

21 Assessment and collection of plastic bag levy liability

1 The plastic bag levy is also referred to as the environmental levy on plastic bags or the e-levy on plastic bags. The levy is not subject to VAT.

2 The statutory basis for the introduction of the levy was the [Waste Management Act 1996](#), as amended by the [Waste Management \(Amendment\) Act 2001](#). The powers under that legislation were subsequently repealed and replaced by [Section 11 of the Circular Economy and Miscellaneous Provisions Act 2022](#) as the legal basis for environmental levies.

3 [National Litter Pollution Monitoring System — system results 2023, July 2024](#).

4 Prior to July 2023, the applicable regulations were the [Waste Management \(Environmental Levy\) \(Plastic Bag\) Regulations 2001](#) as amended by the [Waste Management \(Environmental Levy\) \(Plastic Bag\) \(Amendment\) \(No. 2\) Regulations 2007](#). From 1 July 2023 to 31 December 2023, the [Circular Economy \(Environmental Levy\) \(Plastic Bag\) Regulations 2023](#) were in force. Those regulations were revoked and replaced from 1 January 2024 by the [Circular Economy \(Environmental Levy\) \(Plastic Bag\) \(No. 2\) Regulations 2023](#).

5 The Circular Economy Fund replaced the [Environment Fund](#) which ceased on 30 June 2023. The Fund is managed and controlled by the Minister for the Environment, Climate and Communications.

- 21.1** A plastic bag levy was introduced in March 2002.^{1,2} The main aim of the levy is to reduce the use of certain plastic bags, supplied in retail settings, by influencing consumer behaviour. The levy has had a positive impact, and plastic shopping bags are now estimated to represent just 0.6% of national litter.³
- 21.2** The levy was initially set at 15 cents per bag, rising to 22 cents per bag in 2007. It has remained unchanged since then. The progressive reduction in the use of leviable plastic bags is reflected in the trend of annual levy receipts: these peaked at €27 million in 2008 and had fallen to €1.4 million by 2023.
- 21.3** The plastic bag levy regulations specify the Revenue Commissioners (Revenue) as the collection authority, on behalf of the Department of the Environment, Climate and Communications (the Department).⁴ A service level agreement in place between the Department and Revenue sets out their respective roles and responsibilities in relation to the implementation and collection of the levy.
- The Department is responsible for the relevant primary and secondary legislation, and advertising and promoting awareness of the levy.
 - Revenue is responsible *inter alia* for
 - collecting the levy from retailers
 - carrying out verification checks relating to the accuracy of returns by retailers
 - raising estimates or assessments of liability where returns are not received or where liability is understated
 - dealing with appeals against estimates raised and complaints from accountable persons relating directly to Revenue's collection role.
- 21.4** The regulations require retailers that supply certain plastic bags to customers to charge a levy at the point of sale and then pay over the amounts collected to Revenue. As the collection authority for the levy, Revenue then deposits the levy proceeds into the Circular Economy Fund (and into the Environment Fund up to 30 June 2023).⁵ Amounts in the Fund are ring-fenced to finance initiatives to prevent or reduce waste and promote the reuse and recycling of goods.
- 21.5** In the course of the audit of the cessation accounts of the Environment Fund, it was noted that a long-running appeal by a retailer against an assessment of a plastic bag levy liability of €36.6 million had been settled. The amount of the settlement reached was €5 million.
- 21.6** A review was undertaken of the case to establish the circumstances that led to an outcome that was considerably less than the original liability assessed.

