

9 Internal Controls in the Tax Appeals Commission

- 9.1** The Tax Appeals Commission (the Commission) was established on 21 March 2016 as an independent statutory body, tasked with providing a modern and efficient appeals process in relation to the hearing and adjudication of tax case disputes.¹ The Commission replaced the former Office of the Appeal Commissioners, which was charged with the adjudication of tax appeals prior to the establishment of the Commission.²
- 9.2** A number of changes to the tax appeals process were made by statute. For example, more transparency was introduced by giving taxpayers the option to have their cases heard in public, and by requiring the Commission to publish a report of each determination on the Commission's website.³
- 9.3** The reform of the tax appeals process has led to an increase in the level of staff required by the Commission and a need to develop a new case management system. At the end of 2015, the two (then) Appeal Commissioners retired and two new Commissioners were appointed.^{4,5} By the end of 2016, four administration staff and a legal researcher were also employed by the Commission. The gross expenditure of the Tax Appeals Commission in 2016 was €890,000, compared to €543,000 for the Office of the Appeal Commissioners in 2015.
- 9.4** This report examines the corporate governance arrangements introduced by the Tax Appeals Commission since its establishment in March 2016 and the management of overtime payments in 2016.

Corporate governance framework

- 9.5** Corporate governance comprises the systems and procedures by which organisations are directed, controlled and managed. Effective governance provides clarity in relation to authority and responsibility and supports good decision making within an organisation.
- 9.6** Good governance is central to the effective operation of Government departments and is important in discharging statutory and policy obligations. It ensures that a framework of structures, policies and processes are in place to deliver on these obligations and it allows for an objective assessment of management and corporate performance. The Department of Public Expenditure and Reform has issued guidance on corporate governance for the civil service, to assist departments and offices to develop their own individual governance frameworks.⁶
- 9.7** The corporate governance standard issued by the Department of Public Expenditure and Reform sets out a summary of good governance principles, and an adaptable governance framework including provisions to be used by each department/office in their own arrangements. All departments/offices are required to document and publish their governance arrangements in accordance with the principles of the corporate governance standard. The governance standard sets out five governance principles (see Figure 9.1).

1 Finance (Tax Appeals) Act 2015.

2 Neither the Commission nor the Office of the Appeal Commissioners are/were involved in the collection of taxes.

3 The main reforms to the appeals process are listed in Annex 9A.

4 An Appeal Commissioner's term is seven years.

5 The Accounting Officer role will be rotated between the two Commissioners over their current term of office.

6 *Corporate Governance Standard for the Civil Service, 2016* Department of Public Expenditure and Reform.

Figure 9.1 Public sector governance principles

The culture and ethos which ensures behaviour with integrity, a strong commitment to ethical values, and respect for the rule of law.

Priorities and outcomes are defined in terms of sustainable economic and societal benefits and to determine the policies and interventions necessary to optimise the achievement of these priorities and outcomes. It means implementing good practices in transparency, reporting, communications, audit and scrutiny to deliver effective accountability.

The capacity of the Department is developed, including the capability of the leadership team, management and staff.

Risks and performance are managed through robust internal control systems and effective performance management practices.

Openness, effective public consultation processes and comprehensive engagement with domestic and international stakeholders is ensured.

Source: Corporate Governance Standard for the Civil Service 2016, Department of Public Expenditure and Reform.

