Chapter 2

Revenue

2.1 Revenue Account

Basis for Audit

An account showing all revenue received and paid over to the Exchequer by the Revenue Commissioners is furnished to me annually. I am required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations of this account as I consider appropriate in order to satisfy myself as to its completeness and accuracy and to report to Dáil Éireann on the results of my examinations. The results of my examinations have been generally satisfactory.

I am also required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations as I consider appropriate in order to ascertain whether systems, procedures and practices have been established that are adequate to secure an effective check on the assessment, collection and proper allocation of the revenue of the State and to satisfy myself that the manner in which they are being employed and applied is adequate. Sections 2.7 to 2.10 refer to matters arising from this examination.

Revenue Collected

Revenue collected under its main headings in 2005 is shown in Table 2.

Table 2 Revenue Collected[1]

	Gross Receipts €m	Repayments €m	2005 Net Receipts €m	2004 Net Receipts €m
Income Tax	14,177	2,837	11,340	10,695
Value Added Tax	15,591	3,465	12,126	10,717
Excise	5,549	158	5,391	5,066
Corporation Tax	6,003	500	5,503	5,335
Stamp Duties	2,693	20	2,673	2,070
Custom Duties	234	8	226	174
Capital Acquisitions Tax	261	12	249	190
Capital Gains Tax	2,016	34	1,982	1,528
Total	**46,524**	**7,034**	**39,490**	**35,775**

Of the net receipts of €39,490m, a total of €168m was paid during 2005 under Section 3 of the Appropriation Act, 1999 from the proceeds of tobacco excise to the Vote for Health and Children. €39,240m was paid into the Exchequer which represented a prepayment of €250m. The amount prepaid at the end of 2004 was €332m.

[1] Total gross collection amounted to €54.2 billion as levies and fees such as PRSI (€7.5 billion), Health Levy (€139m) and Environmental Levy (€18m) are collected for other Departments.

2.2 Tax Written Off

The Revenue Commissioners have furnished me with details of the €143m of taxes and PRSI written off during the year ended 31 December 2005. Details of the total amount written off and the distribution according to the grounds of write-off are shown in Table 3 and Table 4.

Table 3 Taxes Written Off

Tax	2005 €'000	2004 €'000
Value Added Tax	48,433	72,369
PAYE	23,992	36,862
Corporation Tax	15,431	8,326
Income Tax	23,839	16,385
Capital Gains Tax	2,264	868
Other Taxes	4,653	1,120
PRSI	24,689	36,618
Total	**143,301**	**172,548**

Table 4 Grounds of Write Off

Grounds of write-off	2005 No. of Cases	2005 €'000	2004 No. of Cases	2004 €'000
Liquidation/Receivership/Bankruptcy	1,263	69,928	2,097	88,519
Ceased trading – no assets	2,032	34,981	2,760	40,447
Deceased and Estate Insolvent	132	1,340	176	1,350
Uneconomic to pursue	60,911	19,358	19,359	23,162
Unfounded Liability	187	2,160	209	1,983
Cannot be traced / Outside Jurisdiction	588	9,680	586	9,615
Compassionate Grounds	206	1,627	248	2,322
Uncollectible due to financial circumstances of taxpayer	439	4,225	706	5,150
Examinership	4	2	0	0
Totals	**65,762**	**143,301**	**26,141**	**172,548**

In 2005, €3.9m was written off on an automated basis, consisting of cases with small balances (less than €500) which were uneconomic to pursue. Cases under general investigation, potential Ansbacher cases, and cases under the control of the Criminal Assets Bureau are excluded from all write off procedures. The largest single amount written off in 2005 was €8.2m in respect of Corporation Tax owed by a company in receivership. There were five other cases where the amount written off was greater than €1m.

Revenue

The Internal Audit Branch in Revenue undertakes an annual examination of tax write offs. The 2005 audit examined a sample of 192 cases representing 32% (€45m) of the value of non-automated write offs (€140m). In one of the cases examined involving a write off of €211,200, the tax liability was based on system-generated estimates for a company which Internal Audit found had never traded. As a result of the internal audit, the write off was reversed and the estimate discharged instead. In another case involving the write off of €94,851, Internal Audit raised questions in relation to the evidence on file supporting the grounds of write–off i.e. compassionate grounds. The District concerned is re-examining the case and is to furnish a full report to Internal Audit on the outcome. Internal Audit also examined the results of the ten automated write off runs and confirmed the application of the authorised selection criteria for each run.

2.3 Outstanding Taxes and PRSI

Table 5 reflects the activities and transactions in the twelve-month period ended 31 March 2006. Table 6 sets out an aged analysis of the balance outstanding at 31 March 2006. The tables were prepared on the basis of information furnished by the Revenue Commissioners.

Table 5 Outstanding Taxes and PRSI

						Analysis of Balance at 31 March 2006	
Balance at 31 March 2005	**Tax or Levy**	**Net Charges Raised**	**Paid**	**Written Off**	**Balance at 31 March 2006**	**Under Appeal**	**Available for Collection**
€m		**€m**	**€m**	**€m**	**€m**	**€m**	**€m**
289	VAT	11,056	11,067	51	227	69	158
161	PAYE	10,100	10,106	18	137	1	136
176	PRSI	7,350	7,340	21	165	1	164
292	Income Tax (Excluding PAYE)	2,807	2,808	15	276	59	217
—	DIRT	184	184	0	0	0	0
140	Corporation Tax	4,436	4,474	11	91	27	64
148	Capital Gains Tax	2,200	2,206	1	141	85	56
3	Capital Acquisitions Tax	249	249	0	3	0	3
8	Abolished Taxes	0	0	0	8	0	8
—	Relevant Contracts Tax[2]	0	0	0	37	11	26
1,217	**Total Debt**				**1,085**	**253**	**832**
2.5%	**Debt as a % of gross collection** [3]				**2%**	**0.5%**	**1.5%**

[2] RCT was incorporated into Revenue's main ITP system on a phased basis commencing in November 2002. The RCT "state of file" which provides an analysis of debt levels was completed in early 2006 and facilitates the inclusion of RCT debt for the first time.

[3] Gross collection in 2004 was €48,705m and in 2005 was €54,157m.

Table 6 Aged Analysis of Debt at 31 March 2006

Tax	Total tax outstanding at 31 March 2006	Amounts outstanding for 2005	Amounts outstanding for 2004	Due for 2001 to 2003	Due for earlier periods (i.e. > 5 yrs old)
	€m	€m	€m	€m	€m
VAT	227	30	49	117	31
PAYE	137	73	23	26	15
PRSI	165	97	26	29	13
Income Tax	276	4	73	66	133
Corporation Tax	91	19	8	27	37
Capital Gains Tax	141	6	24	18	93
Capital Acquisitions Tax	3	0	0	1	2
Abolished Taxes	8	0	0	0	8
RCT	37	12	9	12	4
Total	**1,085**	**241**	**212**	**296**	**336**

2.4 Revenue Audit Programme

Overall Audit Programme

In a self-assessment system, returns filed by compliant taxpayers are accepted as the basis for calculating tax liabilities. The validity of returns is established by the auditing of a selection of cases either through reviewing and seeking further verification of particular details or by the examination of documents and records at a taxpayer's premises. Revenue changed the categorisation of its audit activities in 2005 to reflect the fact that the intervention by Revenue depends on whether the risk is perceived to relate to one or more tax or duty heading or to specific issues or transactions. Assurance Checks are not audits but interventions that may involve tests, verification checks, desk examinations, visits to premises, searches, site visits and telephone contacts for supporting documentation.

The outcome of the 2005 programme of Revenue audits together with assurance activity is summarised in Table 7.

Table 7 Revenue Audit and Assurance Activity

Category	2005		2004	
	No. of audits completed	Yield €m	No. of audits completed	Yield €m
Comprehensive Audits	5,077	323.3	4,058	382.3
Multi Tax/Duty Audits	1,220	52.3	848	18.4
Single Tax/Duty Audits	6,173	122.8	4,409	68.4
Single Issue/Transaction Audits	1,744	26.6	256	4.1
Verification Audits[4]	0	0	6,750	76.4
Total Audits[4]	**14,214**	**525**	**16,321**	**549.6**
Assurance Checks[4]	98,981	50.4	n/a	n/a
Total Interventions	**113,195**	**575.4**	**n/a**	**n/a**

(n/a indicates figures not available)

Comprehensive Audits

To facilitate the recording of audit activity under the new audit categories, a new case management system – Audit Case Management – was introduced in July 2005. As a transitional measure spreadsheets were used to record audit activity under the new categories and, because of the administrative burden, Regions were not required to analyse settlements by settlement bands. Therefore, analysis by settlement bands was not available for 2005.

The yield of €323.5m from the 5,077 comprehensive audits completed includes interest charges of €124.6m and penalties of €52.7m. The highest settlements were €4.1m for Income Tax and €9.5m for Corporation Tax. Comprehensive audits were completed in 1,249 bogus non-resident account cases with settlements totalling €57.2m and in 1,594 offshore assets cases with settlements totalling €151.8m.

[4]Some activities classified as verification audits in 2004 e.g. VAT refund verification checks, are classified as assurance checks in 2005.

Risk Analysis System

A risk analysis system (REAP) was piloted in four Revenue Districts in 2005 and will be implemented in all Districts in 2006. The system analyses the information available on taxpayers by running a set of queries or rules through a database of taxpayer information, scoring the results and ranking the cases according to those scores. The rules have been derived from the knowledge and experience of Revenue auditors and are refined to take account of new risks and data sources. Based on the system ranking District officers analyse and assess the risk in each case to select suitable cases and decide on the appropriate intervention.

Random Audits – Taxpayer Compliance Testing Programme

Revenue introduced the Taxpayer Compliance Testing Programme in 2005 to replace the Random Audit Programme. The purpose of the programme is to measure and track compliance with tax legislation and to ensure that all taxpayers run the risk of being selected for audit. 411 cases were selected for audit under the 2005 programme. 53 of the selected cases were "dropped" as the taxpayer had ceased trading, had never traded or was recently deceased. Additional tax liabilities were established in 91 of the 298 cases that were finalised. Settlements totalling €1m were agreed in those 91 cases. The outcome of the finalised cases is summarised in Table 8. Analysis of the results of the 2005 programme will be performed when the outstanding 60 cases are finalised.

Table 8 Taxpayer Compliance Testing Programme - Finalised Cases by Size of Additional Liability

Additional Liability	Number of Cases Finalised	% of Finalised Cases
Nil	207	69%
< €2,000	27	9%
€2,001 to €5,000	24	8%
€5,001 to €10,000	13	4%
€10,001 to €20,000	11	4%
€20,001 to €50,000	14	5%
> €50,001	2	1%
Total	**298**	**100%**

2.5 Prosecutions

Under Revenue's prosecution strategy, Regions and Divisions forward cases to Investigation and Prosecutions Division for investigation with a view to criminal prosecution where there is prima facie evidence of serious revenue offences having been committed. These cases are further evaluated within the Division before commencement of the resource intensive criminal investigation work which can take several years before reaching the Courts. In 2005, 91 cases of serious tax evasion were referred to the Division for consideration and 30 were accepted for investigation with a view to prosecution.

Twelve convictions were obtained in the ten cases decided in court in 2005. Summary details of the cases are set out in Table 9.

Table 9 Convictions during 2005 for Serious Tax Evasion

Occupation/Activity	Fine	Custodial Sentence
Oil Distribution Company	€4,000	—
and		
Director of above Oil Company	€7,400	3 months prison sentence
Stainless Steel & Engineering Company	€15,000	—
and		
Director of above company	—-	3 month prison sentence
Retired Farmer	€125,000	2 year prison sentence if fine not paid within 3 months
Sales Administrator	€10,800	3 month prison sentence suspended on condition of 120 hours community service
Contract Cleaning and Security	—	6 month prison sentence suspended on condition of 240 hours community service to be completed within 12 months
Endodontist	€4,500	—
Building Sub Contractor	€18,700	6 month suspended prison sentence on each of 4 counts to run concurrently
Disc Jockey and Promoter	€13,887	—
Veterinary Surgeon	—	Pleaded guilty in 2005, awaiting sentence
Shoe Retailer	—	Pleaded guilty in 2005, awaiting sentence

Of the 84 cases of serious tax evasion on hands in the Investigations and Prosecutions Division at the end of 2005, 36 remained under investigation at June 2006 and seven had been closed. The status of the other 41 cases was

- 5 are with the Revenue Solicitor's Office
- 12 have been submitted to the DPP
- The DPP has issued directions to prosecute in 9 cases
- Bench warrants have been issued in 1 case
- 14 cases are before the court.

In addition, there were 12 convictions for serious Customs and Excise evasion in 2005.

2.6 Special Investigations

Table 10 sets out the payments made to the end of June 2006 as a result of each of the Special Investigations being carried out by Revenue. A short summary of progress to date in the investigations follows.

Table 10 Payments arising from Special Investigations

Investigation	Cases Involved	Payments to Date
DIRT — Look Back Audits (financial institutions)	37	€225m
DIRT — Underlying Tax		
Voluntary Disclosure Scheme	3,675	€227m
Post Voluntary Disclosure Investigations	c. 8,500	€390m
NIB	465	€57m
Ansbacher	289	€62m
Pick Me Up Schemes	71	€0.8m
Mahon Tribunal	27	€30m
Moriarty Tribunal	18	€8m
Offshore Assets	13,990	€826m
Undisclosed Funds – Life Assurance Products	5,150	€398m
Total		**€2,223.8m**

Underlying Tax on Bogus Non-Resident Accounts

A total of 3,675 taxpayers paid €227m under the Voluntary Disclose and Pay Scheme whereby underlying tax relating to funds deposited in bogus non-resident accounts was required to be paid by 15 November 2001 to avail of the incentives of a cap of 100% on interest and penalties and an undertaking not to prosecute or publish details of the settlement. Revenue selected 268 of these cases for liability review. 208 of these were accepted as being correct, additional payments of €5,816,408 were required in 54 cases and six cases are still being examined. Payments on account of €1,097,769 have been received in four of the six open cases. All cases were reviewed for eligibility and 17 cases were deemed to be ineligible. Ten of these have been settled with additional liabilities of €1,669,325. One of these cases was prosecuted and received a two year suspended sentence. The remaining seven cases are at various stages of investigation.

