

## 14 Management of tax appeals

**14.1** Taxpayers can avail of two mechanisms to resolve issues in dispute with the Office of the Revenue Commissioners (Revenue) in relation to their tax affairs.<sup>1</sup>

- Taxpayers can seek a review of the handling of their tax affairs. This review is conducted by the manager of a local tax office and if the taxpayer is not satisfied with the outcome of the review they may request a review be carried out by an independent internal or external reviewer. This procedure does not affect a taxpayer's right to make an appeal.
- Taxpayers who are dissatisfied with a tax assessment or decision made by Revenue have 30 days from the date of the assessment to make an appeal to the Tax Appeals Commission (the Commission). Generally, appeals are of either the amount of tax assessed or the application of tax law having a bearing on the amount of tax potentially due and owing.

<sup>1</sup> In this report, the term 'taxpayer' refers to any individual or entity with the right to a review or appeal.

<sup>2</sup> There are some exceptions — if the taxpayer made a true and accurate return and paid at least 90% of the tax due, or if the taxpayer had made a return and entered a genuine 'expression of doubt' as to the correct treatment of a matter covered in the return, the taxpayer is not liable to pay interest.

<sup>3</sup> Chapter 22, Revenue debt management, *Report on the Accounts of the Public Services 2014*.

<sup>4</sup> The Office of the Appeal Commissioners was dissolved when the Commission was established. That Office was charged with the adjudication of tax prior to the establishment of the Commission. A taxpayer who wished to exercise their right of appeal was required to submit notice of appeal to Revenue in the first instance who then transferred cases to the Appeal Commissioners in the event that the parties wished to proceed to hearing.

**14.2** In circumstances where the determination of an appeal is against the taxpayer, the taxpayer is liable to pay the difference between the tax they had already paid (if any) and the amount determined on appeal plus interest on the additional amount from the day that it originally became due.<sup>2</sup>

**14.3** A previous examination found that over one third of all tax debt showing as outstanding in 2014 was under appeal and that half of the tax had been under appeal for more than three years.<sup>3</sup> The report recommended a review of the recording of appeals in Revenue's systems as well as the development of more comprehensive debt management performance indicators.

**14.4** The Tax Appeals Commission was established on 21 March 2016 as an independent statutory body under the Finance (Tax Appeals) Act 2015 (the Act). The Commission is responsible for the management and determination of appeals against Revenue assessments and decisions. Taxpayers who are dissatisfied with a tax assessment or decision made by Revenue must make an appeal, in writing, to the Commission.<sup>4</sup>

**14.5** Initially, two commissioners were appointed to hear appeals. Because of the volume of appeals received, one temporary commissioner was appointed in June 2017 with a further three temporary commissioners appointed in 2019, one of whom is appointed on a half time basis. In July 2020, a Chairperson with overall responsibility for the management and business of the Commission was appointed under the Finance (Tax Appeals and Prospectus Regulations) Act 2019.

**14.6** Funding totalling €3.3 million was provided for the Commission's operations in 2019 under the annual estimates process. The expenditure incurred in the year totalled €1.8 million.

## Objectives of this examination

### 14.7 This examination

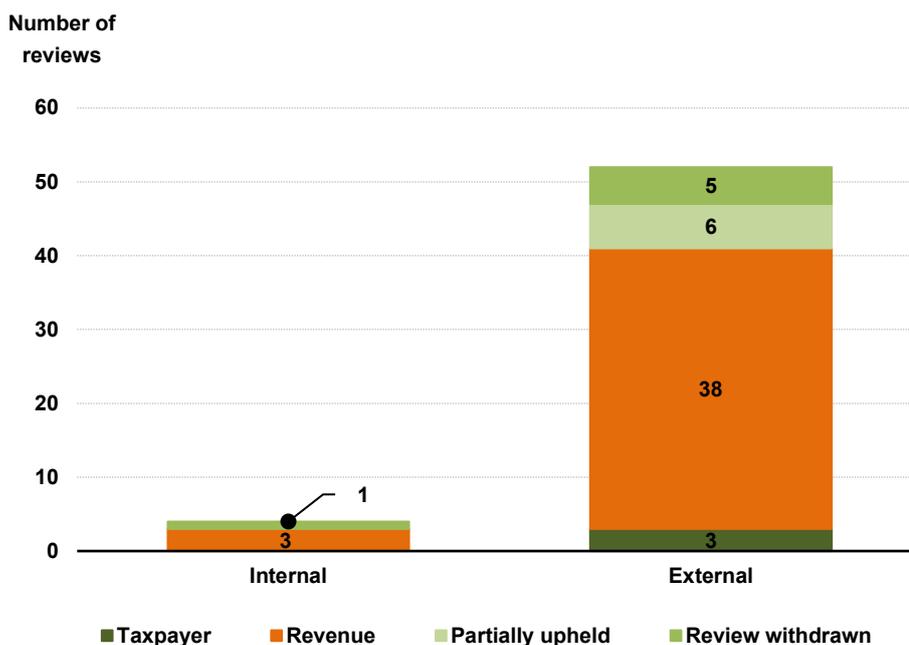
- analyses the results of case reviews in the period 2016 – 2019
- provides details of the current appeal process
- reviews the outcome of appeal cases
- examines debt collection following appeal
- reviews trends in the value of tax under appeal in the period 2016 – 2019
- evaluates the procedures for management of appeal cases including the timeliness of disposal of such cases and the Commission’s ICT systems
- reviews progress in implementing the recommendations of a 2018 review of the Commission’s workload and operations.

## Review of Revenue’s handling of cases

**14.8** Revenue reviews in 56 cases were completed in the period 2016 – 2019 (see Figure 14.1). In most cases, the review was conducted by an external reviewer. In over 75% of cases, the review found in favour of Revenue. The review found in favour of the taxpayers in just 6% of cases. In the remaining cases, aspects of the review found in favour of both parties or the review was withdrawn by the taxpayer.

**14.9** It is important to note that the reviews refer to administrative processes in handling a case and do not directly result in a revised assessment. However, following the review it may happen (rarely) that the tax collected by Revenue was incorrect. Each year, Revenue publishes a summary of review decisions issued in that year.

**Figure 14.1 Outcome of Revenue’s internal and external reviews 2016 – 2019**



Source: Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

## The appeals process

- 14.10** Taxpayers who are dissatisfied with a tax assessment or decision made by Revenue have 30 days from the date of the original assessment to make an appeal, in writing, to the Commission. An overview of the process is outlined in Figure 14.2 and Figure 14.3 indicates the communication flows.

**Figure 14.2 Overview of the tax appeal process**

In order to make a valid appeal

- any outstanding tax returns must be submitted, and
- the liability declared by the taxpayer (if any) must be paid.

Once an appeal is lodged with the Commission by a taxpayer or agent, collection of disputed liability is suspended until either the taxpayer and Revenue settle the dispute or there is an outcome from the appeal. Revenue does this by including a 'stop' instruction, referred to as a 'Stop 16', on the taxpayer's record for the tax in dispute. When an appeal is determined (decided by the Commission or a court, settled, dismissed or withdrawn), the Stop 16 instruction is removed.

When it is decided that an appeal is a valid appeal, the Commission may direct the taxpayer and/or Revenue to provide a statement of case which sets out the details of the appeal including an outline of the relevant facts, written documents or other records upon which the party intends to rely, details of the statutory provisions to be relied upon and whether the party considers that the matter under appeal is one that could be settled by way of an agreement with the other party.<sup>1</sup>

Responsibility for managing tax appeals lies with the Commission, including

- assessing the validity of an appeal request
- setting out and agreeing with the taxpayer and Revenue the outline of the case
- listing, hearing and determining the appeal.

