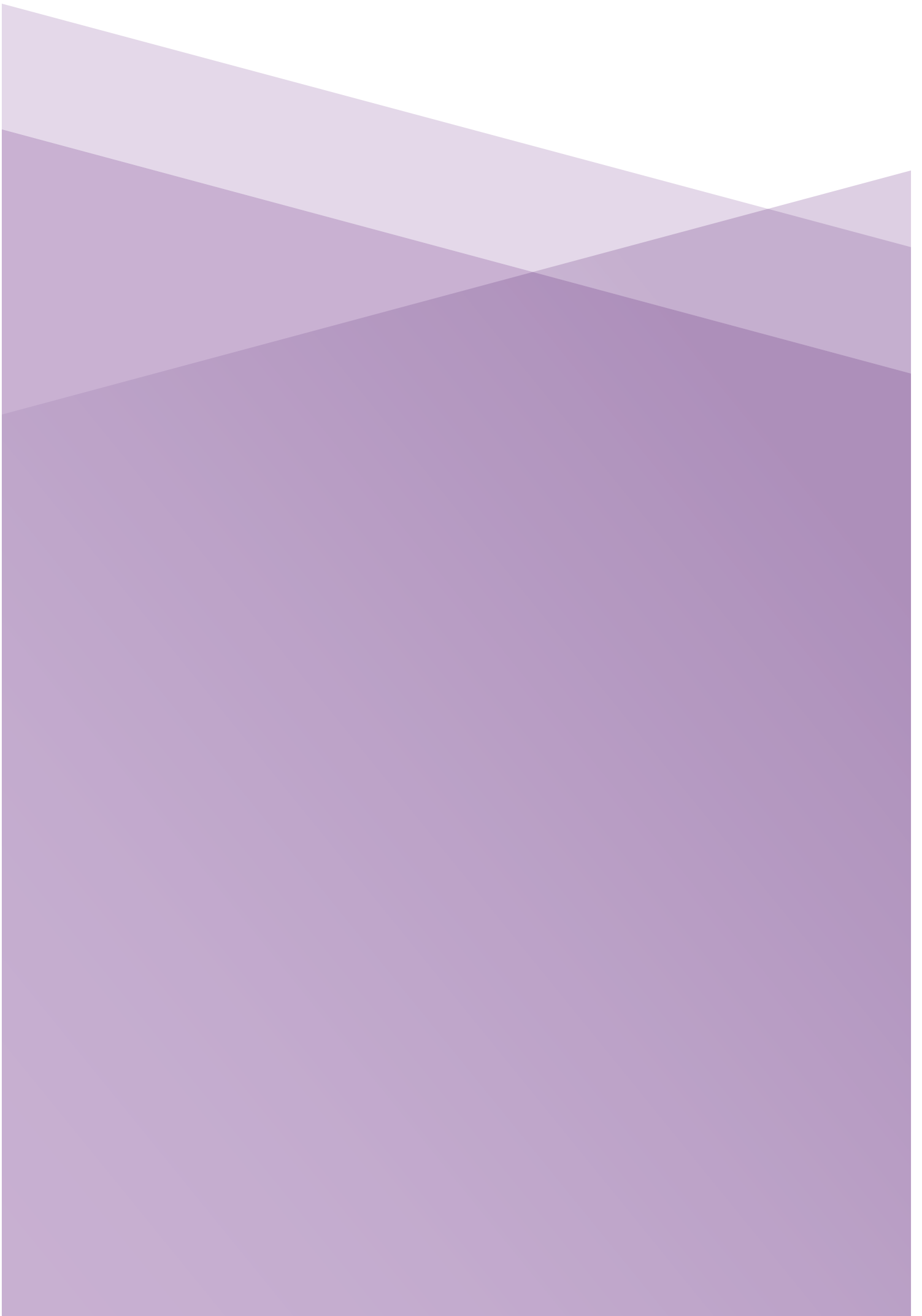




AN COIMISIÚN UM ACHOMAIRC CHÁNACH  
TAX APPEALS COMMISSION

# Annual Report 2018


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# Foreword

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

It is impossible to overstate how different the outlook for the Commission is now than it was at the time of our writing the Foreword to the 2017 Annual Report. In March of 2018, the Commission was struggling to manage a case load which had doubled from the previous year, was operating from premises which it had outgrown to the extent that on-site hearings were no longer possible, and had a level of staffing, equipment and resources which was simply not adequate for the work we were required to do. The scale of the challenge facing the Commission was a cause for great concern. One year on, the prospects for the Commission have improved immeasurably.

In June of 2018, following a long search, the TAC moved into its new premises in Fitzwilliam Court. In addition to now having sufficient space for our current and anticipated staff members to work effectively, we also have three hearing rooms and a number of consultation rooms for parties. This means that the Commission can now schedule simultaneous hearings to ensure greater and more efficient use of Commissioners' time, which will result in a reduction in the time parties have to wait for their appeals to be heard.

The move to our new premises caused a certain degree of disruption to the Commission's operations in the middle of the year but the issues arising as a result of the relocation were addressed quickly and were resolved. The final snagging issues in relation to the new premises are shortly to be

rectified and we would like to acknowledge the assistance of the Office of Public Works in locating our new premises and in ensuring that it was laid out and equipped to the necessary standard.

Even more significantly, in June of 2018, the Minister for Finance appointed Ms. Niamh O'Donoghue, former Secretary General of the Department of Social Protection, to carry out a review of the workload and operations of the Commission in the context of requests made by the Commission for additional resources. Ms. O'Donoghue completed her report in August of 2018 and we would like to place on record, our appreciation and gratitude for the detailed, comprehensive and balanced review she conducted. The recommendations of the O'Donoghue Report are summarised in a later chapter.

On Budget Day, the O'Donoghue Report was published by the Minister for Finance, who announced that he supported the recommendations in the Report and was sanctioning additional staffing resources at all levels as well as additional funding for improved ICT systems. Again, it is appropriate for us to acknowledge with thanks the support and assistance of the Minister and the officials in the Department of Finance who worked with us in the course of 2018 to assess and secure for the Commission the resources necessary to discharge its statutory functions in a timely and effective manner.

With the near-doubling of the Commission's budget for 2019 and sanction for a similar increase in Commissioner and staff numbers, we believe that the Commission can now be put in a position where it is finally able to fully deliver on its mandate. While the implementation of the recommendations in

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the O'Donoghue Report will take some time to fully implement, we are looking forward to the changes it will help us deliver to our systems and methods of work.

Even before the implementation of those recommendations, the Commission has made significant improvements in its delivery of services to stakeholders. Full details of the work of the TAC is set out in the Statistics chapter, but some points worth highlighting are:

- Notwithstanding the fact that the Commission did not have on-site hearing facilities available for the first 6 months of the year, the Commission scheduled 167 hearings, compared to 65 in 2017.
- The Commission closed 1,440 appeals during 2018, compared to 693 in 2017; the quantum of tax involved in the closed appeals amounted to approximately €567 million.
- The Commission has already scheduled 64 hearings, involving 256 appeals, for 2019.

None of this would have been possible without the commitment and hard work of the Commission's staff during 2018. We are truly fortunate to have such an excellent team and are sincerely appreciative of their support and assistance over the past year.

We are of course conscious that a great deal remains to be done in 2019 and subsequent years. The backlog of appeals and determinations is being addressed as our first priority. We fully accept the findings and recommendations of the O'Donoghue Report in this regard and will deploy our increased resources to ensure they are implemented as quickly and effectively as possible. Equally, a good deal of work remains to

be done to ensure that the Commission is compliant with all of its governance obligations. While we have identified what needs to be done in this regard, the paucity of resources meant that progress was limited in the course of 2018. We believe that a proper complement of staff and the assistance of our parent Department will greatly accelerate the process of becoming fully compliant with our manifold obligations as a civil service body.

In summary, while we appreciate the scale of the work that remains to be carried out, we are extremely pleased that the Commission has now been given the resources and supports to enable it to meet its obligations and overcome the difficulties it has faced. The Commission is in a far better position than it was a year ago, and we are optimistic that great improvements can and will be made in 2019 and into the future. We look forward to delivering those improvements to all our stakeholders.