Revenue used their powers under Section 908 of the Taxes Consolidation Act, 1997 to obtain information from financial institutions to help identify bogus non-resident account holders who did not avail of the Voluntary Disclose and Pay Scheme. Eighteen orders under Section 908, seeking information on account holders from 26 financial institutions, were granted. At June 2006, payments of €390m had been received from bogus non-resident account holders over and above the proceeds of the voluntary scheme.

Revenue estimates that the likely future yield from the DIRT underlying tax investigation will be of the order of €20m and will arise over the next couple of years.

Offshore Investments via National Irish Bank

Investigations have concluded in 430 of the 465 cases identified as having invested in an offshore investment scheme operated by National Irish Bank. Settlements totalling €51m have been made in 308 of these cases while the other 122 cases had no liability. Investigations are continuing in the remaining 35

cases and payments on account of €3.2m have been received from 12 of these. Over and above these amounts National Irish Bank has paid €3.1m in respect of Capital Gains Tax on compensation it paid to certain investors. Revenue estimates that a further €4m should be paid and that the investigation will be concluded within approximately 12 months.

Ansbacher Investigation

Cases directly involving Ansbacher type arrangements, as well as other cases involving offshore funds and deposits, are being investigated. There are 289 cases, comprising 179 cases on the High Court Inspectors' Report and 110 similar cases discovered by Revenue or listed in the Authorised Officer's Report.

Ten High Court orders have been obtained against financial institutions and third parties requiring the production of books, records and documentation. Some 220,000 documents have been received under the terms of the High Court Orders. Also, documentation has been received on foot of the June 2004 High Court order which allowed for access to certain documentation relating to clients of Ansbacher named in the High Court Inspectors' Report and those persons found by the High Court Inspectors to have failed to co-operate with their enquiry.

A total of 210 cases have been settled to date, 83 of which had total liabilities of €50.77m. This includes a settlement of €7.5m with a Cayman Islands based bank. The other 127 cases settled had no liability and include 66 non-resident cases covered by the provisions of Double Taxation Agreements, as well as 18 cases covered by the 1993 Amnesty provisions. Payments on account of €11.16m have been received in 27 of the 79 on-going cases. As some of the cases are likely to proceed to the Courts, it is not possible for Revenue to predict either the potential yield or the time frame to completion.

Pick-Me-Up Schemes

Pick-me-up Schemes involved expenses for goods or services incurred by a political party being invoiced by the supplier to another trader who paid the supplier as a means of supporting the party. Such payments were not deductible for tax purposes, the VAT was not reclaimable and the invoices issued were not in accordance with the legal requirements. The investigation found a total of 71 cases that apparently avoided tax by engaging in "picking up" expenses, which were proper to political parties. 44 cases have been settled for a total of €552,344 including interest and penalties. Payments totalling €226,165 have been received in connection with ten other cases including Tribunal cases which are still to be finalised. It is proving difficult to conclude certain cases because of the age of the payments, which were made in the 1980s or early 1990s, and the lack of documentation and records gives rise to difficulty in confirming liability. It is not possible for Revenue to estimate with any degree of accuracy the final outcome and yield in connection with outstanding matters.

Tribunals

Matters disclosed at the Moriarty and Mahon Tribunals, which suggest that tax evasion may have occurred, are being investigated as they come to notice. Eighteen cases are being investigated as a result of the Moriarty Tribunal and two cases have been settled for a total of €6.3m. Payments on account of €1.4m have also been received. Twenty-seven cases are being investigated as a result of the Mahon Tribunal and four of these have been settled for €26.5m; payments on account of €3.6m have also been received.

The Moriarty Tribunal is nearing completion and it is not expected that further cases will arise. Revenue does not know if any additional cases will arise from the Mahon Tribunal or when that Tribunal will conclude. In relation to the cases being investigated, a further yield of €5m over the next two years is expected.

Offshore Assets

This investigation is concerned with those who have not paid tax due on funds held in offshore accounts and investments. The voluntary phase of the investigation required taxpayers to give Revenue notice of their intention to make a qualifying disclosure by 29 March 2004 and submit a statement of disclosure and any payment due by 10 June 2004. The benefits of meeting these deadlines were mitigation of penalties, settlement details would not be published and there would be no prosecution. Disclosures were received from 13,651 taxpayers and €650m was received both from this phase of the investigation and from two earlier investigations.

As a follow-up to the voluntary phase, nine High Court orders have been obtained requiring financial institutions to supply details of transactions by their customers relating to offshore operations. Revenue has been receiving information in relation to these Orders but it is not anticipated that all data will be received before the end of 2006. "Challenge letters" have issued in a number of cases and more will issue during 2006. Further information and court orders will be required to identify persons who could not be identified from the information originally submitted. A further €175.7m has been received since the voluntary scheme, arising from reviews of the voluntary submissions and payments from some 339 taxpayers who did not avail of the voluntary scheme. This follow-up work is likely to run for at least a further two years and the final yield from the investigation may approach €1 billion.

Life Assurance Products

Investigations into the use of life assurance investment products to hide undisclosed income or gains began in 2004. The voluntary disclosure phase of the investigation set a deadline of 23 May 2005 for those who invested undisclosed funds greater than €20,000 in such products to give notice to Revenue of their intention to make a voluntary disclosure. Full disclosure and payment was then required to be made by 22 July 2005. The benefits to the taxpayer in availing of the voluntary scheme were that the settlement details would not be published, there would be no prosecution and penalties would be mitigated in accordance with the Code of Practice for Revenue Auditors. About 10,000 notices of intention to make disclosures were received and some 5,150 taxpayers made payments of €398m under the voluntary scheme.

The second phase of the investigation involves identifying those who did not avail of the voluntary scheme. Revenue used new powers provided in the Finance Act 2005 (section 140), which allows it to sample the information held by a life assurance company that relates to a class or classes of policies and policyholders, where there are circumstances which suggest that such policies have been used to invest untaxed funds. The information obtained can only be used to assist in making an application to the High Court for an order to have wider access to the information. Revenue has completed the sampling work in 14 assurance companies. The information gathered from that work and from the voluntary disclosures is being used to assist in applications to the High Court for orders directing assurance companies to furnish details on individual policyholders and policies to Revenue (11 orders were applied for and made in July 2006). Revenue expect this investigation to take a number of years to complete and the final yield may exceed €500m.

2.7 International Aspects of Revenue Operations

In an open economy and in an era of rapid and extensive movement of persons, goods, investments and services across national frontiers, the international aspects of Revenue's operations have extended far beyond the traditional customs area to become an important element of the administration of all taxes. While the customs area retains importance both in the prevention of criminal activities, and through a shared responsibility for the external frontier of the EU, Revenue also ensures that effective tax administration is maintained through the development of double taxation agreements, information exchange, the implementation and operation of relevant EU Directives, participation in EU Working Groups, and ensuring that Irish tax administration interests are reflected in the taxation policies of the EU, the OECD and the World Customs Organisation.

I examined some aspects of Revenue's operations that have a strong international element and, in particular, considered the extent to which Revenue is systematically and efficiently making full use of the provisions and arrangements in those areas in order to optimise the assessment and collection of taxes and duties. The areas reviewed were Double Taxation Agreements (DTAs), Mutual Assistance for Direct Taxes and for Recovery of Claims, and VAT Carousel Fraud.

Double Taxation Agreements

Section 826 of the Taxes Consolidation Act 1997 contains the legislation under which Ireland's DTAs or tax treaties are negotiated and subsequently ratified by the Irish Government. Generally, the agreements cover income tax, corporation tax and capital gains tax. Ireland has presently DTAs in force with 44 countries[5]. New treaties with Argentina, Egypt, Kuwait, Malta, Morocco, Singapore, Tunisia, Turkey, Ukraine and Vietnam are under negotiation. Existing treaties with Cyprus, France, Italy and Korea are in the process of re-negotiation, and procedures to bring into force a new treaty with Chile and a protocol amending the existing treaty with Portugal were completed by Ireland in December 2005.

DTAs are predominately based on the OECD Model Tax Convention on Income and Capital and are drawn up to eliminate double taxation and to clarify situations where a taxpayer might find himself subject to taxation in more than one country. Generally, the agreements provide that the taxpayer will only be taxed in one country or, if both countries retain the right to tax, the taxpayer is entitled to a tax credit in the country of residence against tax paid in the other country. The agreements counter any harmful effects that double taxation would otherwise bring to the exchange of goods and services and the movement of capital. The agreements also provide for the exchange of information between the tax authorities to prevent tax avoidance or evasion.

Where a DTA does not exist with a particular country, there are unilateral provisions within the Irish Taxes Acts, which allow credit relief for tax paid in other jurisdictions in respect of certain types of income (e.g. dividends and interest). The Direct Taxes Interpretation and International Division (DTII) of Revenue is responsible for dealing with all enquiries in respect of DTA matters.

Although most of Ireland's DTAs are based on the OECD model, all of them contain non-standard provisions. Examples of non-standard provisions include

[5] Australia, Austria, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America and Zambia

- Ireland – Australia: contains rules for taxing gains on assets specifically referred to in the agreement.
- Ireland – Estonia: the residence of a business entity is to be decided by mutual agreement between the countries. The terms of the agreement may not apply to such and entity if agreement cannot be reached.
- Ireland – Switzerland: a partnership organised under the laws of Switzerland is deemed to be resident in Switzerland. A partnership organised under the laws of Ireland is not provided for.
- Ireland – Spain: the country in which a company is resident has the right to tax gains on the disposal of its shares by a resident of the other country provided the shareholder had at least a 25% interest in the company in the year preceding disposal.

The Accounting Officer informed me that in the context of globalisation of business, it is Government policy to continue to expand Ireland's network of DTAs. The network has already been substantially expanded - from 23 DTAs in 1994 to the 44 that are now in force. Ireland has signed and completed the ratification process in respect of a 45th country and DTAs are being negotiated with ten other countries. In addition, first round negotiations will take place with a further three countries this autumn. Revenue has also recently re-negotiated its treaty with Portugal and is currently re-negotiating four other existing DTAs. He pointed out that it should, however, be understood that DTAs are a bilateral process.

In relation to regular review of DTAs, he stated that existing DTAs are kept under general review. Where identified problems arise, consideration is given to requesting negotiations with the other country to amend the treaty. Where weaknesses are identified in one treaty, others which contain similar provisions are reviewed also. He pointed out that this is a rolling process. Portugal is an example of a case where Ireland proposed amending the treaty to avoid the non-taxation of capital gains. Another is the UK treaty which was amended by a protocol in 1998 to reflect various domestic law changes.

The Accounting Officer pointed out that each country, including Ireland, adapts the OECD model to its own domestic laws and policies and that the provisions that are ultimately included come about through a process of negotiation. All of Ireland's DTAs depart to varying degrees from the OECD model but it should be borne in mind that the OECD model is only that – a model – and that there is also a UN model tax convention. All of the examples of non-standard provisions illustrate the point that departures from the models reflect the domestic tax laws and policies of the countries concerned. Ireland proposes several departures from the OECD model in tax treaty negotiations. For example, it is Revenue policy to seek an exemption from source taxation of aircraft leasing income because of the large aircraft leasing industry in Ireland and a zero rate of withholding tax on interest payments, because of the open nature of Ireland's economy and the location of international banking and treasury businesses in Ireland. He stated that the agreement with Switzerland contains the provision regarding partnerships because Switzerland, unlike Ireland, treats a partnership as a separate entity from the partners. The definition of partnership was, therefore, included to protect Switzerland but does not in any way undermine the Irish tax position. The language in the capital gains article of the Spanish agreement reflects the UN model tax convention which is the model the Spanish use.

Tax Information Exchange Agreements

In 2000 the OECD called on countries with tax haven characteristics to cooperate with OECD work in combating tax evasion by exchanging information with tax authorities in OECD countries based on a model Tax Information Exchange Agreement (TIEA). Revenue is currently negotiating TIEAs with the Isle of Man, Jersey, Guernsey, the Cayman Islands, and the British Virgin Islands. If these negotiations are successful the agreements will provide for the exchange of bank information on request, as well as information on the beneficial ownership of companies, partnerships and trusts. The Accounting Officer informed me that consideration would be given to agreeing TIEAs with other jurisdictions in the light of experience with the current negotiations.

Mutual Assistance – Direct Taxes

DTII is responsible for the exchange of information between Revenue Authorities under the provisions of Double Taxation Agreements and also under the EU Directive 77/799/EEC[6], as amended, which provides for mutual assistance (exchange of information) in relation to direct taxation. Exchange of information requests to Revenue relate to issues such as

- Is the individual/company resident in Ireland for tax purposes?
- What taxes are they registered for?
- What tax have they paid?
- Do they own any property in Ireland?
- How many employees does a company have?
- Who are the directors and shareholders of a company?
- Contract verification
- Bank information.

Details of requests are logged on to a database and DTII search Revenue's systems to obtain the required information. If the requested information is not readily available, the details are requested by DTII from the liaison officer in place in each District and the liaison officer provides the requested information to DTII for forwarding to the requesting country. Requests issued by Ireland are forwarded by various sections of Revenue through the liaison officers to DTII who forward the request to the other country. Details of the extent of the exchange of information in the years 2003 to 2005 are set out in Table 11.

