



Annual Report 2016



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Foreword

In accordance with section 21 of the Finance (Tax Appeals) Act 2015, we are pleased to present the first annual report of the Tax Appeals Commission.

The Tax Appeals Commission was established on 21 March 2016 in accordance with the provisions of the Finance (Tax Appeals) Act 2015.

The Commission is an independent statutory body, tasked with providing a modern and efficient appeals process in relation to the hearing and adjudication of tax disputes. The Tax Appeals Commission replaced the Office of the Appeal Commissioners. The relevant legislation made a number of important changes to the tax appeals process; for example, the legislation introduced a substantial measure of transparency by giving taxpayers the option to have their cases heard in public and by requiring the Commission to publish a report of each of our determinations on our website, www.taxappeals.ie. The determinations appear in anonymised form where a taxpayer has opted to have his or her case heard *in camera*.

One of the first tasks we undertook following our appointment was formulating rules and procedures governing how appeals would be processed, from their initial submission to their final determination. These rules and procedures came into effect on the date the Commission was established and have been made available on our website. We believe that this affords taxpayers, practitioners and the Revenue Commissioners guidance and insight into the nature and conduct of the appeals process. It is our intention to meet later this year with representatives of taxpayers and of the Revenue Commissioners so they can inform us of their experience of the new rules and procedures following the first year of their operation.

As part of the reform and modernisation of the tax appeals process, we are in the process of implementing a computerised case management system. The first phase of that process was completed on schedule and we believe that the project will be complete by the middle of 2017. A significant benefit of the new system is the facility for taxpayers to submit an appeal online through our website, which has been available since December 2016. We have also undertaken a complete revision of our website, so that it now offers a single, easy to use portal for submitting appeals and for accessing our rules, procedures and determinations.

The Tax Appeals Commission subscribes to the principles of good governance, as set out in the Corporate Governance Standard for the Civil Service, published in November 2015. During 2016, we completed preparatory work on our governance framework so that it could be put in place and made publicly available on our website in early 2017. It is our intention that this framework will evolve and expand over time.

The Commission's budget and resources have increased to reflect the additional duties we are required to discharge. We have increased our staff and the two Appeal Commissioners are currently assisted by an Assistant Principal, a Higher Executive Officer, two Executive Officers and a Clerical Officer. A recruitment process is currently underway to appoint temporary Appeal Commissioners to assist in dealing with a significant number of legacy appeals. It is also our intention to retain one or two legal researchers to assist the Commission in its work.

As of the date of writing, the Commission has been in operation for just over one year. We believe that a lot has been accomplished in that year, and we look forward to building on what has already been achieved and to administering an increasingly efficient and effective Tax Appeals Commission during our terms of office.



MARK O' MAHONY
Appeal Commissioner



LORNA GALLAGHER
Appeal Commissioner

Glossary

Appeals adjourned prior to hearing	Appeals that were allocated a date for hearing and adjourned at the request of the parties prior to the commencement of the hearing.
Appeal Commissioners	A person appointed by the Minister for Finance pursuant to section 850 of the Taxes Consolidation Act 1997 or, subsequent to 21 March 2016, a member of the Tax Appeals Commission appointed by the Minister for Finance pursuant to section 8 of the Finance (Tax Appeals) Act 2015.
Appeals concluded	Appeals that have been finalised and no longer required any further action.
Appeals disposed of	Appeals that no longer require action from the Tax Appeals Commission.
Appeals listed for hearing	Appeals that have been allocated a date for hearing before the Appeal Commissioners.
Appeals not accepted	Applications for appeals that were not accepted by the Tax Appeals Commission.
Appeals on hand	Live/active appeals that may require further action.
Appeals received	Appeal applications received.
Appeals settled	Appeals that have been settled by agreement between the parties.