**Mark O'Mahony**  
Appeal Commissioner



**Lorna Gallagher**  
Appeal Commissioner

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## Glossary

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Appeals adjourned prior to hearing	Appeals that were allocated a date for hearing but adjourned at the request of the parties prior to the commencement of the hearing.
Appeal Commissioner	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 closed	Appeals that have been finalised and no longer require further action by the TAC.
Appeals on hand	Live/active appeals that require further action.
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.
Appeals withdrawn	Appeals where the Appellant has notified the TAC that they no longer wish to proceed with their appeal.
Appeals dismissed	Appeals which have been dismissed pursuant to section 949AV of TCA 1997 because the Appellant has failed to comply with one or more directions of the Appeal Commissioners.
Appeals refused	Appeals which the Appeal Commissioners have refused to accept in accordance with section 949N of TCA 1997.
Appeals determined	Appeals in which the Appeal Commissioner has decided the appeal and has issued a determination to the parties.
A.P.	Assistant Principal Officer
C&AG	Office of the Comptroller and Auditor General

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CMC	Case Management Conference
Case Management System	Database that contains details of all appeals, both open and closed.
C.O.	Clerical Officer
E.O.	Executive Officer
FLAC	Free Legal Advice Centre
FSS	Financial Shared Services
GDPR	General Data Protection Regulation
Hearing commenced and adjourned	Appeals where the hearing commenced and was adjourned for one or more of the following reasons: for further hearing, for additional information, for additional documentation, for further submissions, and/or for the attendance of witnesses.
H.E.O.	Higher Executive Officer
HR	Human Resources
ICT	Information and Communications Technology
Leader follower appeals	A group of appeals which share similar points of law and/or fact. In some instances, the parties to these appeals will run a test case from the group (the "leader appeal"), the determination of which is likely to be dispositive of the other appeals in the group.
Legacy appeals	Appeals that were submitted to Revenue prior to the establishment of the TAC. These legacy appeals were transferred to the TAC during the second half of 2016.

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Notice of Appeal	The document which first notifies the TAC of a taxpayer's wish to bring an appeal. Section 949I of TCA 1997 states that all applications for appeals to the TAC must be made by the submission of a Notice of Appeal.
Office of the Appeal Commissioners	The body seised with the adjudication of tax appeals prior to the establishment of the TAC. The Office of the Appeal Commissioners ceased to exist on 21 March 2016.
OPW	Office of Public Works
Outline of Arguments	A written outline of the arguments on which a party intends to rely at the appeal hearing, furnished by a party to the TAC in accordance with section 949S of TCA 1997.
PAS	Public Appointments Service
P.O.	Principal Officer
Pre-establishment appeals	Appeals that were on hand in the Office of the Appeal Commissioners prior to 21 March 2016.
PSSC	Payroll Shared Service Centre
Quantum	The amount of tax in dispute between parties.
Revenue	Office of the Revenue Commissioners
SLA	Service Level Agreement
Statement of Case	A written precis of the facts and evidence that a party expects to present at the hearing of the appeal, furnished by a party to the TAC pursuant to section 949Q of TCA 1997.
TAC	Tax Appeals Commission



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## TAX RELATED TERMS

AVC	Additional Voluntary Contribution
BIK	Benefit in Kind
CAT	Capital Acquisitions Tax
CAT Group A threshold	The threshold for CAT exemption in relation to gifts from a parent to a child
CATCA 2003	Capital Acquisitions Tax Consolidation Act 2003
CGT	Capital Gains Tax
CT	Corporation Tax
DIRT	Deposit Interest Retention Tax
DWT	Dividend Withholding Tax
EII	Employment and Investment Incentive
HRI	Home Renovation Incentive
IT	Income Tax
LPT	Local Property Tax
OMSP	Open Market Selling Price
PAYE	Pay As You Earn
PREM	PAYE & PRSI paid by the Employer
PRSI	Pay Related Social Insurance
PSWT	Professional Services Withholding Tax

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RCT	Relevant Contracts Tax
SPCCC	Single Person Child Carer Credit
SURE	Start-up Refunds for Entrepreneurs
TCA 1997	Taxes Consolidation Act 1997, as amended
TCC	Tax Clearance Certificate
USC	Universal Social Charge
VATCA 2010	Value Added Tax Consolidation Act 2010, as amended
VRT	Vehicle Registration Tax

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# 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. Developments in 2016 and 2017 are addressed in previous Annual Reports.

In terms of recent legislative reform, sections 49 and 55 of the Finance Act 2018 introduced the following legislative changes effective from 19 December 2018;

- Section 49 FA 2018 amended section 159A of the Stamp Duties Consolidation Act 1999 to provide that refusal of a repayment claim under section 159A is an appealable matter in accordance with section 949I TCA 1997.
- Section 55(a) amended section 669(5) TCA 1997, which relates to farming and market gardening, by inserting a new subsection 669(5)(c). The additional sub-section sets out factors to be considered by Appeal Commissioners when making a determination in relation to the value to be placed on trading stock.
- Section 55(b) amended section 949P(1) by substituting section 960L in place of a reference to section 960K and section 55(d) deleted section 949AG.
- Section 55(c) deleted subsections (d) and (e) of section 949Q(2) TCA 1997. These subsections relate to Statement of Case requests. On foot of the amendment by the Finance Act, the Commission has removed two items from the Commission's standard Statement of Case request, namely (i) a list and copies of written material a party intends to rely on at hearing, and (ii) details of witnesses to be called at hearing.
- Section 55(d) deleted section 949AG TCA 1997.
- Section 55(e) amended section 949AN to clarify that an appeal may proceed without an oral hearing (i.e. via section 949U) in certain circumstances.

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# Statutory Basis of the Tax Appeals Commission

The TAC 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 TAC 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 of two Appeal Commissioners appointed by the Minister for Finance, a temporary Appeal Commissioner and a number of administrative staff who support the Commissioners in their work.

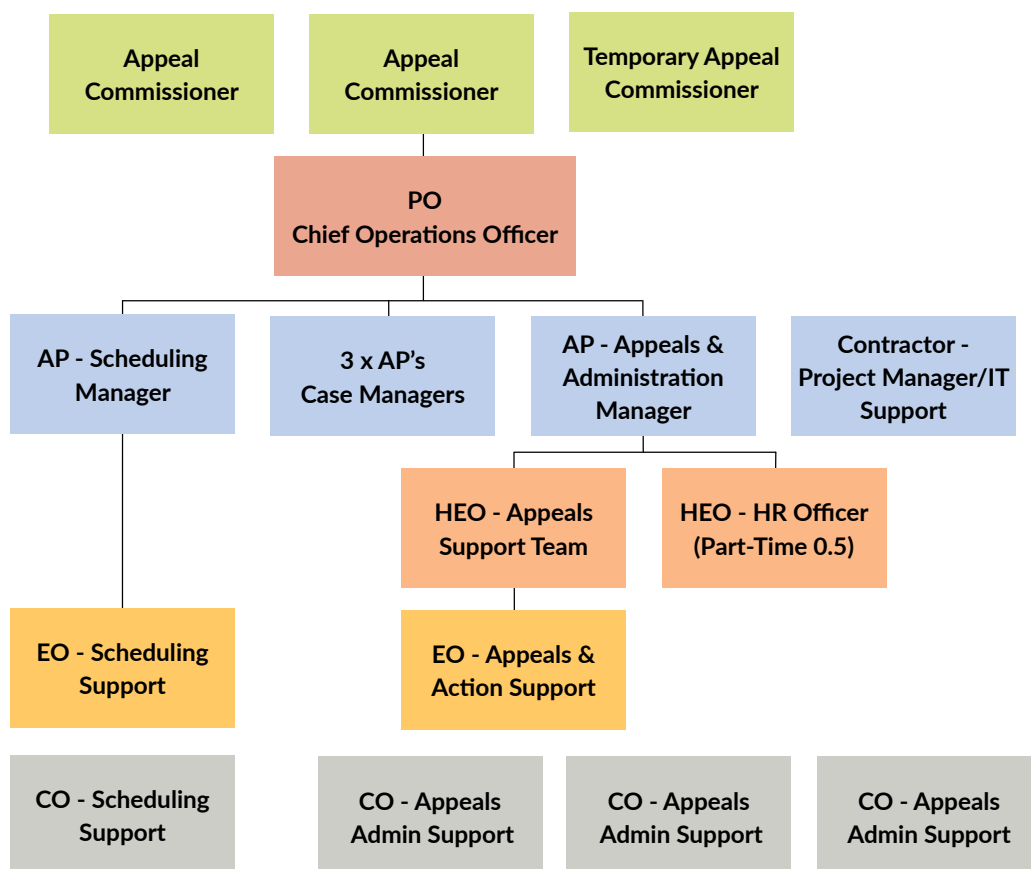
# Functions of the Tax Appeals Commission

The main role of the TAC 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.

## Organisation Chart



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## Current Appeals

For the purpose of this report, “current appeals” are those which were received on or after 1 January 2016.

Current appeals are received, processed and determined in accordance with the provisions of Part 40A of TCA 1997. During 2018, the TAC reviewed all of the current appeal files and made decisions (and where appropriate, gave directions) in relation to holding Case Management Conferences, seeking further information and/or Statements of Case and/or Outlines of Argument. Where possible, appeals were listed for hearing.

In 2018, 75 current appeals were listed for hearing, which is an increase of 289% compared to 2017. In addition, 25 determinations were issued in relation to current appeals, which is more than double the number issued in 2017. As legacy appeals and pre-establishment appeals progress towards conclusion, the TAC can apply its resources increasingly towards current appeals.

The following table provides an outline of current appeals received and closed at the end of 2018:

Year Current Appeal Opened	No. of Current Appeals Received	No. of Current Appeals Closed	No. of Current Appeals remaining
2016	901	622	279
2017	1,751	666	1,085
2018	1,689	491	1,198
<b>Total</b>	<b>4,341</b>	<b>1,779</b>	<b>2,562</b>

While there was a significant increase in the number of appeals received in 2017 compared to 2016, the number received dropped very slightly in 2018. While the number of appeals received has risen substantially since 2016, the number of appeals closed has also increased. In 2016, a total of 200 appeals were closed overall. This increased to 693 in 2017 and increased again to 1,440 in 2018.