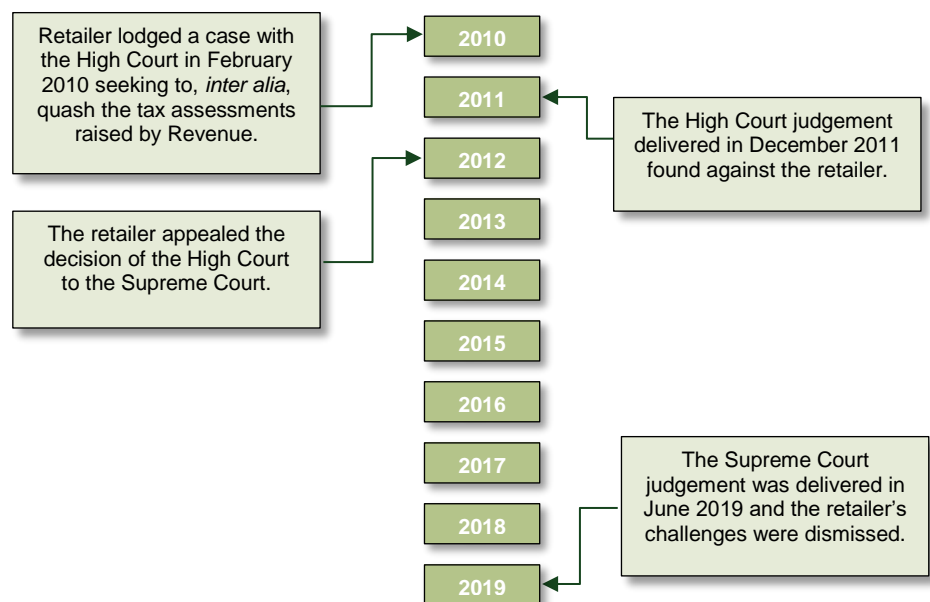
Identification of liability due

- 21.7 Revenue carries out risk-based checks to ensure compliance with the plastic bag levy regulations. A Revenue audit of a particular retailer that concluded in 2009 found that an unpaid liability was due in relation to certain plastic bags which exceeded allowable dimensions specified in the regulations in force at that time. In November 2009, Revenue issued notices of assessment to the retailer for an aggregate outstanding amount of €36.6 million covering a four-year period between July 2004 and June 2008. Revenue also provided the retailer with its calculations to support the assessments.
- 21.8 The retailer appealed the levy assessments to the Appeal Commissioners (now the Tax Appeals Commission).¹ However, the appeals process was later deferred pending the outcome of a separate judicial review sought by the retailer.

Judicial review

- 21.9 The retailer sought a judicial review of both the primary legislation (specifically, section 72(5)(b) of the Waste Management Act 1996 as inserted by section 9 of the Waste Management (Amendment) Act 2001) and the secondary legislation (Waste Management (Environmental Levy) (Plastic Bag) Regulations 2001).
- 21.10 When delivering his decision in 2011 upholding the legislation, the High Court judge noted that initially he thought the wording of a key section of the primary legislation — providing for the imposition of an environmental levy — was ambiguous but that after reading it carefully he was of the view that it was just ‘awkwardly phrased’ and that the section when carefully read is clear.

Figure 21.1 Timeline of court proceedings



¹ Prior to the establishment of the Tax Appeals Commission in March 2016, appeals against decisions and determinations by Revenue were processed by Appeal Commissioners.

21.11 The retailer appealed the decision of the High Court. In dismissing the retailer's appeal in June 2019, the Supreme Court also expressed views on the lack of clarity in the legislation, stating that it was drafted in an overly complex way and that the provisions involved in the appeal were capable of a much clearer definition.

Tax Appeals Commission determination

21.12 The hearing of the retailer's appeal to the Tax Appeals Commission against the November 2009 assessments was stayed for several years, pending the outcome of the judicial review proceedings.

21.13 In February 2021, the Tax Appeals Commission directed Revenue to prepare its outline of arguments in advance of a hearing of the appeal. As part of that process, Revenue carried out a detailed review of its calculations supporting the assessments issued to the retailer in November 2009. At that stage, Revenue also had the benefit of reviewing the retailer's own calculations (which it had received in February 2021) in respect of the amounts in dispute. Revenue's review identified that

- The 2009 assessment had included estimated liabilities for the period 1 July 2004 to 30 June 2007 for plastic bags of a certain type on which the retailer had already paid levies. In addition, there were differences in the level of deduction applied for matters such as the transfer by the retailer of bags from stores in Ireland to stores in Northern Ireland. The related adjustments reduced the assessment by approximately €12.9 million.
- Estimates had also been included for the period 1 July 2004 to 30 June 2007 for certain exempted bags, totalling approximately €4.1 million.¹ The amounts were originally included on the basis of the Department's interpretation of the word 'depth' as it pertained to the measurement of exempted plastic bags. Given that the Department's view on that matter had changed by 2021, Revenue decided not to defend that element of the assessments.
- The above issues also applied to the period 1 July 2007 to 30 June 2008, and the assessment of the amount due was further reduced by €11.1 million in that regard.

21.14 The outcome of the Revenue review was that the original assessments totalling €36.6 million were revised downwards by over €28 million — a reduction of more than three quarters. In November 2021, Revenue wrote to the retailer stating that the amount of the levy at issue for the periods within scope of the assessments was actually €8.5 million.

21.15 A preliminary case management conference was held in June 2022 and the appeal was heard in May 2023.² The Tax Appeals Commission's determination was delivered on 6 September 2023 and confirmed that the liability due and payable by the retailer was €8.5 million.

