

12 Tax Settlements on Certain Payments to Teachers and Others

- 12.1** In 2015, payments of €12.25 million were made from the Vote for Education and Skills in order to settle tax liabilities incurred by the State Examinations Commission (the SEC) and the Department of Education and Skills over the period 2010 to 2014. This report outlines the background to those payments. It also considers a related issue regarding the provision of classroom-based tuition by specialist providers.
- 12.2** Employers are required to make appropriate tax deductions in relation to payments they make to employees. Revenue undertakes audits where cases are selected either on the basis of risk profiling or randomly. Where returns made by the taxpayer are not accepted, the Revenue auditor quantifies the amount of the assessed undercharge and seeks to agree a settlement amount to cover the taxpayer's liability, including appropriate interest charges and penalties.
- 12.3** Taxation legislation provides for the application of interest for the late payment of tax, and for penalties where tax due has not been paid. There is no provision for late payment interest to be mitigated. In contrast, Revenue has discretion to mitigate penalties by up to 50%. No penalties are applied in circumstances where additional tax is due to a technical adjustment or an innocent error that is corrected at the first opportunity.
- 12.4** Revenue undertook separate audits of payments by the SEC and by the Department. The key issues which emerged were in relation to
- payments made by the SEC to contract staff in respect of the cost of travelling associated with State examinations
 - payments made by the Department in respect of home tuition, and fees paid by the Department to various board and committee members.
- 12.5** The tax settlements were funded from a specific once-off allocation included in the 2015 Revised Estimates for Public Services.

State Examinations Commission Tax Settlement

- 12.6** Revenue's audit of the SEC began in May 2012, with an initial focus on the financial year 2010, and formally concluded in May 2015. The audit reviewed 37 categories of contract staff, such as examination paper drafters, setters, superintendents and examiners, engaged by the SEC in the delivery of the Junior and Leaving Certificate examinations.
- 12.7** The contract staff receive fees which are subject to the deduction of taxes at source. Where they carry out contracted duties away from their normal place of work, they are paid expenses by the SEC in line with standard public service travel and subsistence rates.
- 12.8** The SEC took the view that the normal place of work for contract staff already employed as teachers is the school at which they teach or, in the case of unemployed, substitute or retired teachers, their home.

- 12.9** However, Revenue found that contract staff are employed by the SEC under separate contracts of employment to their core teaching roles, and that for superintendents and oral and practical examiners, the normal place of work when undertaking examination duties is the school(s) to which they are assigned by the SEC, or SEC offices. On that basis, Revenue determined that payments to these contract staff to cover the costs incurred in travelling to and from SEC offices in Athlone or the school(s) where they are sent by the SEC to carry out examination work are taxable expenses subject to deduction of PAYE, PRSI and USC.
- 12.10** Expenses paid to attend training conferences, to bring material to post offices, to collect examination papers from Garda stations, and travel between schools are not taxable. The percentage of expenses regarded as taxable was 83.5% for superintendents, 85.55% for oral examiners, 72.94% for practical examiners, and 100% for practical examiners assigned to Athlone.
- 12.11** At the end of the audit, the Revenue auditor reckoned the tax liability for the years 2010 to 2013. The liability for 2014 was estimated by the SEC at the request of Revenue, based on the workings used by Revenue for the earlier years. The final agreed liability for the period 2010 to 2014 was €10.89 million, including statutory interest of €1.4 million for the years 2010 to 2013. No penalty was applied as Revenue was satisfied that due care had been taken by the SEC and the treatment concerned was a technical adjustment arising from a mistaken interpretation of the law.

