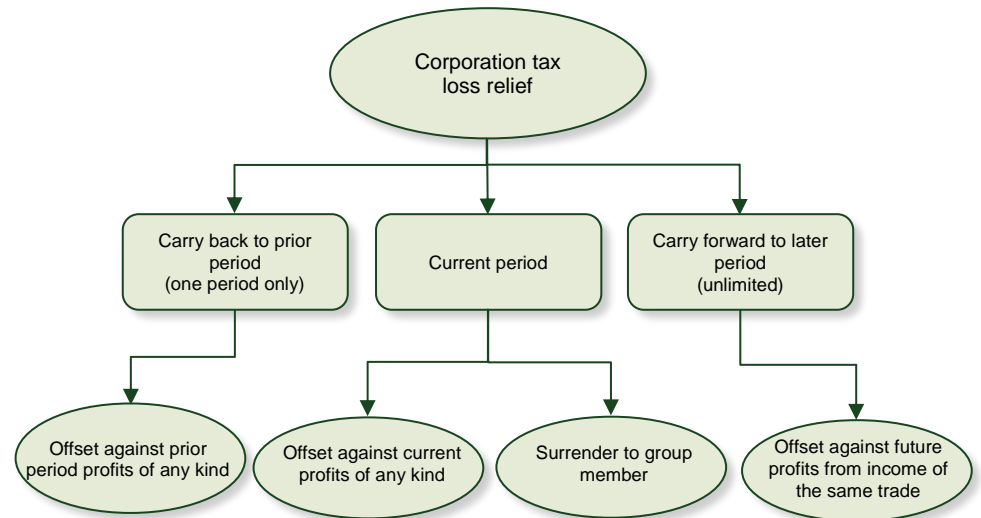


22 Corporation tax losses

- 22.1** Companies are liable for corporation tax on all profits arising from income or gains. Companies operating in Ireland are chargeable to corporation tax at a rate of 12.5% on profits generated from trading activities.¹ A company reporting a trading loss in an accounting period can use that loss to obtain relief from the payment of corporation tax in a variety of ways (see Figure 22.1).

Figure 22.1 Trading loss relief



Source: Office of the Comptroller and Auditor General

¹ A higher 25% tax rate applies in respect of investment, rental and other non-trading activities, as well as certain petroleum, mining and land-dealing activities. Chargeable capital gains are effectively taxed at a 33% rate.

² Claims for capital allowances on 'specified intangible assets' are subject to additional requirements and conditions compared to those on tangible assets. One such condition is that capital allowances for specified intangible assets can only be deducted from income that is generated from 'relevant activities' e.g. the managing, developing and exploiting of specified intangible assets and sales deriving the greater part of their value from the use of specified intangible assets.

³ A company can also claim an accelerated capital allowance (ACA) of 100% for the following: energy efficient equipment including electric and alternative fuel vehicles, gas vehicles and refuelling equipment or equipment in a crèche or gym provided by the company to its employees. The ACA can be claimed in the first year the asset is used in the business.

- 22.2** In general, trading losses may be set against current period profits, surrendered to group companies, offset against profits of a preceding accounting period of equal length or carried forward and offset against income from the same trade in future accounting periods without restriction. Trading losses can also be used on a value basis against non-trading income or gains of the current or preceding accounting period.

- 22.3** In addition, a company can reduce its tax payable by claiming capital allowances on capital expenditure it incurs on certain types of business assets and premises including plant and machinery, motor vehicles, industrial buildings etc.² Capital allowances are generally calculated on a straight-line basis on the net cost of the business asset or premises. These deductions can allow companies to spread the tax relief in respect of expenditure incurred on a capital asset over several tax years depending on the type and useful life of the asset.³ Unused capital allowances in the year (other than certain ring-fenced capital allowances) are carried forward as trading losses to the next year.