Table 11 Direct Taxes Requests for Information 2003 – 2005

Year	Requests Received			Requests Issued		
	Received	Completed in Year[7]	Cases Open[7]	Issued	Completed in Year[7]	Cases Open[7]
2003	155	159	143	21	8	50
2004	145	176	112	24	0	74
2005	117	114	115	13	1	86
Total	**417**	**449**		**58**	**9**	

Information is also exchanged automatically and spontaneously between countries. Spontaneous exchanges occur where the tax authorities of one country believe that they have information that would be of assistance to another country. Certain routine information is exchanged automatically between countries e.g. information relating to taxpayers with addresses in another country who receive a refund of Irish withholding tax (e.g. professional services withholding tax, relevant contracts tax and dividend

[6] EU Directive 77/799/EEC and subsequent amendments were transposed into Irish law by various Statutory Instruments. Statutory Instrument 367 of 2005 gave effect to the latest two amending directives and also consolidated and gave effect, in one set of regulations, to Directive 77/799/EEC, as amended.

[7] Cases in these columns include cases received/issued in earlier years.

withholding tax). The level of automatic and spontaneous exchanges of information in relation to Direct Taxes in the years 2003 to 2005 are set out in Table 12.

Table 12 Number of Automatic and Spontaneous Exchanges 2003 - 2005

Year	Automatic		Spontaneous	
	Received	Issued	Received	Issued
2003	21	10	38	1
2004	27	11	51	3
2005	20	13	44	2
Total	**68**	**34**	**133**	**6**

I asked the Accounting Officer whether he considered that the volume of automatic and spontaneous exchanges of information received by Revenue was consistent with the level of economic activity by Irish residents abroad as indicated by Revenue's recent major investigations, its examination of property abroad and general economic reporting. In response, the Accounting Officer stated that the level and extent of spontaneous reports received from treaty partners is dependent on the knowledge and skills of revenue officials in these jurisdictions and the extent to which those officials can readily identify Irish residents engaged in business transactions within these jurisdictions. In general, business transactions are conducted through corporate vehicles and it may not be apparent from the more complex transactions, where there may be a number of corporate vehicles, that the ultimate ownership lies with Irish residents. The recent Revenue investigation in relation to offshore accounts focussed on subsidiaries and affiliates of Irish financial institutions which had operations outside the State. In the main, these subsidiaries and affiliates had operations in what were traditional tax havens and exchanges of information would not have occurred with these jurisdictions. Revenue has recently initiated a series of meetings with a number of these jurisdictions with a view to concluding tax information exchange agreements. Overall, while the level of spontaneous reports received may not appear significant, the reports received are of a high quality and are considered a useful tool in ensuring compliance with the tax code. Revenue's experience, which is also the experience of other OECD members, in receiving automatic exchanges of information is that the accuracy and usefulness of the information received varies from country to country. Often, insufficient detail in the information provided prevents Revenue from using the information properly. The types of information held by revenue authorities in OECD countries varies and therefore, some information which would be of interest to Revenue may not be held by those countries. Other countries do not engage in automatic exchanges of information yet. Efforts are being made at OECD level to improve the exchange of information system. In May 2006 the OECD released a manual to provide practical assistance to officials dealing with exchange of information for tax purposes and to help member countries in designing or revising national manuals. Also, a sub-group of the OECD Working Party on Tax Avoidance and Evasion was set up to improve the technical and operational aspects of exchange of information for direct taxes. Two current topics being addressed are

- Increasing the efficiency of exchange of information processes and to ensure exchange of information can be used more effectively in a compliance context
- Monitoring the OECD standards for automatic exchange and identifying new types of information to be exchanged automatically.

He stated that Revenue is confident that the recommendations from the aforementioned work will enhance the effectiveness of the exchange of information system among OECD members.

The Accounting Officer informed me that Revenue in the past did not automatically exchange bank information with treaty partners and therefore, in relation to the bogus non-resident accounts, would not have provided such details to other jurisdictions. However, following the implementation of the EU Savings Directive, Revenue is now providing bank information to Ireland's EU treaty partners relating to interest arising in the State on or after 1 July 2005.

Mutual Assistance – Recovery of Claims

EU Directive 76/308/EEC[8], as amended, provides for the exchange of information in respect of, and the recovery of, claims made by other member states in respect of debts due to that State for VAT, income and capital taxes, import and export duties, etc. Directive 2002/94/EEC sets out the detailed rules for implementing the provisions of Directive 76/308/EEC[8].

These mutual assistance arrangements are designed to ensure

- cross-border provision of any information that would be useful in the recovery of claims
- instruments and decisions, including those of a judicial nature, that relate to a claim and/or its recovery are notified to addressees in other member states
- member states that have exhausted the means of recovery of uncontested claims in their own state can recover the claim in other member states as appropriate.

Requests for Information Relating to Claim Recovery

Under Article 4 of the EU Directive, a member state may make a request for information relating to the recovery of its claim in another member state. When Revenue receives a request they are obliged by the Directive to provide any information, which would be useful to the applicant authority in the recovery of its claim. However, Revenue is not obliged to supply information

- which it would not be able to obtain for the purpose of recovering similar debts, or
- which would disclose any commercial, industrial or professional secrets, or
- the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the state.

Requests for information are received in a central liaison office known as VIMA[9]. The requesting state provides the name and address of the person to whom the information to be provided relates and the nature and amount of the claim in respect of which the request is made. The details are recorded on a database and an acknowledgement is forwarded to the other member state. The details of the request are forwarded to the relevant area of Revenue to obtain the information requested. When the requested information has been collected, the details are supplied to VIMA who forward the data to the requesting state's central liaison office.

Requests for information to another Member State generally arise from a Revenue audit. The request is sent through VIMA to the other member state's central liaison office and all details are recorded on a database. When the reply is received the details are forwarded by VIMA to the relevant Revenue office.

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[8] Statutory Instrument 462 of 2002 (as amended by Statutory Instrument 344 of 2003) consolidates and gives effect to Directive 76/308/EEC as amended, as well as the detailed rules for implementing that Directive contained in Directive 2002/94/EEC.
[9] VIMA deals with the VAT Information Exchange System, INTRASTAT (gathering statistical data from traders), and Mutual Assistance.

The number of requests for information received and issued in relation to recovery of claims in each of the last three years is set out in Table 13.

Table 13 Requests for Information for Recovery 2003 - 2005

Year	Received	Issued
2003	2	0
2004	16	3
2005	14	8
Total	**32**	**11**

I sought the observations of the Accounting Officer on the low level of requests for information for recovery issued by Revenue (as reflected in Table 13) and requests for information in relation to direct taxes (Table 11). In reply, the Accounting Officer stated that low awareness and the length of time involved are factors that may influence the number of requests. In order to increase awareness, Revenue issued exchange of information guidelines on its internal website in October 2004 and followed this up with a series of talks to staff in the Dublin area in late 2004 and early 2005. A number of liaison officers have also been appointed throughout the organisation to promote and facilitate the use of the exchange of information system. It is hoped that this will, over time, lead to greater use of exchange of information under treaties. Although the numbers have not increased significantly as yet, a marked improvement in the quality of the requests being drawn up at local level has been noted. Unnecessary and incomplete requests for information have been reduced and the requests are now more focused and targeted. The Accounting Officer recognises that more work needs to be done to promote the exchange of information and Revenue is examining ways to further heighten awareness internally. A high priority is being given by the OECD to assisting countries in obtaining timely and high quality information from treaty partners. One of the initiatives the OECD has taken is to set up a secure website for competent authority staff dealing with exchange of information matters containing, for example, country-specific information, current list of competent authorities, useful public website links in each country and a guide to sources of information in each country. The use of this website will help to reduce unnecessary or incomplete requests by making as much information as possible available in each country. Other areas being given priority include (i) the implementation of streamlined procedures and, where appropriate, standardising procedures and forms and (ii) the greater use of information technology. Ireland participates at OECD level on all of these issues and has contributed to the secure website.

Requests for Claim Recovery

Under Article 6 of the EU Directive, at the request of a member state, the requested state shall recover claims in accordance with the laws, regulations or administrative provisions applying to the recovery of similar claims arising in that member state.

The Collector General is the competent authority in Ireland for issuing requests for recovery to other member states, and to collect debts on behalf of other member states. Prior to May 2006, incoming requests were received via VIMA but the Collector General now receives the cases directly from the other member state.

Requests for Recovery Received by Revenue

Requests for recovery received are recorded on a database. A demand in writing is then issued to the taxpayer and the sum outstanding becomes due and payable seven days from the date of the issue of the demand. If the written demand is unsuccessful, the Collector General forwards the case to the Revenue

sheriff for collection. If the debt remains uncollected, the Collector General can sue for the debt in the District or Circuit courts. Details of requests received for recovery of claims and of cases recovered in each of the last three years are set out in Table 14.

The apparent low success rate in recovery of claims is considered by the Collector General to be due to

- increasing mobility of taxpayers within the EU states
- lack of communication between the taxpayer and the requesting authority regarding his/her movements
- lack of communication between the local tax office and the head office in the applicant country leading to incorrect claims for recovery.

Table 14 Requests Received for Recovery of Claims 2003 - 2005

Year	Received		Recovered		% of Value Recovered
	Number	Value	Number	Value	
2003	118	€2,695,224	25	€638,391	24%
2004	288	€11,945,991	36	€1,428,034	12%
2005	483	€28,659,125	89	€615,000	2%
Total	**889**	**€43,300,340**	**150**	**€2,681,425**	**6%**

Note: 182 cases were closed in the year 2005 at the request of the requesting authority following the intervention of the Collector-General. These cases consisted of uncollectible tax of €3,484,868.

In a sample of 16 cases examined, 8 cases had a time lag of at least one month between the Collector General receiving the request and the issuing of the demand letter to the taxpayer. A further sample of 15 cases, which were forwarded to the Revenue Sheriff in 2005, were examined. In five of these, no response had been received from the sheriff at the beginning of April 2006. In most other cases, the Collector General's office had to contact the Revenue Sheriff for a reply. Delays in waiting for the translation of foreign documents were also noted. Information on the number of open cases, number with sheriff, etc. is not readily available from the database and at present is extracted manually. Some requests received dating from 1999 remain open.

As I was concerned that the low recovery rate and the delays noted might indicate that Revenue was not fully meeting its obligations, I sought the views of the Accounting Officer. The Accounting Officer informed me that he is satisfied that Revenue is meeting its obligations in relation to requests to recover tax on behalf of other countries in a satisfactory manner. He noted that the two years (2003 and 2004) for which EU comparisons are available show that Revenue recovered 24% and 12%, respectively, of tax requested compared to an EU average of about 1% and 2%. Even with the fall in collection performance for 2005, Revenue will still probably be around the EU average for that year. The recovery rate in cases where Revenue is requested to recover tax on behalf of other countries needs to be viewed in the context of the nature of the claims involved

- Cases have first of all been subject to all appropriate/available collection activity by the requesting State. The cases therefore have already resisted all attempts at collection.
- Information in relation to addresses is not accurate in many cases.

- Requests for recovery of estimated amounts are received and these often end up with no liability when returns are submitted.
- Many of the taxpayers who are the subject of these claims tend to move regularly between States and while they may have resided in Ireland at some point, they may have moved elsewhere by the time the claim for recovery is received.

In relation to delays in cases where recovery is requested, the Accounting Officer said that the Collector General's Division, on receipt of claims carry out checks to ascertain as much information on the taxpayer as possible in order to make the best decision on the course of action to take in individual cases. In three of the eight cases Revenue had to revert to the applicant State for clarification prior to issuing the demand for payment. In general, demands are issued in the vast majority of cases within a month of receipt of the request. It may also have been the case that internal Revenue arrangements as regards claims recovery could have added to the timespan for processing of claims recovery requests. The fact that all claims and correspondence concerning claims are now transacted directly between the applicant authority and the Collector General's Division will help to minimise delays in processing cases.

Requests for Recovery Issued by Revenue

A report of non-resident cases with tax outstanding of greater than €20,000 is prepared quarterly[10]. The April 2006 report contained 282 cases and total tax outstanding of €25m. The Debt Management Unit ensures that all avenues open to them have been exhausted in the attempt to collect the debt and appropriate cases are then forwarded via VIMA to the tax authority of the appropriate member state for enforcement.

Details of request for recovery sent to other member states in the years 2003 to 2005 are set out in Table 15. Issues noted from an examination of procedures and cases were

- A relatively small number of requests are issued to other member states
- Many of the cases forwarded by the Collector General's to other member states are based on estimated liabilities. In a sample of 10 cases from 2004, the total sum requested was €1,148,648 and €991,329 of this liability was based on estimated figures. As at April 2006, €100,345 of this estimated liability was collected, the estimated amounts have been reduced by €794,467, and €96,517 remains outstanding.
- One of the cases reviewed from the quarterly report of outstanding taxes was in respect of an Australian resident who owed €247,208. This amount was written off. Revenue is unable to use the authorities in non-EU countries to collect outstanding amounts on their behalf. While provision was made in this regard in the OECD model tax convention[11], Revenue has obtained legal advice to the effect that the inclusion of the provision as set out in the model convention would not be constitutional in Ireland.

[10] Cases with certain "stops" (e.g. liquidation, receivership, under appeal, under investigation, audit) and cases with current balances outstanding are excluded from the report.
[11] Article 27 of the model convention.

Table 15 Requests Issued for Recovery of Claims 2003 - 2005

Year	Issued		Recovered		% of Value Recovered
	Number	Value	Number	Value	
2003	41	€9,096,178	6	€226,019	2%
2004	20	€2,787,657	17	€437,210	16%
2005	48	€6,110,315	23	€761,726	12%
Total	**109**	**€17,994,150**	**46**	**€1,424,955**	**8%**

An EU Commission Report in 2006[12] concluded that although there has been a significant increase in the use of mutual assistance for recovery of claims, a substantial gap remained between the amounts for which assistance is requested and the amount actually recovered. Aggregate figures for the EU show that percentage of recovery requests satisfied were 1.13% in 2003 and 1.82% in 2004.