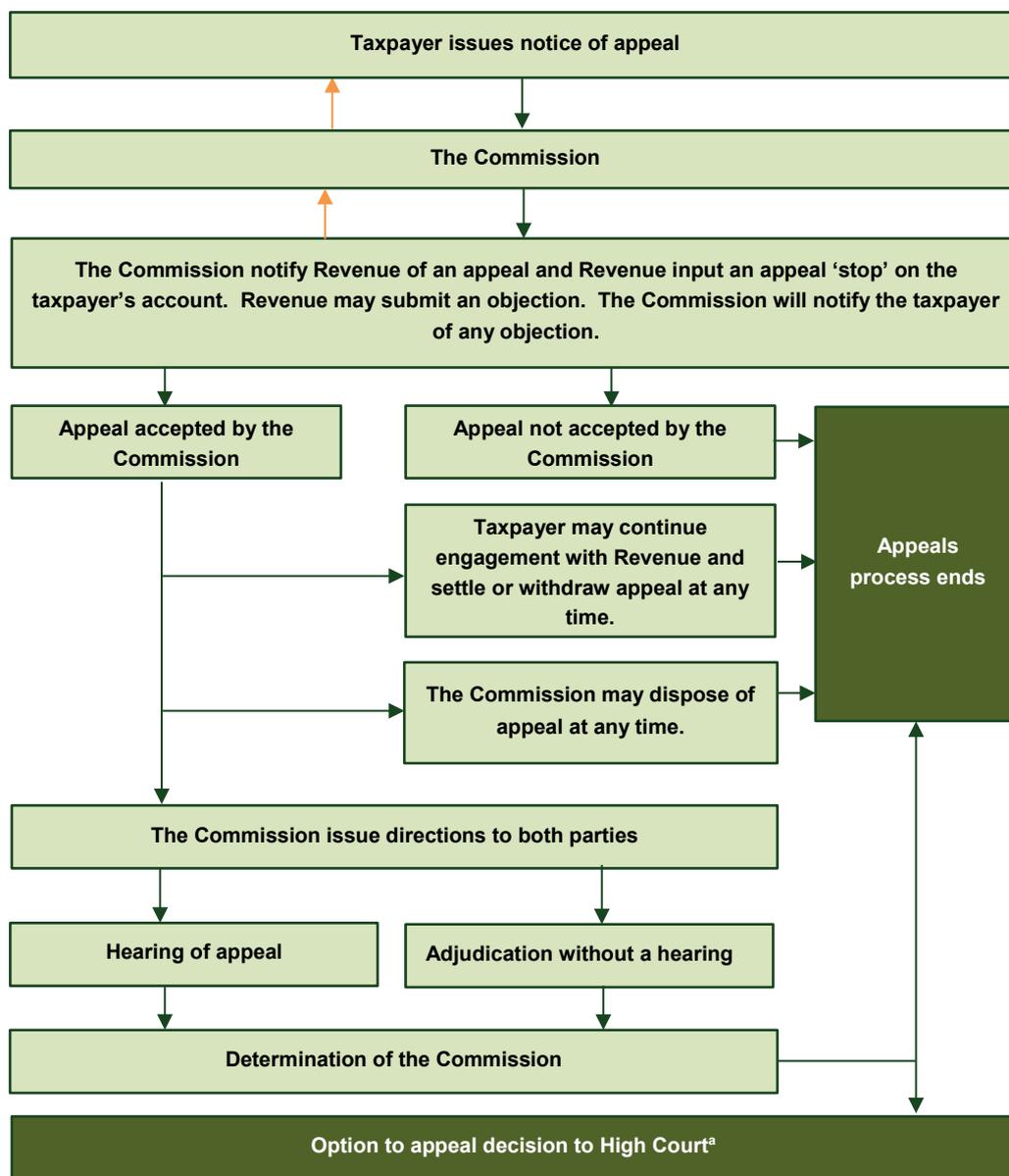
From the taxpayer's perspective, there is a single tax appeal process that starts with the submission of an appeal and may ultimately end with a determination from the Commissioners or a Court. Where the Commissioners make the decision not to accept an appeal, that decision is treated as final and conclusive. A decision not to accept an appeal may be made in the following circumstances

- it is deemed not to be a valid appeal
- the appeal is without substance or foundation
- the appeal is a late appeal and specified criteria have not been satisfied.<sup>2</sup>

<sup>1</sup> Section 949(2)(d) of the Taxes Consolidation Act 1997 requires a taxpayer making an appeal to set out in detail the grounds for the appeal.

<sup>2</sup> The commissioners may accept a late appeal if the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the period specified by the Act and the appeal is made thereafter without unreasonable delay and within a period of 12 months after the end of the period specified by the Act for the making of that appeal. Late appeal may be made later than 12 months, subject to certain conditions. This is provided for by section 949O(2) TCA 1997.

**Figure 14.3 Tax appeal process**



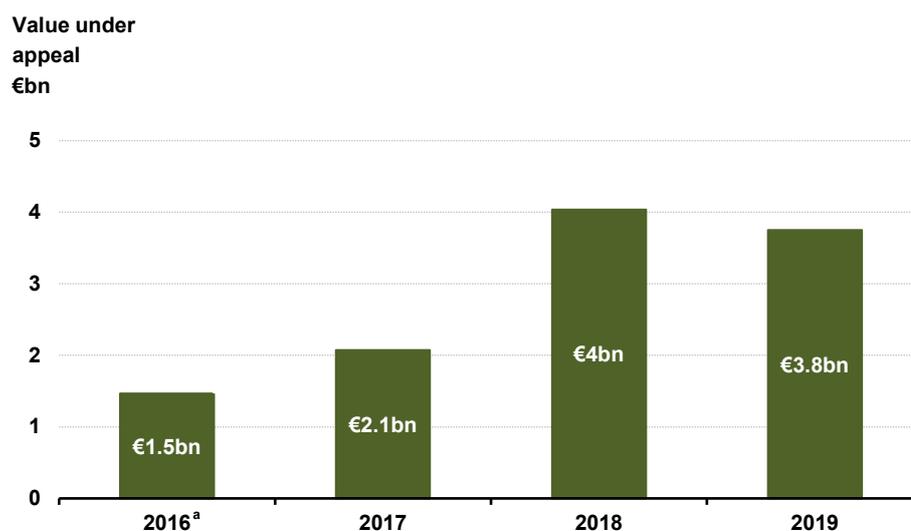
Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General

Note: a The option to progress to the High Court can only be made on a point of law.

## Trends in the value of tax under appeal

- 14.11** The Commission was established in March 2016 and at inception, 1,456 'legacy' appeals with a value (as assessed by Revenue) of €1.1 billion were transferred to it.<sup>1</sup> At the end of 2019, approximately €3.8 billion was recorded by the Commission as being under appeal (see Figure 14.4). This included €2.2 billion related to five appeal cases lodged in 2018 which accounted for the very large increase in value over the course of that year.

**Figure 14.4 Total value of tax under appeal, 2016 to 2019**



Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General

Note: a The 2016 year-end tax under appeal amount includes €1.1 billion of legacy and pre-establishment cases on hand.

- 14.12** While details of tax appeals are recorded on the Commission's ICT systems, the primary taxpayer record is maintained on Revenue's ICT systems.
- 14.13** Revenue uses a separate module within its case management system (RCM) to manage appeal cases. This module includes details on the progress of an appeal through the various stages of the appeal process, the statement of case as provided by Revenue to the Commission and other relevant documentation including the date a stop was placed on the collection of the debt and Revenue's assessment of the amount under dispute. This module is separate from the integrated taxation processing system (ITP) used by Revenue to maintain the case base, process tax returns, payments, refunds and repayments.<sup>2</sup> There is no electronic interface between the two systems.
- 14.14** Data extracted from the Revenue appeals module detailing the number of open appeals and the value of tax under appeal is used on a monthly basis for management reporting purposes within Revenue.
- 14.15** The examination team requested a listing of all cases currently noted as under appeal in Revenue's systems. Initial data provided by Revenue for the examination indicated 4,347 cases under appeal as at 31 December 2019 with a debt amount of €3.2 billion. The examination compared the values recorded in Revenue's system against the value recorded on the Commission's system and noted a large number of cases where the values under appeal differed.

