxpayers to unnecessary reputational risks and erode the essential balance between individual and State interests. It is imperative the unique nature of tax disputes is recognised and that any proposals to streamline the appeal processes of non-court adjudicative bodies ensures that the right to privacy in tax matters continues to be preserved.

The Institute looks forward to further engagement on this matter as the consultation process continues. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation to this submission.

[4] Revenue's guidance on its Complaint and Review Procedure (CS4) confirms that once a Revenue assessment has issued, the quantum of that assessment cannot be considered under the CS4 procedure. https://www.revenue.ie/en/corporate/documents/customer-service/cs4.pdf

1. Proposal for public hearings where adjudicators administering justice

The Commission suggests that adjudicators that are required to act fairly are granted a power to hold public hearings, to be exercised at the body's discretion. Regarding adjudicators administering justice, the Commission suggests that hearings should generally be held in public.

The Commission is of the view that where a body is exercising a power during a hearing, such as compelling a witness, administering an oath or ordering the production of documents, the hearing should be in public. However, the Commission acknowledges that a body's statute may provide for circumstances in which a hearing may be held in private. Therefore, the Commission suggests that bodies administering justice that often deal with sensitive or private information publish redacted decisions.

Currently, the legislation provides for all TAC appeals to be heard in public by default. However, where a taxpayer makes a request for a private hearing, the appeal must be heard in private. Once a tax appeal hearing is held in private, the Appeal Commissioner's determination of that appeal is anonymised to ensure the identity of the taxpayer is not disclosed.

The courts have not explicitly held that the TAC administers justice within the meaning of Article 34 of the Constitution. However, even if the TAC is considered to be administering justice, we believe that Article 37 of the Constitution permits a calibrated approach in which hearings may be held in public or private as the interests of justice require.

The Institute firmly believes that the Supreme Court judgment in *Zalewski* does not require the removal of the option for a taxpayer to elect to have their tax affairs independently reviewed in confidence by the Appeal Commissioners. This is clear from the following statement by Justice O'Donnell in his judgment:

> "*There is a justification for calm, quiet, and private resolution of many disputes which may be of particular sensitivity for the participants, and it may even be permissible to have a presumption in favour of private hearings at first instance, but it is not, in my view, possible to justify the absolute ban ….*"

We consider the review of a tax assessment by the TAC falls squarely within the type of dispute which Justice O'Donnell envisaged as justifying a private hearing at first instance.

Of necessity, a tax appeal hearing involves detailed consideration of the confidential financial affairs of a taxpayer. It is appropriate that there should be an opportunity for a taxpayer to resolve any dispute concerning a tax assessment issued by Revenue in private at the TAC if they so wish, given the inherent sensitivity of such issues. Equally, a taxpayer should continue to have the option to have a public hearing of their tax appeal if that is their preference.

The Constitution provides for an unenumerated right to privacy[5] which must be balanced with the rights outlined in the *Zalewski* case. It is important to note that as privacy was not an issue in the *Zalewski* case, the Supreme Court did not consider that balance.

We consider that the ability for a taxpayer to opt to have their tax appeal heard in private provides a fundamental safeguard for taxpayers wishing to appeal a Revenue assessment. The removal of the option to elect for a private hearing would have a significant impact on the number of cases appealed. It would effectively remove the TAC as an avenue of appeal for very many taxpayers who are unwilling to have their tax affairs made public. This means that these taxpayers would be deprived of the possibility to seek justice even where they believe the quantum of the tax assessment is without foundation.

[5] *Kennedy v Ireland*, High Court, [1984 No. 5011P]

As it stands, taxpayers are often reluctant to even proceed with an appeal at the TAC because of the prospect that Revenue can subsequently appeal the TAC's determination to the High Court. Even in cases where taxpayers have been successful at the TAC and Revenue have appealed the TAC determination on a point of law to the High Court, taxpayers have chosen to pay a Revenue assessment rather than incur the costs and publicity of a hearing of their case in open court.

Our members are concerned that any move towards public hearings would mean that taxpayers would be even more reluctant to contest a position asserted by Revenue, even where they believe it to be unfounded. The Institute believes there is no public benefit to be served if less taxpayers are willing to challenge Revenue. In fact, it could undermine public trust in the self-assessment tax system which would run contrary to the public interest.