Appeals settled prior to hearing	Appeals settled between the parties after the appeal had been listed for hearing but before the commencement of the hearing
Hearing commenced and adjourned	Includes appeals where the hearing commenced and was adjourned for one or more of the following: for determination, for further hearing, for additional information, for additional documentation, for further submissions or for the attendance of witnesses.
Legacy appeals	Appeals that were submitted to the Revenue Commissioners prior to the commencement of the Tax Appeals Commission. These legacy appeals were transferred to the Tax Appeals Commission during the second half of 2016.
Pre-2016 appeals	Appeals that were on hand in the Office of the Appeal Commissioners prior to the commencement of the Tax Appeals Commission. These appeals automatically transferred to the Tax Appeals Commission.
New appeals	Appeals received by the Office of the Appeal Commissioners between 1 January and 20 March 2016 or by the Tax Appeals Commission between 21 March and 31 December 2016.
Notice of Appeal	Section 949 of the Taxes Consolidation Act, 1997, as amended, states that all applications for appeals to the Tax Appeals Commission must be submitted by completion of a Notice of Appeal.

Office of the Appeal Commissioners Prior to the establishment of the Tax Appeals Commission the body seized with the adjudication of tax appeals was the Office of the Appeal Commissioners. The Finance (Tax Appeals) Act 2015 established the Tax Appeals Commission and the procedures under which it is governed. As of 21 March 2016 the Office of the Appeal Commissioners is no longer in existence.

Reform of the Tax Appeals System

Following a commitment in Budget 2014 by the Minister for Finance to reform the role, functions and structure of the Office of the Appeals Commissioners, the Tax Appeals Commission was established on 21 March 2016. The Tax Appeals Commission replaced the Office of the Appeal Commissioners.

Various aspects of the arrangements surrounding the operation of the tax appeals system were the subject of consideration by various bodies over the last 15 years or so. These include the Oireachtas Committee of Public Accounts, the DIRT Inquiry, the Revenue Powers Group, the Law Reform Commission Report on a Fiscal Prosecutor and a Revenue Court and the Commission on Taxation. In addition, there were proposals for changes to the appeals system from representative bodies, and a number of reports made recommendations on this area in that time.

The Minister introduced reforms to the tax appeal process in order to ensure an enhanced and cost-effective appeal mechanism for tax cases, providing transparency and increased certainty for taxpayers, and to ensure that the appeals forum met the independence and impartiality requirements contained in Article 6 of the European Convention on Human Rights; in this regard, while there is no suggestion of actual partiality under the former system, it is important that the Appeal Commissioners are fully independent and there must be no actual or perceived bias in the operation of the Appeals system.

The main reforms introduced include –

- Statutory underpinning of the independence of the Tax Appeals Commission
- A new focus on flexible and active case management
- Discretion to make determinations based on written submissions in the case of straightforward matters, subject to the agreement of the parties to the proceedings
- Public hearings as the default position, although an appellant may request that a hearing or part of a hearing be held in private
- Publication of determinations
- Ability to dismiss appeals where, for example, a taxpayer does not comply with directions given by Appeal Commissioners in relation to the conduct of the proceedings

- A renewable fixed term of office of Appeal Commissioners of 7 years
- Introduction of a requirement for the Tax Appeals Commission to submit annual reports
- Decisions of the Appeal Commissioners are now final and conclusive. Ability to appeal to the High Court on a point of law only, and not in relation to the facts of a case
- Enhanced case management procedures, including the power to determine a broad range of interlocutory applications, to facilitate a more efficient and structured flow of appeals

Statutory Basis of the Tax Appeals Commission

The Tax Appeals Commission is an independent statutory body tasked with providing a modern and efficient appeals process in relation to the hearing and adjudication of tax disputes, in accordance with the provisions of relevant legislation.

The legislation concerned is the Finance (Tax Appeals) Act 2015, the Taxes Consolidation Act 1997, as amended, and related legislation.

The Finance (Tax Appeals) Act 2015 was signed into law by the President on 25 December 2015. The Minister for Finance signed the relevant commencement orders to give effect to the new legislative provisions on 26 February 2016. On 21 March 2016 the Tax Appeals Commission was established and the new regime for the processing of tax appeals entered into force.

Section 10 of the Finance (Tax Appeals) Act 2015 specifically provides that the Commission and its members shall be independent in the performance of their functions. In addition, various provisions in the 2015 Act provide the Commissioners with powers to manage cases more actively than in the past, thereby reinforcing the independent operation of the appeals process.

The Commission currently comprises two Appeal Commissioners appointed by the Minister for Finance and a number of administrative staff who support the Commissioners in their work.

