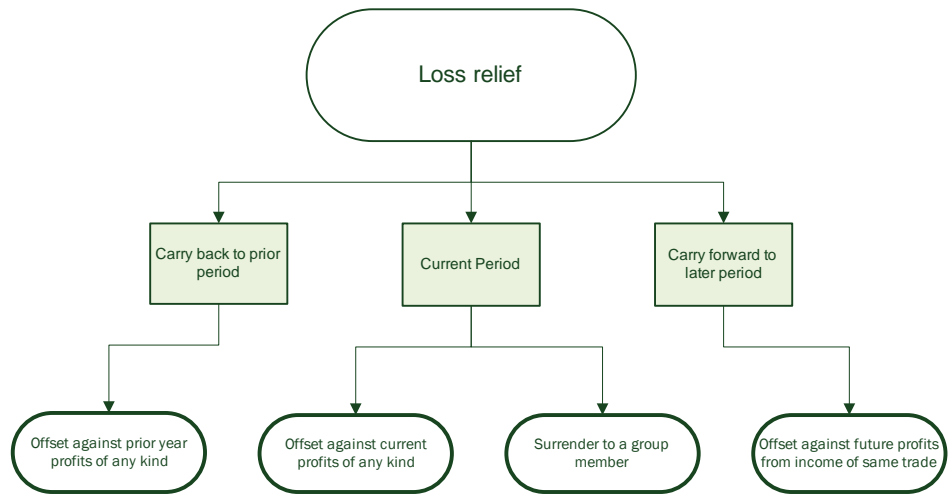


19 Corporation tax losses

19.1 Companies are liable for corporation tax in respect of all profits arising from income or gains.¹ Where a company reports a trading loss in an accounting period, that loss can be used to obtain relief from the payment of corporation tax in a variety of ways (see Figure 19.1). In general, trading losses may be carried forward and offset against income from the same trade in future accounting periods without restriction.²

Figure 19.1 Trading loss relief



Source: Office of the Comptroller and Auditor General

¹ Trading profit is taxed at a rate of 12.5%. Non-trading profit such as rental and investment income is taxed at a rate of 25%. Profit from capital gains is chargeable to corporation tax at a rate of 33%. Trade losses can be used on a value basis against non-trading income or gains.

² A restriction on the use of trading losses carried forward from preceding accounting periods by the financial institutions participating in NAMA was imposed from 2010 to 2014.

19.2 In addition, a company can reduce its tax payable by claiming capital allowances on capital expenditure it incurs on certain types of business assets and premises including plant and machinery, etc. Capital allowances are generally calculated on a straight-line basis on the net cost of the business asset or premises. Unused capital allowances in the year are carried forward as trading losses to the next year.