Since its establishment in 2016, the TAC has published over 1,300 written determinations on its website, almost all of which are redacted. It is obvious from a review of these determinations that a very significant proportion of appeals involve individual taxpayers appealing issues concerning Vehicle Registration Tax (VRT), artists' exemption, capital acquisitions tax (CAT) and Revenue's refusal of credits or refunds due to the application of time limits. It is not apparent to us how the publication of the identity of the taxpayers in these types of cases would be in the interests of justice.

In considering any proposals for a more coherent system of decision-making processes and procedures for non-court adjudicative bodies, it is vital that the unique functions carried out by certain adjudicative bodies, such as the TAC, is taken into consideration. We strongly urge the Commission to ensure that any proposals which are adopted are sufficiently flexible to ensure that the option for a taxpayer to elect to have their tax appeal heard in private before the TAC remains and the publication of anonymised determinations where a hearing has been held in private is maintained.

If the Commission is of the view that increased transparency of the hearing of tax appeals is constitutionally required because of the decision in *Zalewski*, a potential option which could be considered is the approach adopted in family law proceedings. Members of the media can attend family law proceedings and report on what occurs, on an anonymised basis, when granted permission by the presiding judge. Those who are permitted to attend are subjected to restrictions on what they may report, and this must be done on an anonymised basis to protect the identities of the parties involved.[6] Adopting a similar approach to tax appeal hearings would increase transparency whilst continuing to ensure taxpayer confidentiality is maintained.

1.1. Legislative proposals to amend the tax appeal process

Head 5 of the Tax Appeals Bill which was published in November 2025 proposes to make fundamental changes to the tax appeals process because of the 2021 Supreme Court judgment in the case of *Zalewski v. Adjudication Officer & Ors*[7]. The proposed changes include granting discretion to the Appeal Commissioners to decide whether a tax appeal hearing should be held 'in camera' (i.e. a private hearing) and allowing the Appeal Commissioners to determine if there are "special and limited circumstances" to justify redaction of determinations.

As part of the pre-legislative scrutiny by the Oireachtas of the Tax Appeals Bill, the Institute responded to a public consultation by the Oireachtas Joint Committee on Finance, Public Expenditure, Public Service Reform and Digitalisation, and Taoiseach where we outlined our very serious concerns with the proposed amendments. The Institute obtained a legal opinion from Senior Counsel on the constitutional requirement for the changes proposed under Head 5 of the Tax Appeals Bill. As outlined in our follow-up submission to the Oireachtas Joint Committee, the legal opinion confirms that there is nothing in the *Zalewski* case which mandates the change to tax appeals before the TAC, as proposed in the Tax Appeals Bill.

[6] https://www.oireachtas.ie/en/debates/question/2025-12-11/494/
[7] [2021] IESC 24

Under the Tax Appeals Bill, while the default position for public hearings would remain unchanged, the approach to private hearings would be significantly altered. Rather than giving the taxpayer a mandatory entitlement to a private hearing, it is proposed that the Appeal Commissioners would be given discretion to determine whether the appeal should be heard in private.

The core constitutional requirement which emerges from *Zalewski* is that the legislation must provide the <u>possibility</u> of a hearing in public. But Justice O'Donnell was clear in his judgment that public hearings were by no means an absolute requirement and that it may be permissible to have a presumption in favour of private hearings at first instance. It was simply the absolute ban on public hearings at the WRC that rendered section 41(13) of the Workplace Relations Act 2015 unconstitutional.

The legal opinion we have received confirms, by taking the view that TAC hearings constitute the administration of justice and that appeals must therefore by default be held in public, with the Appeal Commissioners (rather than the taxpayer) having discretion to decide whether to allow for a hearing to be held 'in camera', the Heads of Bill has over-interpreted the effects of *Zalewski*.

According to the legal advice, while a court would likely find that TAC appeal hearings constitute the administration of justice for the purposes of Article 34 of the Constitution, there is nothing in the judgment in *Zalewski* which casts an obvious constitutional doubt on the current approach to the privacy of TAC hearings.

Indeed, the Supreme Court expressly states in *Zalewski* that it may be possible to have a presumption in favour of private hearings. However, the current tax appeals regime does not even go this far, as the default position is that tax appeals will be heard in public. Considering the express recognition by the Supreme Court in *Zalewski* for private hearings, it is difficult to see how the current approach could plausibly be said to be unconstitutional.