Functions of the Tax Appeals Commission

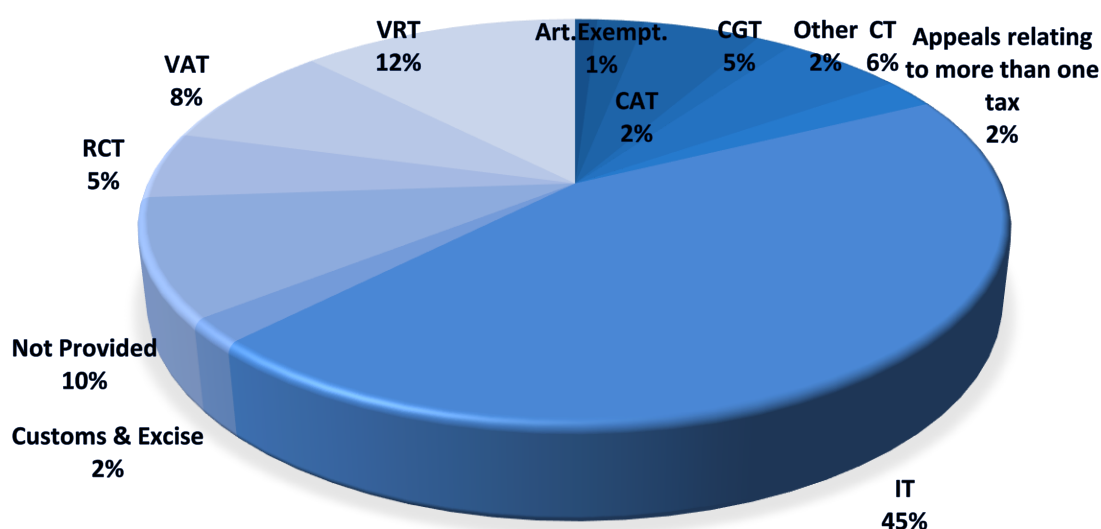
The main role of the Tax Appeals Commission is to adjudicate, hear and determine appeals against decisions and determinations of the Revenue Commissioners concerning taxes and duties. The specific functions of the Appeal Commissioners are set forth in section 6 of the Finance (Tax Appeals) Act 2015.

In carrying out their functions, the Appeal Commissioners are obliged to ensure that proceedings before them are accessible, fair and conducted as expeditiously as possible.

The 2015 Act contains a number of provisions which are intended to underpin and safeguard the impartiality and independence of the Commissioners in the exercise of their functions, including, *inter alia*, section 3 which establishes the Commission as a body corporate, section 6 which establishes the functions of the Appeal Commissioners and section 10 which requires the Commission to be independent in the performance of its functions.

Analysis of Appeals Received by Tax Type

Since its establishment on 21 March 2016, the Tax Appeals Commission has received 808 new appeals and a breakdown of those appeals by tax type is set out below.



Tax Heads	
Artists Exemption	8
Capital Acquisitions Tax	17
Capital Gains Tax	42
Other	13
Corporation Tax	44
Appeals relating to more than one tax	19
Income Tax	361
Customs & Excise	16
Tax Type Not Provided	77
Relevant Contracts Tax	43
Value Added Tax	68
Vehicle Registration Tax	100

Summary of the Combined Tax Heads

Income Tax	361
P21 (Balancing Statement)	18
Incapacitated Child Tax Credit	3
Income Tax	253
PAYE	31
PAYE/IT	10
PRSI	2
Single Parent Child Carer Credit	4
USC	9
PAYE/PRSI	29
PAYE/PRSI Employer	2