The Accounting Officer informed me that the 282 non-resident cases on the April 2006 quarterly report included all foreign-based registrations and not just those in the EU. Subsequent examination of each case in the context of caseworking will determine the suitability of the case for any particular type of recovery action. For example, examination will show the availability of RCT offsets, subsequent payment of the debt, case having ceased trading prior to the period covered by an estimate of liability by Revenue. Examination of a sample of 50 of the larger liability cases in the listing of 282 indicated that less than 10 of these have the potential for referral for collection under mutual assistance. Cases are selected for caseworking intervention each month by reference to the returns due for the previous month or by reference to the quantum of the tax debt. Priority attention is given to the cases with the largest debt or potential debt. Mutual assistance requests must be preceded by the deployment by Revenue of available collection avenues. In 2005, 349 non-resident cases were referred for solicitor enforcement and in 2004, 372 cases were so referred. In the final analysis, a decision on whether to make a mutual assistance request is made on a case by case basis and will depend on the size of the debt, an assessment of the reliability of available information about address etc. in the foreign jurisdiction and an assessment of the likelihood of success.

In relation to the high level of estimated liabilities included in the sample of cases examined, the Accounting Officer stated that the tax collection system is structured around ensuring, to the greatest extent possible, that where a taxpayer fails to file a return, Revenue makes an estimate of the liability using the best information at its disposal, and undertakes appropriate collection measures to effect recovery. Of their nature, therefore, non-compliant cases will in many instances display an element of estimated liability. Frequently cases respond to the issue of estimates by filing returns and making payment. He said that it is worth noting that of the 10 sample cases examined, one case accounted for 45% of the total amount referred for recovery and 52% of the total estimated amount referred thereby skewing the sample to a very significant extent. It was eventually established that this case never traded and the case was cancelled with estimates discharged on receipt of "Nil" returns. There is much greater difficulty with foreign cases in establishing whether the entity is currently trading, as no local knowledge or sheriff information is available (a feature in resident cases).

[12] Report for the Commission to the Council and the European Parliament on the use of the provisions on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, 8/2/2006.

The Accounting Officer informed me that Revenue was aware of the likelihood of a constitutional difficulty with the "assistance in collection of taxes" article of the OECD model. The 2002 update to the OECD model added this new optional article, and prior to finalisation of the model, Revenue sought legal advice from the Attorney General. The Attorney General raised concerns about the removal of the jurisdiction of the Irish courts in relation to examining the substance of the foreign tax claim. A footnote to the article is included in the model, partly in response to comments Revenue made, to the effect that in some countries, national law, policy or administrative considerations may not allow or justify the type of assistance envisaged under the article or may require that this type of assistance be restricted, e.g. to countries that have similar tax systems or tax administrations or as to the taxes covered, and for that reason, the article should only be included where each State can agree to provide assistance in the collection of taxes levied by the other State. Given the constitutional difficulty, Revenue has not sought to include the article in its treaties. Other OECD countries also do not include the new Article for similar reasons.

Missing Trader Intra-Community (Carousel) Fraud

Revenue's Carousel Fraud Team (CFT) is designated as a liaison department in accordance with Article 3 of European Council Regulation (EC) 1798/2003 for the purpose of the direct exchange of information in relation to suspected VAT fraud, particularly Missing Trader Intra-Community or Carousel fraud. Carousel fraud involves a trader carrying out business in high-value low-bulk goods (e.g. computer chips and mobile phones) with transactions in the business taking place over a short period. The transactions are often quite complex with the goods passing through a number of businesses within the EU in a circular fashion, and maybe even returning to the original trader, thereby giving rise to the term "carousel".

The CFT undertakes visits to selected businesses to discover potential missing traders and conduit traders, to investigate current trading for exchange of information purposes, to carry out pre-registration checks on high-risk cases and to be proactive in deterring evasion and fraud. The CFT uses VIMA to verify the validity of VAT numbers. The activities of CFT in 2005 included

- Research into 211 cases, identifying cases suitable for field visits or referral to the appropriate region
- Conducting 93 field visits in known risk sectors for the purpose of gathering intelligence and monitoring the activities of known conduit traders
- The issue of 177 items of spontaneous information to other member States under Mutual Assistance and receiving 95 requests for assistance. The exchange of information in the years 2003 to 2005 is set out in Table 16.

The UK Revenue and Customs compiles estimates of the VAT lost from fraud, avoidance and other non-compliance i.e. the VAT gap. The estimated level of attempted carousel fraud in 2004-05 was put at between stg£1.12 billion and stg£1.9 billion out of a total estimated VAT loss of stg£11.3 billion. Equivalent figures for Germany were €2.1 billion lost to carousel fraud out of a total loss of €17 billion. A similar exercise is not carried out in Ireland. While carrying out such estimates is inherently difficult and a relatively untested area, an assessment of possible losses allows the risks to be assessed, and strategies developed to tackle those risks.

Companies can register in Ireland solely as conduit traders that acquire goods from other member states at the zero VAT rate and supplying them on, also VAT-free, to an intending missing trader in another member state. The action open to Revenue in these cases is to cancel the VAT registration. There is an ongoing risk that the trader will set up under a different name and obtain a new VAT registration number.

The largest case of outstanding taxes written off by Revenue in 2004 (€5.58m) was in respect of a liability arising as a result of a carousel fraud. Revenue received information under mutual assistance arrangements in relation to the supply of computer components to an Irish company. Following an initial Revenue meeting with the company, the company went into liquidation. A Section 23 estimate was raised but the debt was subsequently written off. The Criminal Assets Bureau (CAB) also carries out investigations in relation to carousel fraud cases. A CAB settlement of €3m in respect of a liability arising from a carousel fraud was noted in media reports in 2006.

Table 16 Carousel Fraud Team - Exchanges of Information 2003 - 2005

Year	Requests Received		Requests Issued		Spontaneous Exchanges Issued
	Number	Cases Open	Number	Cases Open	
2003	170	0	10	0	1,295
2004	150	2	19	7	881
2005	95	17	59	30	177
Total	**415**	**19**	**88**	**37**	**2,353**

In response to my enquiries as to whether he felt that an estimate of VAT losses would assist Revenue in combating fraud including carousel fraud, the Accounting Officer stated that VAT is the single largest yielding tax and the measures taken by Revenue to safeguard this yield reflect its importance to the Exchequer. The focus is on preventing VAT losses in the first place and responding strongly where prevention does not work. The measures employed by Revenue include audit, sectoral projects, regional special compliance units and a specialist VAT anti-avoidance unit, as well the Carousel Fraud Team. He has no doubt that the targeted deployment of resources in support of these measures represents their most efficient and effective use.

While it may be the case that an accurate estimate of VAT losses could be informative, it is also his view that there would be little point in producing an estimate, that would at best be unreliable and at worst misleading, just for the sake of having one. He concurs with the view that this is a relatively untested area and an inherently difficult one for making estimates.

The Accounting Officer informed me that the issue of carousel fraud was viewed seriously by Revenue and this was evidenced by the existence of the Carousel Fraud Team. He informed me that between 2003 and 2005, 21 conduit traders' VAT numbers were cancelled by Revenue. In relation to taking action against those involved in the case of carousel fraud where €5.8m was written off, he said that the company principals, both foreign nationals, were not resident in the State. One of the directors was known to have an address in Liberia, the other director was believed to be in Antwerp but their exact whereabouts were unknown. The question of pursuing the principals was considered and the decision, based on all of the known facts and the perceived costs of doing so, was that a recovery was unlikely to be effected. Revenue could, and would, recommence activity in this case should circumstances change to an extent that successful prosecution/collection of the debt becomes a possibility. He said that while it is somewhat reassuring that the write off case came to light as far back as 2000 and in the intervening years no further VAT losses have been identified, Revenue has no intention of lessening its focus on carousel fraud. Revenue's success in this area is likely to be due to a number of factors, including the pro-active nature of the Carousel Fraud Team's activities and improved and enhanced exchange of information. Active participation in the Missing Trader Intra-Community international networks, including European Carousel Network, keeps Revenue abreast of current developments and threats in this sphere. He understands that the reported €3m CAB settlement does not involve the recovery of VAT defrauded in the State.

2.8 VAT and e-Commerce

VAT

VAT is an indirect tax on consumer spending. Traders registered for VAT collect the tax on behalf of the Revenue Commissioners on the supply of goods and services to their customers. Each registered trader in the chain of supply charges VAT on their sales and is entitled to deduct from this the amount of VAT charged to them on their purchases. Therefore, the tax is charged on the value added at each stage of the production and distribution cycle. The final consumer effectively pays the VAT as part of the purchase price. Traders are required to register with Revenue where their annual turnover exceeds €27,500 in the case of services and €55,000 in the case of goods. The legislation governing VAT is contained in the Value Added Tax Act, 1972, as amended. In 2005, the net amount of VAT collected by Revenue was over €12 billion.

e-Commerce

Electronic commerce or 'e-commerce' is generally understood to mean the buying and selling of goods and services over the internet. Goods and services may be supplied business-to-business or between a business and a consumer. Usually, payment is also made on-line, mainly by credit or debit card. The types of transaction involved in e-commerce are

- Ordering of physical goods for delivery by traditional means
- Ordering of services (e.g. airline flights) where the supplier provides the service in the traditional form
- Ordering, and delivery of virtual or digitised goods and services over the internet (e.g. software, music, video).

OECD/EU Principles and Guidelines

The OECD Ministerial Conference in Ottawa in 1998 agreed that the principles applying to the taxation of traditional trading should also apply to e-commerce. In July 1998, the EU endorsed a number of guidelines drawn up by the EU Commission as a means of ensuring that the EU's VAT system would continue to function in the world of e-commerce. These guidelines are

- No new taxes will be levied on e-commerce but existing taxes, particularly VAT, should be adapted
- The on-line supply of digitised products will be treated as the supply of services
- Services consumed in the EU should be taxed in the EU, regardless of their origin or means of supply. Services supplied by EU traders for consumption outside the EU are not to be subject to EU VAT, but VAT on related inputs would be deductible
- The VAT system must be enforceable
- Electronic invoicing should be allowed within the EU, subject to agreed rules
- Electronic VAT declarations and payment should be possible.

Revenue Working Group on e-Commerce

In June 1999, an extensive report on Electronic Commerce and the Irish Tax System was prepared by an Electronic Commerce Working Group in Revenue. The report, which was published, identified the tax issues arising from the increased use of e-commerce and considered Revenue's likely responses. The report addressed the impact of e-commerce on all taxes and duties and considered how the internet might

be used to improve tax administration. The report stated that VAT was the one tax where action would be required to protect the tax yield, and that e-commerce issues had an immediacy in the area of VAT as compared with other taxes.

The report also

- outlined the fundamental issues for the taxation of e-commerce as
  - the identification of a transaction
  - the identification of the parties to a transaction (especially the taxpayer)
  - verification of the details of a transaction
  - for VAT, the identification of the correct rules, rates, calculation and remittance to the correct taxing authority
  - the generation of an audit trail
- indicated that, because of the technologies and the global nature of e-commerce, it may be necessary to adapt the procedures and techniques needed to effectively collect and administer these taxes
- considered that Revenue would need to constantly monitor developments in the service provision sector so as to identify new businesses and other internet value-added services.

The on-line supply of digitised goods and services (e-services[13]) to private customers was identified as presenting the greatest challenge. The 'place of supply' determined where VAT was chargeable and the general rule for services at that time was that tax was due in the place where the supplier was established (see Table 17) which dated from an era when services were generally not traded across borders. No VAT was chargeable by 3rd country (i.e. non-EU) businesses supplying e-services to EU consumers[14].

Table 17 Supply of e-Services - Business to Private Consumers (pre July 2003)

Supplier Established in	Customer Resident in	Place of Taxation
Ireland	Ireland	Ireland
Ireland	Other EU State	Ireland
Ireland	3rd Country	Zero Rated
Other EU State	Ireland	Other EU State
3rd Country	Ireland	No VAT

Objectives and Scope of Audit

There has been a continuing growth in the level of e-commerce both within the country and across EU and international borders. The proper taxation of trade in that area presents particular difficulties to Revenue authorities generally due to aspects of e-commerce such as the absence of a physical business presence or even of the necessity for physical transfer of goods. The objectives of the audit were to

[13] EC Directive 2002/38 provides an illustrative list of e services – website supply; web hosting; distance maintenance of programmes and equipment; supply and updating of software; supply of images, text and information; making databases available; supply of music, films and games; political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; supply of distance teaching.

[14] The 'place of supply' for VAT-registered businesses purchasing e-services from outside the EU was deemed to be the EU country where the business purchaser was located and the VAT implications of such transactions were dealt with in the purchaser's VAT return.

examine Revenue's approach to addressing these issues and ensuring an adequate level of tax compliance in that segment of economic activity. Particular questions raised included

- the extent of e-commerce in Ireland including the volume of e-commerce trade, number of participating businesses, VAT proceeds from e-commerce transactions, whether there has been any overall impact on the tax base
- how Revenue activity has matched up with the challenges and requirements set out in the 1999 e-commerce Working Group Report
- the impact of EU initiatives
- whether current compliance procedures were considered adequate including
    - the extent of Revenue audits in this area
    - evidence of any increase in postal importations related to e-commerce activity.

The audit comprised a review of reports and papers, informal consultation with Revenue officials, and formal correspondence with the Accounting Officer. A transaction-based review of VAT collected that relates to e-commerce is not possible as VAT returns show a business's total VAT without differentiation between traditional trading and e-commerce.

The responses and comments of the Accounting Officer relating to particular points raised in this chapter have been added to the relevant sections of the chapter. His overall summary response on the Revenue approach to VAT and e-commerce, and on the risk that e-business poses to VAT revenues, has been included at the end of the chapter.

Extent of e-Commerce in Ireland

There are no exact figures for the level of e-commerce trading in Ireland. The Central Statistics Office's (CSO) Information Society and Telecommunications Report 2005 contains material on how information and communications technologies are being used in Ireland, in the home and in business. The report uses data from the CSO's Census of Industrial Population, Annual Services Inquiry and Quarterly National Household Survey. The results of the surveys show

- In 2005, sales using e-commerce accounted for 27% of total manufacturing turnover. In the services sector, sales via e-commerce accounted for 16% of turnover. By applying these details to the value of turnover in the manufacturing sector (€108 billion) and in the services sector (€103 billion), this would indicate e-commerce sales of the order of €46 billion.
- Over half of businesses have made some purchases using e-commerce. The percentage of total purchases made in this way has increased from 6% in 2004 to 10% in 2005. This remains small relative to the percentage of sales by e-commerce.
- In the 12 months to June 2005, over 587,000 people had ordered goods or services over the internet for private use. The most common internet purchases by households are travel and holiday accommodation, films and music and tickets for events.
- Irish enterprises are more likely to sell online than their EU counterparts.