Constitutionally protected privacy interests are particularly relevant when it comes to sensitive financial information relating to a party's tax affairs, which requires consideration to be given to what constitutes an appropriate constitutional balance between those interests and the open justice principle.

We firmly believe that an appropriate balance between open justice and confidentiality is afforded with the current approach which provides that once a tax appeal hearing is held in private, the Appeal Commissioner's determination of that appeal is anonymised to ensure the identity of the taxpayer is not disclosed. TAC determinations, which are freely accessible to the public, outline in detail the background to the appeal; the evidence and submissions provided by the taxpayer and Revenue at the appeal hearing; the Commissioner's findings of material fact; the Commissioner's analysis of the issues; and the Commissioner's determination.

The publication of detailed anonymised determinations strikes a careful balance between transparency and privacy, allowing non-binding precedents to develop and scrutiny to occur. It ensures that the wider public can understand how decisions are made, how the law is applied, and what reasoning underpins those decisions. Public scrutiny of TAC operations is also provided through the publication of Annual Reports and Oireachtas oversight.

The essential rationale of *Zalewski* is that proceedings which involve the determination of rights and liabilities must have a sufficient level of procedural fairness and integrity necessary to safeguard constitutional rights and values. It is our firm view that public hearings are not necessary to secure transparency and would in fact risk undermining the right of taxpayers to fair procedures. As a result, we consider that the approach advocated for in the Heads of Bill regarding the publicity of hearings before the TAC goes further than is constitutionally or legally necessary.

In May, the Oireachtas Joint Committee on Finance, Public Expenditure, Public Services Reform and Digitalisation, and Taoiseach published its Report on Pre-Legislative Scrutiny of the Revised General Scheme of the Finance (Tax Appeals and

Fiscal Responsibility) Bill 2024. The Report notes that the Committee "*very much agrees with the consensus of both legal and financial stakeholders that the tax appeal system does not need to be changed, and if it were changed in line with the current proposal it would have an extremely negative impact upon taxpayers' willingness to seek independent review of Revenue decisions and assessments. The Committee is very clear in its view that the proposed change would undermine the appeals process by causing potential appellants not to appeal for fear of personal details or commercially sensitive details being brought into the public domain. To undermine the process and create a fear of appealing defeats the purpose of having an appeals process.*"

The Report strongly recommends that the Minister for Finance make no change to the existing provisions in respect of public or private TAC hearings. The Committee also recommends assessing the degree to which the proposed changes will make Ireland's tax system more punitive compared to European peers, potentially discouraging international investors.

1.2. Public hearings would detrimentally impact the tax appeals process

The ability to appeal tax assessments is fundamental to the integrity and effectiveness of the Irish self-assessment tax system. Self-assessment relies on taxpayers accurately reporting their liabilities, but it also presumes that errors or disputes can be resolved fairly. An effective appeals process provides a critical safeguard, ensuring that taxpayers have recourse when they believe an assessment is incorrect. This mechanism not only protects individual rights but also reinforces confidence in the system. If taxpayers are prevented from accessing the appeals process due to privacy concerns, trust in the fairness of tax administration will be undermined, which in turn will weaken voluntary compliance, the cornerstone of self-assessment.

On average, of the determinations issued by the TAC since its establishment in 2016, approximately 18% were in favour of the taxpayer. This clearly demonstrates that in a significant number of cases, where a taxpayer genuinely disagrees with an assessment, pursuing an appeal leads to a different and fairer outcome. However, an overwhelming majority of our members who regularly advise on tax appeals believe that if the decision regarding whether an appeal hearing should be held 'in camera' or in public is at the discretion of the Appeal Commissioner rather than the taxpayer, more taxpayers will decide to pay a liability that they consider to have been incorrectly assessed, rather than proceed with a public hearing.[8]

Genuine appellants paying Revenue's assessment prematurely, not because Revenue have the stronger legal argument, but because the commercial, privacy and reputational concerns are too high, fundamentally undermines the basis of a case being taken on merit. It also means the balance of power shifts further away from the taxpayer, who may be punished in the court of public opinion for daring to contest an assessment, and towards the State.