Overall, since 1 January 2016, the TAC has received 4,341 current appeals and has closed 1,779 in the same period, with 2,562 current appeals on hand on 31 December 2018.

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A detailed analysis of the types of appeals received is contained in the Statistics chapter. The percentage of appeals received by tax type has remained largely stable; Income Tax appeals continue to make up well over half of all appeals received by the TAC. In 2017, 11% of all appeals related to one or more tax types but this decreased to 7% in 2018.

The statistics also show that there are substantial differences in the types of appeals received, based on matters such as complexity of issues and tax heads, number of years of assessments under appeal and quantum in dispute.

Some of the tables included in the Statistics chapter contain data in relation to the quantum in dispute in relation to appeals received (see Note 1 on page 33 which describes how 'quantum in dispute' figures are estimated).

On 31 December 2018, the quantum in dispute in relation to appeals received in 2018 totalled €2.532 billion and the quantum in dispute in relation to current appeals closed in 2018 totalled €567 million. Five appeals received in the final week of December 2018 contained an aggregate quantum in dispute of approximately €2.1 billion. Had these appeals been omitted from the annual total in relation to quantum, the quantum figure for appeals closed in 2018 (€567 million) would have exceeded the quantum figure for appeals received in 2018 (€432 million).

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## Legacy Appeals

Legacy appeals are aged appeals that were made directly to the Revenue Commissioners prior to the establishment of the TAC. In the second half of 2016, 2,758 legacy appeals were transferred to the TAC in accordance with Part 40A TCA 1997.

Mr Conor Kennedy BL was appointed as a Temporary Appeal Commissioner in June 2017 and was tasked with responsibility for the legacy appeals. Following his detailed initial review of the files, 1,595 of the appeals were grouped with related appeals or with lead-follower appeals. In light of this review, the number of individual appeals reduced from 2,758 to 1,163.

During 2017, 182 appeals were closed (i.e., the appeals were either determined, settled, withdrawn or dismissed). In 2018, a further 253 legacy appeals were closed and accordingly, as of 31 December 2018, 728 legacy appeals remained open. Approximately 150 of those appeals have been progressed to an advanced stage.

The TAC relocated to new, larger premises in June 2018. Notwithstanding restrictions on hearing room facilities in the old premises prior to the relocation, a total of 93 legacy appeals were scheduled for hearing in 2018. From the total number of hearings scheduled, 26 appeals proceeded to hearing, 13 appeals settled prior to hearing and 54 appeals were postponed to enable parties progress resolution.

Case management conferences continued to be effective in progressing legacy appeals and 139 case management conferences were scheduled in 2018, which affected 580 appeals.

Commissioner Kennedy completed 9 determinations in relation to 10 appeals in 2018 and 4 of those determinations were appealed to the High Court in accordance with section 949AQ TCA 1997. Information in relation to the status of these appeals is contained in page 16, which addresses cases stated.

With increased facilities for hearings now available on site at the TAC's new premises, it is anticipated that approximately 150 legacy appeals will be set down for hearing in 2019.



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## Pre-Establishment Appeals

Pre-establishment appeals are appeals which were on hand in the Office of the Appeal Commissioners prior to the establishment of the Tax Appeals Commission.

There were 248 pre-establishment appeals on hand in the TAC as of 1 January 2018.

During 2018, a thorough review was carried out on all 248 open appeals with appropriate action taken in order to advance matters. Significant progress was made and by year end 85 pre-establishment appeals, with a quantum in dispute totalling €12,990,000, had been disposed of.

Of the 85 appeals closed, 9 were closed by means of determination. A further 21 appeals were dismissed by the TAC for failure to comply with a direction issued by the TAC in accordance with section 949E TCA 1997. In the course of the progression of appeals by the TAC, engagement between the parties led to settlement or withdrawal of 55 pre-establishment appeals. In addition, 38 pre-establishment appeals were listed for hearing and 9 were listed for case management conference.

Of the 163 pre-commencement appeals which remained open as of 31 December 2018, 32 are part of a group of appeals. A related group of 131 appeals is stayed pending the determination of a number of lead appeals in the group of 32.

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## Cases Stated

Section 949AP TCA provides that a party who is dissatisfied with a TAC determination on the grounds that the determination is erroneous on a point of law, may require the Appeal Commissioner to state and sign a case stated for the opinion of the High Court.

During 2018, the Commissioners signed 11 cases stated pursuant to section 949AQ TCA 1997 to enable determinations to be appealed to the High Court.

In addition to the foregoing 11 cases stated, the TAC had 43 pre-establishment cases stated (i.e. appeals which were determined and where requests for a case stated were made by a dissatisfied party prior to the establishment of the TAC) and 2017 cases stated on hand at the beginning of 2018. Four of these requests for case stated were withdrawn during 2018. A further 12 appeals have confirmed that they intend to proceed via case stated. Correspondence is ongoing in relation to a further 27 requests for pre-establishment cases stated and the position in relation to these is, as yet, unconfirmed. These pre-establishment cases stated are being processed by the TAC in accordance with the transitional provisions contained in sections 29 and 30 of the Finance (Tax Appeals) Act 2015.

No. of Cases Stated received by Year Opened and Category						
Year	Total	Legacy	Pre Est'd	2016	2017	2018
2016	0					
2017	3		1	2		
2018	11	4	5		1	1

Two cases stated by the TAC were the subject of judgement by the High Court during 2018, namely *Leanne Deane -v- Revenue Commissioners* [2017 No. 279R] and *Michael O'Neill -v- Revenue Commissioners* [2018] IEHC 388. In both cases, the decision of the TAC was upheld by the High Court.

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# Determinations overview

Please note that this chapter is a commentary highlighting relevant issues in the context of 2018 determinations, in general terms. For detailed information on all published determinations please see our website at [www.taxappeals.ie](http://www.taxappeals.ie)

## Lead-Follower appeals

If taxpayers disagree with a determination in a lead-follower appeal, in circumstances where they are a party to an appeal in the lead-follower group, they may apply to differentiate the facts and circumstances of their appeal from the appeal which has been determined, and they may seek to have their appeal heard independently, with reference to the provisions of section 949AN TCA 1997.

On other occasions, a single appeal may be determined by the TAC in circumstances where the Commission is not yet seised of the follower appeals. The consequence of a determination in these circumstances may result in the resolution of the legal issues for other potential appellants.

In addition, an appeal which has not started life as a lead-follower appeal may clarify the law in a manner which is likely to affect other taxpayers. These appeals are not lead-followers as such, but they may impact on numerous, similarly situated taxpayers.

Some appeals involve multiple appellants. These are different to lead-follower appeals, as they sometimes involve fewer parties. They may be heard together in a single hearing, with separate determinations issuing or, if the circumstances of each taxpayer are similar, the appellants may agree that one determination will bind all of the appellants.

While there were no lead-followers determined in 2018, as at the date of publication of this report, there are lead-follower appeals under consideration.

## Complex/substantial appeals

Appeals vary greatly in terms of their subject matter, substance, complexity and value. The absence of a cap on the financial jurisdiction of the TAC means the Commission determines appeals where the quantum in dispute is insubstantial (in determination **06TACD2019** the sum in dispute was €502) in addition to appeals where the amount at issue is substantial (in determination **06TACD2018** the quantum in dispute was some €1,778,458). The legal issues which require determination range from non-complex to complex.

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## Quantum

A significant number of appeals come before the TAC in which the matter under appeal does not relate to the interpretation of a provision of the Taxes Acts, but where the dispute between the parties concerns the quantum of taxable income earned and/or the quantum of a deduction sought (see determination **5TACD2019**).

These appeals require a detailed review of the books and records of the appellant's trade or business. Appellants are bound not only to retain documentation in accordance with the requisite statutory provisions (section 886 TCA 1997 and section 84VATCA 2010), but also to produce such documentation as may be required. In a tax appeal, if the appellant cannot succeed in demonstrating that the assessment is incorrect, the assessment shall stand.

Determination **5TACD2019** involved a review of the sales figures of a driving instructor in respect of the tax years 2009 to 2012. The Respondent estimated assessments on the basis of odometer readings without making an adjustment for private use or use by other persons insured to drive the vehicle. As regards the odometer basis of calculation, the Appellant highlighted a number of variables which adversely affected the reading including; use of the vehicle by five other family members who were insured to drive the vehicle, provision of lessons by the Appellant in adjoining towns and the fact that some lessons were provided in a learner driver's own vehicle. As a result, the assessments were adjusted to account for these variables.

## Claims for repayment of tax and the four-year statutory limitation period

The statutory limitation periods which apply to taxpayers seeking a repayment of tax provide that claims for repayment must be made within four years after the end of the tax periods to which they relate. The relevant date is the date upon which a valid claim is first made; see section 865 TCA 1997 and section 99 of the Value Added Tax Consolidation Act 2010 as amended ('VATCA2010').