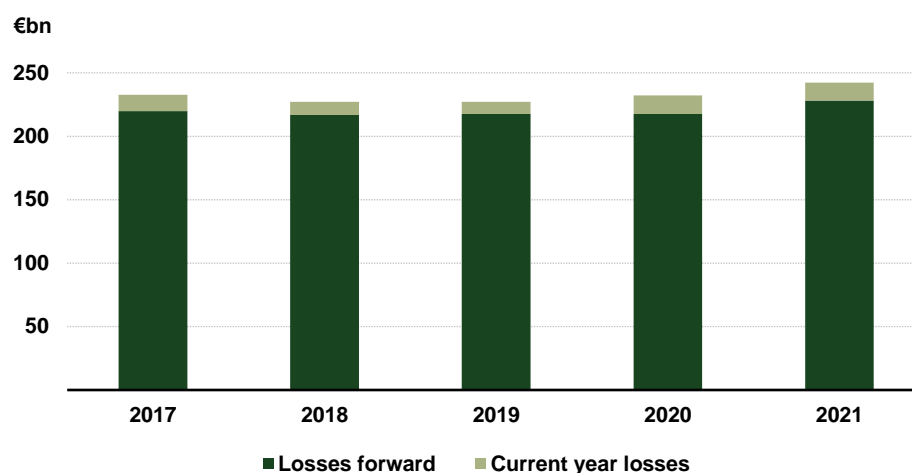
- 22.4** This examination reviews

- trends in corporation tax losses
- verification work undertaken by Revenue in relation to corporation tax loss balances
- temporary acceleration of corporation tax loss relief
- how Revenue uses available data on corporation tax losses for planning and forecasting purposes.

Trends in corporation tax losses

- 22.5** Available corporation tax losses have been relatively stable over the five years up to 2021. In 2021, approximately €242 billion of losses were available for offset against profits, consisting of €228 billion of losses carried forward and €14 billion of current year losses (see Figure 22.2). This potentially reduces the amounts of future profits on which corporation tax is charged, and so equates to around €30 billion in possible future reduced corporation tax receipts for the Exchequer.

Figure 22.2 Trading losses available 2017 – 2021^a



Source: Revenue Commissioners

Note: a The latest available corporation tax data is for 2021. Corporation tax returns for 2022 are to be submitted within nine months after the end of the accounting period.

Corporation tax losses available for offset

- 22.6** In April 2023, Revenue reported that around €35 billion of losses brought forward into 2021 were claims by companies that were either in liquidation or otherwise unlikely to ever use those losses. The bulk of this amount was recorded by companies in the financial sector.¹
- 22.7** Losses carried forward in relation to the 2021 tax year of €228 billion were available to around 63,200 companies. Of these losses carried forward, nearly 90% were incurred by companies that had been claiming losses forward for five years or more.¹
- 22.8** Where capital allowances have created or augmented a trading loss in an accounting period and that loss is carried forward, Revenue's systems do not distinguish between unused capital allowances carried forward and losses carried forward.
- 22.9** In June 2018, the Committee of Public Accounts recommended that Revenue should
- implement procedures to analyse losses carried forward to distinguish between those relating to trading losses and those relating to unused capital allowances, and
 - carry out an age analysis of current losses carried forward and put in place procedures to ensure that such analysis is carried out on a regular and systematic basis.²

¹ Corporation Tax — 2022 payments and 2021 returns, Revenue Commissioners, April 2023.

² Examination of matters in relation to receipts from corporation tax, Committee of Public Accounts, June 2018.

22.10 Revenue informed the examination team that legislative change would be required to enable it to implement either recommendation. It stated that there is no basis in tax law for a distinction between the part of a trading loss that is attributable to capital allowances and the part that is not — for taxation purposes, it is treated as one composite amount.