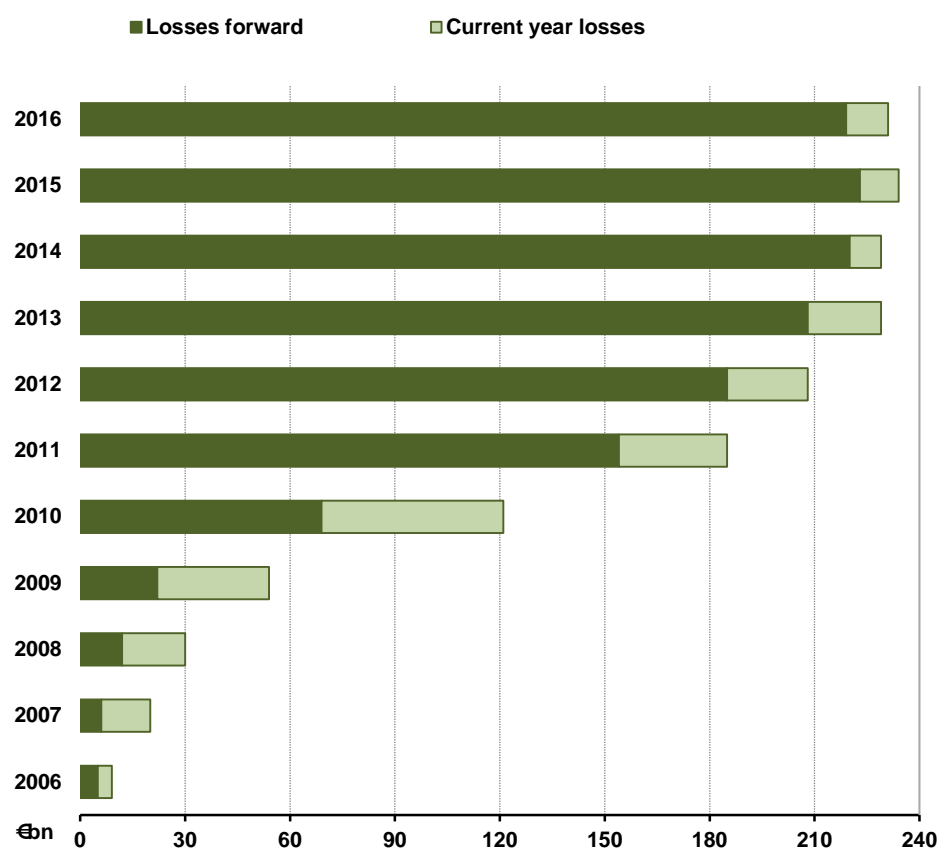
19.3 This examination reviews

- recent trends in corporation tax losses
- trends in the use of corporation tax losses by the companies with the largest losses
- how Revenue uses available data on corporation tax losses for planning and forecasting.

Corporation tax losses available for offset

- 19.4** In 2016, a total of €231 billion of losses and unused capital allowances was available for offset against profits (see Figure 19.2). This compares to 2006 when an estimated €9 billion was available. To put this into context, the €231 billion corporation tax losses available in 2016 is the equivalent of €29 billion in possible future reduced corporation tax receipts for the Exchequer.¹ In 2016, the total net tax receipts was €48 billion.
- 19.5** Revenue began capturing direct information on the value of cumulative losses available to offset against future profits in 2011. For the years prior to 2011, Revenue calculated the amount of unused losses available to carry forward to future years using available information and estimates of the level of losses utilised in relation to group relief.
- 19.6** The significant increase in losses carried forward between 2008 and 2011, and the continuous increase in each subsequent year up to 2015, with a marginal decrease in 2016, is reflective of the economic downturn. Revenue states that about 90% of the losses forward in 2016 belong to companies that had been claiming losses forward for five years or more.² Under current legislation, there is no prescribed order of priority of use for the different components of the trading loss.³ Losses carried forward from a number of periods are indistinguishable.

Figure 19.2 Trading losses available 2006 to 2016^a



¹ If companies that are in liquidation are excluded, this figure would be €24 billion.

² *An analysis of 2016 corporation tax returns and 2017 payments*, Revenue Commissioners, April 2018.

³ Tax Consolidation Act 1997, section 396 (1).

Source: Revenue Commissioners

Note: a Revenue estimates around €40 billion of losses brought forward in 2016 relate to companies that were in liquidation or otherwise unlikely to be in a position to ever use these losses.

19.7 Revenue's systems do not identify unused capital allowances carried forward separately from losses carried forward. Revenue states that there is no basis in tax law for distinction between the part of a trading loss that is attributable to capital allowances and the part that is not; for taxation purposes it is treated as one composite trading loss.

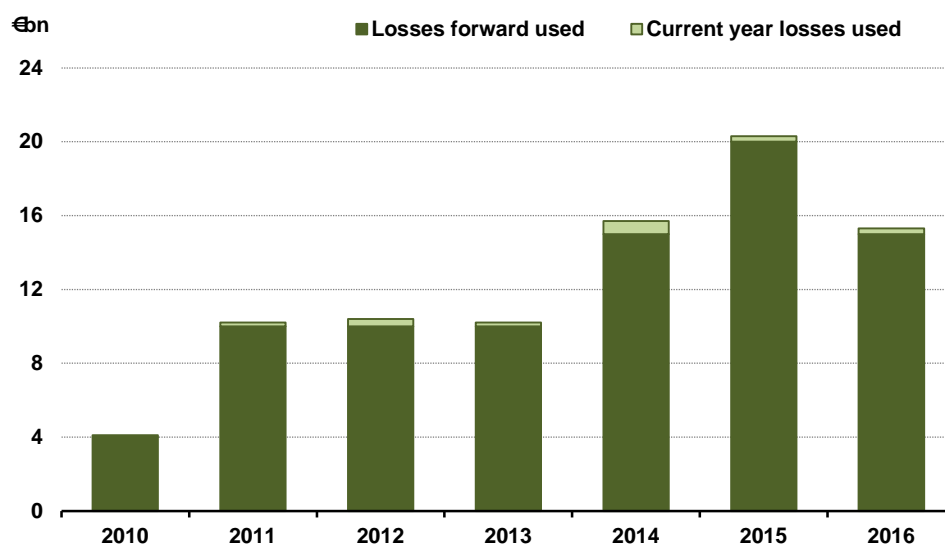
19.8 This lack of detail in Revenue data was highlighted in a report recently published by the Committee of Public Accounts.¹ The Committee has recommended that Revenue put in place procedures to analyse losses carried forward in order to identify those relating to trading losses and those relating to unused capital allowances.