Views of the Chief Executive Officer of the SEC

- 12.12** The Chief Executive Officer stated that the SEC disputed Revenue's audit decision. In its interactions with Revenue, it stressed the importance of assigning superintendents and examiners to schools other than their normal place of work or their home location, in order to maintain the integrity and fairness of the examination system.
- 12.13** The SEC believes that the expenses paid are wholly, exclusively and necessarily incurred in the performance of the duties associated with the nature of the assignment. The examination roles undertaken are inextricably linked with teachers' work. Furthermore, the examination roles are a subsidiary and supplementary role for a short period of time (maximum of 13 days) during the school year to the core role of teaching for 179 days each year. Contract staff, as appropriate, must receive the formal approval of their school management to their absence for engagement on examination duties.
- 12.14** In considering the Revenue finding, the SEC sought professional taxation consultancy advice. In addition, and in recognition of the impact on the crucial issues of the ongoing delivery of the State examinations and funding, the SEC engaged with the Department, and with the Department of Public Expenditure and Reform and the Department of Finance.
- 12.15** When it became apparent that the SEC could not persuade Revenue of the merits of its case, the only options remaining were to accept Revenue's decision or formally submit an appeal. The SEC received advice that, in the context of the operation of the state examinations, there was merit in its longstanding approach to the payment of expenses in respect of assigning teachers away from where they work and live, but it would have a difficult case to argue in support of making these on a tax-free basis in the context of taxation legislation. It was also obvious that any challenge through the appeals process would incur significant legal costs. The decision of Revenue was accepted on that basis and the settlement agreed.

- 12.16** Given that the audit was not finalised until May 2015, the SEC was unable to make the necessary changes, both to systems and to terms and conditions for recruiting contract staff, in time for the 2015 examinations. Accordingly, the SEC intends to pay the relevant tax liability in respect of the 2015 examinations, which is estimated to be a further €1.9 million to €2 million.

Department of Education and Skills Tax Settlement

- 12.17** In 2011, a Revenue audit commenced on the application of taxation rules to the deduction of PAYE, PRSI, VAT, relevant contracts tax (RCT), and professional services withholding tax (PSWT) by the Department. The audit covered the years 2010 to 2013, and found that a tax liability existed in respect of payments to individuals delivering home tuition services, and of fees paid to members of boards and committees, and a small number of other individuals.
- 12.18** Following extensive engagement with Revenue, the Department agreed a settlement amount of €1.359 million, including interest of €222,000, which was discharged by payment in March 2015. The settlement was treated by Revenue as a technical adjustment, on the basis of a difference in the interpretation or the application of legislation. Accordingly, no penalty was applied.

Home Tuition Assistance

- 12.19** The Department provides funding under a number of schemes providing assistance with tuition for
- pre-school children with autism
 - children with special educational needs who are awaiting school placement
 - children without a special educational need but who find themselves temporarily without a school place and where the parents are actively seeking school placement
 - students who experience significant disruption to school attendance due to medical conditions or maternity-related absences.
- 12.20** Tuition is most often provided on a one-to-one basis in the family home, where parents engage tutors based on criteria specified by the Department. The parents pay fees to the tutors out of grants paid to them by the Department.
- 12.21** Under two of the home tuition schemes, the Department pays the tutors directly. These are the schemes for maternity-related absences and for children without a special educational need who are temporarily without a school place. Until January 2015, these payments were made by the Department without the deduction of taxes at source. Since January 2015, all statutory deductions are being made at source from such payments.
- 12.22** A small number of home tutors are also employed in schools as primary teachers. For these tutors, the home tuition fees are paid by the Department on the primary teachers' payroll system, with the various statutory deductions made at source.
- 12.23** Instead of home tuition, some parents of pre-school children with autism avail of tuition offered by specialist providers, where tuition is delivered in classroom settings for groups of three to six children.

- 12.24** On average, some 1,200 tutors are engaged in the provision of home tuition. In 2014, the total cost was €10.9 million, with around €7 million being paid to home tutors and the balance being paid to specialist providers (see Figure 12.1).