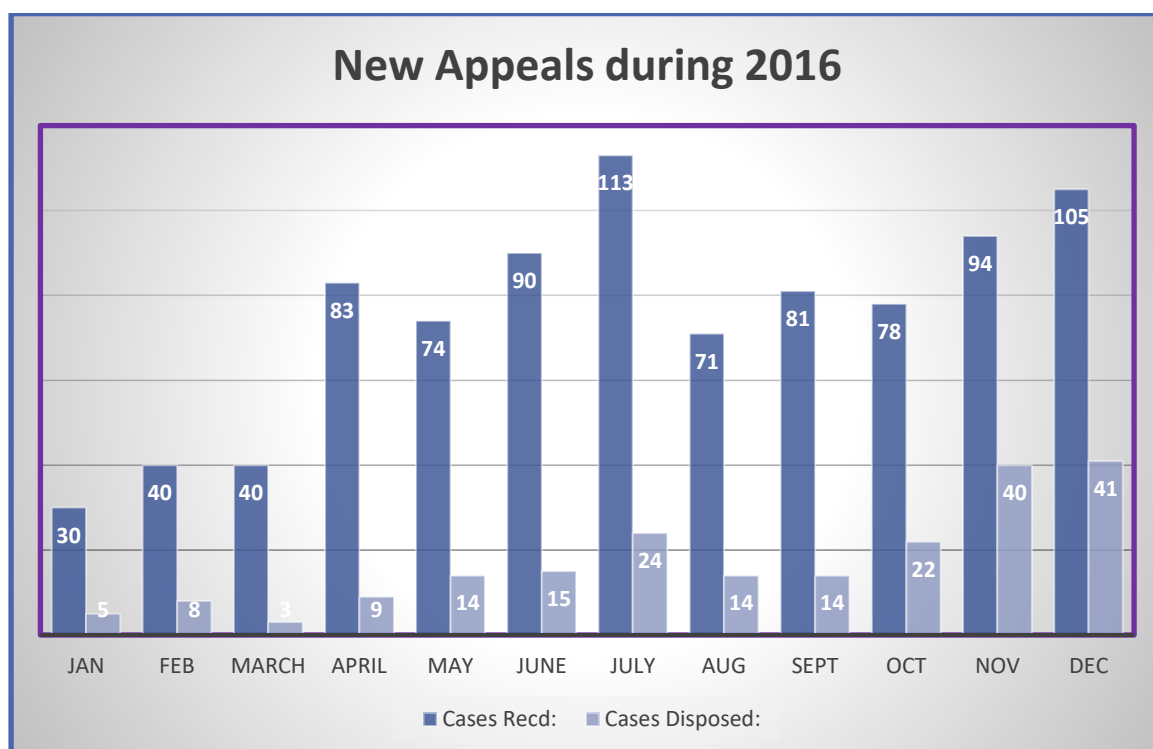
Taxes listed under the category other	13
Anti-Dump Anti-Dumping Duty	1
Clearance Tax Clearance Certificate	1
DIRT	1
Domicile	2
EII	1
LPT	3
Stamp Duty	2
Startup Refunds for Entrepreneurs (SURE)	2

Appeals relating to more than one tax	19
IT & CGT	1
IT & VAT	13
CT & VAT	1
VAT & VRT	1
IT & CAT	3

Customs & Excise	16
Excise Duty	11
Customs Duty	2
Mineral Oil	3

New Appeals

A total of 899 new appeals were received in the course of 2016, initially by the Office of the Appeal Commissioners and subsequently by the Tax Appeals Commission. 209 of those had been disposed of by the end of the year. A monthly breakdown of the receipt and disposal of those new appeals is set forth below.



Flow of New Appeals during 2016													
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Appeals Received:	30	40	40	83	74	90	113	71	81	78	94	105	899
Appeals Disposed:	5	8	3	9	14	15	24	14	14	22	40	41	209
Number of 2016 appeals on hand as of 31/12/16													690

Pre-2016 Appeals

In addition to the new appeals received during 2016, the Office of the Appeal Commissioners had 425 pre-2016 appeals on hand at the beginning of the year. A monthly breakdown of the disposal of these appeals (by the Office of the Appeal Commissioners up to 20 March 2016 and by the Tax Appeals Commission thereafter) during 2016 is not available but will be available for future annual reports. A summary of the disposal of these appeals is set forth below.