Corporation tax losses used

19.9 The amount of the losses carried forward and the current year losses actually used in each year by companies is set out in Figure 19.3.

19.10 Legislation provides that trading losses forward must be used against the first available profits of the same trade. However, it does not prescribe in which order prior year losses must be used by a taxpayer. Consequently, there is no analysis of losses forward by year incurred.

Figure 19.3 Trends in total trading losses used 2010 to 2016^{a, b}



Source: Revenue Commissioners

Notes: a Revenue cannot provide information for amounts used prior to 2010.
b Excludes the use of losses through group relief and value basis. Value basis means that trading losses can be offset against non-trade income including chargeable gains.

¹ Examination of matters in relation to receipts from corporation tax, Committee of Public Accounts, June 2018.

Sectoral analysis

- 19.11** In 2016, a total of €296.3 billion was available for offset against profit (2015: €285.2 billion). This comprised of
- losses brought forward of €219.6 billion
 - current year losses of €11.7 billion
 - current year capital allowances amounting to €65 billion.
- 19.12** Details of the losses and capital allowances available, used and unused in 2016 by sector are set out in Figure 19.4.
- 19.13** Revenue has stated that evidence from recent years suggests that usage of capital allowances is faster than usage of losses forward, and therefore their inclusion here may underestimate the number of years left for losses. Due to the fact that unused capital allowances are not identified separately, it is not possible to strip out unused capital allowances.

Figure 19.4 Estimate of losses and capital allowances available, utilised and unused at year-end 2016

Sector	Losses and capital allowances available 2016 ^a	Used in 2016 ^b		Unused at end 2016	Number of years left ^c	Number of companies
	€bn	€bn	%	€bn		
Financial and insurance activities	117.8	9.2	8%	108.6	11.8	2,844
Administrative and support service activities	59.1	17.9	30%	41.2	2.3	4,357
Manufacturing	43.6	35.3	81%	8.3	0.24	4,432
Information and communication	17.6	5.7	32%	11.9	2.1	5,101
Construction	13.2	0.7	5%	12.5	17.9	9,778
Wholesale and retail trade	10.0	1.9	19%	8.1	4.3	10,653
Transportation and storage	9.8	1.2	12%	8.6	7.2	2,006
Other	25.2	4.3	17%	20.9	4.9	21,142
Total	296.3	76.2	26%	220.1		60,313

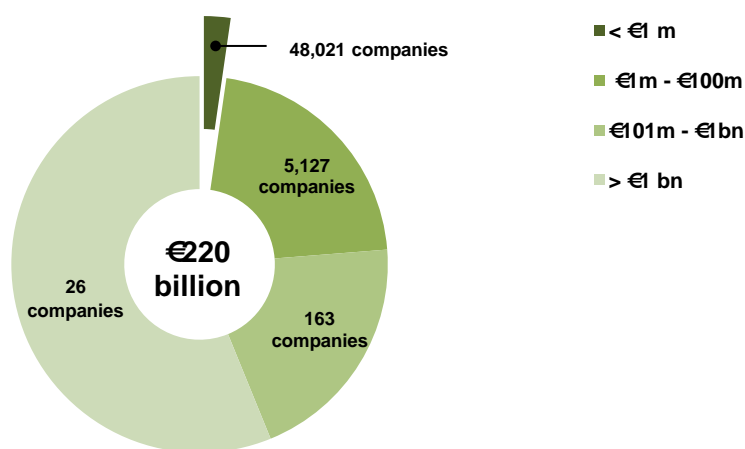
Source: Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a Revenue estimates around €40 billion of losses brought forward in 2016 relate to companies that were in liquidation or otherwise unlikely to be in a position to ever use these losses.
 - b Excludes the use of losses through group relief and value basis.
 - c Estimate is based on the assumption that no new losses will be incurred, the usage rates for trading losses and capital allowances are the same and existing losses are used at the same rate as in 2016.