Where it has been established and/or where the taxpayer accepts that a valid claim was made outside the four-year period, the refusal of the repayment claim will be upheld by the TAC, as the legislation provides that a valid claim must be made within the four-year statutory period.

If the parties to an appeal differ in relation to the date upon which a valid claim was made, there is a case to contest and this could result in a determination in favour of either party, depending on the facts of the appeal. However, if the parties are agreed that the claim was made outside the four-year period, the appellant's claim will fail.

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In the determinations published in relation to the four-year rule, the TAC has made plain its adherence to the clear statutory language used to ensure that the four-year rule has uniform application. The TAC does not have authority to disapply the rule for extenuating circumstances, or to create exceptions to the four-year rule on compassionate grounds. The determinations are consistent with the legislation and do not provide for exceptions to the rule, where the claim for repayment is not made within the statutory four-year period.

The TAC anticipates that the publication of determinations during 2018 in relation to the four-year rule will serve to reduce the number of these appeals over time (see determinations **9TACD2018, 12TACD2018, 16TACD2018, 18TACD2018, 19TACD2018, 25TACD2018, 29TACD2018, 03TACD2019 and 04TACD2019**).

### Directors' emoluments

Taxpayers who appeal assessments raised under section 997A TCA 1997 may be unaware of the constraints on the TAC in dealing with such appeals (see determinations **5TACD2018** and **21 TACD2018**).

Section 997A(3) TCA 1997 provides that a credit in relation to tax deducted from emoluments paid by a company to a proprietary director shall not be given unless there is documentary evidence to show that the tax deducted has been remitted to Revenue.

In appeals relating to the application of section 997A TCA 1997, the appellants accepted that tax due had not been remitted to Revenue but appealed on grounds of undue hardship; however, the TAC does not have jurisdiction to set aside an assessment on grounds of hardship or oppression. The Commission is required to act in accordance with the clear statutory language in section 997A TCA 1997.

The TAC expects that the number of appeals taken on grounds of hardship and oppression caused by a particular statutory provision will decrease over time, as awareness grows in respect of the Commission's inability to set aside assessments on these grounds.

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## Vehicle Registration Tax

The TAC receives a substantial volume of appeals each year in relation to VRT.

Many of the appeals relate to disputes between taxpayers and Revenue in relation to the value to be attributed to a vehicle's 'open market selling price' ('OMSP') (see determinations **06TACD2018**, **07TACD2018**, **10TACD2018**, **13TACD2018**, **22TACD2018**, **06TACD2019** and **07TACD2019**). Broadly put, the 'open market selling price' is the price, inclusive of all taxes and duties, which the vehicle might reasonably be expected to fetch on a first arm's-length sale thereof in the State.

Some appellants do not present alternative valuations in support of their suggested OMSP but nonetheless seek to argue that valuations furnished by Revenue are overstated. Appellants who wish to challenge an OMSP assigned bear the burden of proof in VRT appeals, as in all tax appeals.

While most appeals which have been determined on the subject of OMSP seek to reduce the OMSP assigned, some contend for an increased OMSP. In determination **32TACD2018**, the appeal was in relation to the export repayment scheme and the issue was whether or not the Appellant was entitled to a VRT repayment having sold the vehicle to a dealer in Northern Ireland. It was found that the Appellant did not meet all of the conditions as set out in the legislation, and in particular that the Appellant did not furnish proof that the vehicle was subsequently registered in another Member State or was permanently exported outside of the European Union pursuant to 135(D)(3)(b) Finance Act 1992. Consequently, the decision to refuse the repayment was upheld.

VRT '*Transfer of residence relief*' was considered in determination **26TACD2018**. In this appeal, the Appellant had sought relief from VRT on the transfer of her normal residence from the UK to the State, pursuant to section 134(1)(a) Finance Act 1992. The relief had been refused by Revenue as their position was that the Appellant's normal residence had, for the purpose of the relief, remained within the State. It was determined that the Appellant's place of 'normal residence' was within the State and the decision by Revenue to refuse the relief was upheld. Determination **10TACD2019** also dealt with '*transfer of residence relief*'.

Determination **30TACD2018** concerned an appeal against VRT charged in relation to the adaptation of a used motor vehicle in accordance with S.I. No. 353/1994 – Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994.

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## Artists' exemption

In the context of grouping appeals which relate to claims for exemption, the TAC receives a significant number of appeals each year in relation to claims for exemption pursuant to section 195 of the TCA 1997, commonly known as 'artists' exemption'. Many Appellants choose to have their appeals adjudicated without a hearing in accordance with section 949U TCA 1997.

Determined cases under s.195 TCA 1997 include the following:

- Determination **02TACD2019** clarifies the approach taken by the TAC where an Appellant contends that a work falls into more than one category of non-fiction work. The determination considered different categories contained in the Guidelines in force under section 195 (12) TCA 1997.
- Determination **20TACD2017** assists in the clarification of the meaning of 'autobiography'. In this appeal, only part of the book retained the character of an autobiography. The majority of the book did not and therefore it did not constitute an autobiography for the purpose of the Guidelines in force under section 195 (12) TCA 1997;

It is anticipated that the publication of these determinations, clarifying the parameters of the various categories of exemption for writers, composers and artists, will serve to reduce over time the number of appeals received in relation to section 195 TCA 1997.

## Other tax heads and determinations

Determinations have also issued in relation to the following:

### Corporation Tax

Determination **02TACD2018** concerned the deductibility of foreign withholding tax under section 81 TCA 1997. The Appellant was engaged in the provision of software solutions to the worldwide market and owned the worldwide right to such software. It licensed the software to customers in return for a licence fee or royalty. Foreign withholding tax was deducted from licence payments being made in Double Tax Agreement (DTA) locations and non-DTA locations. The issues for determination were whether the foreign withholding tax suffered by the Appellant (in excess of that relieved under DTA provisions) "*was laid out or expended for the purposes of its trade*" within the meaning of section 81(2)(a) TCA 1997 on the basis it was incurred wholly and exclusively for the purpose of its trade, and whether the withholding tax was in the nature of a loss.

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The Appeal Commissioner determined as follows;

- Foreign withholding tax levied by a source state on the software licence royalty income is in the nature of a tax on income.
- The fact that the foreign withholding taxes are calculated on gross income or gross receipts does not deprive them of their nature as taxes on income.
- The excess foreign withholding tax deducted from royalty income does not comprise a deductible expense pursuant to section 81(2)(a) TCA 1997.
- The excess foreign withholding tax deducted does not constitute a loss in accordance with section 81(2)(e) TCA 1997.

### Capital Gains Tax

Determination **17TACD2018** concerned an appeal against an assessment to Income Tax charged pursuant to section 640 TCA 1997 in respect of Case I profits arising from dealing in or developing land. The determination also concerned the refusal by the Respondent to allow CGT relief under section 604 TCA 1997 in respect of the Appellant's Principal Private Residence claim.

### Capital Acquisitions Tax

Determination **14TACD2018** considered the issue of whether monthly payments received by an individual from his parents constituted payment made for his 'support' or 'maintenance' within the meaning of the CAT exemption provided by section 82(2) CATCA 2010. To fall within the latter exemption, the payment must be part of the normal expenditure of the disposer and must be reasonable in light of his/her financial position. The Appellant argued that, being a low paid employee of his father's company, the expenses were paid to fund his living expenses and that as they had been paid over a lengthy period of time, they were part of his parents' normal expenditure.

The Appeal Commissioner agreed with the Respondent that on a literal interpretation of the legislation, it was clear that the purpose of the exemption provided by section 82(2) CATCA 2010 was not to transfer wealth to children and that it was necessary to consider the Appellant's financial circumstances. On review of the evidence, the Appeal Commissioner concluded that the payments did not constitute 'support' or 'maintenance' given the Appellant's own ample resources and the fact the payments were used to finance his lifestyle and maintain his rental property portfolio. Accordingly, he determined such payments did not qualify for the exemption.

The issue to be determined in **33TACD2018** was whether the Appellant was entitled to claim an exemption from CAT pursuant to section 79 CATCA 2003 in relation to an inheritance



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taken from his son. Section 79 provides for an exemption from CAT where a parent takes an inheritance from a child if the child had taken a non-exempt gift from the parent within the period of 5 years immediately prior to the date of death of the child. The Appellant in this instance submitted that he had gifted his deceased son a non-exempt sum of money during the 5 years prior to his son's death and was therefore entitled to the CAT exemption pursuant to section 79. The Respondent contended that there was insufficient evidence of receipt of the monies by the Appellant's son and refused the exemption. The Commissioner, having considered and evaluated the evidence, was satisfied that the Appellant had on the balance of probabilities succeeded in proving his case and the appeal was consequently determined in his favour.

## Income Tax

### Section 130 TCA 1997

Determination **24TACD2018** concerned whether the transfer of share rights attaching to a class of shares in Company B to another class of shares in Company B which were owned by an individual who was also a member of Company C, was chargeable to income tax as a distribution. It was held that a share constituted a bundle of proprietary rights which constituted incorporeal property which was an asset for tax purposes. It was determined that the share rights were capable of transfer independently of a transfer of the shares. It was also determined that there was an income distribution within the meaning of section 130 TCA 1997, as the alteration of the shares constituted a transfer of an asset by a company, to a member of the company of value in excess of any consideration paid by that member to the company. Reference was made to the previous determination **10TACD2016** where similar issues were considered.