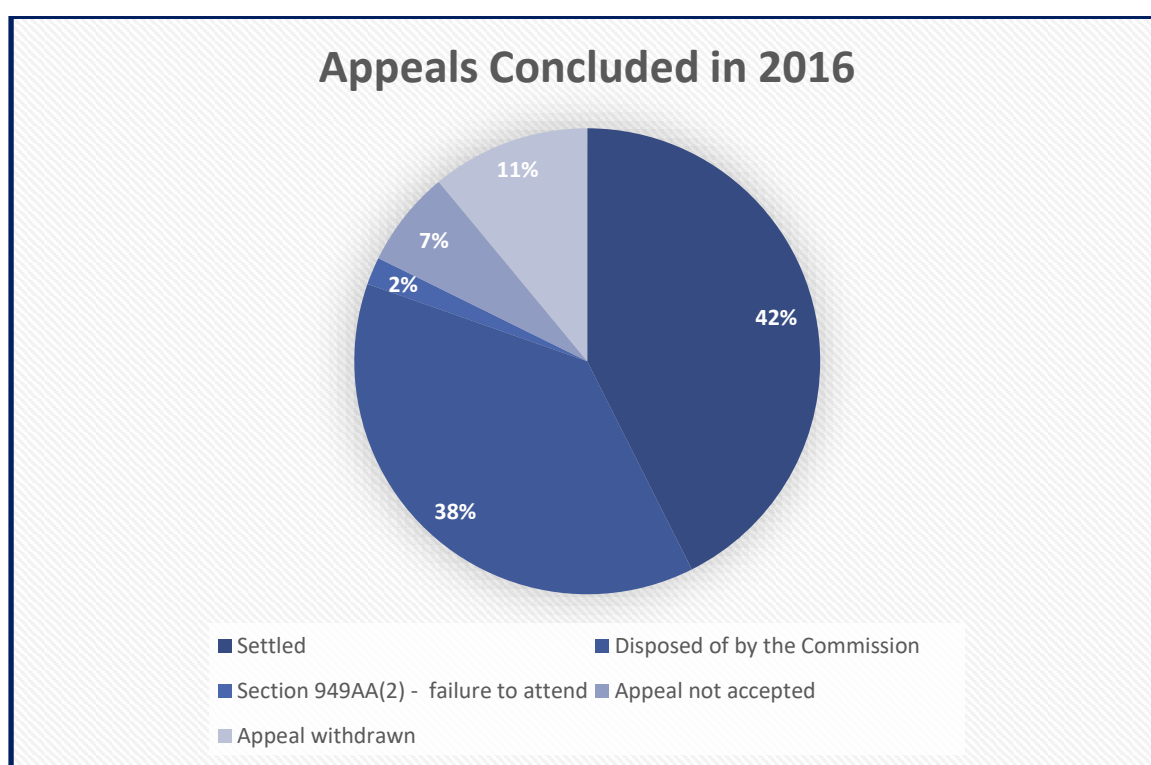
Number of pre-2016 appeals on hand as of 01/01/16	425
Number of pre-2016 appeals disposed of during 2016	239
Number of pre-2016 appeals on hand as of 31/12/16	186

Appeals Concluded in 2016

The Tax Appeals Commission concluded 448 appeals in 2016. Of the 448 appeals concluded, 209 were new appeals (*i.e.* appeals received in 2016) and 239 were pre-2016 appeals.

An analysis of the 209 new appeals concluded during 2016 is set forth below.