- 9.8** Accounting Officers are responsible for the safeguarding of public funds and property under their control, for the regularity and propriety of all transactions in each appropriation account bearing their signature and for the efficiency and economy of administration in their department/office. Specific obligations of Accounting Officers include the preparation and presentation of a vote appropriation account incorporating a statement of internal financial control, and the establishment of an internal audit function and an audit committee.
- 9.9** A service agreement is in place for the provision of certain services by the Office of the Revenue Commissioners (Revenue) to the Commission. Under this agreement, Revenue provides administrative and other supports to the Commission including processing of supplier payments and the administration of personnel matters by Revenue's Human Resources division. The service agreement also provides that Revenue's internal audit function is available to the Commission to provide an advisory service on request, on matters pertaining to standards in internal audit, as well as practices and procedures in auditing generally.¹
- 9.10** This examination found no evidence that the Commission had engaged with Revenue's Internal Audit Unit or Audit Committee to seek advice in meeting its corporate governance obligations through the identification of risk areas or the completion of internal audit reviews.
- 9.11** In February 2017, the Tax Appeals Commission published a governance framework, providing details on the mission and operations of the Commission. The framework also includes details of senior management roles and responsibilities, of management board and other governance structures together with audit, assurance and compliance arrangements.
- 9.12** The published framework refers to the internal audit advisory service provided for under the service agreement in place with Revenue. However, the Commission has stated that in line with a significantly increased annual budget and larger organisation, it will arrange its own internal audit services and establish an audit and risk committee. Internal auditors were appointed in August 2017, and the Commission has stated that it is now in the process of establishing the committee.

¹ Prior to 2013, Revenue also processed salaries, overtime payments and travel claims on behalf of the Office of the Appeal Commissioners. These functions are now carried out, on behalf of the Commission, by the Payroll Shared Services Centre.

- 9.13** The Commission has not established a risk assessment and management system. The published framework states that responsibility for risk assessment, including the preparation of a risk management policy, will be allocated to an employee who will also have responsibility for the internal finance management function. The Commission has stated that a draft risk assessment and management plan is currently being reviewed by the newly appointed internal auditors.

Control of overtime payments

- 9.14** The Commission's 2016 vote appropriation account records overtime payments of €65,400 to one employee. These payments represented 7% of the gross expenditure on the Vote, or just under 10% of salaries paid in the year.
- 9.15** Department of Public Expenditure and Reform guidelines require that overtime is authorised and that the nature of the work involved makes overtime unavoidable.¹ There is no record that the overtime hours in respect of which the payments were made had been authorised by a more senior official.
- 9.16** The records that are available from the Commission are insufficient to substantiate the overtime payments. The Commission has hand-written summaries of hours worked compiled using the employee's work diaries over a number of years, and copies of e-mails issued during a small number of the claimed overtime periods. The Commission has no other records or evidence to support the claims.
- 9.17** The overtime claims were submitted directly to the Appeal Commissioners. The Commission's Head of Administration (an experienced officer on secondment from the Department of Finance) was not aware of or involved in the review of the overtime claims.
- 9.18** The Commission has stated that a sample of the overtime claims was checked by both of the Appeal Commissioners prior to being approved for payment by the Accounting Officer. The majority of the overtime claims submitted related to periods which predated the current Commissioners' tenure and so assurance in relation to the additional hours worked by the employee was sought from one of the previous Appeal Commissioners, prior to the payments being made. There is no documentary evidence of any of these checks.
- 9.19** Legal advice was not sought or obtained by the Commissioners in respect of whether the overtime claims should be paid, nor was sanction from the Department of Public Expenditure and Reform obtained in advance of the overtime payments being made.
- 9.20** In November 2016, Revenue contacted the Commission querying the amount of overtime being processed on behalf of the Commission. At that time, €65,400 (gross) had already been paid to the employee. The Commission decided that no further overtime payments would be made. Additional overtime claims submitted in May 2017 have not been paid.

¹ Circular 14/2014, *Overtime in the Civil Service*, Department of Public Expenditure and Reform.

Overtime policy

- 9.21** In February 2017, an overtime policy was introduced by the Commission, which was subsequently further refined in May 2017. The Commission has stated that the policy is in line with Department of Public Expenditure and Reform guidelines and the civil service code of conduct. The policy discourages overtime and staff are expected to complete their work within normal business hours. Overtime may be sanctioned in exceptional circumstances if it is unavoidable and authorised in advance by the Head of Administration or the Assistant Principal Officer.¹ Employees are required to submit overtime claims within four weeks of the additional hours being worked.

Conclusions and recommendations

Corporate governance

- 9.22** The Commission was established formally in March 2016 but is not yet fully compliant with its corporate governance obligations. A governance framework was published by the Commission in February 2017. This provides details of proposed governance structures including audit, assurance and compliance arrangements but the Commission has yet to establish a formal risk assessment and management system including a risk management policy and risk register. The absence of an effective risk management process could prevent the Commission from achieving its overall objectives as risks to the organisation may not be identified and managed in a timely and effective manner.