Figure 12.1 Payments under home tuition schemes, 2010 to 2014

	2010	2011	2012	2013	2014
	€000	€000	€000	€000	€000
Tuition delivered in the home					
Grants to parents to pay tutors	5,574	7,271	7,388	7,073	6,023
Tutors paid by Department without deduction of taxes	1,102	988	614	599	588
Tutors on the primary teachers' payroll	611	528	391	412	313
Tuition delivered in classroom settings					
Providers paid by Department	2,027	1,561	1,151	2,156	3,991
Total	9,314	10,348	9,544	10,240	10,915

Source: Office of the Comptroller and Auditor General

Tuition Delivered by Tutors

- 12.25** Just over 78% of home tuition costs in the five years 2010 to 2014 represent payment for teaching delivered on a one-to-one basis in the home. Only a small percentage of these fees, about 6%, was paid on a payroll system and subject to the routine deduction of taxes at source.
- 12.26** The Revenue audit found that all payments for one-to-one tuition are liable for deduction of taxes at source, and that responsibility under tax law for making these statutory deductions rests with the Department.
- 12.27** The Revenue auditor calculated that a sum of €789,000, including statutory interest of €129,000, was due in respect of tutors who were paid around €3.3 million in the years 2010 to 2013, without the deduction of taxes at source by the Department. A liability was not raised in respect of 2014.
- 12.28** Revenue also did not raise a liability in relation to payments by parents out of funds paid to them for that purpose by the Department in the years 2010 to 2013.¹ However, following a transitional period to allow the Department to make the necessary operational changes, taxes will be deducted at source by the Department from such payments.
- 12.29** The Accounting Officer stated that, while the Department disputed some of Revenue's interpretation of the categorisation of home tutors, it was considered, on balance, best to conclude the audit and to make the payment required.
- 12.30** The Department transferred payments for home tutors paid directly by the Department onto the non-teaching staff payroll with effect from January 2015.

¹ Over the four years audited, such payments totalled over €27 million.

- 12.31** Pending the development of a more comprehensive and permanent solution, the Department's IT section is working to develop an interim solution to place tutors paid by parents on the non-teaching staff payroll system as soon as possible. Issues to be dealt with include the employment status of the tutors, which required clarification from the Department of Social Protection and from Revenue, as well as advice from the Office of the Attorney General.
- 12.32** The settlement agreed with Revenue was a full and final settlement, and included acceptance that, while all home tutors would be placed on the payroll, it would be necessary to do this on a phased basis, with some home tutors not being placed on the payroll until the academic year 2015/16.

Tuition Delivered by Specialist Providers

- 12.33** Some tuition for pre-school children with autism is delivered by specialist providers in a classroom setting at a cost to the Department of around €4 million in 2014. In areas where such services are available, it is for the parents to choose between tuition provided by a tutor in the home and the classroom-based tuition.
- 12.34** Tutors are employed by the specialist providers, so taxation of their salary payments is a matter for the providers, and accordingly was not within the scope of the Revenue audit.
- 12.35** The Department does not engage in a competitive procurement process for the provision of classroom-based tuition by specialist providers. Instead, the Department each year agrees a fee basis with the specialist providers in respect of tuition delivered to children approved for home tuition. The providers invoice the Department directly for the services delivered. The fees agreed with the providers do not exceed the combined cost of one-to-one tuition for an equivalent number of children.
- 12.36** Each year, the Department provides the Department of Public Expenditure and Reform and the Comptroller and Auditor General with details of procurement contracts above €25,000 that had been awarded without a competitive process. The classroom-based tuition delivered by specialist providers has not been included in the returns submitted.

Payments to Board and Committee Members

- 12.37** The Revenue audit examined fees plus travel and subsistence payments made in the years 2010 to 2013. For the years 2010 to 2012, payments to an average of 79 persons came within the scope of the audit. Payments to members of the Residential Institutions Redress Board and its Review Committee came within the scope of the audit for 2013. Figure 12.2 lists the boards and committees concerned.