In its budget submission 2006, ICT Ireland[15] noted that the European spend on business-to-consumer electronic transactions would grow to €200 billion in 2006 and that Ireland would account for €400m of that.

In response to audit questions on Revenue's estimate of the volume of e-commerce trade, the impact on the tax base, expected VAT proceeds, and the number of unregistered e-commerce traders identified, the Accounting Officer pointed out that as there is no distinction for VAT purposes between e-commerce and other commerce, estimates of the type mentioned in the question are not required to be made. Based on the ICT estimate the VAT liability at final consumer level would be significantly below €80m for 2006. At a macro level the continued strength of the VAT yield year on year gives no reason to suspect any negative effect on the tax base.

He stated that while Revenue does not differentiate between businesses with or without e-commerce trading activities, Revenue's Special Compliance Units continue to monitor actively all aspects of hidden economy activity and register cases for taxes as appropriate. The units focus on identifying businesses not fully registered with Revenue, and have an intelligence gathering function involving a range of initiatives, e.g. surveillance, door-to-door enquiries, third-party information matching, newspapers, internet information and external databases.

Supply of e-Services from External Suppliers to EU Consumers

The VAT rule for supplies by non-EU businesses to EU consumers gave non-EU suppliers a competitive advantage over their EU counterparts. In addition, as suppliers of e-services do not need to be located near their customers, there was an increasing risk that the supply of these services from outside the EU would increase. To counteract this, EC Directive 2002/38/EC[16] was introduced with effect from July 2003 and provided that where a non-EU business supplies e-services to a EU private consumer, the place of supply will be the place where the customer resides. The effect of this is that non- EU businesses are required to register in every EU country where they have private customers. An optional electronic services scheme (the scheme) was introduced at the same time allowing such non-EU businesses to register in one EU country and to account for and pay in that country the VAT on all its supplies to EU private customers. The rate of VAT is the rate in the country in which the customer resides. On-line returns are submitted providing a breakdown of supplies to customers in each EU country. The EU country of registration distributes the VAT collected to the other member states in accordance with the returns.

At present there are six overseas traders registered in Ireland under the scheme and one other trader has ceased registration. From the commencement of the scheme to the end of 2005, €17.7m was paid to Revenue by suppliers. Of this, €0.3m was in respect of VAT on supplies to Irish customers and the remaining €17.4m was in respect of supplies to customers in other member states and was paid over to those states by Revenue (with almost half going to the UK). In turn, a total of €1.4m was paid to Revenue by seven other member states under the scheme (77% of which was from the UK). The total Irish VAT received by Revenue under the scheme to the end of 2005 was therefore €1.7m. In total, there are over 900 overseas traders registered under the scheme throughout the EU. Under the terms of the scheme, traders are required to maintain proper records of all transactions and make those records available, on request, to Revenue by electronic means. No checks have been carried out to date by Revenue on those records. It is not clear what sanctions are available to Revenue against those who fail to comply with the terms of the scheme and whether interest and penalties can be imposed.

[15] ICT Ireland is the representative lobby group for the high technology or knowledge sector within the Irish Business Employers Confederation.

[16] Directive 2002/38/EC was transposed into Irish Law in Finance Act, 2003. Revenue's VAT Information Leaflet 2/03 explains the different measures introduced by the Directive.

The Accounting Officer indicated that the six cases registered in Ireland were actively monitored for payments and returns compliance by the Collector General's Division. Further checks were being considered in consultation with Revenue's Computer Audit Services Branch. With regard to the special scheme introduced under the provisions of EU Council Directive 2002/38/EC, no unregistered businesses (all of which would be located outside the EU) trading in Ireland had been identified by Revenue. There was little doubt but that the special scheme has had a significant positive impact on VAT compliance by such businesses in the EU generally. While only six businesses are currently registered under the Scheme in Ireland, some 900 businesses have registered in the EU, and Ireland currently receives more VAT from other Member States than it receives net for itself from businesses registered under the Scheme here. On the question of whether the amount of €1.7m VAT collected under the special scheme is consistent with the level of supplies of e-services by non-EU businesses to Irish consumers, he said that while absolute measures were not available here, comparison was a useful proxy evaluation measure. In this regard the Irish net receipts did not seem unreasonable when compared to the net €59m received in the UK under the Scheme for the same period, given the sizes of the respective economies and having regard to the different broadband penetration rates.

Commission Report on e-Services Scheme for External Suppliers

The July 2003 directive that switched the 'place of supply' rule for private customers was introduced on a temporary basis for three years. In May 2006, the EU Commission adopted a report to the Council on the operation of the Directive concluding that it had achieved its objectives and operated in a satisfactory manner, and proposed to extend its application beyond June 2006 to 2008. Among the issues noted in the Commission Report were

- the market for downloads and on-line services has matured and become more sophisticated since the Directive was adopted and that sales of digitally distributed music are reported to have tripled during 2005.
- in addition to the amounts collected under the scheme, VAT collected from businesses which opted to establish within the EU are likely to have been significant. The amount is difficult to quantify as businesses opt to set up in the EU for a variety of reasons and it is not possible to identify VAT receipts from particular services. While the rate of VAT in particular countries may have been a factor in the selection of the EU country in which to locate, some businesses appear to have chosen their place of establishment for other reasons.
- there was little indication that a significant number of overseas businesses availed of the option of registering in every EU country where they have customers.
- a further effect on VAT collected was that existing EU businesses no longer had any incentive to move their operations outside the EU to protect their competitive position.
- tax administrations should handle the issue of EU consumers circumventing systems to avoid payment of VAT in the context of materiality and proportionality.
- there were no problems reported by tax administrations in verifying the correctness of returns but this may be because the provisions relating to examining records have not been used on a systematic basis.

The EU Council further extended application of the Directive to December 2006.

EU Internal Supply of e-Services

While there is no gap in the VAT coverage of supplies from EU businesses to EU consumers, there is an issue as to which country receives the VAT. VAT is a consumption tax and the principle is that the VAT should be a charge in the place of consumption. As can be seen from Table 17, the place of taxation for supplies between EU countries is the country where the supplier is established. Following the introduction of the 2003 scheme, overseas businesses set up operations in the EU and chose to locate in

countries with low VAT rates, and now pay VAT in that country. It was apparent that EU businesses also chose to locate in member states with low VAT rates in order to compete more effectively.

A Commission proposal in 2005[17] sought to address this issue by making such services taxable in the member state where the customer is established. This would mean that the influence of VAT rates on the place of supply would be neutral, as the service would be taxed at the rate applicable in the state of consumption. The Commission had already proposed a "one stop shop" mechanism to allow businesses use a single VAT number for all EU supplies and make VAT declarations to a single electronic portal from which they would be transmitted to the relevant member states. This would make it easier for businesses to meet their obligations when they become liable for VAT in a member state where they are not established. It is understood that discussions of these proposals is continuing at EU level.

Physical Goods Ordered over the Internet

Goods, including goods ordered over the internet, imported into Ireland from outside the EU are liable to VAT and Customs Duty at the point of importation. However, relief is available for consignments with a value not greater than €22 and gift consignments where the value of the gift does not exceed €45. Separate reliefs are available for travellers who import goods on return from abroad. Revenue staff are permanently based in mail centres to monitor mail imports from countries outside the EU in order to detect contraband and ensure that correct VAT and import duties are paid. Packages are examined on a sample basis to establish that the correct amount of VAT and duty has been paid. The addressee is required to pay all amounts due before the package is released. However, as customs legislation does not provide for the imposition of civil penalties, there would appear to be little deterrent to those who might order package sized goods from overseas suppliers who describe items incorrectly or underdeclare the value of goods to help their customers evade tax.

The low-value reliefs are provided for practical reasons to avoid the need to collect small amounts of tax from private consumers. However, the effect is that goods ordered over the internet from a non-EU supplier are more competitive than those purchased locally. The report of the 1999 Revenue Working Group noted that the small packages relief distorted competition and that this distortion would be exacerbated by the expected increase in the volume of small packages and it may, therefore, be necessary to re-evaluate the relief.

The Accounting Officer confirmed that he was, in general, satisfied with the existing procedures in this area. It is an area that was kept under regular review both from a staffing and procedures viewpoint. He said that the Revenue Internal Audit Branch was conducting an audit of postal importations this year and, obviously, the results of that audit would inform Revenue thinking on the systems and processes currently in place. He had no evidence to suggest that the absence of penalties in addition to seizure of goods was seen as a weakness in the existing enforcement system. However, he added that Article 22 of the revised Customs Code being discussed by the EU at the moment foresaw the inclusion of a range of administrative penalties in all Member States to deal with any breach of community customs legislation. Revenue had established an internal Working Group to prepare the ground in this area, and will be in a position to introduce whatever measures are required if and when the new code enters into force in late 2006 or in 2007.

Equally, he had no evidence to suggest an information gap with regard to public awareness of the possibility of seizure in misdeclaration cases. He considered that any person and**,** in particular**,** any commercial operator who knowingly misdeclared the value or nature of their consignment for tax or duty purposes would have an expectation of the goods being seized in the event of detection. Finally, he confirmed that no increase in the abuse of low value/small package relief had been noted relating to e-commerce activity.

[17] COM (2005) 334 final

e-Commerce and Tax Compliance

The 1999 Report noted that e-commerce presented challenges in terms of detecting those who tried to remain outside the tax system and those who join the system but do not disclose the full extent of their activity. The report made a number of suggestions with regard to how Revenue might identify e-commerce activity and the parties to such transactions. It considered that Revenue needed to actively look for indications as to whether existing businesses were involved in e-commerce. Websites may be set up offshore or offshore websites might front onshore businesses. Revenue needed to encourage voluntary disclosure of websites; it was proposed that a change in tax forms might ask about e-commerce and obtain details of e-commerce activities. Other possibilities included a requirement that tax numbers be displayed on websites, that stronger proofs of identity be required before domain names were assigned, and that Revenue would consult with other tax authorities in relation to their work in identifying e-commerce activities. The Report also referred to the technical expertise that would be required in order to access the detailed records of e-commerce transactions. That included staff resources and training devoted to computer audit, and access to a means of decrypting data.

Revenue's Computer Services Unit is attached to the Large Cases Division and currently has a complement of 10 staff. The Unit is available to provide training and to assist on audits in all Revenue Divisions.

In relation to the adequacy of current compliance procedures in regard to e-commerce, the Accounting Officer stated that Revenue's compliance activities focused on risk and in that regard he was satisfied as to their adequacy. Given the expected growth in e-commerce, Revenue fully appreciated the need to keep a critical eye on this area.

He pointed out that Revenue assessed major risk in the context of its Annual Risk Programme. Any risks included in this programme also identified clear courses of action to deal with the risk. Materiality and proportionality were relevant concepts in this regard. VAT on e-commerce (with a theoretical maximum tax at risk of significantly less than €80m) was not included in the current annual risk programme and that was indicative of the present assessment. Current assessment included the view that it was necessary to be very active on the international front and that was being done. It was an area, however, that was subject to ongoing review.

E-commerce activities were also monitored by the Special Compliance Units in the course of projects that focused on identifying cases in the hidden economy. The results of their findings to date had not highlighted any areas of major concern in relation to e-commerce transactions.

Furthermore Revenue assessed individual risk through its programme of audit screening by expert auditors, and more recently through the use of the new risk analysis tool, currently being rolled out and available in four pilot districts for over a year, and the sectoral projects initiated in the Regions. In addition, Revenue pursued the filing and payment risks through their returns and payments compliance programmes. In all programmes there was constant risk assessment. Revenue carried out over 14,000 audits in 2005. In an audit all aspects of a business (traditional and electronic) are reviewed as appropriate.

He also referred to the pending availability for examination by Revenue of internet tools from the EU Commission Project Group, to current consideration of further research in the area, and to the continuing expansion of e-audit capabilities through the increase in the use of its Computer Audit Services Branch, the provision of high quality training and the recruitment of a specialist e-Auditor. He noted that the Computer Audit Services Branch had assisted in 82 cases since its establishment almost three years ago.

Summary Response of the Accounting Officer

From the information available, Revenue considered that despite the growth in e-commerce, the overall risk to VAT revenue remained relatively low, which is a conclusion that has also been drawn by other tax

authorities, most notably the UK. It was noted in the audit report that the ICT 2006 budget submission estimated that Ireland's share of the European spend on business-to-consumer (B2C) electronic transactions would grow to some €400m in 2006. B2C transactions, being the final transactions in the production and distribution chain, were generally regarded as posing the greatest risk of VAT loss; with business-to-business (B2B) transactions VAT was generally passed on through the chain without any great difficulty. Thus, applying the standard rate of VAT of 21% to the ICT estimated amount of B2C electronic transactions would indicate a maximum exposure of some €80m of VAT liability. But even that relatively small amount would have to be scaled down further, when one took into account the not unreasonable assumption that much of the e-commerce business with Irish consumers was by Irish-based businesses, which were already well policed by Revenue under its standard business programs, and that a significant amount of such business would not attract a VAT liability at all; for example, sales of books, most food, medicines and children's clothing are zero-rated for VAT purposes. Thus, in the context of an estimated VAT yield of some €14 billion for 2006, the risk to VAT revenues from e-commerce was seen as relatively minor.