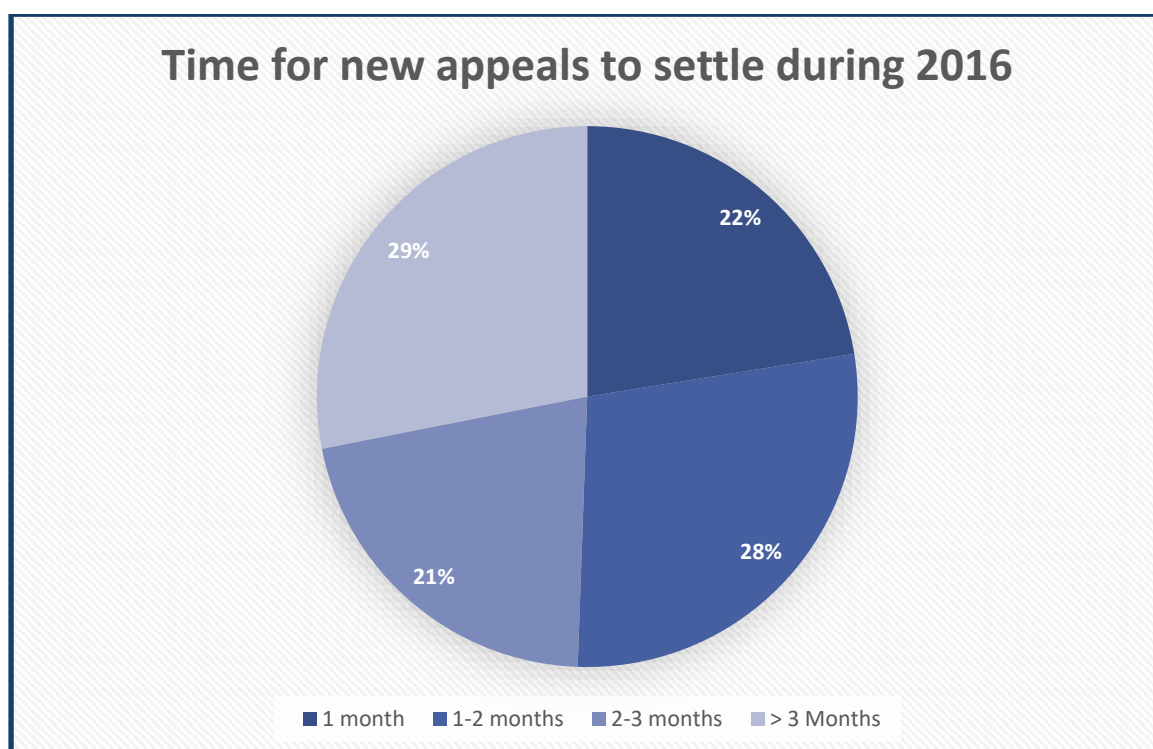
Settled	89
Disposed of by the Commission	79
Section 949AA(2) - failure to attend	4
Appeal not accepted	14
Appeal withdrawn	23
Total	209



The average time for disposal of new appeals since the establishment of the Commission was 77 days, from receipt of the Notice of Appeal to the closing of the file.

New Appeals Settled in 2016

An analysis of the 89 new appeals which settled during 2016 shows that a significant majority settled in less than 3 months from the receipt of the Notice of Appeal. A breakdown of the time taken for these appeals to settle is set forth below.



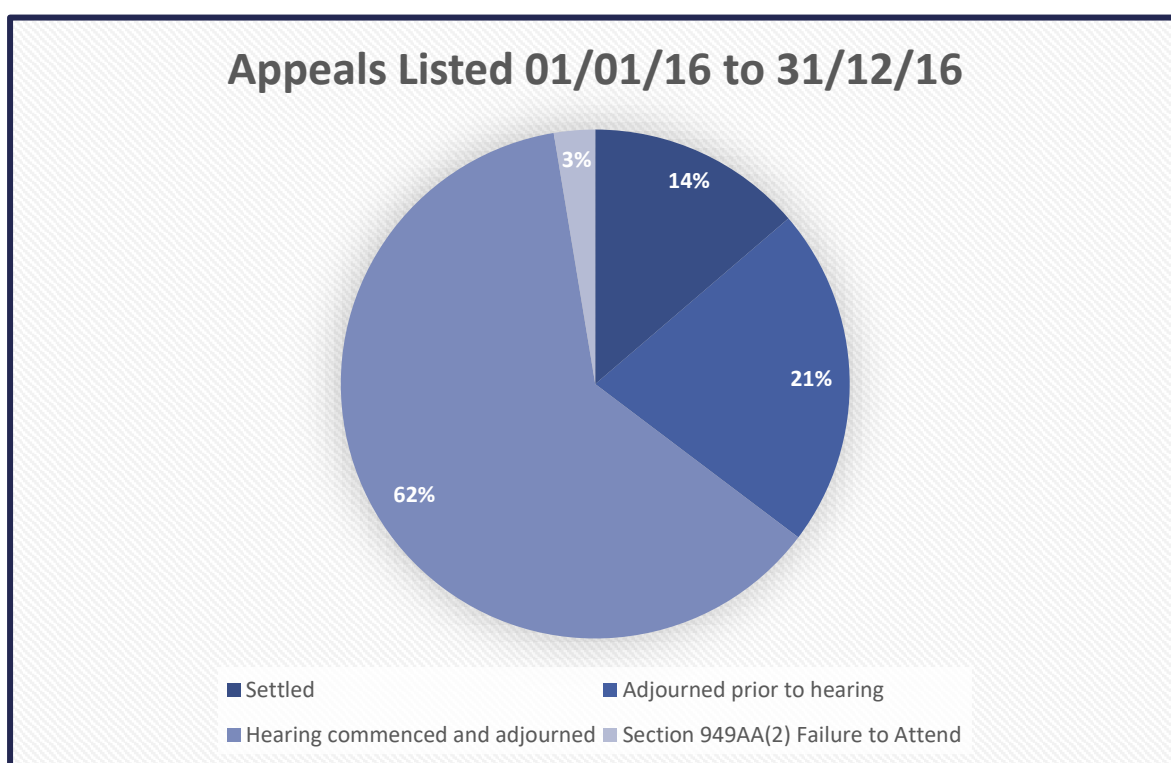
Settled within:		
1 month	20	22%
1-2 months	25	28%
2-3 months	19	21%
> 3 Months	25	29%
Total	89	