Recommendation 9.1

The Commission should develop and implement a risk assessment and management process to ensure that risks to the organisation are identified, analysed and managed in a timely and effective manner.

Accounting Officer response

Agreed. A governance framework was published by the Commission in February 2017 and updated and published in summer 2017. This provides details of existing and proposed governance structures including audit, assurance and compliance arrangements. The Commission has established a risk assessment system, but it is a work in progress, as is the risk management policy and risk register, as these are under review by the Commission's internal auditors.

- 9.23** A service agreement in place with Revenue provides that Revenue's internal audit function is available to the Commission in an advisory capacity if required. The examination found no evidence of this facility being utilised by the Commission since its establishment.
- 9.24** Under the new governance framework, the Commission has recently arranged its own internal audit services and has begun the process of establishing an Audit and Risk Committee. Such functions will assist the Accounting Officer fulfil corporate governance and oversight responsibilities in relation to the internal control and risk management systems operating in the Commission.

¹ Overtime claims can only be made by Higher Executive Officer grades and grades below.

Recommendation 9.2

The Commission should ensure that it complies fully with its corporate governance obligations in relation to maintaining an appropriate internal audit function, together with the establishment of an audit committee.

Accounting Officer response

Agreed. The Commission has now appointed an internal auditor and put in place an internal audit function, has established an Audit Group, and has begun the process of establishing an Audit and Risk Committee. The Commission's Audit Group, established on foot of advice received from the Institute of Public Administration, comprises the Head of Administration, the Assistant Principal, an internal auditor and the project manager. Its mandate is to consider specific processes extant in the Commission, with a view to establishing their propriety and keeping day-to-day risk considerations to the forefront. It also considers and agrees proposals for internal audit review and/or advice. It is a preparatory arrangement, pending establishment of the Commission's Audit and Risk Committee.

Overtime payments

- 9.25** The circumstances surrounding the payment of overtime indicate a very weak control environment. The bypassing of the Head of Administration, the lack of formal procedures for authorisation of overtime and the lack of documentation to support the claims or to evidence the checking of the claims, are of particular concern.
- 9.26** The process of developing a modern system of governance was ongoing but not implemented when the overtime claims were approved for payment in 2016. In February 2017, a new overtime policy was introduced by the Commission, which was subsequently further refined in May 2017. Under the terms of the new overtime policy, overtime working must be authorised in advance, and employees are required to submit overtime claims within four weeks of the additional hours being worked. The timely submission of claims allows an organisation to effectively manage budgets and cash flows.

Recommendation 9.3

The provisions of the new overtime policy should be clearly communicated to all staff to ensure that they are familiar with the overtime claims system.

Accounting Officer response

Agreed. The provisions of the new overtime policy have been clearly communicated to all staff, who are now fully familiar with the overtime claims system. This was done as part of a series of weekly governance workshops now held for staff to ensure that they are fully aware of the Commission's governance systems and procedures.

Annex 9A

Main reforms of the tax appeal process

Statutory underpinning of the independence of the Tax Appeals Commission

A new focus on flexible and active case management

Discretion to make determinations based on written submissions in the case of straightforward matters, subject to the agreement of the parties to the proceedings

Public hearings as the default position, although an appellant may request that a hearing or part of a hearing be held in private

Publication of Appeal Commissioners' determinations

Ability to dismiss appeals where, for example, a taxpayer does not comply with directions given by Appeal Commissioners in relation to the conduct of the proceedings

A renewable, fixed term of office of Appeal Commissioners of seven years

Introduction of a requirement for the Tax Appeals Commission to submit annual reports

Decisions of the Appeal Commissioners are now final and conclusive

Ability to appeal to the High Court on a point of law only, and not in relation to the facts of a case

Enhanced case management procedures, including the power to determine a broad range of interlocutory applications, to facilitate a more efficient and structured flow of appeals

Source: Tax Appeals Commission Annual Report 2016