### Expense deductions – Section 114 TCA 1997

Determination **08TACD2018** concerned the deductibility of the costs of meals incurred by the Appellant while working as a self-employed gardener. He claimed a deduction in accordance with Civil Service rates. He argued that it was unfair and discriminatory to disallow the costs of his meals incurred during his self-employment in circumstances where such expenses if arising to an employee would be deductible. He sought to support his position in this regard by relying on the ECJ case of *Jusilla v Finland*(73053/01) (2006) ECHR 996 and the Supreme Court case of *Keogh v Criminal Assets Bureau* [2004] 2 IR 159.

The Respondent argued that the Appellant was not entitled to deduct expenses under section 114 TCA 1997 as that section is addressed to employees and does not extend to self-employed individuals. The Respondent argued that the expenses were not deductible under section 81(2) TCA 1997 as the expenses were domestic and private in nature and could not be

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considered “*as wholly and exclusively*” incurred for the purposes of his trade within the meaning of section 81(2)(b) TCA 1997.

The Appeal Commissioner agreed with the Respondent’s submission and noted that if it had been necessary to consider whether the burden of proof had been met by the Appellant, he would have failed, as he had not produced documentary evidence to substantiate his claim. The Appeal Commissioner further confirmed that the Commissioners did not have jurisdiction to determine whether a legislative provision was discriminatory or unfair and that they were not empowered by statute to apply principles of equity or to grant declaratory relief.

Determination **20TACD2018** concerned whether expense payments made by an employer company to the Appellant constituted income chargeable to tax under section 112 TCA 1997. The company was involved in the provision of engineering services to clients at various European locations. The Appellant was charged with the on-site management of installation and commissioning projects. His work thus necessarily entailed departing from the company’s office on Monday morning, renting an apartment and returning home on a Friday evening. The expenses claimed by the Appellant in question consisted of vouched travel and accommodation expenditure together with other unvouched travel and subsistence costs.

The Appellant argued that the case-law relating to temporary workers could be relied on to justify his position that the costs of travelling from his bases and differing work bases should be deductible. The Respondent disputed this on the grounds that the costs were incurred in travelling from home to work were as a result of the requirement of the onsite performance of his job and that his circumstances differed from a salesman or commercial traveller.

The Commissioner determined that the reimbursement of travel and subsistence should be treated as a perquisite notwithstanding that no personal benefit was derived due to the deeming provisions in section 117 TCA 1997. He noted the Respondent’s guidelines on the treatment of unvouched expenditure could not be reconciled with the provisions of section 114 TCA 1997 and section 117 TCA 1997.

In relation to vouched travel expenditure, the Commissioner held the expenses were not incurred “*in the performance of the duties of the office or employment*” due to their duality of purpose and hence were not deductible. In relation to the subsistence payments, he concluded these were not “*wholly and exclusively incurred in performing the duties of his employment*” and likewise such expenses were not deductible under section 114 TCA 1997. The Commissioner confirmed that he had no jurisdiction to supervise the administrative actions for purported inequity in the Respondent’s application of the tax code.

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### Four Year Time Limit on raising Assessments

Determination **11TACD2018** concerned the appropriate tax year in which to tax remuneration received by an employee under a deferred share scheme. The Appellant had been awarded ordinary shares which were held in trust for a 3-year deferral period. The shares did not vest until the expiry of the end of the 3-year period and the Appellant had no rights *qua* shareholder in the intervening period. It was agreed that the shares were emoluments which fell to be taxed under section 112 TCA 1997. The Appellant did not include details of the share award in this tax return for either the year of the award or the year of the transfer.

The Respondent argued the shares were taxable in the year transferred to the Appellant and issued a PAYE balancing statement for that year. The Appellant submitted that the balancing statement was time-barred by virtue of the 4-year rule on the basis the share award was taxable in the year the shares was awarded. The Appeal Commissioner held that the share award could not be turned to pecuniary account until transferred into the Appellant's name and therefore the tax charge did not arise until the year of the transfer.

The Appeal Commissioner agreed that the Appellant's return for the tax year when the shares were transferred to him was incomplete. The Commissioner thus concluded that the general 4-year time bar did not apply by virtue of section 955(2) TCA 1997. The Commissioner determined the balancing statement was within time.

### Help to Buy Scheme – Income Tax Relief

Income tax relief is available under section 477C TCA 1997. This relief is known as the 'Help to Buy' scheme. Where relief is granted, it provides an income tax rebate to first-time buyers who purchase or self-build a newly constructed residential property.

Section 477C TCA 1997 is a detailed and lengthy section with clear definitions of the precise meaning of terms used and the conditions which must be satisfied to avail of the relief. One of those conditions is that a qualifying loan must be drawn down and must amount to a minimum of 70% of the purchase price or 70% of the self-build valuation.

In determination **01TACD2018**, the Appellant's loan amount did not reach the loan-to-value ratio as defined in section 477C TCA 1997; it fell short of the minimum 70% by less than 0.25%. The Appellant contended that this percentage should be rounded up as is often the practice when dealing with Euros and Cents. The determination concluded that the TAC did not have the authority to depart from the express statutory requirement of "not less than 70%" and therefore the Appellant failed to meet the minimum loan-to-value requirements of the Help to Buy Scheme.

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In determination **31TACD2018**, the Commissioner considered the requirement that the individual must be a first-time purchaser at the time of making the claim for the relief. A first-time purchaser means an individual who has not previously purchased or built a dwelling. In this appeal, the Appellant purchased a pre-existing farmhouse with land and planning permission to demolish the farmhouse and build a new residence.

The parties had opposing views on whether the pre-existing farmhouse constituted a 'dwelling' for the purposes of the definition of a first-time buyer. However, both parties agreed that a 'dwelling' is a 'building which is suitable for use as a dwelling'.

The Appellant provided a detailed architect's report on the condition of the property which concluded that the farmhouse was not suitable for use as a dwelling. The report was the best evidence available to the Commissioner regarding the property's state of dereliction. Accordingly, the TAC determined that the Appellant was entitled to avail of the relief under section 477C.

#### **S.1025 TCA 1997 - Maintenance in case of separated spouses**

Determination **01TACD2019** concerned an appeal against a decision by the Respondent to deny section 1025 TCA 1997 relief claimed by the Appellant for a number of tax years.

The Respondent alleged that the Appellant derived benefit from 50% of the maintenance payments he had made, as the monies were used to repay a mortgage on the family home in which the Appellant continued to have a 50% interest.

The TAC determined in favour of the Appellant as section 1025(2) was not drafted in the manner suggested by the Respondent, notwithstanding that the Appellant indirectly derived benefit from the reduction in the mortgage debt on the family home.

#### **S.640 and S.604 TCA 1997 - Dealing in or developing land/Principal Private Residence Relief**

Determination **17TACD2018** concerned an appeal against an assessment to Income Tax, charged pursuant to section 640 TCA 1997 in respect of Case I profits arising from dealing in or developing land. The determination also concerned the refusal by the Respondent to allow CGT relief under section 604 TCA 1997 in respect of the Appellant's Principal Private Residence claim.

The evidence provided by the Appellant did not support his claim that the property in question was a dwelling house which he had occupied as his main residence. The Appellant did not provide any evidence that he had occupied the property during his period of ownership. The loan agreement for the purchase and refurbishment of the property also indicated that the loan

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was a short-term commercial loan. Furthermore, other facts indicated that the badges of trade were present.

As a result, the TAC determined that the Appellant was engaged in the business of dealing in development land and the Income Tax assessments were upheld.

### Income Tax Credits

Determination **15TACD2018** concerned an appeal against the withdrawal of the one parent family tax credit by Revenue. Determination **28TACD2018** concerned a claim in respect of the Single Person Child Carer Credit in accordance with section 462B of TCA 1997. Determination **27TACD2018** concerned the entitlement of the Appellant to the incapacitated child tax credit pursuant to section 465 of the TCA 1997.

### Local Property Tax

Determination **09TACD2019** considered the issue of whether the Appellant was a person liable to LPT on the liability date of 1 May 2013. The Appellant provided various forms of student accommodation to third level students both on and off campus. The potential liability of the Appellant to LPT turned on whether the accommodation constituted “*relevant residential properties*”, and whether they were “*in use or suitable for use as a dwelling*”.

The Appeal Commissioner inspected the premises in question on the invitation of the parties. The Head of Accommodation gave evidence as to the nature of the accommodation and supervision of same by the Appellant. The Appellant argued that the term ‘dwelling’ can have different meanings in differing statutory contexts. It was argued by the Appellant the definition of the term in one statutory context is not determinative of its meaning in another context.