Figure 12.2 Boards and committees which came within the scope of the Revenue audit

Department of Education and Skills Internal Audit Committee
Education Finance Board
Incremental Credit Appeals Board
Post-Primary Appeals Board in relation to Teaching Staff Allocations
Primary Appeals Board in relation to Teaching Staff Allocations
Residential Institutions Redress Board and Review Committee
Review Committee regarding the Suspension and Dismissal of Teachers
Committee regarding Student Exclusion, Suspension, and Non-Enrolment
School Transport Appeals Board
Director for the Redeployment of Teachers and Redeployment Panel Officers
Inquiry Officer under Section 105 of the Vocational Education Act 1930

Source: Office of the Comptroller and Auditor General

- 12.38** The Department had deducted PSWT and VAT at source from board and committee members' fees and expenses, where appropriate. Instead, the Revenue audit found that PAYE, PRSI and USC should have been deducted from fees and from expenses, where applicable.

Figure 12.3 Fees and expenses paid to board and committee members, 2010 to 2013

Year	Fees	Travel expenses	Total	PSWT deductions
	€000	€000	€000	€000
2010	1,681	132	1,813	309
2011	1,295	111	1,406	256
2012	1,254	176	1,430	246
2013	997	55	1,052	199
Total	5,227	474	5,701	1,010

Source: Office of the Comptroller and Auditor General

- 12.39** The Department agreed to make a settlement payment of €570,000 to cover the tax liability for the four years 2010 to 2013, including statutory interest of €93,000. The net assessed tax liability was computed having regard to the €1.01 million PSWT which had already been deducted at source. From 2013 onwards, fee payments to most board and committee members were subject to statutory deduction of PAYE, PRSI and USC. Payments to members of the Residential Institutions Redress Board and its Review Committee were subject to statutory deduction of PAYE, PRSI and USC from 2014. Revenue has confirmed that the responsibility for ensuring appropriate deduction of tax rests under taxation law with the Department and not with the individual board and committee members.

- 12.40** In relation to whether or not travel and subsistence payments to board and committee members are exempt from tax, the Accounting Officer noted that the Revenue auditor referred principally to the relevant statement of practice¹ and to section 195A of the Taxes Consolidation Act 1997. Section 195A exempts from tax the reimbursement of the expense of travel and subsistence to certain members of boards and governance bodies of non-commercial entities, in both the public and private sector, in respect of attendance at meetings of such entities. To qualify for the exemption, a member's annualised emoluments from the entity must not exceed €24,000 in the case of the chairperson or €14,000 in the case of other members. The exemption covers expenses up to the standard civil service rates.
- 12.41** Given the different arrangements in place regarding the various boards and committees that are under the Department's umbrella, the Revenue auditor recommended that, in cases of uncertainty, specific guidance should be sought from Revenue regarding the appropriate treatment of travel and subsistence payments. The Department now ensures that sections of the Department with oversight responsibility for the different boards and committees seek advice from Revenue in cases where the appropriate tax treatment is unclear.

Conclusions and Recommendations

- 12.42** Revenue audits have resulted in additional Vote expenditure of €14.25 million, €12.25 million of which has already been paid, with a further payment of €2 million expected. The SEC accounts for €12.89 million of this, with the Department accounting for €1.36 million.
- 12.43** The SEC and the Department have accepted liability for the underpayment of taxes in the past. The settlement amounts will not be recovered from the individuals concerned.
- 12.44** The Department does not have a process in place to procure classroom-based tuition for pupils with special educational needs on a competitive basis. There are risks that best value may not be obtained where competitive procedures are not followed, and that certain suppliers are favoured.

Recommendation 12.1

The Department should seek advice on whether the provision of classroom-based tuition services by specialist providers to children with special educational needs come within the definition of procurement under national guidelines. The Department should explore the use of procurement frameworks which allows for agreement of a pricing structure, but with flexibility in relation to volume and drawdown of service.

Accounting Officer's response

Agreed. The Department accepts the recommendation and is actively seeking advice on whether arrangements regarding classroom-based tuition for pupils with special educational needs come within the definition of procurement under national guidelines. It is also exploring the use of procurement frameworks in this regard.

¹ Revenue Commissioners' Statement of Practice SP IT-2-07 regarding the tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees.