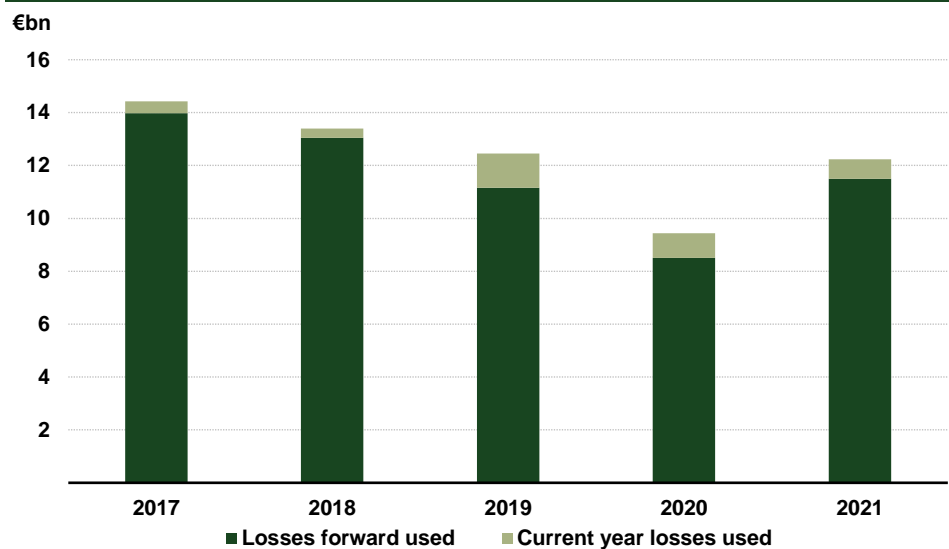
22.11 On the matter of age analysis, Revenue stated that

- the current legislation does not set out any order in which trading losses carried forward from earlier years should be offset, other than to say that they must be used against the first available profits from the same trade
- given that there is no prescription in law on the streaming of losses carried forward by reference to the year in which they are incurred, there is no basis to require taxpayers to provide an age analysis of losses carried forward as it is not relevant to the calculation of their tax liability
- as there is no basis in legislation for streaming losses by year and there is no requirement for taxpayers to provide an age analysis, it is not possible for its systems to carry out an age analysis of trading losses carried forward.

Corporation tax losses used

22.12 While a company must record losses claimed on their corporation tax return (CT1), trading losses can only be used if there is an appropriate corporation tax liability to offset. Figure 22.3 sets out the amount of losses used by companies in the period 2017 to 2021 apportioned over losses carried forward and current year. With the exception of 2020 — where the figure dipped below €10 billion — the corporation tax losses used by companies have remained fairly consistent since 2017 ranging from just over €14 billion in that year to around €12 billion in 2021.

Figure 22.3 Trading losses used 2017 – 2021



Source: Revenue Commissioners

Sectoral analysis

22.13 In 2021, just over €415 billion corporation tax losses and capital allowances were available for offset against profits (2020: €377 billion). This comprised

- losses brought forward of €228 billion
- current year losses of €14 billion
- current year capital allowances amounting to €173 billion.

22.14 Details of the use of losses and capital allowances available in 2021, by sector, are set out in Figure 22.4.

Figure 22.4 Estimate of losses and capital allowances available, used and unused at the end of 2021

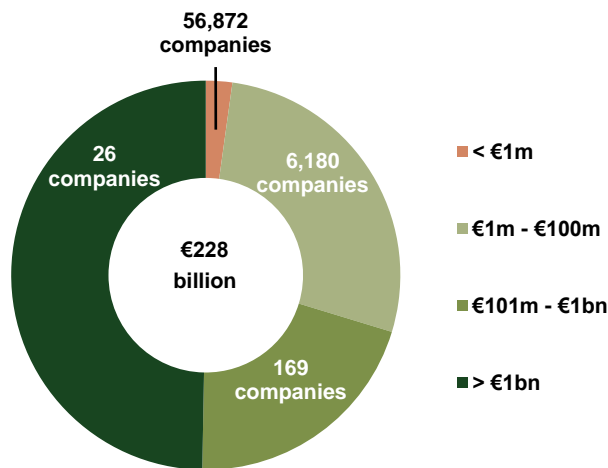
Sector	Losses and capital allowances available 2021	Used in 2021		Unused at end 2021	Number of companies
	€bn	€bn		€bn	
Financial and insurance activities	108.3	6.7	6%	101.6	4,390
Administrative and support service activities	85.0	18.3	22%	66.7	5,899
Manufacturing	82.7	57.4	69%	25.3	4,618
Information and communication	41.0	12.0	29%	29.0	6,175
Construction	10.7	1.0	9%	9.7	11,227
Wholesale and retail trade	36.0	8.1	23%	27.9	10,140
Transportation and storage	11.9	0.5	4%	11.4	2,156
Other	39.9	7.4	19%	32.5	26,711
Total	415.5	111.4	27%	304.1	71,316