Appeals Listed for Hearing in 2016

During the period 1 January 2016 to 31 December 2016, 153 appeals were listed for hearing before the Appeal Commissioners. The duration of the hearings ranged from less than an hour to 10 days. The vast majority of hearings were concluded within one day.

A breakdown of the outcome of those appeals is set forth below.

Settled	21
Adjourned prior to hearing	33
Hearing commenced and adjourned	95
Section 949AA(2) Failure to Attend	4
Listed	153



Determinations

Part 40A Chapter 5 of the Taxes Consolidation Act 1997, as amended, contains provisions for the notification and publication of determinations by the Tax Appeals Commission. Section 949AO requires the Appeal Commissioners to publish a report of each of their determinations on the internet not later than 90 days after the parties have been notified of the determination. Details of all determinations made in 2016 and their publication are set forth below.

Number of determinations made in 2016	
1 Jan - 20 March	14
21 March - 31 December	27
Total	41

Number of determinations published in 2016	
1 Jan - 20 March	2
21 March - 31 December	27
Total	29

While 26 published determinations are available our website, one determination disposed of three separate appeals while another determination disposed of two separate appeals.

Please note that several of the published determinations relate to pre-2016 appeals, *i.e.* appeals which were received prior to the commencement of the Tax Appeals Commission on 21 March 2016 and which relate to tax years prior to 2016.

Appeals of Determinations

In accordance with Section 949AP of the Taxes Consolidation Act 1997, as amended, a party who is dissatisfied with a determination of the Tax Appeals Commission as being erroneous on a point of law may appeal to the High Court by way of case stated.

There were no appeals by way of case stated in respect of determinations made in 2016.

Following establishment, 67 cases transferred to the Tax Appeals Commission where the parties had previously indicated an intention to submit an application for a case stated to the High Court in respect of a determination which had issued under the old Office of the Appeal Commissioners regime.

During 2016 the Tax Appeals Commission issued correspondence, in accordance with section 29(4) of the Finance (Tax Appeals) Act 2015, to all parties in respect of the 67 cases. The Commission sought confirmation from the parties as to whether it is their intention to continue to seek a case stated before the High Court or whether they wish to have the Commission rehear their case. It is the Commission's intention to continue to progress the 67 cases during 2017.

Legacy Appeals

A large number of legacy appeals (*i.e.* open appeals which had been made to the Revenue Commissioners prior to 21 March 2016 but which had not been notified to the Appeal Commissioners) were transferred by the Revenue Commissioners to the Tax Appeals Commission in the second half of 2016.

Breakdown of the number of such appeals received are as follows: -

August 2016	381 appeals received
October 2016	965 appeals received
December 2016	1,385 appeals received

The Tax Appeals Commission believes that a considerable number of these appeals will not require hearing and determination following the recent outcome of legal proceedings in the Superior Courts. The Commission further believes that the outcome of separate legal proceedings, which have yet to be concluded, will have a significant bearing upon a considerable number of other appeals.

During 2016, preparatory work was undertaken to assist with the progression of legacy appeals toward hearing and determination. The Minister for Finance sanctioned the provision of significant additional personnel resources to deal with the legacy appeals. Preliminary work was undertaken in respect of the recruitment of temporary Appeal Commissioners, with a view to appointing Temporary Commissioners during 2017. The temporary Appeal Commissioners, once appointed, will focus solely and exclusively on dealing with the legacy appeals.