Numbers of companies carrying losses

- 19.14** Over 60,000 companies had losses available and 26,000 companies used corporation tax losses in their 2016 tax returns. Figure 19.5 sets out the concentration of corporation tax losses carried forward in 2016. Over half (56%) of the €220 billion losses carried forward was available to just 26 companies, an average of approximately €4.7 billion. In comparison, just over 48,000 companies had losses available totalling €5 billion, an average of approximately €104,000.

Figure 19.5 Concentration of corporation tax losses brought forward, 2016^a



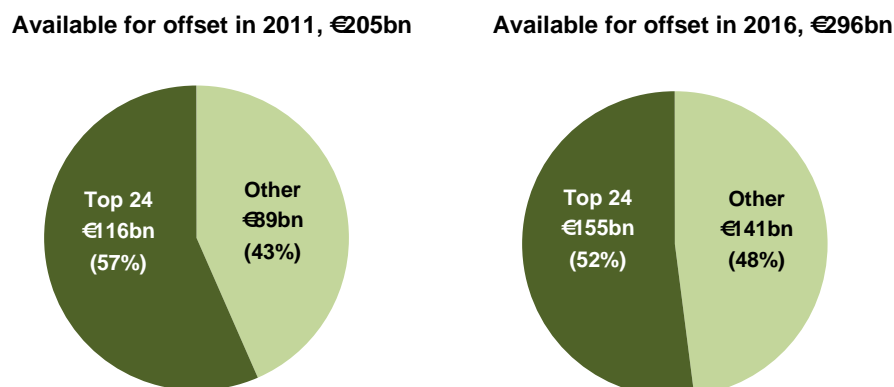
Source: Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

Note: a Companies banded by value of corporation tax losses brought forward.

Analysis of companies with a high level of corporation tax losses

- 19.15** It was previously reported that a large proportion of the €205 billion of losses available for offset against corporation tax in 2011 was accounted for by a relatively small number of taxpayers — 24 cases accounted for €116 billion or 57% of the 2011 total.¹ This compares to €155 billion or 52% in 2016 (see Figure 19.6).

¹ Comptroller and Auditor General, *Report on the Accounts of the Public Services 2012*, chapter 26.

Figure 19.6 Losses and capital allowances available for offset, 2011 and 2016

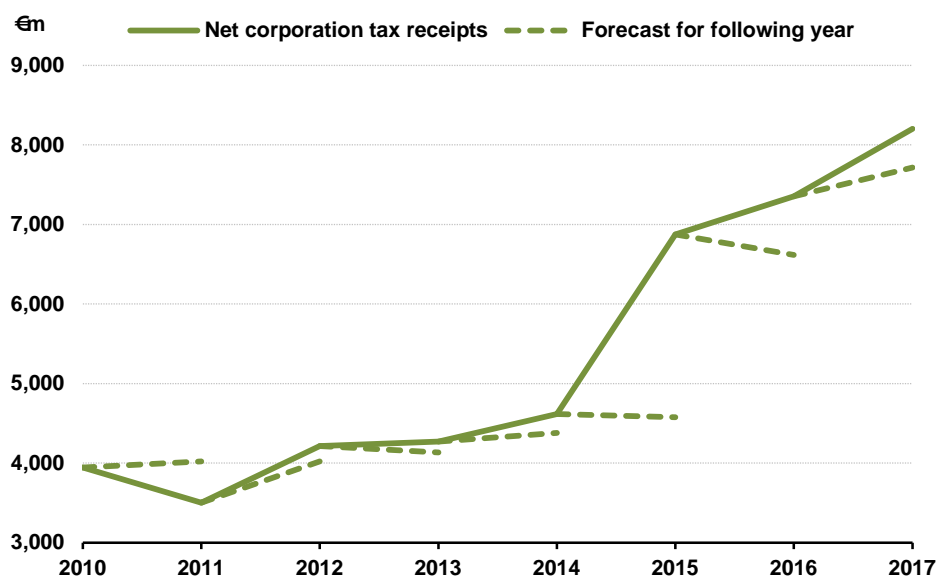
Source: Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

- 19.16** As part of this examination, we compared the 24 companies with the largest losses in 2011 with those in 2016.
- 19.17** 17 of the companies with the largest losses in 2011 are still in the top 24 for 2016, (by which time two had merged). Of the seven companies no longer in the top 24 in 2016, two companies are profitable with no remaining losses, two companies are profitable and using losses, two companies filed nil returns and one company had no trade profits.
- 19.18** Eight companies with the largest losses in 2016 did not feature in the 2011 listing. Although some of those companies are not generating trading losses, their level of capital allowances available against profit means they feature in the top 24 companies using loss relief and capital allowances.