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

Numbers of companies carrying losses forward

22.15 Almost 29,000 companies used corporation tax losses in their 2021 returns. Nearly half of the €228 billion losses carried into 2021 was available to just 26 companies, an average of approximately €4.4 billion each. In comparison, nearly 57,000 of the remaining companies had losses available to them totalling €5.1 billion, an average of approximately €90,000 per company (see Figure 22.5).

Figure 22.5 Concentration of corporation tax losses brought forward, 2021

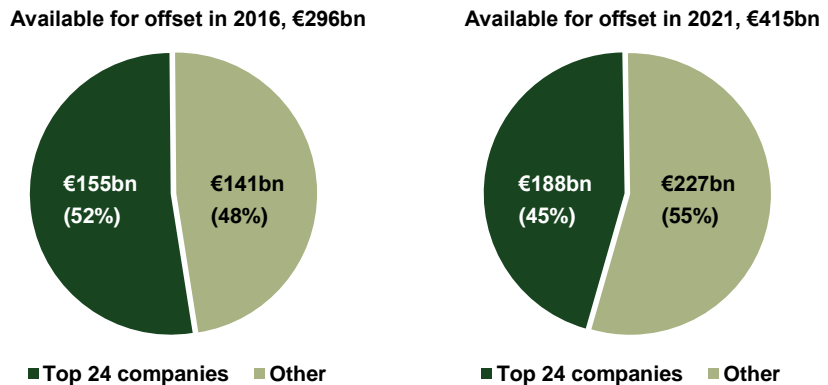


Source: Revenue Commissioners

Analysis of companies with a high level of corporation tax losses

22.16 While there is a very high level of concentration of losses available for offset against future corporation tax liabilities, this has reduced somewhat since I previously reported on this matter.¹ In 2016, just over half of the losses then available for offset (€296 billion) was accounted for by the top 24 companies (see Figure 22.6). This had reduced to 45% of the available losses (€415 billion) in 2021.

Figure 22.6 Losses and capital allowances available for offset, 2016 and 2021



¹ Chapter 19, 'Corporation tax losses', Report on the Accounts of the Public Services 2017.

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

22.17 As part of this examination, we tracked the 24 companies with the largest losses in 2016 to establish their position in 2021. Twelve of the companies with the largest losses in 2016 were still in the top 24 for 2021. Of the twelve companies no longer in the top 24 for 2021, nine were profitable and using the losses, one had profits and was claiming capital allowances for 2021, one submitted a CT1 for 2021 but had no trade profits and one company is no longer trading.

Verification of corporation tax losses forward

22.18 Revenue's system for verification of the value of losses carried forward for companies comprises a number of elements.

- Corporation tax compliance interventions generally include a review of any losses forward.
- Losses forward are examined as part of the annual risk review for large groups taking part in the Co-operative Compliance Framework (CCF).¹
- When requests for corporation tax refunds and liquidation clearance are received by Revenue, losses forward may be examined.

22.19 Revenue carried out 14,810 corporation tax compliance interventions between 2019 and 2022. Revenue's case management system contains caseworker notes and an intervention report that provides the details of each case. This information is generally in the form of free text rather than pre-defined fields that could be used as a basis for extracting statistics. This means that each case would need to be reviewed manually to confirm how many cases included a review of losses.