The internet was a genuine global phenomenon and the idea that Revenue, or indeed any other single tax administration should, or could, unilaterally resolve taxation issues that might arise in relation to it would be to ignore this international context. The focus of developments in this area must be, therefore, in multilateral arenas i.e. EU and OECD. For example, in recognition of the need to be able to detect and identify internet trade, a number of EU Member States have developed, or are in the process of developing, electronic tools to facilitate the monitoring of internet trade, the analysis of its trends and the identification of high risk websites and internet supplies. To this end, in March 2006 the EU Commission decided to set up a project group to investigate the tools and techniques available to aid in the detection of traders operating on the Internet. The project group will draft a report for the EU's Fiscalis Committee. The mandate of the group will be to examine, describe and test the existing tools more thoroughly, and to report on the extent to which the tools meet the functionality of the most efficient Internet search tool, and especially how Member States can obtain the tools. Where appropriate, the project group will work on profiles and other relevant ways to facilitate the identification of high-risk traders. Revenue applied for membership of this group in order to identify and acquire the most appropriate tool for its needs and its application had recently been accepted.

The Accounting Officer stated that Revenue would continue to work with its EU and OECD partners with a view to introducing measures and procedures, which best protected the national Exchequer. In this regard, the audit report referred to the EU Commission proposal to make services taxable in the Member State where the customer is established. This is also a principle that has been agreed at OECD level. Certainly, it is envisaged that the Commission's proposals for a "One-Stop-Shop" should facilitate greater compliance by businesses with their VAT obligations generally. These proposals would allow businesses to comply with their VAT obligations in a number of Member States through use of a single web-based portal, and would allow tax authorities access to VAT, business and transactional information across all Member States. The EU Commission's Fiscalis 2013 programme would also provide opportunities for the EU to develop co-operation with third countries, which was required to tackle the increasing international dimension of tax fraud and evasion and which would include information exchange.

He pointed out that, while the June 1999 Report of the Revenue Working Group was quite farseeing for its time, in the context of its subject matter seven years was an extremely long time. For example, at the time the Report was being completed only 14% of Irish people were connected to the Internet, and Broadband was not even mentioned. Revenue was at present exploring the potential or indeed the need for further research in this area in the light of relevant international studies already completed or ongoing, with a view to ensuring that its understanding in this important area was not found wanting.

2.9 Assessment and Collection of Capital Gains Tax

Capital gains arising on the disposal of a wide range of assets are subject to Capital Gains Tax (CGT) at a standard rate of 20%, with a 40% rate applying to disposals of certain foreign life assurance and investment products. Capital gains accruing to companies are chargeable to Corporation Tax with the exception of development land and non-trading assets of non-resident companies situated in the State. The self-assessment system applies to CGT and taxpayers must make returns without being requested to do so by Revenue.

A purchaser of certain assets[18] where the consideration for the disposal exceeds €500,000, is obliged to withhold CGT equal to 15% of the sales proceeds and pay it over to Revenue. Tax is not required to be withheld where the vendor produces a clearance certificate from Revenue. The certificate is issued on application provided the vendor is resident, or there is no CGT payable in respect of the disposal, or that CGT payable in respect of the disposal, and previous disposals, has been paid.

Table 18 CGT Net Receipts 2001 to 2005

	2001	2002	2003	2004	2005
CGT Net Receipts	€876m	€619m	€1,436m	€1,528m	€1,982m

The yield from CGT for the years 2001 to 2005 is shown in Table 18. CGT receipts have more than doubled during that period, and have exceeded the annual budget forecast by an average of more than 50% over the last three years. The yield for 2005 was €1,982m which surpassed the net yield of non-PAYE Income Tax of €1,961m.

Audit Objectives and Scope

While there is an additional risk posed by the one-off nature of transactions in CGT over the repeating nature of some other taxes, this is counter-balanced by the availability for compliance activity of information obtained from applications for clearance certificates and, in the case of certain assets, of data from Stamp Duty transactions. The objectives of my audit in March 2006 were

- To review the extent of Revenue consideration of the implications of the growth of CGT yield
- To test a sample of cases in order to establish the adequacy of the operation of ongoing compliance activity, particularly the follow-up of clearance certificates issued
- To establish the extent to which Revenue was availing of the possibility of cross-checks with Stamp Duty data.

My staff reviewed compliance procedures and examined a sample of cases in one tax district in each of the Dublin and East/South East Regions, and a unit of Large Cases Division. In addition, the question of whether a CGT liability was recorded in a selection of cases sourced from Stamp Duty transactions was examined. Documents and reports were reviewed and, together with the test results, were discussed with Revenue officials.

[18] The assets concerned are land and buildings in the State, mineral assets in the State, exploration or exploitation rights in a designated area, unquoted shares deriving their value from the above assets, unquoted shares received in exchange for such shares qualifying for S584 relief, the goodwill of a business carried on in the State and certain transactions which do not involve the purchaser acquiring an asset.

Internal Revenue CGT Reports

The reports of two internal Revenue reviews of aspects of CGT were examined. The first, by Large Cases Division in 2004, investigated the extent to which taxpayers may be attempting to reduce their tax liabilities by re-categorising income as gains. More recently, in February 2006, the Office of the Collector General prepared an analysis of CGT yield for Revenue's Management Advisory Committee.

Large Cases Division Analysis of CGT Taxpayers

As the CGT rate of 20% is less than the higher rate of Income Tax (42%), taxpayers could reduce their tax liabilities by re-categorising income as gains. In 2004, the Large Cases Division carried out an analysis of the largest CGT payers in 2002 and concluded that there was no evidence to indicate that such a practice was widespread.

60 cases with CGT payments of more than €1m were examined and 10 of these were audited[19]. There were no issues arising in 35 of the 60 cases, 8 cases were found to have computational errors or to require technical adjustments with additional CGT of €2.5m being paid, and 17 cases are still under enquiry. Information has been submitted and is being examined in four of the cases under enquiry and information is awaited on relation to the other 13. In one of the four cases where information has been submitted there appears to be possible income to gain conversion.

50 cases where payments of CGT of between €250,000 and €300,000 were made were also reviewed. 11 were audited with the following results

- 2 cases were resolved without further enquiry
- 2 cases had computational errors giving rise to additional payments of €369,424
- 2 cases are under appeal
- 1 case has been recommended for consideration under anti-avoidance legislation[20]
- 4 are still under enquiry, including one case referred to the Valuation Office.

Three of the cases still under enquiry involve possible income to gain conversion. The two cases under appeal also involve income to gain conversion and the additional tax involved is €1.1m. The Appeal Commissioners have requested a written submission from Revenue in one of these cases and in the second case consideration is being given to appointing counsel to represent Revenue at appeal.

Collector General's Analysis of CGT Yield

In February 2006, Revenue's Management Advisory Committee considered a report prepared by the Collector General on a statistical analysis of the CGT elements of the Form 11 Income Tax Returns for 2004 filed through the Revenue On-Line Service (ROS), and of the largest CGT payments in 2005. The main conclusions and recommendations of the Collector General's analysis were

[19] Supporting documentation, generally the contracts, was requested and examined in the 60 cases. Further action, including a request for more information and/or a meeting with the taxpayer and their agent, was taken in 10 cases.

[20] Section 811 of Taxes Consolidation Act, 1997. Revenue can form the opinion that a transaction has little or no commercial reality but is intended primarily to avoid, or reduce tax or create a tax deduction or refund. Notice is given to that effect and describes the action that Revenue proposes to take. If not appealed or upheld at appeal Revenue is empowered to take the steps described in the notice in order to defeat the tax avoidance scheme.

- The yield from CGT appears to be driven by gains from land sales and, to a lesser extent, equities and property. Continuing strong yield is therefore dependent on the buoyant property market and business profitability.
- CGT is now a significant tax and should therefore attract an equivalent level of compliance attention.
- Although the yield is rising each year, there is no accurate analysis of the levels of non-compliance. Notwithstanding the timing differences between Stamp Duty and CGT, the relationship between the two needs to be exploited to help bridge the compliance gap.
- CGT paid is generally paid on time and only 3% of the 2005 receipts were paid late.
- Further examination of possible shifting of income to gains may be worthwhile.
- Revenue may need to assess the risk to the tax base arising from the movement of significant capital abroad.

The Management Advisory Committee noted the contents of the Collector General's analysis and agreed that CGT needed to attract a significant level of compliance attention. The 2006 business plans would focus on compliance and the Revenue Risk Project Group would consider the risks, including further analysis of the risk of conversion of income to gains.

Audit Findings

Follow-up of Clearance Certificates

Clearance certificates are issued by districts from a database that records details of the certificates. In the Dublin district, details of clearance certificates issued are also recorded on a control spreadsheet to facilitate monitoring and subsequent follow-up. However, at the commencement of the audit, there was no indication on the control spreadsheet of assessment activity in relation to 617 of the 706 clearance certificates issued by the district in the period November 2003 to December 2004, and which had not been exempted as Principal Private Residences (PPRs)[21]. Since March 2006, the District has been working through the cases and comparing the details to the CGT returns, referring cases to other districts and noting further cases as PPRs mainly from information on the return. The updated spreadsheet shows 148 cases not marked as PPRs but where the liability has not been assessed. These 148 cases are being enquired into by the District mainly through the issue of letters requesting the return, or computation, as appropriate.

The district in the East/South East Region did not maintain a control spreadsheet of clearance certificates issued. A reduced level of check applied in that samples of certificates issued were subsequently selected from the database by the relevant compliance and audit districts for follow-up. In the unit of Large Cases Division, an officer is assigned to deal with all the tax affairs of each case and so has a detailed knowledge of all activities in a particular case. For this reason, a control spreadsheet was not required in that area. Instead each officer's case records will note the issue of a clearance certificate.

The Accounting Officer informed me that current standing instructions required a record to be maintained of clearance certificates issued, and for that record to be periodically reviewed with a view to having assessments raised if necessary. He also said that work has commenced on incorporating clearance certificate information into the data warehouse which would facilitate its integration with Revenue's main systems. In relation to the 148 cases on a district spreadsheet, the Accounting Officer has informed me that 53 have since been identified as PPRs, assessments have been raised in 15, assessments were not required (covered by losses, etc) in 29, and 51 are still under enquiry. CGT has been paid in all cases assessed and surcharges for late payment have been imposed in four cases. He pointed out that from

[21] No CGT is payable on gains arising from the sale of PPRs.

November 2006, the computer system will automatically generate a surcharge for every late return. All cases would be pursued to finality. All outstanding cases had received reminder letters, and estimated assessments would be input in the near future as appropriate.

Examination of Sample of Clearance Certificates

A number of issues were noted from an examination of a sample of 37 clearance certificates issued by the three districts, and from a review of the taxpayers' records and any subsequent returns. These included instances where

- there was no return or CGT payment for the period to which the clearance certificate related
- the consideration per the clearance certificate issued did not appear to be consistent with that shown on the subsequent return
- there was no note on Revenue's main computerised taxpayer record to indicate that a clearance certificate had been issued.

The Accounting Officer stated that review of the cases with no returns or payments is ongoing. He pointed out that there were many legitimate reasons why the amounts on a clearance certificate and a return might not agree arising from the wide range of reliefs, allowances and exemptions, such as Principal Private Residence and Retirement Reliefs. However, four of these cases have been noted for audit (the audit has commenced in one). He stated that as the issue of a clearance certificate was noted on taxpayer files for information purposes only, procedures in that regard may vary somewhat from Region to Region. However, there would be a general requirement that they be entered as promptly as possible. The manual entering of these notes would become redundant when clearance information was captured in the data warehouse.

Cross-check with Stamp Duty Data

During my audit, Stamp Duty payment details were examined relating to 12 property transactions in late 2003 and 2004 where the consideration was greater than €500,000. These involved the sale of property by 16 taxpayers, two of which were companies. A number of issues were identified including

- five cases where there was no return or CGT payment for the period.
- three cases where there were possible inconsistencies between the recorded Stamp Duty details and the subsequent return.

The Accounting Officer informed me that the eight cases identified on the Stamp Duty cross check were subject to ongoing examination.

Wider Audit Concerns

In addition to inviting the views of the Accounting Officer on matters arising from the cases examined during my audit, I also sought his observations on wider audit concerns arising both from those cases and from a review of the two Revenue reports. In particular, I inquired whether

- Revenue had completed its appraisal of the extent of the shifting of income to gains
- he was satisfied that Revenue was making full use of the valuable information available as a result of the clearance certificates and Stamp Duty payment details
- a formal assessment had been carried out by Revenue of the level of CGT non-compliance
- he was satisfied that current procedures were adequate to ensure that all CGT was promptly assessed and collected.

Accounting Officer's Response

Income to Gains Substitution

The Accounting Officer stated that in light of the exceptional growth in CGT yield and because there is a divergence in tax rates between income and capital gains, Revenue's management advisory committee considered it prudent to consider whether there was any evidence that some individuals were shifting income to gains (the substitution effect). In keeping with sound risk management, Revenue would continue to keep such a situation under regular review. The review by Large Cases Division in 2004 did not find evidence to support a serious concern about the prevalence of the substitution effect. However, as a result of the review, Section 817 of the Taxes Consolidation Act, 1997 was amended in the Finance Acts 2004 and 2005 to close off possible loopholes. The Accounting Officer said that the Collector General's analysis quoted figures that broadly supported the earlier Large Cases Division review of the substitution effect. These figures showed that of the 237 taxpayers that paid over €1m in CGT in 2005

- Only 24 individuals had regular CGT liabilities in each of the previous three tax years,
- Only five of the 24 individuals had a CGT liability greater than an Income Tax (schedule D and E) net liability in each of the three years.

One of the Collector General's conclusions i.e. that it may be worthwhile to carry out further examination to confirm there was no substitution effect, reflected the general Revenue view that it was a matter that should be kept under regular review. In support of this, the Management Advisory Committee approved a number of measures. Responsibility for the establishment of a Risk Project Group, had been assigned to the Operations Policy and Evaluation Division and work would commence in the second half of 2006. Because of timing factors it had been necessary to deal with work in this area in the context of the 2007 Business Plans. Besides the Large Cases Division review and the Collector General's paper, he also pointed to a separate exercise carried out in a Dublin Tax District in Spring 2005 on 60 of its largest CGT payers. All cases were screened and audits were carried out on 10 of them. That exercise found only one possible substitution effect case. That case was currently under enquiry with the Anti-Avoidance Unit.