<sup>1</sup> Revenue transferred 1,159 appeals and the Office of the Appeals Commission transferred 297 open appeals to the Commission.

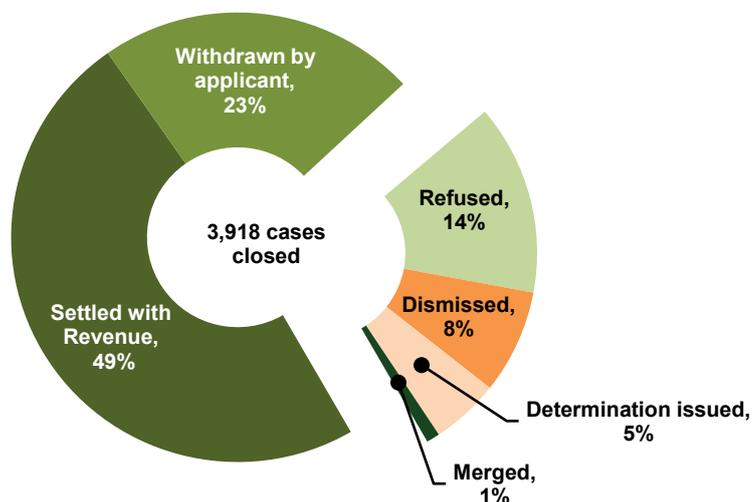
<sup>2</sup> The integrated taxation processing (ITP) system is Revenue's core integrated tax and customs administration system. The stop on tax debt collection (Stop 16) in appeal cases is applied on this system.

- 14.16** Arising from the discrepancies, Revenue requested all case managers with open appeals to review cases in the appeals module and to update the amount in dispute, as at end June 2020. As a result of this review, revised data provided to the examination team indicated 4,434 cases and €3.7 billion in tax under appeal at end December 2019.
- 14.17** Differences can arise between the figures Revenue records as tax under appeal and the figures the Commission state as tax under appeal for a number of reasons.
- The amount under appeal may be amended in Revenue's records where an aspect of the appeal is settled or withdrawn but the amount is not amended on the Commission system because they may be unaware of the settlement or withdrawal.
  - There can be a time lag between the date the Commission close a case and notify Revenue, to Revenue closing the appeal on the Revenue appeals module.<sup>1</sup>
  - Human error may occur in recording the amount under appeal.

### Outcome of appeal cases

- 14.18** The Commission provided the examination with a listing of all cases closed since its establishment on 21 March 2016. A total of 3,918 appeals cases were closed in the period. Nearly half (49%) of cases were closed as the taxpayer reached a settlement with Revenue and almost a quarter (23%) were withdrawn by the taxpayer. The Commission refused or dismissed 22% of cases and was required to make a formal determination in only 5% of cases (see Figure 14.5).

**Figure 14.5 Outcome of taxpayer appeals to the Commission, 21 March 2016 to December 2019**



Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

- 14.19** Where possible, the Commissions' approach is to facilitate the resolution of appeals without a hearing. Under provisions set out in the Act, it is possible to adjudicate without a hearing, if both parties agree. The aim is to complete proceedings in an expeditious manner. Since inception, the Commission has used this mechanism in 38% of the determinations issued.

<sup>1</sup> Under the Act, The Commission shall notify all parties in writing within 21 days of a determination.

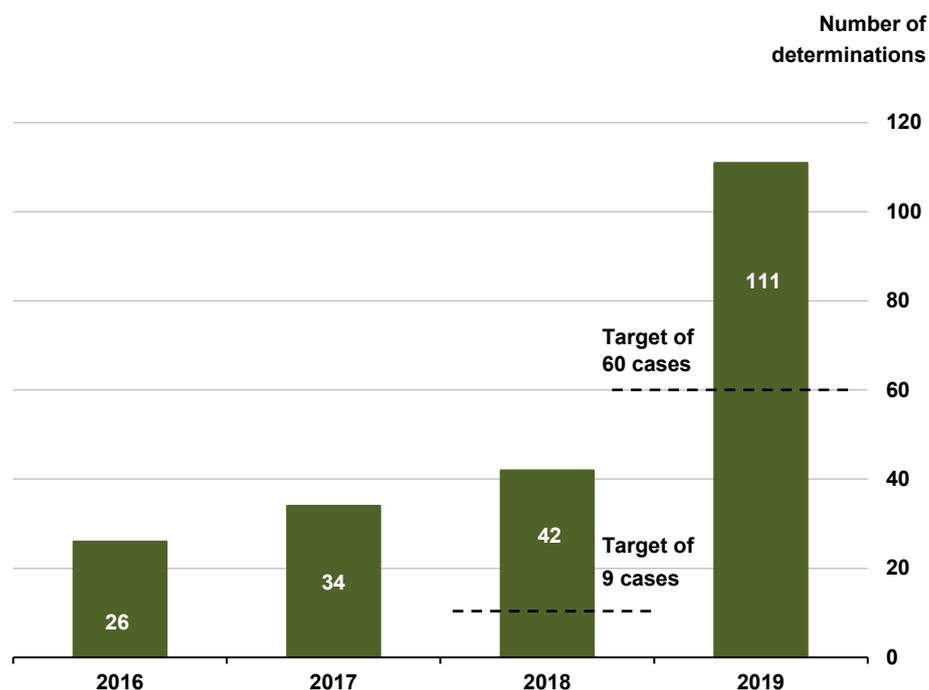
**14.20** The outcome of an appeal can result in a revised tax assessment. Revenue's ICT systems do not facilitate the compilation of summary reports to examine the impact of appeals on original tax assessments. Such reports would compare original assessments with the final agreed liability, allow Revenue to monitor trends in that regard and consider what, if any, action may be required in circumstances where there are significant reductions/increases in the original assessment for particular tax types as a result of appeal.

### **Publication of determinations**

**14.21** The outcome of appeals determined can provide useful information to tax practitioners and to taxpayers in relation to the interpretation of tax law. Under the Act, the Commission is required to publish on its website, within 90 days of a determination, a report on the determination. The report includes background to the case, the legislation relied upon, details of submissions, conclusion reached and the outcome — whether in favour of the taxpayer or Revenue. The Commission has issued 213 determinations since its establishment.

**14.22** Figure 14.6 shows the number of determinations issued during the period 2016 – 2019. One case determined in 2019 resulted in the conclusion of 31 other appeals lodged with the Commission and the issuing of 32 separate determinations.<sup>1</sup>

**Figure 14.6 Case determinations issued 2016 to 2019**



Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

**14.23** The Commission website includes a copy of the determinations in order of date published. The website does not include a summary of the case and does not include a search facility by, for example, tax type or nature of issue under dispute. Whilst complying with the requirements of the Act to publish determinations on the Commission website, this information has limited use to end users. However, the Commission noted that it publishes within its annual report summaries of complex determinations and groups smaller determinations by category.

<sup>1</sup> The determination related to income tax and the deductibility of certain tax losses. The Commission ruled on one case but there were appeals lodged from 32 individuals all relating to the same tax issue.

- 14.24** Revenue considers the Commission's determinations issued in the context of publishing new manuals or amending existing manuals. Determinations by the Commission do not create new law or precedent and Revenue may decide to appeal to the High Court against a determination or to seek a change in the law by way of a Finance Bill amendment, subject to the approval of the Minister for Finance. Revenue has appealed nine cases to the High Court, and tax law has been amended on foot of one determination issued.