22.20 Revenue has stated that its approach to compliance is tailored to tackle potential or existing risks across its segmented case base, with cases managed differently in each division. For example, of the nearly €223 billion losses forward in 2021 (excluding those relating to excepted trades)

- 80% or around €178 billion was managed by Revenue's Large Corporates Division²
- 12% or around €27 billion related to taxpayers managed by the Medium Enterprises Division and
- the remaining 8% or €18 billion related to taxpayers managed by the Business Division.

Large Corporates Division

22.21 The primary method used by Large Corporates Division (LCD) to gain assurance over the value of losses carried forward is case-specific risk assessments. A review of losses is just one element considered during the risk assessment and may include examination of

- group relief claims (including symmetry between losses surrendered and losses claimed)
- any restrictions of losses that should arise e.g. in the event of late filing.

¹ 119 groups comprising 1,252 companies that are registered for corporation tax take part in the CCF.

² Since October 2015, groups with annual turnover greater than €190 million or tax payments greater than €18 million per annum are dealt with by the Large Corporates Division.

22.22 A review of the closing losses in one year and the opening losses the following year is routinely carried out as part of a case-specific risk assessment. However, Revenue stated that this is not necessarily documented as the purpose of the risk assessment is to identify a risk to tax. Where no tax risk is identified, the risk assessment is generally not documented.

22.23 LCD also carries out specific compliance projects on losses forward in certain sectors.

- In 2019 and 2021, two projects were carried out on the aircraft leasing sector. The focus was to reconcile losses carried forward at the end of 2016 and 2017 to losses brought forward at the beginning of 2017 and 2018. Entities in this sector have specific excess capital allowances that are not included on the CT1 form which means that losses forward cannot be reconciled solely from the information on the return. The projects reviewed 25 companies which resulted in a restriction of total losses carried forward by the relevant companies of €358 million (10% of the total losses carried forward), resulting in an additional €45 million in tax yield. Amendments have been made to the CT1 for 2021 and later years to allow these specific excess capital allowances to be reported separately on the form.
- In 2021, a project commenced to examine the validity of the 2017 and 2018 losses in 30 companies with the highest losses in two LCD branches. Phase one has been completed, with almost €18 million of losses restricted (1% of total losses carried forward) yielding an additional €2.2 million. Phase two is ongoing and focuses on the validity of losses in 2019 and 2020 in excess of €5 million claimed and surrendered by groups. Revenue has stated that recommendations, if arising, will be made in respect of both phases on completion of the project.

Medium Enterprises Division

22.24 When carrying out a corporation tax compliance intervention where losses are shown in the return(s), the Medium Enterprises Division (MED) reviews the losses for any indication of risk. As part of this review, a schedule of losses is requested. Revenue stated that the conclusions in relation to all matters subjected to risk review, including losses, are documented in the intervention report.¹

22.25 In quarter 3 of 2022, one of the MED branches commenced an exercise to analyse the losses carried forward for the years 2017 to 2021 in respect of the 261 cases managed by that branch with such losses indicated on the relevant CT1 forms. Phase one of this exercise was finalised in April 2023 and while no difference or an easily reconciled difference was found in 192 (almost 75%) of the cases, the exercise noted the following issues in respect of some of the forms

- transcription and calculation errors²
- agents/taxpayers had not completed the losses panel fully (leaving the carry forward box blank).

22.26 The April 2023 exercise also noted that, in cases where there are current year losses, the CT1 form does not allow for a reconciliation of the losses carried forward at the end of one year, with those brought forward to the following year. The MED branch report on the review noted that an additional field should be added to the CT1 form to capture total losses carried forward into the following year, rather than just the balance of losses brought forward from previous years. Revenue stated that this change to the CT1 form is under consideration for the next period (CT1 2024) but that the capacity to implement the change is subject to prioritisation and availability of IT resources.