The Appeal Commissioner accepted the argument advanced by the Respondent that there was no ambiguity in relation to the construction of the term ‘dwelling’ and that the ordinary meaning of the word should be adopted. On this basis he concluded that a dwelling is a property where a person or persons live. He agreed with the Respondent’s position that if the Oireachtas intended the word dwelling to have a technical or qualified meaning, it could have so provided but that it did not. Likewise, the Appeal Commissioner concluded that if the Oireachtas has intended to exclude the type of accommodation provided by the Appellants from the charge to LPT, it could have included it in the exemptions expressly provided for in the Act.

The Appeal Commissioner did not agree with the Appellant’s contention that there was any looseness or ambiguity associated with the term dwelling as used on the context of LPT legislation. He held that if any member of the public had accompanied him on this inspection of the student accommodation, he or she would have similarly come to the conclusion that the

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accommodation having sleeping facilities together with sanitary and cooking facilities, provided either on a self-contained basis or approximate basis, constituted a dwelling.

Having visited the premises, having reviewed the evidence adduced, and having considered the terms of occupancy and the legal submissions of both parties, the Appeal Commissioner determined that the accommodation provided by the Appellant did in fact constitute dwellings for LPT purposes.

### Value Added Tax

Determination **03TACD2018** related to the VAT treatment to clamping release fees by the operator of pay-and display and barrier-operated car parks. The Appellant imposed de-clamping fees in relation to customers who parked in the wrong area or who overstayed the permissible parking period. It was held that the de-clamping activity was not a commercial activity in its own right and that no new contract was entered at the point of de-clamping. Accordingly, the Commissioner concluded there was no direct link between the removal of the clamp and the payment of the release fee. As the de-clamping fee arose in the context of enforcement action by the Appellant, it was held it was not the supply of a taxable service. It was determined that the release fee was in the nature of or in lieu of damages for trespass and hence fell outside the scope of VAT.

### PAYE/PRSI

Determination **23TACD2018** turned on the question of whether food delivery drivers engaged by the Appellant were operating under a contract of service (employees) or a contract for services (self-employed). PAYE/PRSI estimates were raised by the Respondent on the basis that the drivers were employees. The matter to be determined by the TAC was whether the payments to drivers were emoluments within the meaning of section 112 TCA 1997 or whether delivery drivers were self-employed persons chargeable to tax under Case I Schedule D in respect of income of a trade.

The questions for consideration in this appeal were as follows;

1. Whether issue estoppel arose in the appeal and the relevance, if any, of a 2008 decision of a social welfare appeals officer in relation to a former delivery driver.
2. Whether *mutuality of obligation* was present or absent in the contracts between the Appellant and its drivers
3. Whether the contracts between the Appellants and its drivers constituted contracts of service *or for services*

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The determination of the TAC can be summarised as follows: -

1. The TAC determined that issue estoppel did not arise as there was no privity of interest between the parties to this appeal and the parties to the decision of the Social Welfare Appeals Office.
2. The Commissioner determined that there was an overarching umbrella contract supplemented by multiple individual contracts in respect of each assignment of work and that mutuality of obligation was present for the duration of these individual contracts.
3. As regards the individual contracts, the Commissioner conducted an analysis based on the components of substitution and personal service, control, integration, the enterprise test, opportunity to profit, bargaining power and the categorisation of employment status by the parties. The Commissioner determined that the individual contracts entered into between the Appellant and its drivers, in respect of assignments of work involving one or more shifts, comprised contracts of service. Thus the Commissioner determined that the delivery drivers were taxable in relation to the emoluments arising from their contracts of service in accordance with section 112 TCA 1997.

### Opportunities for resolution

It should be noted that all taxpayers are entitled to avail of an internal/external review facility with Revenue, prior to pursuing an appeal before the TAC. This facility obviates the need for an appeal to the TAC in the event that the taxpayer is satisfied with the outcome of same. If the taxpayer is dissatisfied with the outcome of Revenue's review facility, that taxpayer may pursue an appeal to the TAC notwithstanding. It is imperative for taxpayers to be aware that an assessment or a Revenue determination must be appealed within 30 days to be within time to pursue an appeal with the TAC.

Once the TAC is seised of an appeal, it aims to facilitate engagement between appellants and Revenue, with the objective of assisting parties to achieve resolution pre-hearing where possible.

**For more information on published determinations please visit our website at [www.taxappeals.ie](http://www.taxappeals.ie)**

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# Review of the Workload and Operations of the TAC

On 6 June 2018, the Minister for Finance, Mr. Paschal Donohoe TD, commissioned an independent review of the workload and operations of the TAC in the context of requests made to his Department by the TAC seeking increased staff and budget resources. The Minister appointed Ms. Niamh O' Donoghue, former Secretary General of the Department of Social Protection, to carry out this review.

In the course of her review, Ms. O'Donoghue consulted with the TAC Commissioners and staff, the Revenue Commissioners, the Department of Finance, the Law Society, representatives of the Bar of Ireland, accountancy professional bodies and practitioners from the private sector.

Her report ("the O'Donoghue Report"), which was published on 9 October 2018, made a number of recommendations in relation to staffing, resources and corporate governance of the TAC. These are summarised below.

On Budget Day the Minister for Finance stated: *'Today I am publishing an independent review of the operations and resources of the Tax Appeals Commission, which I commissioned earlier this year. I fully support the recommendations of the review, which include the sanctioning of additional staffing resources at all levels and additional funding for improved IT systems, so that the Commission can adequately address its caseload and remit.'*

The TAC has welcomed the Minister's support in relation to the O'Donoghue Report and is working with the Department of Finance and with other bodies to implement the recommendations contained therein.

## Recommendations and actions

### Budget

The TAC has received a budget increase of 97% on the 2017 net estimate to enable it to give effect to the recommendations contained in the O'Donoghue Report. The TAC budget allocation for 2019 stands at €3.2m. The 2019 estimate was made to facilitate ongoing modernisation and reform of the Commission and to address its caseload whilst also meeting its obligations as a civil service body.

### Staff and Commissioner resources

The O'Donoghue Report recommended that additional resources be allocated in terms of the appointment of an additional permanent Appeal Commissioner and two temporary Appeal Commissioners and also by the appointment of additional staff at all existing levels. In addition, the Commission now has a permanent position at Principal Officer level for a Chief Operations Officer.



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The O'Donoghue report further recommended that an additional two Case Managers be recruited in addition to the three recruited during 2018 to assist with the research, preparatory and processing tasks related to appeals. The appointment of additional Case Managers should facilitate greater disaggregation of work and the use of delegated authority, particularly in the early parts of processing appeals and in research and assistance with determinations.

On foot of the sanction received in respect of increased budget and resources, the TAC intends to increase the current staff levels in TAC from 17 to 32. The recruitment process necessary for this began in 2018 and will continue throughout the coming year.

During 2018, the TAC engaged with the Department of Finance in relation to additional Commissioner posts, and the recruitment processes in relation to additional temporary Commissioners and an additional permanent Commissioner that will take place during 2019. Consideration will be given to the creation of both full-time and part-time temporary Appeal Commissioner posts.

The Commission notes that the Report recommended that overall resourcing of the Commission be re-examined in three years having regard to progress made and ongoing requirements of the Commission.

It was recommended that the Minister appoint a Commissioner to be Chairperson, Accounting Officer and Head of Office and that this Commissioner would be responsible for overseeing case allocation, quality assurance, consistency and management of the operations of the Commission. This will require legislation to amend the Finance (Tax Appeals) Act 2015 in order to allow for the appointment of a Chairperson of the TAC and the Commission engaged with the Department of Finance in relation to draft legislation in the latter stages of 2018. The Commission has been informed by the Department of Finance that the recruitment process in relation to the appointment of a Chairperson will commence once the necessary legislation has been enacted.

### **Corporate support and operations**

The Report recommended that on a short-term basis, the Department of Finance should be responsible for the provision of corporate supports to the TAC, including internal audit, health and safety services and risk management. The Civil Service Management Board should be requested to consider how best a shared service solution of these areas might be progressed for the TAC and other small agencies in the future.

The Report also recommended that the Revenue Commissioners and the TAC re-engage in relation to the provision of IT systems design, support and hosting facilities. The Report recommends that this be afforded priority by both organisations in the context of ensuring a properly functioning appeals system.

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In addition, the Report recommended that the Department of Finance assist the TAC in securing support from the OGCIO in relation to assisting with IT development, connectivity with Government networks, office systems and other sundry technical matters.

The TAC has welcomed these recommendations and work began in 2018 and is ongoing with the Department of Finance with a view to implementing same.

### Case Management

It was recommended that the Commissioners should maximise the delegations available within the Act to optimise the contribution of Case Managers in the progression of appeals, and that these delegations should be utilised in a consistent manner by all Commissioners. It was advised that the Commissioners should focus on more complex appeals while Case Managers should be focused on drafting determinations in less complex appeals with guidance from the Commissioners. The Scheduling Unit in the TAC is working with the Commissioners to apportion schedules accordingly.

The Report directed that priority be given to outstanding determinations and that a time frame for the elimination of the backlog be put in place. In this regard, the TAC has begun the process of issuing letters to parties in relation to outstanding determinations and giving estimates for the issue of outstanding determinations. This process is ongoing and it is envisaged it will be completed in Q2 2019.