### Collection of tax following an appeal

- 14.25** The examination team asked Revenue for a listing of all completed appeal cases up to 31 December 2019 to ascertain if the liabilities were paid. Revenue was unable to provide this information because, once an appeal is closed and the Stop 16 is removed, the ITP system does not differentiate appeal cases from other standard debt outstanding cases. Once the appealed tax debt is confirmed as properly due, it is pursued in the normal manner alongside any other outstanding liability.
- 14.26** Revenue stated that it has detailed information at an individual taxpayer level and there is no systematic way of retrieving this information. Revenue also stated that there is limited value to developing systems that provide macro-level information.
- 14.27** The examination reviewed a sample of 100 appeals determined or settled in the period 2016 to 2019 to examine the collection rate of the final agreed liability of €168.9 million. The final liability takes account of agreements reached between Revenue and the taxpayer in relation to the interpretation of tax law, any additional information provided by the taxpayer and in some cases a determination by the Commission. It should be noted that in some cases the final agreed liabilities may not agree with the final amounts collected. This reflects the fact that in certain circumstances Revenue has determined that it could not successfully pursue or that it would be uneconomic to pursue the assessed amounts.
- 14.28** At end May 2020, over 90% of the final agreed liability in the 100 sample cases had been collected; less than 1% had been written down; and 9% remained outstanding. The majority of the outstanding liability related to appeals that were closed during 2019.
- 14.29** A number of taxpayers pay the amount in dispute before lodging an appeal with the Commission. This is to prevent interest being applied if the taxpayer is unsuccessful in the appeal. If the taxpayer is successful in the appeal case, Revenue is required to refund the amount prepaid to the taxpayer. Revenue is not in a position to quantify the total amount prepaid relating to tax under appeal at the end of 2019, or how much in total was refunded by Revenue to taxpayers as a result of Revenue losing appeals in 2019.

## Management of appeal cases

**14.30** The Commission has a number of output targets each year as set out in *Estimates for Public Expenditure*. The Commission has exceeded all output targets adopted. The targets and outcome were as follows

- *Number of tax appeals closed* — this metric was included for the first time in 2019 and a target of 1,500 was adopted. In 2019, the Commission closed 1,584 appeals (2018, 1,439).
- *Number of determinations issued* — the Commission had a target to issue 60 determinations in 2019 (2018, 9). In 2019, it issued 111 determinations (2018, 42).

### Caseload

**14.31** Data available at end December 2019 shows that between 21 March 2016 and 31 December 2019, 5,819 appeals were lodged with the Commission. Combined with the 1,456 legacy appeals transferred to the Commission upon establishment, this gives a caseload since inception of 7,275 cases with an aggregate quantum of €5.2 billion (see Figure 14.7).<sup>1</sup> A total of 3,918 cases were closed in the same period, leaving a total of 3,357 cases open at 31 December 2019 (see Figure 14.8).

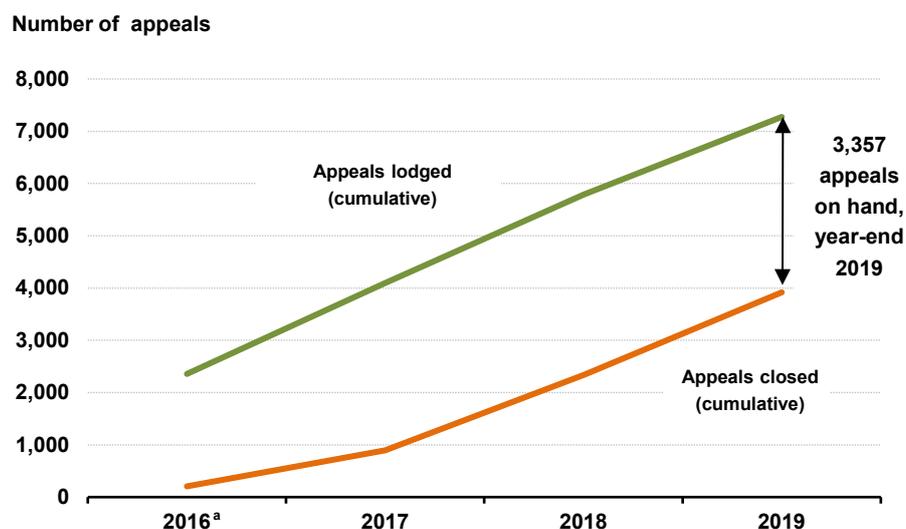
**Figure 14.7 Breakdown of quantum of appeal**

Header	Number of cases	Quantum appealed €m
No quantum <sup>a</sup>	896	n/a
Less than €1,000	912	0.4
€1,000 – €10,000	1,972	7.5
€10,000 – €100,000	1,946	75
€100,000 – €1 million	1,245	403
€1 million – €10 million	251	699
€10 million – €50 million	39	822
€50 million – €100 million	6	388
€100 million +	8	2,843
<b>Total</b>	<b>7,275</b>	<b>5,238</b>

Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a The monetary value of an appeal is not always calculable by the Commission e.g. where the rate of tax is in dispute, appeals in relation to the refusal of VAT registration, refusal to issue tax clearance certificate or where an appeal represents a refusal of loss relief, deductions or eligibility for an exemption.

<sup>1</sup> Quantum of appeal is the amount of tax in dispute between parties.

**Figure 14.8 Cumulative appeals lodged and closed, 2016 to 2019**

Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a The year 2016 includes 1,456 cases lodged with the Commission on establishment.

### *Timeliness of the appeal process*

- 14.32** Timely progression and determination of tax appeal cases are important factors in achieving fair treatment for taxpayers. Delays in finalising appeals may also be costly for the State due to the failure to collect taxes due in a timely manner and for taxpayers who may be faced with interest costs if a determination is made against them. In evaluating timeliness, it is useful to examine the age of tax currently under appeal and, for closed cases, the time taken to dispose of the appeal.

#### *Age of tax under appeal at end 2019*

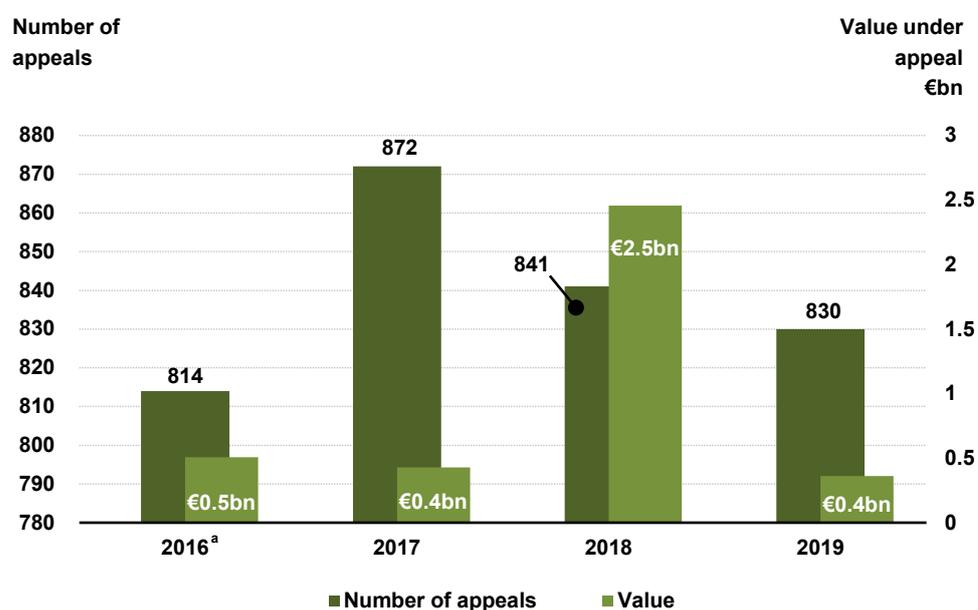
- 14.33** A total of 3,357 cases, with a value of €3.75 billion remain open at 31 December 2019 (see Figure 14.9). The average time cases were open with the Commission to end December 2019 was two years.<sup>1</sup>

- Almost a quarter of cases (€508 million in value) were in the appeal system three years or more. 74% of this value relates to legacy cases transferred to the Commission in 2016.
- Over 90% of the value of tax on appeal related to 2018 or earlier years of assessment with a quarter (25%) relating to 2017 or earlier years.