¹ A risk review considers risks in relation to current year corporation tax losses and carry forward trading and non-trading losses.

² Transcription errors such as misplaced or omitted digits from a number. Calculation errors such as omission of component figure, visible in CT1 but not taken into account in computing the balance.

22.27 The MED branch concerned then commenced phase two of the exercise examining 69 cases identified in the initial exercise as requiring a more detailed review. The follow-up review was able to establish the reason for the discrepancy in 93% of those cases. The June 2023 report on the follow-up review noted that some taxpayers/agents lack understanding with respect to certain fields on the CT1 return and this accounted for the associated input errors. As a result, it was suggested that validation of figures on CT1 returns by Revenue could address this. The review also identified five cases for escalation in the form of a risk review.

Review of corporation tax losses by the OCAG financial audit team

- 22.28** As part of the financial audit of the Receipt of Revenue of the State collected by the Revenue Commissioners in the year ended 31 December 2022, a sample of 15 cases was examined by the financial audit team where the losses carried forward from the 2019 CT1 returns varied from the losses brought forward in the 2020 CT1 returns.
- Nine cases, with differences totalling €975 million, were explained by taking factors such as foreign exchange differences, charges, capital allowances, group relief and value based losses into account.
 - Two cases, with differences totalling €294 million, related to entities in the aircraft leasing industry where there are specific excess capital allowances that were not included on the CT1 form for the year under review. However, Revenue confirmed that amendments have since been made to the CT1 form for 2021 and later years to facilitate the inclusion of the industry-specific excess capital allowances.
 - Four cases, with differences totalling €12 million, were attributed to input errors by taxpayers/agents. One of these cases has been resolved by the taxpayer and Revenue is continuing to work with the relevant taxpayers/agents on addressing the remaining three cases.

Temporary acceleration of corporation tax loss relief

- 22.29** Section 11 of the Financial Provisions (Covid-19) (No. 2) Act 2020 provided for a temporary acceleration of corporation tax loss relief for companies as a cash flow support. The provision allowed companies to estimate trading losses for certain accounting periods impacted by Covid-19 restrictions and to make a provisional claim to carry-back up to 50% of those losses against taxable profits of the preceding accounting period on an accelerated basis. This resulted either in a repayment of some or all of the corporation tax paid for the prior period or in a reduction in the amount of corporation tax payable for that period. The last day by which a claim for this relief could be made was 30 May 2022.
- 22.30** Figure 22.7 provides details on the total number of claims received by Revenue for accelerated losses and the amount of losses and accelerated refunds claimed.

Figure 22.7 Accelerated loss relief

Year ^a	Type	Number of claimants	Losses claimed €m	Accelerated refunds claimed €m
2019	Companies with trading profits	247	479.8	60.0
	Companies with excepted trades ^b	30	2.7	0.6
	Total	277	482.5	60.6
2020	Companies with trading profits	106	89.8	11.2
	Companies with excepted trades ^b	23	1.2	0.2
	Total	129	91.0	11.4

Source: Revenue Commissioners

Notes: a 2019 data reflects 2020 losses carried back against 2019 profits. 2020 data reflects 2021 losses carried back against 2020 profits.

b An excepted trade is a trade which consists only of trading operations or activities which are excepted operations such as dealing in or developing land, trade of working minerals or a trade consisting of petroleum activities.

22.31 Revenue stated that for the 24 claims managed by LCD (just under 6% of all accelerated loss relief claims), those claims were notified to the sectoral branches as they arose and interventions were opened on the majority.

22.32 There are no dedicated criteria for selecting claims made for accelerated loss relief on corporation tax for review by caseworkers. As is the case for all other corporation tax refund claims, accelerated loss relief claims may be brought to the attention of the processing team via the standard work item rules in Revenue's Integrated Taxation Processing system.¹ If a taxpayer submits or amends a corporation tax return and a refund is due, a work item may be generated based on the amount of refund that applies.