Requiring private individuals, sole traders and small and medium sized businesses to expose their affairs publicly risks discouraging legitimate appeals. Feedback from our members indicates that this cohort are the taxpayers most likely to decide to pay a Revenue assessment that they consider to be incorrect rather than proceed with a hearing, if the decision to have a private hearing is at the discretion of the Appeal Commissioner. Unlike large corporates, these taxpayers typically lack the resilience to absorb the consequences of public scrutiny, be it media attention, commercial speculation, or damage to future trading relationships.

1.3. International comparisons

While the procedures for resolving tax disputes differs across jurisdictions, we have sought to compare the processes which currently exist at the TAC in Ireland with similar bodies/tribunals in other EU Member States[9] and other common law

[8] Irish Tax Institute Survey on Proposed Changes to Tax Appeal Hearings, December 2025, based on 223 respondents – 190 were tax advisers working in practice and 33 were tax advisers working in the corporate sector.
[9] The Institute collated information on the options available to taxpayers for the resolution of tax disputes in 20 EU Member States. Our research is based on information we have obtained directly from tax professionals and fellow tax institutes located in the Member States and supported by information available online.

jurisdictions (including Australia, Canada, New Zealand and the UK), which are independent from the tax authority in that country. Our research indicates that, within the EU, private hearings and appeal proceedings which are conducted largely or entirely in writing, thereby limiting public disclosure, are common, and that the publication of anonymised decisions is the norm, not the exception.

We outlined the detailed findings of our research in our submission of 11 March to the Joint Oireachtas Committee.

The key themes emerging from our research are:

- The approach taken to tax appeal hearings varies significantly across the EU and internationally. Some EU Member States hold tax appeal hearings in private and some hold hearings in public, while other Member States decide tax appeals through written proceedings.

- Private hearings are the established norm amongst our peer jurisdictions. Akin to the position which currently exists in Ireland, in six other EU Member States where tax appeal hearings are undertaken, it is generally possible for a taxpayer to have a private hearing. Notably, these include Members States with populations like Ireland such as, Cyprus, Denmark, Finland, and Slovenia. In Australia and New Zealand, which like Ireland are common law jurisdictions, tax appeal hearings are also generally held in private. This demonstrates that the availability of private hearings in tax disputes is neither unusual nor inconsistent with modern standards of transparency and accountability.

- In addition, in three of the EU Member States which we reviewed (i.e. Italy, Slovakia and Spain), our understanding is that the proceedings are mostly conducted in writing. Such an approach limits the public disclosure of details of a taxpayer’s private affairs. In fact, in Slovakia, the outcome of the written proceedings is subject to tax secrecy and is not made public.

- Of the EU Member States that generally hold tax appeal hearings in public, all except one country, Italy, provide the taxpayer with either, the option for a review of the underlying tax issue before appealing the matter to an independent tribunal/body, or the option to avail of arbitration. Similarly, common law jurisdictions which have public hearings of tax appeals such as Canada and the UK, also provide robust alternative avenues to taxpayers to resolve their dispute in private before resorting to a public hearing of their appeal. This is in stark contrast with the position in Ireland where the TAC is the sole avenue available for a taxpayer to resolve disputes regarding tax assessments with Revenue.[10]

- The overwhelming trend across the EU Member States which we reviewed is that published tax appeal decisions, where publication occurs at all, are anonymised or redacted to protect taxpayer privacy. Our analysis indicates that approximately 85% of the EU Member States we reviewed either do not publish decisions in tax appeals or, where decisions are published, they are anonymised/redacted to protect the privacy of the taxpayer. This figure rises to 95% for decisions in tax appeals concerning individuals. Our research indicates that just one EU Member State (i.e. Italy) publishes tax appeal decisions that include the private data of individuals.

If the ability of a taxpayer to opt to have their tax appeal heard in private were removed, this would eliminate a critical safeguard for taxpayers and tip the balance of power further in favour of Revenue. It would also make Ireland a clear outlier compared with the privacy protections which exist in the procedures for resolving tax disputes in other jurisdictions.