The Report also recommended that the TAC formalise liaison arrangements with the Revenue Commissioners to facilitate greater efficiency in the operation of the appeals process. In light of this recommendation, an Administration Working Group between the Revenue Commissioners, the Department of Finance and the TAC has been established and met for the first time in October 2018. This group will explore options for the electronic exchange of information that is required by both the TAC and the Revenue Commissioners.

The Report also recommended that the Revenue Commissioners should consider how their internal/external review processes might be strengthened. This recommendation is supported by the TAC.

Furthermore, the Report suggested legislative changes which might assist the work of the Commission, including consideration of how an ADR process might be accommodated at different stages of the process. A summary of legislative changes contained in the Finance Act 2018 is set out on page 9 with further legislative change anticipated with the publication of the Finance (Tax Appeals) Amendment Bill 2019.

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# Statistics

Number of Appeals per Year Received in the TAC	34
Appeals Received in 2018	36
Appeals Closed in 2018	37
Appeals - Main Tax Type	38
Multiple Tax Types	40
Appeals Listed for Hearing in 2018	41
Determinations	43
Case Management Conferences in 2018	46
Progress Made on all Appeals in 2018	49

*Note 1: Some of the tables included in the following pages display the “quantum in dispute” for appeals received by the Tax Appeals Commission. This quantum figure should be viewed as an estimate on the following basis:*

- *the original quantum of tax under appeal may be modified post filing of the notice of appeal (i.e. where an aspect of the appeal is settled or withdrawn).*
- *The parties may disagree in relation to the precise quantum of tax in dispute*
- *the monetary value of an appeal is not always calculable (e.g.in appeals where the rate of tax is in dispute or in appeals in relation to the refusal of Tax Clearance Certificates).*

*Note 2: It is important to note that statistics in relation to appeals are continually evolving and are updated on a daily basis in line with correspondence and notifications received. As at Q1 of 2019, this report presents as accurate a picture as possible in relation to statistics in respect of the calendar year, 2018.*

## Number of Appeals per Year Received in the TAC

The TAC was established on 21 March, 2016. The system of characterisation of appeals reflected the appeals on hand prior to the establishment of the TAC ('pre-establishment appeals'), appeals received post establishment of the TAC ('current appeals') and aged appeals transferred from the Revenue Commissioners ('legacy appeals') and the appeal groups are described accordingly.

The following table provides an outline of the number of appeals received and closed since the TAC was established in 2016:

Year	Total	Legacy	Pre-Est'd	Current		
				2016	2017	2018
<b>2016</b>						
Appeals received in 2016*	2,346	1,163	282	901		
Closed in 2016	(200)		(4)	(196)		
Balance (31/12/16)	2,146	1,163	278	705		
<b>2017</b>						
Appeals received in 2017	1,751				1,751	
Closed in 2017	(693)	(182)	(30)	(222)	(259)	
Balance (31/12/17)	3,204	981	248	483	1,492	
<b>2018</b>						
Appeals received in 2018	1,689					1,689
Closed in 2018	(1,440)	(253)	(85)	(204)	(407)	(491)
Balance (31/12/18)	3,453	728	163	279	1,085	1,198
<b>Summary</b>						
Appeals received	5,786	1,163	282	901	1,751	1,689
Appeals Closed	(2,333)	(435)	(119)	(622)	(666)	(491)
Balance (31/12/18)	3,453	728	163	279	1,085	1,198

\*As a result of the review of the legacy files by TAC in 2017, the TAC reduced the original number of legacy appeals received from 2,758 to 1,163 by grouping tax years of assessments relating to the same appellants and by grouping related issues.

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In many instances, an appellant will appeal the same issue over multiple tax years of assessment and in such instances, these appeals are grouped as one appeal. In appeals where a taxpayer has appealed to the Revenue Commissioners prior to the establishment of the TAC (a 'legacy appeal') and subsequently appeals a post-establishment tax year of assessment, these appeals may be grouped as one appeal. For administrative purposes, appeals are grouped if appropriate however, not all related appeals are suitable for grouping.

Of general note in relation to all appeals:

- Almost 50% of appeals (open and closed) in 2018 are, or were, managed by an agent for the appellant.
- At least one quarter of the appeals have multiple tax years of assessment or periods of assessment in dispute.
- At least 300 appeals currently on hand are identified as part of a group of appeals, where a similar issue(s) is under appeal.

## Appeals Received in 2018

The TAC received 1,689 appeals in 2018, which was in line with the number received in 2017. All appeals received have been reviewed and are being processed through the stages. An outline of appeals received and the quantum of tax under appeal in 2018 is broken down as follows:

2018 Month	No. of Appeals Received	Quantum* €000
Jan	264	52,575
Feb	134	8,693
Mar	159	43,773
Apr	104	4,180
May	195	18,961
Jun	72	5,180
Jul	114	12,262
Aug	127	15,883
Sep	108	89,884
Oct	108	55,623
Nov	115	14,425
Dec**	189	2,210,724
<b>TOTAL</b>	<b>1,689</b>	<b>2,532,163</b>

Tax type of Appeals Received***	No. of references in Appeals	% of Total	Quantum* €000
IT	1,035	56	91,973
VAT	221	12	71,110
VRT	207	11	1,817
CT	131	7	2,333,753
Other****	111	6	6,941
CGT	100	6	17,112
CAT	40	2	9,457
<b>TOTAL</b>	<b>1,845</b>	<b>100</b>	<b>2,532,163</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figure is calculated.

\*\* Five appeals received in the final week of December 2018 amounted to approximately €2.1 billion. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2018 would have totalled €432 million.

\*\*\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted under each tax head, leading to a notional figure of 1,845 which relates to 1,689 actual appeals.

\*\*\*\* Other includes C&E, DIRT, DWT, LPT, RCT and Stamp Duty.

## Appeals Closed in 2018

The TAC closed 1,440 appeals in 2018, by determination, settlement, withdrawal, refusal, merging or dismissal of the appeal. Despite a shortage of staff, the number of appeals closed in 2018 was double the number closed in 2017. An outline of appeals closed in 2018 is as follows:

2018 Month	No. of Appeals Closed	Quantum* €000
Jan	64	13,041
Feb	319	17,590
Mar	148	18,110
Apr	141	6,689
May	122	11,735
Jun	76	136,339
Jul	116	9,666
Aug	56	211,572
Sep	89	23,002
Oct	156	108,110
Nov	72	4,646
Dec	81	6,803
<b>TOTAL</b>	<b>1,440</b>	<b>567,303</b>

Tax type of Appeals Closed**	No. of references in Appeals	% of Total	Quantum* €000
IT	978	60	263,899
VRT	170	10	371
VAT	138	8	19,050
Other***	127	8	9,035
CT	96	6	188,551
CGT	94	6	22,303
CAT	34	2	64,094
<b>TOTAL</b>	<b>1,637</b>	<b>100</b>	<b>567,303</b>

Category / Year Received	No. of Appeals Closed	Quantum* €000
Legacy	253	304,742
Pre Est'd	85	12,990
2016	204	151,149
2017	407	76,758
2018	491	21,664
<b>TOTAL</b>	<b>1,440</b>	<b>567,303</b>

Reason for Appeal Closures	No. of Appeals Closed	Quantum* €000
Determinations Issued	44	3,521
Dismissed	162	24,419
Merged / consolidated	19	6,778
Refused	324	12,608
Settled	668	455,359
Withdrawn by Appellant	223	64,618
<b>TOTAL</b>	<b>1,440</b>	<b>567,303</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figure is calculated.

\*\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted under each tax head, leading to a notional figure of 1,637 which relates to 1,440 actual appeals.

\*\*\* Other includes C&E, DIRT, DWT, LPT, RCT and Stamp Duty.

## Appeals – Main Tax Types

Many appeals involve more than one tax head or more than one type of credit, deduction, relief or exemption. The table below contains information in relation to the main tax types disputed across appeals opened and closed in 2018:

Main Tax Type or Issue of Appeals Opened / Closed in 2018				
Tax Type *	No. of Appeals Received	Quantum** €000	No. of Appeals Closed	Quantum** €000
IT	1,035	91,973	978	263,899
VAT	221	71,110	138	19,050
VRT	207	1,817	170	371
CT***	131	2,333,753	96	188,551
Other****	111	6,941	127	9,035
CGT	100	17,112	94	22,303
CAT	40	9,457	34	64,094
<b>TOTAL</b>	<b>1,845</b>	<b>2,532,163</b>	<b>1,637</b>	<b>567,303</b>

\* For the purposes of tax head analysis, an appeal containing more than one tax head has been counted under each tax head, leading to notional total amounts in circumstances where 1,689 appeals were received in 2018 and 1,440 appeals were closed in 2018.

\*\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figure is calculated.

\*\*\* Five appeals received in the final week of December 2018, amounted to approximately €2.1 billion. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2018 would have totalled €432 million.

\*\*\*\* Other includes RCT, LPT, C&E, DIRT, PSWT, Stamp Duty and DWT

During 2018, income tax was again the tax most frequently appealed, arising in 56% of appeals received. VAT, VRT, CT and CGT made up a further 36% of the appeals on hand.