22.33 In terms of compliance interventions on temporary acceleration of loss relief, Revenue confirmed that twenty interventions were carried out comprising three compliance contacts, three appraisals and 14 aspect queries.² No yield (of additional tax due) was obtained from this compliance work carried out on almost 5% of cases by number and 87% by value of total accelerated refunds claimed.

1 A work item is a 'trigger' generated by Revenue's processing system for a particular issue identified on a taxpayer's return or record that requires a caseworker review.

2 A compliance contact is an intervention by Revenue that, although not at the level of an audit, may involve checks and challenges and direct contact with the taxpayer and/or agent to test compliance.

3 The Department of Finance uses projections of gross operating surplus i.e. profitability, estimates of the impact of budgetary measures and other policy changes, together with information derived from Revenue, to forecast corporation tax receipts.

Planning and forecasting

22.34 Accurate forecasting of tax revenue is a key part of overall public sector budgeting. The Department of Finance has responsibility for the calculation and publication of tax forecasts each year, which is carried out with assistance from Revenue.³ Revenue has stated that the forecasting of the future impact of losses on corporation tax receipts in later years is difficult, given that the future use of losses is dependent on the future profitability and the ability of companies to utilise any losses available to them.

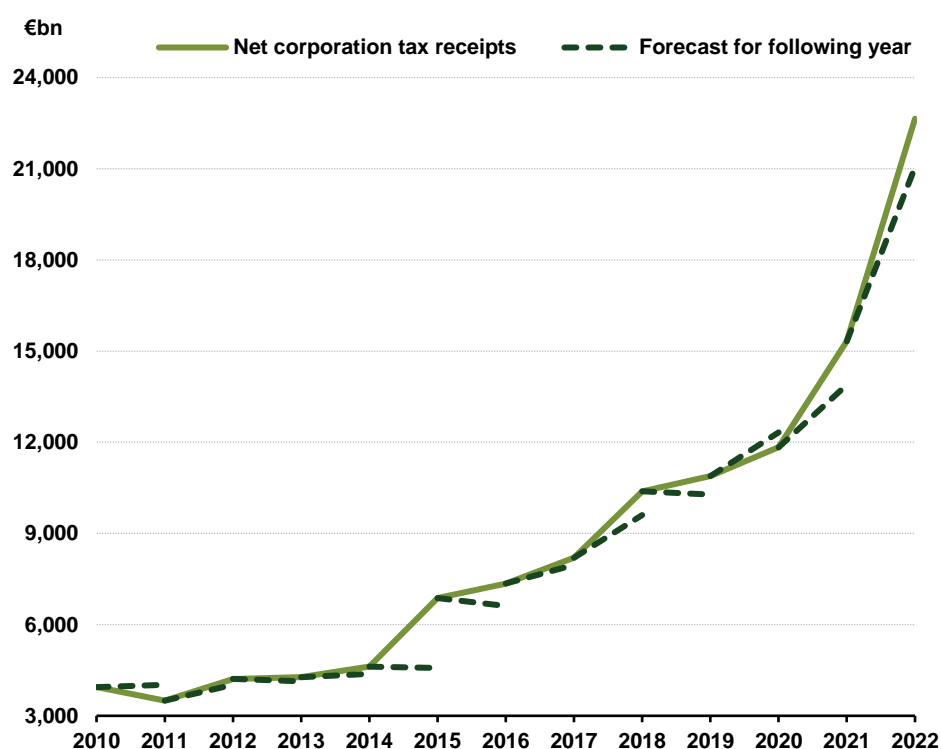
22.35 Corporation tax is highly concentrated, with the bulk of receipts paid by a small number of companies and sectors. As a result, company and sector specific developments, which are difficult to predict, have a significant impact on receipts. For 2021, corporation tax trading losses used reduced the tax receipts to the Exchequer by just over €1.5 billion, and the remaining accumulated losses represent a potential reduction in future tax collection of just over €30 billion. Therefore, the future use of losses is a key component of forecasting.