Planning and forecasting

- 19.19** Accurate forecasting of tax revenue is a key part of overall public sector budgeting. The Department of Finance has responsibility for the calculation and publication of tax forecasts each year, which is done with assistance from Revenue.¹ Corporation tax receipts are by nature difficult to forecast, especially in economies such as Ireland, with both a concentration of tax receipts from a small number of taxpayers and a reliance on multinational companies. For 2016, corporation tax losses used accounted for €2 billion of a reduction in tax receipts to the Exchequer. Accumulated losses have a potential cost of tax foregone of €29 billion. Therefore, the future use of losses is a key component of forecasting.
- 19.20** Corporation tax losses are not forecast separately. Revenue states that estimates for future years are based on receipts of previous years on a net basis, with losses an intrinsic part of the tax base for corporation tax. Therefore, it does not consider it necessary to forecast them separately. If significant new losses were to be incurred in the tax base, Revenue expects to capture this through the usual channels and then to adjust estimates accordingly. Figure 19.7 sets out corporation tax forecasts compared to net receipts for the period 2010 to 2017. Significant variations are evident over this period.

¹ The Department of Finance uses gross operating surplus (taken from the National Accounts) together with information derived from Revenue to forecast corporation tax receipts.

Figure 19.7 Corporation tax receipts compared to forecasts, 2010 to 2017^a

Source: Revenue Commissioners and Department of Finance

Note: a Comparison of net corporation tax receipts recorded when received by Revenue to tax profiles from the Department of Finance based on receipts in the exchequer account.

- 19.21** Revenue's view is that forecasting of tax receipts on a net receipt basis (so including the impact of losses) remains the most appropriate approach. It considers that while forecasting of corporation tax has been challenging in recent years, increases in losses and capital allowances are only one of many factors impacting on this process.

Monitoring

- 19.22** An OECD report indicates that special reporting obligations on losses, mandatory disclosure rules, advance ruling mechanisms and co-operative compliance programmes have proven useful in relation to aggressive tax planning schemes on losses.¹ Revenue has a mandatory disclosure regime in place for all taxpayers and a co-operative compliance programme in place for large businesses.
- 19.23** Companies with large losses are monitored by case managers in Revenue's Large Cases Division. The existence of losses is identified through the examination of the corporation tax returns and supporting documents. These documents are considered when analysing risk. Consistent losses can be an indicator of risk of the existence of transfer pricing. Corporation tax losses are considered, amongst other factors, when case managers are assessing the tax risk presented by a case. The way in which losses are being used may also impact on the risk profile of a company.

Conclusions

- 19.24** Significant amounts of accumulated losses have built up since 2008. The current level of €231 billion represents possible future tax receipts reductions of €29 billion.
- 19.25** While some sectors such as manufacturing are now using up these losses, the financial and insurance sector still has a significant overhang. Based on 2016 usage rates, it will take at least 12 years for the accumulated losses in this sector to be used up (assuming no new losses).

¹ OECD, *Corporate Loss Utilisation through Aggressive Tax Planning*, 2011.

- 19.26** There is a high degree of concentration in companies that have accumulated losses, and significant persistence in companies with large accumulated losses.

Capital allowance data

- 19.27** Revenue captures key data regarding corporation tax losses in the corporation tax return. However the losses forward data does not identify separately the capital allowances carried forward, even if the loss forward consists solely of capital allowances. As Revenue has identified possible differences in the rate of usage of capital allowances and of trading losses, such information may be useful for tax forecasting.

Forecasting

- 19.28** The Department of Finance, with assistance from Revenue, carries out forecasting of corporation tax on a net basis, the results of which have a relatively high error rate. Corporation tax losses are not forecast separately. Revenue states that the potential impact of the corporation tax losses informs the estimate of the corporation tax receipts. Separate forecasting of gross receipts and the usage of losses forward may offer potential for improved forecast accuracy.