Governance and Regulation

The Tax Appeals Commission was established on 21 March 2016. The statutory mandate in respect of the Commission is contained in the Finance (Tax Appeals) Act 2015 and the Taxes Acts.

During 2016, the Tax Appeals Commission completed preparatory work on our governance framework so that it could be put in place and made publicly available on our website in early 2017.

Legislation

The relevant legislation is the Finance (Tax Appeals) Act 2015 and Part 40A of the Taxes Consolidation Act 1997, as amended.

Procedures

The 2015 Act provides that the Commissioners may adopt rules of procedure with respect to any of their functions. Rules and procedures were prepared and adopted by the Appeal Commissioners and are available on our website, www.taxappeals.ie. Please refer also to Part 40A of the Taxes Consolidation Act 1997, as amended, the Taxes Acts and related legislation.

The Accounting Officer

Commissioner O' Mahony is currently the Accounting Officer for the Tax Appeals Commission. The Accounting Officer role will be rotated between the Commissioners over their current term of office.

Values, Behaviours and Culture

The Tax Appeals Commission in its management and operations is guided by the Civil Service Code of Standards and Behaviour, a copy which may be accessed at the following address:- <http://www.sipo.gov.ie/en/Codes-of-Conduct/Civil-Servants/>. The main requirements of the Ethics Acts, insofar as they are relevant to the Tax Appeals Commission, will be addressed in our governance framework.

Annual Returns of Statements of Interest

A person who occupies a position prescribed as a designated position under the Ethics Acts must complete and furnish a statement of interests each year by 31 January. In the case of the Tax Appeals Commission, the statement of interest is furnished to the Secretary General of the Department of Public Expenditure and Reform by 31 January each year.

Accountability and Assurance Arrangements

Under the Finance (Tax Appeals) Act 2015, the Appeal Commissioners hold office for a period of seven years. The Appeal Commissioners are accountable to the Minister for Finance and, through the Minister, to the Oireachtas in relation to the performance of their functions. In this regard, they must submit an annual report to the Minister on or before 31 March each year in respect of the preceding year; this report is submitted in discharge of that duty. In addition, the Minister may direct the Commissioners to prepare and submit to him or her a report in relation to any particular matter relating to the activities of the Commissioners. No such direction was given by the Minister in 2016.

Internal Audit Function

Having regard to the significant increase in annual budget and the growth of the organisation, the Commission has plans in place to arrange Internal Audit (IA) services and to establish an Audit Committee, with an external Chair, to oversee the adequacy and effectiveness of the Commission's IA systems, control environment and control procedures, to oversee the work of the IA function and to provide advice and professional guidance in relation to the suitability and robustness of the systems of risk management and internal control within the organisation.

Conclusion on Governance and Regulation

It is anticipated that the Commission's governance framework will be adjusted over time, in accordance with the needs and interests of the Commission as they evolve. In addition, the Commission will continue to pursue compliance with all relevant regulatory requirements.

Funding and Expenditure

The Tax Appeals Commission is funded through Vote 10 of the Estimates as approved by Dáil Éireann. The allocations to the Commission and its predecessor the Office of the Appeals Commissioners have increased significantly over recent years mainly to cater for increased expenditure on staff and IT systems arising from the reform of the tax appeals system. The allocations to the Commission in 2016 and 2017 were €1.440 million and €1.605 million respectively. This represents a substantial increase over the funding allocated to the Office of the Appeal Commissioners in 2014 and 2015 (€447,000 and €775,000 respectively).

The below table sets out an analysis of the Commission's administration expenditure in 2016.

	2016 Estimate Provision	2016 Outturn	2015 Outturn
	€,000	€,000	€,000
Salaries, wages and allowances	820	661	473
Travel and subsistence	50	4	22
Training and development and incidental expenses	35	19	16
Postal and telecommunications services	25	8	7
Office equipment and external IT services	500	181	18
Office premises expenses	70	17	7
Total Expenditure	1,500	890	543

In accordance with the provisions of the Comptroller & Auditor General (Amendment) Act 1993, the Commission's Accounting Officer is responsible for the production and submission to the Comptroller and Auditor General of the Appropriation Account for Vote 10 by 31st March each year. This has been done in respect of 2016 and the audited accounts of the Commission will be published by the Comptroller and Auditor General later in the year as part of his 2016 annual report on the accounts of the public services.