22.36 I previously reported that corporation tax losses were not forecast separately. In response, Revenue stated that estimates for future years were based on receipts of previous years on a net basis, with losses being an intrinsic part of the tax base for corporation tax.¹ Revenue added that if significant new losses were to be incurred in the tax base, Revenue would expect to capture this through the usual channels and would then adjust estimates accordingly.

22.37 Revenue confirmed that the same approach continues to be taken to forecasting corporation tax receipts as it is considered the most appropriate method. As part of the forecasting process, Revenue gives particular attention to the use of losses by the 'top ten' groups.² Each year, the top ten groups are asked to forecast any significant changes in their tax payments in the forecast year and any associated reasons underpinning these changes, for example, due to increased loss usage. Revenue confirmed that it has not received any responses indicating that losses are a factor influencing variations in tax payments by these groups.

22.38 Figure 22.8 sets out corporation tax forecasts compared to net receipts for the period 2011 to 2022. The annual variance from forecast ranged from 3% to 50% up to 2016. However, the accuracy of forecasting has improved in recent years with net receipts being within 10% of the forecast throughout the 2017 to 2022 period.

Figure 22.8 Corporation tax receipts compared to forecasts, 2010 – 2022^a



Source: Revenue Commissioners

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

¹ Chapter 19, 'Corporation tax losses', *Report on the Accounts of the Public Services 2017*.

² The top ten groups are defined by Revenue as the top ten corporation tax payers. In 2022, the top ten groups were responsible for approximately 60% of corporation tax receipts.

Conclusions and recommendations

- 22.39** The level of corporation tax losses forward has been relatively stable over the five years up to 2021. At the end of 2021, approximately €242 billion of accumulated corporation tax losses were available for offset against profits. This represents a significant potential reduction in future corporation tax receipts, of the order of €30 billion.
- 22.40** Corporation tax losses brought forward from prior years comprise trading losses incurred and unused capital allowances for companies engaged in investment. Under current legislation, there is no distinction for tax purposes between the portion of a trading loss that is attributable to capital allowances and the portion that is not. Accordingly, the balance between these sources of losses brought forward cannot be readily identified.
- 22.41** Recommendations made by the Committee of Public Accounts in 2018 in relation to distinguishing between trading losses and unused capital allowances and performing regular age analyses of losses carried forward have not been implemented. Revenue has stated that implementation of these recommendations would require legislative changes.
- 22.42** Losses brought forward into 2021 were highly concentrated with just 26 companies accounting for nearly half of the total.
- 22.43** Three major compliance projects on corporation tax losses undertaken by Large Corporates Division since 2019 have yielded an additional €47 million in corporation tax receipts. While other compliance exercises, undertaken to reconcile differences arising between the losses forward figure from one year to the losses brought forward in the following year, were able to establish a reason for the discrepancy in the majority of cases, some issues were highlighted.

Recommendation 22.1

Revenue should introduce a process to investigate instances where significant variations arise between a company's corporation tax losses carried forward from one year and its losses brought forward in the following year.

Accounting Officer's response

Agreed.

Revenue proposes to introduce a work-item to flag significant variation in CT1 losses carried forward from one year compared to the losses brought forward to the following year. While there are many valid reasons for such variations, for example, exchange rate movements or group restructuring, generating this work-item will ensure losses are reviewed by a case worker where a significant variation arises.

Timeline for implementation

For the CT1 2024 by quarter 4 2024.

22.44 A scheme of temporary acceleration of corporation tax loss relief, introduced by the Financial Provisions (Covid-19) (No. 2) Act 2020, was administered by Revenue from 2020 to support companies that had become loss-making due to the impact of Covid-19. Aggregate tax refunds of €72 million were paid arising from over 400 claims submitted in respect of the 2020 and 2021 trading periods. Twenty compliance interventions (5% by number and 87% by value) undertaken by Large Corporates Division in respect of the scheme did not result in any additional tax yield.