<sup>1</sup> Based on 3,336 cases open at end 2019. Dates of notification of appeal was not available for 21 cases.

- 14.34** Ten cases make up €2.6 billion (69%) of the value under appeal. Two of those cases amounting to €196 million are on appeal for three years or more (see Figure 14.10). Excluding these ten cases, the average age of tax under appeal is two years.

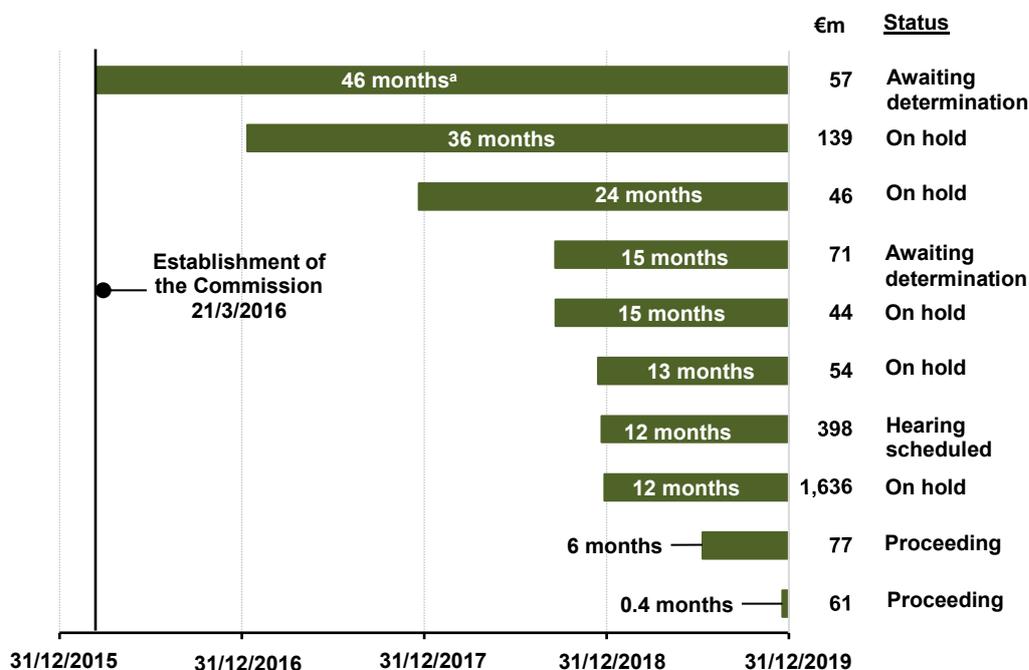
**Figure 14.9 Number of appeals and value outstanding by year of receipt at 31 December 2019**



Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a 2016 includes legacy appeals, pre-establishment appeals and appeals received by the Commission in 2016.

**Figure 14.10 Highest value open appeals, by length of appeal proceedings, quantum and status at 31 December 2019**



Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a This case was lodged prior to the establishment of the Commission. The case was transferred to the Commission on 21 March 2016. All legacy and pre-established cases are considered to be lodged at this date.

**14.35** The Commission has indicated the delays in concluding the eight cases which are over 12 months in appeal are as follows.

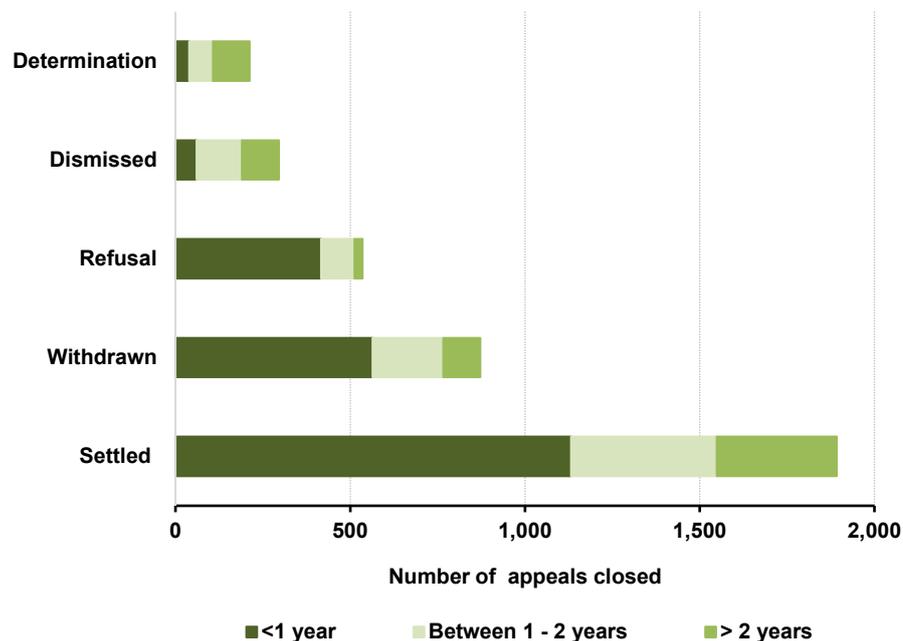
- In one case, the taxpayer requested a stay from the High Court on the Commission review, pending judicial review.
- Four other cases are also on hold — the taxpayer and/or Revenue requested an extension of time for the submission of statements of case which had led to delays of between three to nine months in progressing the cases. All cases are currently with the Commission case managers.
- In one case, a Commission hearing took place in December 2017. A determination was expected in April 2020 but the Commission has stated that it now expects to issue a determination in December 2020.
- In one case, a Commission hearing took place in February 2020 and the Commission expects to issue a determination in January 2021.
- In one case, a hearing is scheduled to take place in November 2020 and will be heard by a three-person Commission for the first time. The Commission expects to issue a determination in January 2021.

*Time to determine appeal — closed cases*

**14.36** In order to calculate the time taken for an appeal, a record of the dates when an appeal notice was submitted by a taxpayer and the appeal was finalised is required. The information in the Commission's case management system is incomplete in that regard. Of the 3,918 cases shown as closed, the date the appeal was received was not recorded in 68 cases and transcription errors were noted in eight additional cases, where the recorded date of closure predated the recorded date the appeal was received by the Commission.

**14.37** The time taken to dispose of cases was examined for the 3,842 cases where notice of appeal date and date of closure were recorded (see Figure 14.11)

- 72% of the closed cases had been settled or withdrawn by the taxpayer — of these, 61% were disposed of in under a year
- in 8% of cases, the appeal was dismissed but only one fifth of these cases were disposed of within a year
- just 5% of appeal cases proceeded to a determination and half of these cases took in excess of two years to finalise.

**Figure 14.11 Elapsed time of closed appeals, 2016 to 2019**

Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

#### *Addressing delays in finalising cases*

- 14.38** A number of provisions have been set out in the Act to allow the Commission to proceed with cases efficiently. The Commission may direct the parties to attend a meeting known as a case management conference to progress a case that may be hindered for whatever reason. In 2019, the Commission scheduled 39 case management conferences (2018, 159). 17 cases were withdrawn or settled in advance of conferences and 15 cases are proceeding. In the remaining seven cases, the date of the conference was rescheduled.
- 14.39** The taxpayer has a right under the Act to have their appeal heard. The Commission will notify the parties of a hearing date three to six months in advance of the scheduled date. Failure to attend the hearing is treated as a withdrawal. A significant proportion of cases do not proceed on the scheduled hearing date. 224 cases were scheduled for hearing in 2019. In 25 cases, the appeal was withdrawn. The hearing date was deferred in almost two thirds of the remaining cases, with the hearing proceeding as planned in the other one third.
- 14.40** Significant delays are occurring between the date of a hearing and the date a determination is issued. There is no time limit for the Commission to determine a case once an appeal is heard by a commissioner. From data provided to the examination, at the end of 2019, there are 57 cases awaiting a determination from the Commission following a hearing (see Figure 14.12).