¹ Prior to 2024, exemptions from the levy applied in respect of re-usable shopping bags and plastic bags falling within specified dimensions and used to contain certain products. Since 1 January 2024, in accordance with the [Circular Economy \(Environmental Levy\) \(Plastic Bag\) \(No. 2\) Regulations 2023](#), the exemption criteria are based on the weight and wall thickness of bags, rather than the dimensions.

² A case management conference is a meeting to help progress a case. It is provided for in [Part 4 of the Finance \(Tax Appeals\) Act 2015](#).

21.16 No interest or penalties applied in this case.

- On the matter of interest, Revenue stated that its legal counsel advised that, having regard to the applicable legislation and regulations, the levy determined by the Tax Appeals Commission is not subject to interest.
- On the matter of penalties, Revenue stated that tax-geared penalties are not provided for in the legislation or regulations underpinning the plastic bag levy. They also stated that even if tax-geared penalties were provided for, given the circumstances of the case, a technical adjustment without penalty would be considered applicable in this case, as per the Code of Practice for Revenue Compliance Interventions.¹

Settlement offer

21.17 Following the determination, the retailer made a request to appeal the Tax Appeals Commission's determination to the High Court.

21.18 On 7 December 2023, Revenue was advised that the retailer had made a settlement offer of €5 million, or just under 60% of the assessed liability.

21.19 The settlement offer was reviewed by legal counsel for Revenue who recommended that the offer be accepted given the associated litigation risks, not least of which was the potential impact on the case of the revocation of the 2001 regulations with effect from 1 July 2023.

21.20 Revenue notified the Department of the settlement offer on 20 December 2023. While Revenue is the collection authority for the levy and is responsible for the settlement of a case, it does so as an agent of the Department and, in the specific circumstances of this case, would have regard to the preference of the Department as to whether a settlement offer would be accepted or rejected.

21.21 The Department stated that prior to making the legislative changes in 2023, it had consulted with Revenue in relation to the potential impact of the changes on the appeal case. Revenue had advised the Department that, as the new regulations introduced with effect from 1 July 2023 would have prospective effect, the appeal case would not be impacted.

21.22 In considering the settlement offer and the potential for further legal proceedings, the Department consulted its own legal advisor. The Department's legal advisor reviewed the advice provided by counsel for Revenue, and concurred with the recommendation to accept the settlement offer.

21.23 On 22 December 2023, the Department notified Revenue that it was willing to accept the settlement offer of €5 million and requested Revenue to proceed with the settlement on that basis. As disclosed in the final Environment Fund account, the settlement amount was paid by the retailer to Revenue in January 2024 and transferred to the Circular Economy Fund the following month.²

¹ [Code of Practice for Revenue Compliance Interventions](#).

² See [Environmental Fund — Cessation Account](#), financial statements for the period 1 January 2022 to 30 June 2023. The account was certified on 26 March 2024.

- 21.24** The legal costs incurred by both Revenue and the Department on this matter are borne in full by the Department.
- Revenue has stated that it incurred almost €105,000 in external legal costs related to this case and just over €7,000 in costs relating to internal legal advice. Revenue has recently requested reimbursement of €105,000 from the Department — it does not intend to seek payment in respect of its internal legal costs.
 - The Department has stated that it did not incur any external legal costs, and that it cannot quantify the cost of its internal legal advice as time sheets are not maintained.

Conclusions

- 21.25** Following a Revenue audit of a retailer, Revenue issued notices of assessment to the retailer in 2009 for an aggregate outstanding amount of €36.6 million in respect of plastic bag levies due for the period 1 July 2004 to 30 June 2008.
- 21.26** The retailer appealed Revenue's assessment of liability, but the appeal did not proceed until after judicial review proceedings had ended in 2019.
- 21.27** In preparation for the hearing by the Tax Appeals Commission, during 2021, Revenue reviewed the calculations supporting its November 2009 notices of assessment and identified a number of issues. On the basis of that review, Revenue reduced the estimated liability to €8.5 million.
- 21.28** The Tax Appeals Commission determination in September 2023 confirmed that the amount due from the retailer was €8.5 million.
- 21.29** Having confirmed that the Department was in agreement, Revenue subsequently accepted a settlement offer of €5 million from the retailer, due to concerns regarding the potential impact of the repeal of section 72 of the Waste Management Act 1996 and the revocation, in July 2023, of the 2001 regulations underpinning the levy assessment. The acceptance of the settlement offer was based on legal analysis and advice.