Cross-check with Stamp Duty Data

The Accounting Officer informed me that there was a strong correlation between the information from the Stamp Duty payment data and clearance certificates, but that there were exceptions where there would not be a complete match between the two declarations e.g. if the value of the transaction was less than €500,000, or for builders disposing of newly constructed houses. Stamp Duty details were returned in relation to property transactions but not all property transactions were subject to CGT, e.g. residential and non-residential (Section 643) development land, which may be chargeable to income tax. Despite these and other exceptions and the timing difference between Stamp Duty and CGT, he is generally satisfied that Revenue was making the best use possible of the information available to it to maximise CGT compliance. He emphasised that use of the information could only be maximised when it was fully captured in the data warehouse and available for risk profiling of individual taxpayers. The Risk Evaluation, Analysis and Profiling (REAP) system included rules on CGT/stamp duty transactions. This system was being implemented nationally and would be further developed over the coming years. Already the system included risk related rules which were used to highlight individual cases. The rules checked cases with regard to the following

- a mismatch between an asset purchase (either from Stamp Duty or CGT data) and declared income
- an asset sale (either from Stamp Duty or CGT data)
- CGT liabilities outstanding or paid late
- a mismatch between a CGT payment and the non-inclusion of CGT information on a return (or the absence of a return), or

- the payment of a CGT liability against declared income.

CGT Compliance

In relation to the level of CGT compliance, he said that there was ongoing assessment at central, regional and district level of general risk, including specific taxhead risk. For example, the Collector General's analysis concluded that CGT payment compliance was very high with late payments responsible for only 3% of yield in 2005. In addition, a number of Districts had carried out CGT compliance campaigns and the issues or risks highlighted had been disseminated within Revenue via the Capital Taxes Network. One of those compliance initiatives was an ongoing project in relation to the CGT risk on the disposal of second non-principal private residences by Irish residents, and the disposal in the State of properties by foreign residents. 113 cases were currently under examination, 68 of which were resident and 45 non-resident. CGT risk issues would, of course, continue to be screened as part of the normal ongoing compliance/audit programmes.

Adequacy of Current Compliance Procedures

The Accounting Officer stated that CGT was a self assessed tax and that taxpayers were obliged to make returns without being requested to do so by Revenue. Furthermore, CGT was also an event driven tax and Revenue's compliance approach must take those factors on board. He was satisfied generally that current procedures were adequate and adequately employed to ensure compliance with the CGT legislation. Procedures, mainly due to developments in the IT area, were undergoing significant change. Those developments included, for example, the electronic capture of information (either from ROS or paper filed returns), the wide availability of that information for officials via the Integrated Business Intelligence application on the intranet, the use of that information by REAP, and the inclusion of CGT assessing in the mainstream Integrated Taxation Services system. Finally, he mentioned the Operations Policy and Evaluation Division's plans to conduct a risk examination of CGT later this year; some initial scoping work had already taken place.

2.10 The Management of Tax Appeals

Background

A taxpayer who is dissatisfied with a decision or assessment made by the Revenue Commissioners has a right to submit an appeal in writing through Revenue to the Appeal Commissioners. This must be done within a limited period that varies from tax to tax (e.g. VAT: 14 days from date of estimate or 21 days from date of assessment, Income Tax : 30 days from Revenue assessment). The appeal is lodged with the officer of the Revenue Commissioners, formerly known as an Inspector of Taxes, who had been handling the case.

A taxpayer who remains dissatisfied following the decision of the Appeal Commissioners may appeal to the Circuit Court for a complete re-hearing. With the exception of Capital Acquisition Tax, there is no corresponding provision for appeal by Revenue. A point of law arising on a decision of the Appeal Commissioners may be referred to the High Court (or Supreme Court if necessary) by way of *case stated* at the request of either party to the appeal. An overview of the tax appeals process in diagrammatical format is shown in Figure 1. The role of the Appeal Commissioners is represented by the two shaded boxes.

Paragraph 20 of my 1999 Annual Report noted that, as part of the ongoing general review of the systems, procedures and practices applied to the assessment and collection of revenue, I had sought information regarding the annual throughput of appeals cases and the overall summary of outcomes e.g. decided in favour of the taxpayer or Revenue, appealed to the Courts, and of the extent of cases on hand. The response indicated that each case was dealt with on an individual basis from scheduling to hearing. While details of issues of principle were published, the Appeal Commissioners were not a tribunal of record and were not required to, and did not, retain a written record of determinations, proceedings or documents submitted. The Appeal Commissioners or Revenue did not retain statistical or summary records. Revenue estimated that between 500 and 600 cases had been lodged with the Appeal Commissioners in 1999, and that approximately 250 cases were heard and decided annually. The remaining appeals were either withdrawn or settled prior to a hearing.

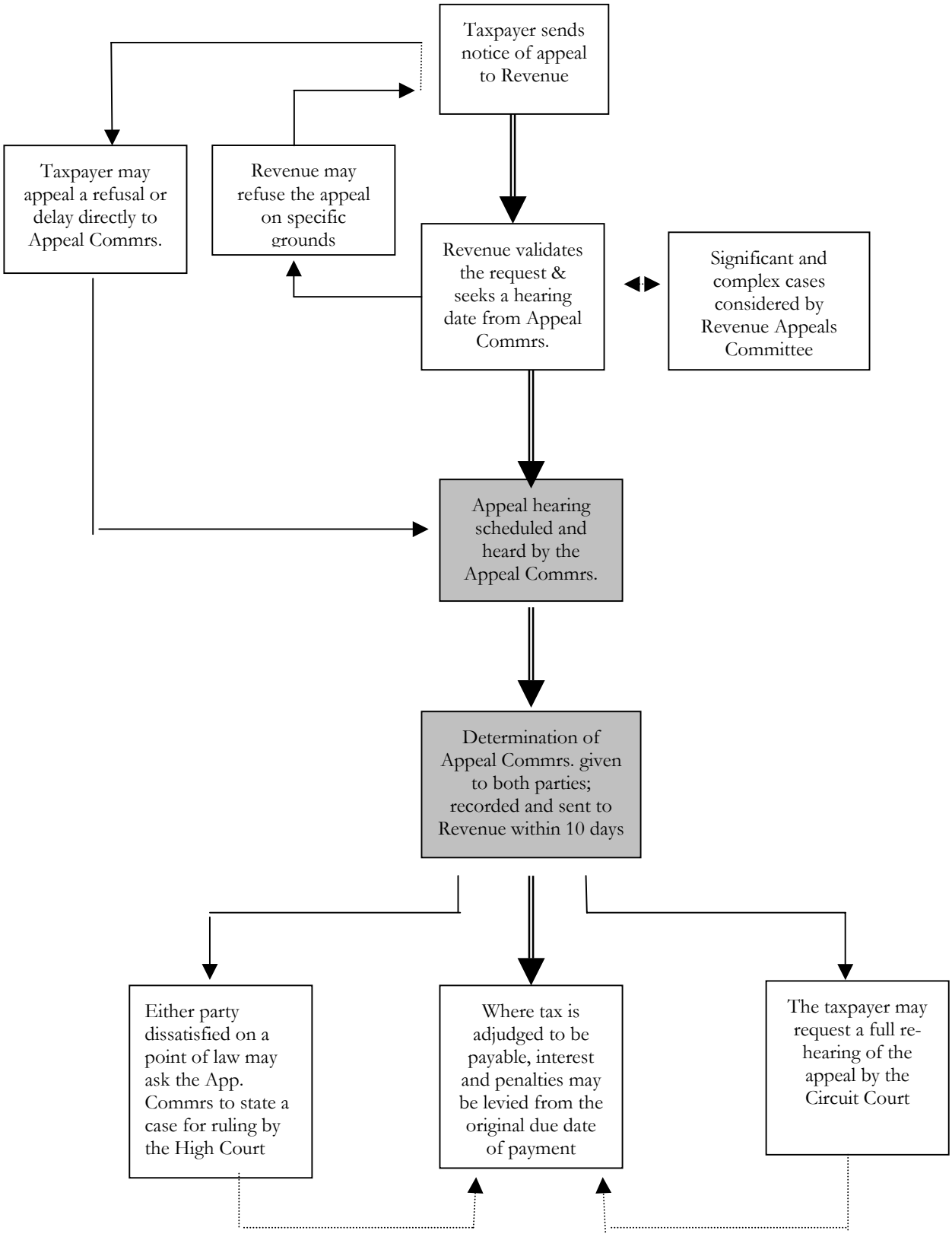
Tax Appeal Procedure[22]

Lodgment of the Appeal with Revenue

Each appeal application is reviewed by Revenue to establish that the statutory conditions have been met. An appeal is not allowed in cases where the appeal is outside the relevant time limit, or where all tax due – other than the amount in dispute – has not been paid. Where it is decided that an appeal is not allowable, a notice of refusal is issued by Revenue to the taxpayer. The taxpayer may appeal against this decision directly to the Appeal Commissioners within 15 days of the notice of refusal. A taxpayer can also appeal directly to the Appeal Commissioners at any stage if he feels that there is undue delay within Revenue.

[22] Taxpayers can request that Revenue's handling of their tax affairs be reviewed by a senior Revenue official locally, by another senior Revenue official or jointly by that other official and an external reviewer. This does not interfere with the taxpayer's right to submit an appeal to the Appeal Commissioners. This internal review process was not examined.

Figure 1 Overview of the Tax Appeals Process



When it is decided that an appeal is in order, a Revenue form (AH1) outlining the case from both sides is sent to the taxpayer. A taxpayer who is not satisfied with the Revenue outline may complete and return an independent statement on a second form. Revenue forwards the form(s) AH1 to the Appeal Commissioners, together with an estimate of the likely length of time required for the hearing, and a request for a hearing date. The case is listed by the Appeal Commissioners who notify Revenue of the date, venue and time. Revenue then notifies the taxpayer of the hearing details.

The Hearing of the Appeal by the Appeal Commissioners

The Appeal Commissioners, through Revenue, may request further submissions prior to the hearing, in order to speed up the process and to allow for a review of the case before the hearing begins. Where further information is supplied by the taxpayer prior to the hearing of a case, Revenue may review the case and come to a settlement with the taxpayer. The appeal is then withdrawn. The taxpayer may also withdraw the appeal at any time, for any reason.

Appeals are heard by an Appeal Commissioner at the Dublin headquarters of the Office, or in Circuit Court offices at various locations outside Dublin. Cases are heard *in camera* but taxpayers and Revenue may be professionally represented at the hearings. The decision on an appeal is normally announced on the day of the hearing, with both parties present. The finding is subsequently notified in writing to Revenue (on form AS1).

Office of the Appeal Commissioners

The Appeal Commissioners are appointed by the Minister for Finance under Section 850 of the Taxes Consolidation Act, 1997 to hear appeals by taxpayers against assessments or decisions of the Revenue Commissioners concerning taxes or duties. Decisions of the Appeal Commissioners are based on findings of fact determined from the evidence presented at the hearing, and by interpretation of tax law. Prior to 1978, appeals were heard by one or other of two Commissioners. Following an increase in workload, a third Commissioner was appointed in that year, but the number reverted to two in 1993 in the aftermath of the introduction of self-assessment.

A separate vote for the funding of the Office of the Appeal Commissioners was established in 2003, with one Commissioner serving as Accounting Officer. Previously, the salaries and expenses of the Appeal Commissioners were paid through the Revenue Vote. The Commissioners are assisted by two support staff, who act as clerks to the Commissioners. The recruitment of a further staff member has been sanctioned by the Department of Finance, but an appointment has not been made. Total expenditure amounted to €344,000 (Est. €561,000) in 2003, €357,000 (Est. €571,000) in 2004, and €399,000 (Est. €607,000) in 2005.

However, outside of the listing and hearing of cases, the Office of the Appeal Commissioners relies on Revenue for the processing of financial transactions and other services such as personnel, training and information technology. The Accounting Officer receives a monthly report on expenditure from Revenue. The arrangements are formalised in a Service Level Agreement between both Offices signed in February 2005.

The Appeal Commissioners' web site is hosted and maintained by the Irish Taxation Institute. There are at present 31 determinations listed on it, 25 relating to 2000, 5 relating to 2003 and 1 case relating to 2005. It also contains a calendar of hearing dates and venues for the current term and a Freedom of Information Guide relating to the Appeal Commissioners. The Commissioners do not issue an Annual Report covering developments or activities, and have not prepared a statement of strategy or a business plan. Statistical or summary records of cases, throughput, outcomes and decisions are not maintained.

External Reviews of the Operation of the Appeal Commissioners

Arising from the Committee of Public Accounts Parliamentary Inquiry into DIRT, various parties prepared proposals in relation to the role and operation of the Appeal Commissioners, and the issue was also considered in the final report of the Committee of Public Accounts in April 2001. During the period 2000 to 2003, reports and submissions prepared by the following bodies and groups included proposals and recommendations for improving, reforming or extending the tax appeals process as operated by the Appeal Commissioners

- D/Finance Steering Group on the Review of Revenue – August 2000
- Submission of the Institute of Taxation to the PAC Inquiry – February 2001
- Submission by Revenue to the PAC Inquiry – February 2001
- Submission by the Appeal Commissioners to the PAC Inquiry – March 2001
- PAC DIRT Inquiry Final Report – April 2001
- Law Reform Commission Report on a Fiscal Prosecutor and a Revenue Court – July 2003.

Recommendations Made

Many of the proposals covered the broader aspects of the status and functions of the Appeal Commissioners ranging from appointment of commissioners, jurisdiction, statutory basis, legislative changes, to the extension of the Commissioners' role. However, other recommendations, which are listed in Figure 2, are of more direct interest to this review as they might be seen as indicators of perceived weaknesses in the current operations of the Office of the Appeal Commissioners, and as providing opportunities for improved performance in the area of tax appeals.