**Figure 14.12 Cases awaiting a determination following a hearing at 31 December 2019**

Year heard	Number of cases	Quantum under appeal €m	Average years awaiting determination
2016	10	37.6	3.5
2017	13	76.1	2.8
2018	19	4.9	1.4
2019	15	48.4	0.6
<b>Total</b>	<b>57</b>	<b>€167</b>	

Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

- 14.41** The Commission stated that plans for the elimination of the backlog in issuing determinations for appeal cases that had been heard began in April 2019. At that time, determinations were outstanding in relation to 61 cases involving tax of approximately €177 million. The Commission agreed to provide the Department of Finance with a bi-monthly update from April 2019 onwards. At 4 June 2020, determinations are outstanding in 38 cases involving tax of approximately €158 million.
- 14.42** In October 2018, an independent external review of the operation of the Commission concluded that changes could be made to assist in clearing the backlog of cases and to equip the Commission to meet the objective for which it was initially established.<sup>1</sup> The Commission has provided a statement of how it has responded to the recommendations and associated timeframes and the progress to end August 2020 (see Annex 14A).
- 14.43** One of the recommendations in the report suggests a target of two months for the finalisation of determinations following the hearing of an appeal.
- 14.44** In cases where the taxpayer or Revenue appeal determinations of the Commission to the High Court, the appeal cannot be finalised. Cases must be appealed within 21 days of a Commission determination and the appeal must be based on a point of law arising in relation to the determination of the Commission. Since 2016, 23 cases were appealed to the High Court. Four cases did not proceed. As at 31 December 2019, 13 cases are awaiting a High Court hearing or determination.
- 14.45** Of the six High Court cases that had proceeded
- one case was struck out
  - one case was settled between the taxpayer and Revenue prior to hearing
  - the determination of the Commission was overturned by the High Court in one case
  - the determination of the Commission was confirmed in two cases
  - the judgement was not to be made public in one case.

<sup>1</sup> *Review of the Workload and Operations of the Tax Appeals Commission* (O' Donoghue report) Report to the Minister for Finance.

## ***Adequacy of the Commission's ICT systems***

### ***Case management system***

- 14.46** In 2016, the Commission undertook a public procurement exercise to acquire a new case management system (CMS). During 2016 and 2017, expenditure totalling €202,000 was incurred on the CMS solution that was acquired.
- 14.47** In April 2018, the Commission ceased operation of the CMS as the system did not operate as originally intended. The Commission stated that it did not have adequate ownership of the software intellectual property (IP) resulting in overreliance on the service provider to operate and make changes to the system at additional ongoing expense. This was despite the system being customised and designed by the service provider in conjunction with the Commission and written exclusively for and paid for in full by the Commission.
- 14.48** The system was written off by the Commission in its appropriation account at the end of 2018 with a net book value of €84,000.
- 14.49** In 2018, a replacement case management system was developed in-house. Although this system was intended to be used only temporarily, it is still in use and is still being used by the Commission to record and manage all case related material. The invitation to tender for the case management system that was written off included specification of what the Commission considers are key elements of a functioning case management system. The examination compared the system currently in place with the tender specification (see Annex 14C). This indicates the current system cannot facilitate electronic interface with the taxpayer or with Revenue and does not have adequate reporting functionality. These were features specified in the original invitation to tender.
- 14.50** The Commission received funding approval through the estimates process in December 2019 for expenditure of €384,000 in 2020 for planned expenditure on capital ICT equipment including the development of a permanent case management system. A project board was set up and meetings commenced in January 2020. Process mapping of the requirements for the new system is complete. At August 2020, the requirements specification had not yet been updated and the tender process had not commenced.
- 14.51** The work undertaken for this examination also found errors in the data recorded on the CMS. These were attributed to the following control/design weaknesses
- Notice of appeals submitted are inputted on to the CMS by a member of the Commission staff but are not checked for accuracy by another member of staff.
  - All appeals received by the Commission are manually allocated a unique identification reference number on a separate system.
- 14.52** The Commission stated that a process of quality checking of data entry is being put in place and that the new CMS will address the issue of manually allocating unique identification reference numbers.

### ***Remote hearing of cases***

- 14.53** The outbreak of the Covid-19 pandemic has created major challenges for the operation of the Commission. Hearings by the Commission were postponed during the period 13 March 2020 to 18 August 2020 due to Covid-19 restrictions. In August, the Commission resumed the scheduling of physical hearings and began offering remote hearings. The Commission intends to prioritise postponed hearings. The Commission estimates the value of the cases affected is approximately €77 million.
- 14.54** Other aspects of the Commission's operations are continuing during the Covid-19 restrictions, although many staff are continuing to work remotely. New appeals are being accepted and processed and publication of determinations is continuing.

### **Conclusions and recommendations**

- 14.55** Taxpayers have a right to appeal an assessment of tax liability made by Revenue. The Tax Appeals Commission is an independent statutory body with responsibility for the management and determination of appeals against Revenue assessments.
- 14.56** Taxpayers may be discouraged from lodging an appeal in circumstances where there may be delays in determining that appeal. Significant delays are occurring in the disposal of appeals. For example, at the end of 2019, there were 3,357 open appeals. The average time that the cases had been under appeal at that date was two years. Almost a quarter of cases (€508 million in value) had been in the appeal system three years or more.
- 14.57** Analysis of appeal cases disposed of between 2016 and 2019 shows that only 5% were as a result of a formal determination of the Commission. Half of the cases involving a determination took in excess of two years to finalise.
- 14.58** Once an appeal is heard by the Commission, there is no time limit on the Commission to issue a determination. At December 2019, there were 57 cases awaiting a determination by the Commission with an amount under appeal of €167 million. In 23 of those cases accounting for over two-thirds of the related value, the case had been heard prior to 2018.

**Recommendation 14.1**

In order to ensure that cases are progressed efficiently, the Commission should set target timeframes for the disposal of cases and should develop an escalation procedure for cases that have not been disposed of within the target timeframe.

**Chairperson's response (The Tax Appeals Commission)**

Agreed.

Cases can take a minimum of six months to progress to being ready for scheduling if all steps in the process are required and there is full co-operation by all the parties. Initially, we would propose to set a target of nine months for this process with an escalation process to be followed after this period. The escalation process will ensure that the cases are progressed by the Appeals Support Team, the Case Manager and the applicable Commissioner. Milestones are being developed alongside the case management system which alerts the various personnel when lapses occur. The Commission recognises that more discipline on all parts of the appeal are also required and that is being implemented currently.

**Recommendation 14.2**

The Commission should set a target timeframe for the issue of a determination following a hearing and should report its performance in that regard.

**Chairperson's response (The Tax Appeals Commission)**

Agreed.

The Chairperson is introducing a gradient of timeframes from one month to three months for determinations depending on the case

- cases with quantum up to €1 million — one month for issue of determination
- cases with quantum between €1 million and €10 million — two months for issue of determination
- cases with quantum over €10 million — three months for issue of determination.

The timelines on determination are only being introduced and have been tested in terms of the production line in the Commission. As such, no commitment can be given in relation to an external audience at this time but that will be reviewed in quarter 1 2021 and it is hoped a positive response can be given at that time. If information is to be reported on, the Commission intend to commence from new hearings taking place from Quarter 4 2020.

**14.59** The Commission's operational procedures were reviewed as part of this examination. There is considerable scope to enhance its administrative procedures.

**14.60** The current case management system is not fit for purpose. A system procured in 2016 was subsequently written off and a temporary system was implemented from April 2018. In particular, the system does not allow for electronic interface with the taxpayer and Revenue. In addition, the system does not allow for the compilation of management information to facilitate effective management and accurate reporting of caseload and outcomes.