[10] Revenue's guidance on its Complaint and Review Procedure (CS4) confirms that once a Revenue assessment has issued, the quantum of that assessment cannot be considered under the CS4 procedure. https://www.revenue.ie/en/corporate/documents/customer-service/cs4.pdf

Alternative dispute resolution

It is clear from our research that there is considerable emphasis in other EU Member States on creating opportunities for dispute resolution at an early stage. The importance of alternative dispute resolution is acknowledged in the Consultation Paper which notes that it affords the opportunity for solutions to be reached outside the parameters of formal decision-making and that it can also prove to be less expensive and faster than other forms of dispute resolution.

In the event of a move towards public hearing of tax appeals, it is vital that a form of alternative dispute resolution, such as independent binding arbitration, is established in legislation in tandem with any changes to tax appeal hearings so that an alternative avenue to a public hearing is available to taxpayers where they disagree with Revenue. This would align with the position that exists in other countries and it would also be in keeping with the 2018 report of Niamh O'Donoghue, *Review of the Workload and Operations of the Tax Appeals Commission*, which recommended that there should be an exploration of how alternative dispute resolution might be accommodated at different stages of the tax appeals process in Ireland.

1.4. Recognition of the right to privacy under EU law

Detailed consideration must be given as to whether any potential changes to tax appeal hearings would be in line with the rights vested in individuals under EU law, such as the General Data Protection Regulation (GDPR), the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

The recent European Court of Human Rights case in *L.B. v Hungary*[11] found the Hungarian legislative policy of publishing a list of major tax debtors on the tax authority's website, which included the personal data of taxpayers, infringed the

[11] ECtHR 9 March 2023, No. 36345/14, *L.B.* v *Hungary* (GC).

Convention for the Protection of Human Rights and Fundamental Freedoms. The Court observed that the state enjoyed a wide margin of appreciation when assessing the need to establish a publication scheme such as the one in question. However, the Court noted that to remain within this margin, the competent domestic authorities must have conducted a proper balancing exercise between the competing interests, having regard to:

- the public interest in the dissemination of the information in question,
- the nature of the disclosed information,
- the repercussions on and risk of harm to the enjoyment of the private life of the persons concerned,
- the potential reach of the medium used for the dissemination of the information, and
- basic data protection principles.

The Court of Justice of the European Union (CJEU) has also reinforced the right to privacy of individuals at the expense of transparency. A recent judgment from CJEU[12] held that amendments to the Fifth Anti-Money Laundering Directive, which resulted in the general public having unfettered access to beneficial ownership registers, breached certain freedoms under the EU Charter of Fundamental Rights, specifically the right to privacy and the right to protection from processing of personal data.

2. Proposal regarding right to access to information

The Consultation Paper states that the administration of justice comes with additional requirements relating to transparency and that case law under Article 34.1 of the Constitution has established certain principles relating to the accessibility of documents to the public. The Consultation Paper notes that these principles may extend to adjudicative bodies administering justice in public.

[12] *WM (C-37/20) and Sovim SA (C-601-20) v Luxembourg Business Registrars*

The Consultation Paper observes that existing rights of access to court records reflected in the Rules of Court for the Superior Courts, the Circuit Court and the District Court is exclusive to court proceedings. Therefore, the Commission considers that a power to give access to documents would be more suitable for adjudicative bodies. It is suggested that such a power could be exercised with the discretion of the adjudicative bodies themselves and would be subject to any procedural rules the body in question might adopt to preserve privacy or confidentiality

We firmly believe that if there is any lack of certainty for the taxpayer regarding the potential public disclosure of their financial affairs arising from potential access to documents filed with the TAC, most taxpayers will choose to yield to Revenue’s demands even where there is a sound basis for an appeal, rather than face a public hearing. This will lead to an imbalance in the Irish tax system and risk creating a perception that Revenue may issue assessments without due consideration to the technical grounds because the taxpayer is more likely to agree to a settlement than face a public appeal process.

Notably, in the UK, it has been clarified that the corollary of a public hearing of a tax appeal in the First Tier Tribunal is that the pleadings in such cases may also be made public. The First Tier Tribunal has confirmed that third parties interested in the outcome of appeal proceedings before the Tribunal are entitled to obtain a copy of pleadings filed by the parties, including a copy of the parties' skeleton arguments.[13]

[13] Hastings Insurance Services Ltd and HMRC v KPMG LLP (Third Party), [2018] UKFTT 478 (15 August 2018)