Figure 2 Recommendations relating to Current Operations and Performance of the Appeal Commissioners

	D/Fin Revenue Review Group	Institute of Taxation	Revenue Commissioners	Appeal Commissioners	PAC DIRT Sub Committee	Law Reform Commission
Publication of Annual Report	●	●		●	●	
Comment on areas of Tax Legislation through report	●					
Provide Separate Vote and Accounting Officer	●					
AO to conduct a review of adequacy of resources	●					
Name of the Office does not indicate independence		●				●
Formal rules required due to delays in listing cases		●	○			
Formal rules req'd due to delays issuing decisions		●	○			
Publication of determinations in detail		●			●	●
Appointment of a third Appeal Commissioner		●	●	○	●	
Review of IT requirements incl. Website				●	●	
General review of administration systems				●		
Review of staffing requirements				●		
Establish a case management system in the Office				●		
Objectively establish a realistic budget for the Office					●	
Ending of Revenue responsibility for listing appeals						●
Issue concise written determination within 3 months						●

- Denotes support for the recommendation by the body or group.
  - o Recommendation considered not to be necessary by the body or group.

Objectives and Scope of the Audit

The statutory appeals process is an important safeguard for the taxpayer in his/her relationship with the tax system. It also provides a reasonableness check on the tax assessment process. My audit sought

- to establish whether there had been any development of the systems, procedures and practices for the management of tax appeals in Revenue and in the Office of the Appeal Commissioners since my 1999 Report
- to consider the extent to which the annual throughput of appeals cases and of case time elapsed in both Offices was indicative of the efficient resolution of appeal cases
- to ascertain whether the outcomes of appeals were analysed and summarised to provide management information within Revenue, or published by the Appeal Commissioners for the benefit of taxpayers in general.

As can be seen from Figure 1, responsibility for the management of tax appeals is in effect shared by two independent Offices who each perform the distinct roles assigned by the Taxes Acts. Notwithstanding

the distinct statutory roles, the audit addressed the appeals process as a continuous one that commences with the lodgment of the appeal and concludes with a determination by the Appeal Commissioner i.e. from the taxpayer viewpoint.

The audit findings are based on the review of procedures and documentation, the analysis of data from Revenue systems, the extraction from Revenue records of the time elapsed at each stage of the appeals process in respect of a sample of cases, on informal discussions with officials in Revenue and in the Office of the Appeal Commissioners, and on formal correspondence with the Accounting Officers of Revenue and the Office of the Appeal Commissioners.

The performance of a case-tracking exercise following a sample of appeal cases through Revenue and the Appeal Commissioners was an important part of the original plan for the examination. However, this could not be completed as the Accounting Officer of the Office of the Appeal Commissioners had a serious doubt as to whether it was within his jurisdiction to supply my Office with the information and documentation requested in relation to taxpayers. He has sought the opinion of the Attorney General in the matter, and that is still awaited. As a consequence, all data analysis and selection and sampling of cases were, of necessity, performed only on Revenue records and case files.

Tax Appeals Process within Revenue

Standard Practice

In general, normal and routine appeals are handled on an individual case basis by the officer with previous responsibility for the case. Revenue practice is that tax cases that have been appealed are sent on to an appeal hearing only after every reasonable effort has been made to settle the case by negotiation without conceding any important point of principle. Assistance in relation to presentation and argument of cases is available from the Revenue Legislation Services (RLS) Divisions to individual officers handling appeals. In order to comply with time limits, a case stated to a higher court is demanded by Revenue in all cases where the case officer is dissatisfied with the determination of the Appeal Commissioners or the Circuit Court on a point of law, and the issue is considered sufficiently important to warrant consideration of appealing the matter to the High Court. The demand may be withdrawn subsequently following consideration.

Referrals to Revenue Central Appeals Committee

Officers are required to refer particular appeal cases to an Appeals Committee within Revenue before the form AH1 is sent to the Appeal Commissioners. The Appeals Committee was formed to identify significant issues that might give rise to concern for the quality and standard of Revenue's approach to "argument appeals", as well as to oversee and co-ordinate such appeals. Specific responsibilities include

- Implementing a consistent and effective approach to the selection and presentation of appeals for the higher courts
- Deciding on whether engagement of counsel should be approved in particular cases
- Ensuring a free flow of information throughout Revenue regarding cases taken to appeal to the higher courts
- Ensuring appropriate technical input is received from the RLS divisions
- Monitoring the timely passage of appeals through the appeal process.

Cases that are required to be sent to the Appeals Committee are

- All cases in which an appeal to the higher courts is likely

- Where an officer considers that counsel should be retained
- Where the point at issue is seen as having wide precedent significance
- Cases involving a significant amount of tax or duty
- Cases involving avoidance and avoidance schemes
- Where a *case stated* has been demanded and the Committee has not already considered the case.

Information on Progress of Appeals

The Appeals Committee circulates decisions taken e.g. how a case is to be handled, and whether counsel is to be retained, to the individual officers, to regional liaison officers, and to all Assistant Secretaries. In cases where the retention of counsel has been approved, details of the issues are placed on the Revenue intranet for general information of staff. Where the question at issue is already awaiting hearing by the higher courts, or has previously been dealt with in some other way, further similar cases will be returned to the region or division to await the outcome of the previous case or to be dealt with in accordance with the previous decision. The case officer provides the Committee with brief reports at each appeal stage of cases where counsel has been authorised. The Committee makes a six-monthly report to the Revenue Board on the progress of cases under appeal to the higher courts.

Role of District Manager

In addition to the specific roles of the case officer and the Appeals Committee, the manager of each tax district is expected to be closely involved in

- The selection of cases for consideration by the Appeals Committee
- Ensuring a consistently high standard in the preparation and presentation of the Revenue case at appeals
- Monitoring progress at each subsequent stage in the appeal process.

Records of Appeal Cases

Revenue does not maintain a central or regional record of tax appeals giving basic control information e.g. a listing of all appeals received, the details and issues involved, current position, date sent to the Appeals Commissioners, and the outcome. As stated above, the Appeals Committee maintains a detailed record of current cases that are under the guidance of the Committee; other cases are a matter for the individual case officer. However, when an appeal is received, it is necessary to suspend all enforcement action for the amount in dispute. This is achieved by the input of a 'Stop' instruction to the taxpayer's computer record – a 'Stop16' for tax cases under appeal.

Selection and Analysis of Audit Sample

As a statistical or summary record of appeals cases, throughput, outcomes and decisions is not maintained by Revenue, it was necessary for the audit to use the movement in Stop 16s as an activity indicator in these areas. The quality of this information is likely to be good following action taken in response to unfavourable Revenue Internal Audit comments in 2003 on uncleared stops. During the course of audit, a database was obtained of cases where the "under appeal stop" was put on the case in each of the years 2000 to 2005. The database showed the dates on which the stop was inserted and later removed. There were 3,104 cases in total on the database. Table 19 shows the number of cases categorised by the year the stop was inserted and the period of time the stop was in place as at May 2006.

Table 19 Database of Cases with Appeal Stops

Period Stop in Place	Stop put on in year						Total
	2000	2001	2002	2003	2004	2005	
0-6 mths	142	132	244	197	208	231	1,154
6-12 mths	63	54	63	47	48	46	321
1-2 yrs	53	91	46	58	47	7	302
2-3 yrs	64	31	38	27	2	n/a	162
3-5 yrs	115	56	13	2	n/a	n/a	186
Still in Place	40	49	54	69	155	612	979
Total Cases	**477**	**413**	**458**	**400**	**460**	**896**	**3,104**

While the Stop 16 data does not indicate the ongoing status of each case, an analysis of a random sample of 43 Stop 16 cases up to end 2005 gave the following results

- six had been entered in error (one remained uncorrected from November 2005)
- of the 37 valid appeal cases, only 11 cases had been sent to the Appeal Commissioners by Revenue
- with the exception of one case of 79 months, the time elapsed between the date of receipt of those appeals in Revenue and the cases being sent to the Appeal Commissioners ranged from less than 1 to 27 months; the appeal in the case of 79 months was held up pending the outcome of other cases
- Hearings had been listed in 8 of the cases; the time elapsed between the date of submission to the Appeal Commissioners and the hearing date ranged from 1 to 8 months.
- Of the 8 cases, 3 were settled prior to hearing, 5 were heard, and determinations have been made in 3 of those. The time between hearing and determination in the three cases ranged from 3 to 15 months.
- Cases not forwarded to the Appeal Commissioners had been held in Revenue for periods of 8 to 17 months.

Only three cases from the sample of 37 passed through the full appeals process. The overall elapsed time in those cases three cases was 83 months[23], 30 months and 18 months.

Audit Issues

The results of the audit sample suggest that the system for handling appeals is not as efficient as it could be, and I sought the views of the Accounting Officers of Revenue and of the Appeal Commissioners.

In particular, I sought observations from Revenue on the lack of records, the management of appeals and control of Stop 16s. As regards the Appeal Commissioners, I asked for information on the throughput of cases, the administration of the Office and the level of implementation of the various recommendations set out in Figure 2.

[23] This total includes the 79 months with Revenue noted earlier.

Responses of the Accounting Officers

Length of Time Required in Appeals Cases

The Accounting Officer for the Office of the Revenue Commissioners indicated that the duration of any case within the Appeal Commissioners was not a matter for his Office. He noted that the findings in respect of elapsed time in Revenue did show a large variation between individual cases which tended to reinforce his view that it was the nature of the case that determined the length of time to have it submitted to the Appeal Commissioners, rather than any general delay in the procedures for dealing with it in Revenue. It had to be borne in mind that finalising a case for submission to the Appeal Commissioners was not just a matter for Revenue, the taxpayer was also centrally involved both in providing information and in agreeing the AH1. Taxpayers could at any stage appeal directly to the Appeal Commissioners if they felt that there were undue delays within Revenue. However, complaints in relation to delays were very rare.

Since the introduction of self-assessment, all appeals against assessments were effectively 'argument' appeals. The points at issue could range from a disagreement between Revenue and the taxpayer as to the levels of income disclosed in a return to a difference on the interpretation of a statute. In many cases, estimated assessments were raised while an audit was ongoing, usually in the absence of progress on the audit or where a fundamental difference appears that is unlikely to be resolved by agreement. The raising of an assessment may prompt further negotiations or submission of outstanding material. By their nature, such cases were difficult and took time to bring to a stage where they were ready for submission to the Appeal Commissioners. He also indicated that the change in pattern for 2005 cases whereby the 896 cases received was twice the previous annual average and the proportion of cases resolved within 6 months had fallen from 45% to 26% appeared to be related to two large groups of cases (260 and 290 cases) that had appealed on the same grounds.

The Appeal Commissioners indicated that they were unable to comment on specific cases pending the receipt of specific advices in that regard from the Office of the Attorney General.

Elapsed Case Time within Revenue

Revenue did not see its role in the appeals process as a controlling one but rather, from the Revenue perspective, as a facilitatory role. That view was supported by the fact that taxpayers could appeal directly to the Appeal Commissioners at any stage if they felt that there were undue delays in Revenue. The role was also a pragmatic one in that many appeal cases were settled between Revenue and the taxpayer without recourse to the Appeal Commissioners.

The cases were dealt with by Revenue in accordance with the relevant legislation. Revenue has studied the recommendations of the Law Reform Commission Report on a Fiscal Prosecutor and a Revenue Court with a view to furnishing its observations to the Department of Finance. In the context of the overall implementation of the package of recommendations, Revenue would have no great difficulty with them insofar as they relate to Revenue. Specifically, it would have no difficulty with the recommendation regarding ending Revenue responsibility in the listing of appeals. However, the Accounting Officer pointed out that this was not primarily a matter for Revenue.

The Appeal Commissioners stated that informal discussions had been held with the Institute of Taxation and with Revenue concerning the suggestion that appeals should be addressed directly to the Appeal Commissioners rather than through Revenue. Those discussions would continue but had not yet reached a stage where a recommendation on the suggestion could be made.

Other Observations from Revenue

The Accounting Officer pointed out that all important cases were sent to the central Appeals Committee, which maintained detailed records and made six-monthly reports to the Revenue Board. Different levels of records were maintained at various local levels. Information on appeals was presently being analysed by the Strategic Planning Division with a view to providing central and local management with appropriate performance reports.

He stated that while the situation in relation to Stops on the central computer system had improved generally since an Internal Audit report in 2003, some instances of delay in removing them still occurred. A listing of Stops older than three months had issued to all District managers in June, and that would be repeated before year end. A computer query facility to enable regions and district to control and monitor Stops more effectively was being explored at present.

Other Observations from the Appeal Commissioners

The Accounting Officer stated that the timely passage of appeals through the Office was not hindered by a lack of records. While statistics were not available for earlier years, he provided a summary of cases processed for the years 2002 to 2005 as shown in Table 20.

Table 20

Year	Listed	Heard	Taken Off[24]
2002	441	314	127
2003	325	247	78
2004	283	219	64
2005	228	178	50

He reported that determinations had been handed down, or had been listed for announcement before the end of the current term on 31 July, in respect of all cases fully heard to 30 June 2006, where the Office had received all information requested. Between 10 to 15 appeals were received annually directly from taxpayers in cases where Revenue had considered the appeals to be statutorily invalid. As the Appeal Commissioners were not informed by either party or the Court, he had no information on Circuit Court hearings. He also supplied *case stated* statistics i.e. cases referred to the High Court on a point of law as shown in Table 21.

Table 21

Year	Taxpayer	Revenue	Total
2002	3	11	14
2003	4	0	4
2004	3	10	13
2005	4	14	18

With regard to the administration of the Office, a full review of resources, administration systems and staffing requirements had been completed. He was satisfied that a realistic budget had been established for the Office. The underspend arose because of the failure to recruit a suitable candidate for an additional position sanctioned. The website and general IT facilities satisfied current requirements; however, the publication of further selected cases had been delayed by the absence of the additional staff.

[24] Cases taken off were settled by agreement, or relisted

He stated that a number of the recommendations in Figure 2 had been implemented. In addition, the Commissioners had long accepted that an Annual Report should be published but that it awaited the filling of the sanctioned staff position. Other recommendations were premature and needed more detailed examination and wider consultation.