**14.61** The examination identified differences between the amount recorded by Revenue and the Commission in relation to the quantum of tax under appeal.

**Recommendation 14.3**

In advance of the procurement of a case management system in 2016, the Commission specified its requirements in that regard. The Commission should review and amend these requirements as appropriate and commence procurement of an effective case management system.

In the interim, the Commission should review the quality control procedures applied to performance data to ensure the information is accurate and complete.

**Chairperson's response (The Tax Appeals Commission)**

Agreed.

The process to replace the case management system is underway. A project board, which includes a representative from the Revenue Commissioners, commenced meeting in January 2020. A significant amount of work on this project including updating the process mapping requirements of the new system has been completed to date. In addition, meetings have taken place with the OGCIO to discuss solutions they may be able to provide. A target date of December 2020 is set for stage one of the project to be complete — the production of a project initiation document. This will allow the procurement process to commence.

Quality control procedures have been developed to reduce the risk of errors from manual entry and are currently being put in place. This includes monthly sampling of cases newly entered on the CMS system by line managers to ensure quality of data entry. Checks will also be carried out on a quarterly basis on a random selection of open files by senior members of the Appeals Support team to ensure the digital and physical files have been updated correctly and all entries on the CMS system are of the required standard. These procedures will be fully operational before end of Q4 2020.

Staff have been instructed to check the details of cases they are updating on CMS to ensure key details such as quantum were entered correctly when the case was first set up or when new details became available. This will now be a part of regular training for all new staff and refresher training on CMS data entry procedure for current staff is scheduled to take place in September 2020. It is intended that these quality control procedures will be further developed and added to as necessary in the future to ensure best practice is achieved

- 14.62** The Commission publish details of all cases determined on their website within 90 days of a determination. The presentation of this material does not facilitate ease of use for taxpayers, agents, Revenue or the public. Reports are not categorised by tax head, or year, and/or a summary of the case is not included. However, the Commission notes that it does publish within its annual report a summary of complex determinations.

**Revenue complaint and review procedure**

- 14.63** Taxpayers can use Revenue's complaint and review process to resolve disagreements in relation to a wide range of issues where it was not possible to resolve them during the intervention process. Revenue records show that between 2016 and 2019, this process was used 56 times, an average of around 14 cases a year.
- 14.64** The review process does not interfere with a taxpayer's right to make a statutory appeal, if appropriate.

## Revenue system of tax under appeal

**14.65** There is scope to improve the information in relation to tax appeals and their impact. For example

- Information extracted from the Revenue case management (RCM) system about appeals was not reliable and required extensive revision.
- Information in relation to the original tax assessment and the final assessed liability is recorded at the level of the individual taxpayer. Revenue does not monitor the impact of the appeal process on tax assessed at a global level.
- Revenue does not separately monitor the collection of amounts due in relation to appeals that have been determined.
- Revenue is not in a position to confirm how much tax in total was prepaid pending the outcome of an appeal at end December 2019. This would allow an estimate of how much of the tax under appeal has been paid and how much is actually outstanding. Revenue noted that the information is available on individual taxpayer records.

### Recommendation 14.4

Revenue should review the process for recording tax appeal data on the RCM appeals module. All open appeals should be reviewed to ensure the amount recorded is correct.

#### Chairman's response (Revenue Commissioners)

Agreed.

A review of appeals to update tax in dispute figures in RCM has been completed and procedures have been put in place for a six-monthly review, with central oversight to ensure this position is maintained.

Revenue operational divisions will continue to monitor appeals activity as part of their ongoing management of RCM interventions in respect of their case base and Revenue is in the process of developing a quality assurance programme for periodically reviewing the recording of appeals activities.

### Recommendation 14.5

In order to determine the overall effect of the appeal process, Revenue should monitor the overall change in assessed liabilities (by tax type) as a result of appeal.

#### Chairman's response (Revenue Commissioners)

Part agreed.

Detailed information on pre-appeal assessed liabilities and the change, if any, in those assessed liabilities following an appeal is currently available at individual taxpayer level on Revenue systems. Revenue will, however, consider the development of a monitoring function for appeal cases, as part of further IT systems enhancements. Any significant development, of this type, will be considered from a value for money perspective, having regard to other IT priorities.

## Annex 14A Actions by the Tax Appeals Commission to address recommendations in the O'Donoghue Report 2018

O'Donoghue recommendation	Timeframe in report	Tax Appeals Commission responses to recommendation: progress as at 31 August 2020
<b>1. Governance structures</b>		
1.1	Q2 2020	The Chairperson of the Commission was appointed on 1 July 2020.
1.2	Q2 2020	<b>Complete:</b> Additional commissioners have been appointed, as recommended, and have commenced work with the Commission. As at 31 August 2020 there are two permanent and four temporary commissioners (three full time and one part time) employed by the Commission.
<b>2. Independence</b>		
2.1	Q3 2020	The Commission was advised by the Department that they did not consider it appropriate for them to provide this range of corporate supports. The Department recommended that the Commission conduct a review of the corporate supports it needed and put forward a proposal for future provision of service. A memorandum setting out the corporate supports requirements of the organisation were submitted to the Department in November 2019. The Department has submitted the request for additional corporate services posts to the Department of Public Expenditure and Reform. Sanction for an additional Assistant Principal and Executive Officer was granted. The Assistant Principal post was advertised as a secondment and offered to a candidate. The candidate declined the offer in July 2020. As a result of this, in August 2020, it was decided to reorganise staff internally to address this issue and existing staff increased their portfolio, with additional junior staff being recruited in September 2020 to assist.
2.2	Q3 2020	The Commission is prepared to consider adoption of a shared services model if it becomes available at a future date.

2.3	IT services: it is recommended that there is re-engagement between Revenue and the Commission in relation to the provision of IT systems design and support, and hosting facilities. This should be considered as a priority within Revenue in the context of ensuring a properly functioning appeals system, and should be fully supported by the Commissioners in both organisations.	Q4 2022	<p>There has been engagement between Revenue and the Commission on IT matters. Revenue has provided IT support and hosting facilities since the publication of the report.</p> <p>Revenue has been consulted on the development of a new case management system for the Commission. A Revenue representative has been appointed to the project board and it is intended that they will be consulted as a key stakeholder in the project at all stages with particular emphasis on an effective exchange of information interface.</p>
2.4	IT services: the Department should use its influence to ensure that the Office of the Government Chief Information Officer (OGCIO), in recognition of the scale of the Commission, provides full support to the Commission in relation to assisting with IT development; connectivity with government networks; office systems and other sundry technical matters.	Q4 2022	The Commission has entered into an agreement with OGCIO for IT support and maintenance. OGCIO took over responsibility for IT support and hosting from Revenue on 4 August 2020. OGCIO have also been consulted on the development of the new case management system.

### 3. Additional resources required

3.1	<p>Allocation of additional resources as follows: appeal commissioners x 1; temporary commissioner x 2; principal officer x 1 (to replace the current seconded post — so no addition); assistant principals x 3 (including replacement for current contractor); HEO x 3.5; EO x 2; CO x 3.</p> <p>The intention of this additional resource is to facilitate the creation of a new organisation structure with separate teams specifically to facilitate the identification and management of backlogs together with current caseload. The final determination of how support functions should be organised should be a matter for the principal officer with the agreement of the commissioners.</p>	<p>Q2 2020</p> <p>Q4 2020</p>	<p>The Commission has recruited nearly the full complement of staff recommended in the report. Recruitment of an additional case manager is required.</p> <p>Appointment of the Chief Operations Officer (COO) ensured immediate progress on recommendation of additional resources to facilitate the creation of a new organisation structure. A new interim organisation structure is now in place. It is expected that final determination of optimal operating structure will be led by the chairperson and COO and will be in place by Q4 2020.</p>
3.2	Three-year review: all additional support staff should be appointed as core permanent staff at this point. However, the overall resourcing of the Commission should be re-examined in three years having regard to progress made, ongoing business requirements, and automation and efficiency gains.	Q4 2021	A three-year review of resourcing is expected to take place in Q4 2021 as recommended.
3.3	Recruitment consideration: given the time lags in external recruitment, if the resources required are not available in the timeframe sought by the Commission, consideration should be given to seconding the additional staff on a temporary basis from other organisations in the civil service. Given that both the Department of Finance and Revenue has a direct interest in ensuring the effective operations of the Commission, I would suggest that they should take the lead in the provision of secondees with appropriate skills as a clear demonstration of their commitment to the effective operation of the Commission.	Q4 2020	In all recruitment processes secondment has been explored as an option. It has not proved practical in most cases to fill posts via this method to date. The Department has recently provided an AP on secondment 2 days per week for a period 3 months (mid Sept-mid Dec 2019) to help in the formulation of data protection procedures and policies.
3.4	Workplace mobility: the Commission should request DPER to explore and put in place mobility and career development mechanisms for staff of the Commission and staff of other similar organisations.	Q4 2020	The Commission is a participant in the civil service mobility scheme. The Commission would welcome any further schemes which would encourage staff career development or staff retention.

<b>4. Dealing with backlogs</b>			
4.1	Dealing with backlogs: each Commissioner is accountable in respect of his/her own hearings and determinations. The Commissioners should identify and categorise caseload on hand with a view to determining the scale of the 'backlog' of current cases. They should put a plan in place to deal with this in accordance with some of the suggestions outlined. The plan should indicate a timeframe for the elimination of the backlog and targets for progress against which progress can be reported.	2019-2020	Plans for the elimination of backlogs and targets for progress have been put in place and communicated to the Department of Finance. Commissioners are prioritising finalising cases which have been heard but not yet determined. In relation to legacy appeals, the status of same as at 31 December 2019 is set out at Annex 14B.
4.2	Communication with parties: the Commissioners should communicate with all parties to appeals caught up in the backlog outlining the approaches being taken and identifying when progress might be expected in relation to different categories of appeals.	2019-2020	A review of determinations outstanding was conducted in 2019 and letters sent thereafter. It is intended that this will be repeated as a part of future reviews of cases in any backlog.
<b>5. Process improvements</b>			
5.1	Process improvements: the Commissioners should maximise the delegations available within the Act to optimise the contribution of case managers in the progress of appeals. These delegations should apply to the work of all Commissioners (permanent and temporary).	Q4 2019	A review of the case managers' role and responsibilities was carried out in 2019. This has now been clarified and agreed. A structured case manager development programme has been established and will be progressed during 2020.
5.2	The support structures and systems in place must be optimised through utilisation in a consistent manner by all Commissioners, including temporary Commissioners. The responsibility for ensuring this happens lies with the Accounting Officer.	Q4 2019	Clarification of case managers' role and responsibilities as above have aided progress in this regard. Case managers are now assigned to assist Commissioners on a rota basis to ensure all Commissioners have sufficient access to case manager support.
5.3	The Commissioners should publish indications for expected timeframe for finalisation of determinations following hearing of appeal. A target of two months is suggested. The Commissioners should report on progress in meeting this target.	2019-2020	Given the appointment of a Chairperson and new temporary Commissioners alongside the reduction in backlogs, it is expected that a clearer picture of the timeframe for cases to progress from hearing to determination will be available in Q4 2020. This will be a key indicator for reporting on cases on hand.
5.4	The Commissioners should, using the support of case managers in place, whilst appropriately balancing the issuance of determinations of appeals already heard with scheduling of new appeals, give priority to the finalisation of determinations currently outstanding.	Q1 2019	As outlined in responses to recommendations 4.1, 5.1 and 5.2, plans for the elimination of backlogs, determination of cases already heard and new appeal hearings are already in place. Case managers are assisting will all stages where appropriate.
<b>6. Liaison with Revenue</b>			
6.1	The Commission should formalise liaison arrangements with Revenue to facilitate greater efficiency in the operation of the appeals process.	Q4 2020	The Commission maintains regular contact with the Revenue tax appeals unit and participates in regular Administration Working Group (AWG) meetings with Revenue which are hosted by the Department.
6.2	An interdepartmental group, chaired by the Commission, should be established to explore options for the electronic exchange of information that is required by both the Commission and Revenue in line with Revenue proposal for same.	Q4 2020	These matters have been discussed at AWG meetings. Revenue has been consulted on the design and implementation of the ongoing replacement CMS project which it is hoped will enable such data exchange. A Revenue representative has been appointed to the CMS project board.

### Annex 14B Current status of legacy appeals as at 31 December 2019 is as follows

Status of legacy appeals as at 31 December 2019	No. of appeals	Quantum €000
<b>Currently being processed by the Commission</b>		
On hold (e.g. pending outcome of another appeal or High Court determination or party requesting)	314	101,742
Merged/consolidated	57	10,001
Requested further information from parties and awaiting responses — statement of case, outline of arguments, pre/post hearing documents	36	57,427
Hearings/case management conferences scheduled	32	10,812
Awaiting confirmation of closure of appeals	13	3,260
Awaiting determination	5	8,927
<b>Subtotal</b>	<b>457</b>	<b>192,169</b>
<b>Processing required by the Commission</b>		
Appeals support team	34	13,650
Case manager	17	24,805
Scheduling office	17	5,314
Commissioner	1	—
<b>Subtotal</b>	<b>69</b>	<b>43,769</b>
<b>Overall total</b>	<b>526</b>	<b>235,938</b>

Source: The Tax Appeals Commission

## Annex 14C Assessment of current case management system in place

Key requirements <sup>a</sup>	Current system in place	
Provide a facility for a taxpayer to submit an appeal and correspond with the Commission online.	There is no facility for a taxpayer to submit an appeal and correspond with the Commission online.  A taxpayer must download a form from the Commission's website and submit via post or scan the completed form to info@taxappeal.ie.	●
The system should automatically create a new case on the case management system and generate a unique identifier for the case and pre-populate fields retrieved from the submitted form.	The case management system (CMS) does not allocate a unique identifier to cases appealed.  All appeals received are manually allocated a unique identification reference number on an offline shared spreadsheet.	●
The system should facilitate the upload of documents by the taxpayer and attach to the case.	A hardcopy file is maintained for all appeal cases which is updated as the case progresses. Since mid-2019, the Commission has begun the process of digitally recording documents on a shared drive within the Commission's server.	●
The system should be able to automatically exchange information bilaterally and electronically with external parties, for example, the Office of the Revenue Commissioners.	There is no method of exchanging information automatically from the current CMS. All correspondence with Revenue on cases under appeal is by post or email which is not stored in the case management system.	●
Provide the ability for the Commission administrative team to track and work cases efficiently.	There is limited capability for the Commission to track and work cases efficiently on the current CMS system.  The system records due dates for return of correspondence but does not alert the users if the time has passed and reminders do not issue from the system which would enable cases to be followed up in a timely fashion.	●
Capture history of all updates to a case including timestamp and username.	The CMS currently in place includes an audit trail showing the last user to alter the data and includes a timestamp.	●
A CMS should provide comprehensive reporting capabilities to enable management to assess progress of appeals, current caseload, length of time cases are open and progression of cases by value and year.	The CMS generates a number of reports which are used by management such as the number of new cases in the year by tax type, the number of cases closed in the year and also length of time cases are open. Reports such as 'new in by tax type' 'closed by year category' 'open appeals' and 'time open' are available. These reports provide a snapshot to management of the caseload, however, the Commission must download the system data and undertake manual manipulation of the data to provide statistics for reporting purposes.	●

Source: The Tax Appeals Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a This assessment is based on the specifications contained in the request for tender document issued on 18 April 2016 by the Commission.

● In place ● Partially in place ● Not functioning