In 2018, the TAC received 275 appeals which referenced either PAYE, PRSI or USC. The combined total of these appeals accounted for 15% of all tax types in relation to appeals received in 2018. Although some of these appeals relate to appealable matters, others were queries in relation to tax liabilities as opposed to appeals of tax assessments or determinations. Such queries are more appropriately addressed through the Revenue Commissioners' customer service channels.

Tax head analysis in 2018 is broadly similar to tax head analysis in relation to 2017.



The following table outlines the top four tax types which were referenced in appeals in 2016, 2017 and 2018. The increase in appeals received post 2016, resulted in a consequent increase in the number of appeals under each of the four main tax heads and under all other tax heads.

Top Four Tax Types referenced in appeals from 2016				
No. of Appeals Received (By Year)	IT	VAT	VRT	CT
2016	462	112	104	54
2017	1,130	170	132	125
2018	1,035	221	207	131

The following table outlines the quantum figures per tax head in relation to appeals received and closed in 2016, 2017 and 2018:

Main Tax Type of Appeals Opened / Closed since 2016							
Tax Type	2016		2017		2018		Balance Remaining €000*
	Appeals Received €000*	Appeals Closed €000*	Appeals Received €000*	Appeals Closed €000*	Appeals Received €000*	Appeals Closed €000*	
IT	473,613	8,291	102,645	35,600	91,973	263,899	360,441
CT**	410,960	133	605,795	147,604	2,333,753	188,551	3,014,220
CGT	219,054	950	22,427	44,614	17,112	22,303	190,726
VAT	92,522	268	118,388	10,066	71,110	19,050	252,636
CAT	67,674	282	6,917	1,337	9,457	64,094	18,335
VRT	167	62	650	131	1,817	371	2,070
Other***	90,140	2,383	12,501	1,535	6,941	9,035	96,629
<b>Total</b>	<b>1,354,130</b>	<b>12,369</b>	<b>869,323</b>	<b>240,887</b>	<b>2,532,163</b>	<b>567,303</b>	<b>3,935,057</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figure is estimated.

\*\* Five appeals received in the final week of December 2018, amounted to approximately €2.1 billion. These appeals related to corporation tax.

\*\*\* Other includes RCT, LPT, C&E, DIRT, PSWT, Stamp Duty and DWT

## Multiple Tax Types

The table below indicates the total number of appeals processed by the TAC across three categories of appeal (2016, 2017 and 2018 appeals) in which more than one tax type was being appealed.

Number of Appeals with Multiple Tax Types in 2016, 2017 and 2018						
No. of Tax Types	2018	% of Total Appeals Received	2017	% of Total Appeals Received	2016	% of Total Appeals Received
2	79	4.7	150	8.6	58	6.4
3	24	1.4	35	2	13	1.4
4	9	.5	14	.8	2	-
5			5	.3	1	-
<b>Total</b>	<b>112</b>	<b>6.6</b>	<b>204</b>	<b>11.7</b>	<b>74</b>	<b>7.8</b>

In 2017, 11.7% of all appeals were in relation to multiple tax heads. The percentage for multiple tax head appeals reduced to 6.6% in 2018. The following table outlines the main multiple tax types which were referenced in appeals in 2018.

Summary of main Multiple Tax Types referenced in appeals received in 2018			
Tax Types	Appeals received with 2 Tax Types	Appeals received with 3 Tax Types	Appeals received with 4 Tax Types
IT (incl. PAYE/PRSI/USC)	46	21	
IT / VAT	13		
IT / LPT			5
IT / CT/ VAT			2
Other	20	3	2
<b>TOTAL</b>	<b>79</b>	<b>24</b>	<b>9</b>

## Appeals Listed for Hearing in 2018

During 2018, 167 hearings affecting 248 appeals were scheduled for hearing over 202 days. The TAC had no on-site hearing rooms available until it moved to new premises in June 2018. Despite this, the number of hearings scheduled in 2018 doubled when compared with 2017. The duration of the hearings ranged from a half day to five days.

The following provides information on the outcome of the hearings:

Outcome*	No. of Hearings Scheduled		No. of Appeals affected	
	2018	2017	2018	2017
<b>Scheduled but deferred or withdrawn prior to hearing:</b>				
Settled / Withdrawn prior to hearing	17	2	23	2
Adjourned / Deferred prior to hearing	90	11	148	11
<i>Subtotal</i>	107	13	171	13
<b>Proceeded:</b>				
S949AA – Withdrawn for non-attendance	5		5	
Settled after hearing		4		5
Hearing commenced and adjourned	14	5	24	6
Hearing concluded for determination	41	43	48	82
<i>Subtotal</i>	60	52	77	93
<b>TOTAL</b>	<b>167</b>	<b>65</b>	<b>248</b>	<b>106</b>

\* It is possible that the status of an appeal cited above may have changed e.g. appeals recorded above as '*concluded for determination*' may be determined by the publication date of this report. Similarly, some appeals adjourned may have settled or may have become '*concluded for determination*'.

Hearings can be adjourned for a number of reasons, e.g. to allow for submission of further evidence or to continue the hearing on a subsequent hearing date if it does not conclude on the initial hearing date. Also, depending on the circumstances, hearings may be adjourned to await the outcome of Court proceedings which have to be taken into account by a Commissioner.

Although 167 hearings were scheduled in 2018, 90 hearings were adjourned before a hearing could take place, despite parties being issued calendars of availability in advance. This represented an increase in hearings being adjourned compared to 2017. Due to the increase in adjournments, the TAC reviewed its procedures for scheduling hearings and took the following steps;

- The TAC now issues hearing notices 3 to 4 months in advance so that, should an adjournment take place, there will be time to schedule another appeal in place of the adjourned appeal.
- The TAC increased the number of appeals scheduled for hearing in anticipation of the fact that adjournments will arise in relation to some of those appeals.

At the end of 2018, a further 64 appeals had been scheduled for 2019. These appeals relate to 256 individual appeals and are estimated to take 149 days to hear.

The following provides information in relation to the quantum of tax at issue, in respect of appeals scheduled for hearing in 2018;

Outcome**	Category / Year opened					Total 2018	Quantum* 2018 €000
	Legacy	Pre Estab.'d	2016	2017	2018		
<b>Scheduled but deferred before hearing:</b>							
Settled / Withdrawn prior to hearing	9	3	4	1		17	12,250
Adjourned prior to hearing							
- By Appellant	19	20	6	14	4	63	9,344
- By Revenue	11	3	3	4	1	22	25,780
- By the TAC	1		1	3		5	344
<i>Subtotal</i>	40	26	14	22	5	107	47,718
<b>Proceeded:**</b>							
Determined	8	6	5	5	1	25	3,222
S949AA - Withdrawn for non-attendance			2	3		5	133
Hearing commenced and adjourned	6	4	2	1	1	14	4,412
Hearing concluded and awaiting determination	1	1	3	8	3	16	2,230
<i>Subtotal</i>	15	11	12	17	5	60	9,997
<b>Total</b>	<b>55</b>	<b>37</b>	<b>26</b>	<b>39</b>	<b>10</b>	<b>167</b>	<b>57,715</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figure is calculated.

\*\* It is possible that the status of an appeal cited above may have changed e.g. appeals recorded above as 'concluded for determination' may be determined by the publication date of this report.

## Determinations

Part 40A, Chapter 5 of TCA 1997 contains provisions for the notification and publication of determinations by the TAC. Section 949AO requires the Appeal Commissioners to publish a report of each of their determinations on the TAC website not later than 90 days after the parties have been notified of same. Details of all determinations issued in 2018 and the relevant publication period, are set out below.

Number of determinations issued in 2018				
	No. of Appeals Determined		Total No. of Appeals	
	2018	2017	2018	2017
Determinations issued without the need for a hearing (s. 949U)	17	8	17	8
Determinations issued relating to appeals heard in 2018	18		18	
Determinations issued relating to appeals heard in 2017	3	11	5	13
Determinations issued relating to appeals heard in 2016	4	15	4	19
<b>Total</b>	<b>42</b>	<b>34</b>	<b>44</b>	<b>40</b>

A total of 33 of the 42 determinations issued in 2018 were published on the TAC website in 2018. The remaining nine determinations were published on the website in early 2019. Two determinations published disposed of an additional separate appeal on two occasions.

The above table does not reflect the complexity of each appeal or the time required to hear and determine same. To increase efficiencies and maximise the use of TAC resources, Case Management Conferences are scheduled where it appears that they may assist in progressing an appeal. Also, where appropriate, parties are encouraged to agree to determinations being issued without the need for a hearing.

The following table provides information on the quantum of tax in dispute in relation to determinations issued in 2018 and the category/ year in which the TAC received the appeal:

	Category / Year received					Total 2018	Quantum* 2018 €000
	Legacy	Pre Estab.'d	2016	2017	2018		
Determinations issued without the need for a hearing (s. 949U)		3	2	10	2	17	299
Determinations issued relating to appeals heard in 2018	7	3	2	5	1	18	965
Determinations issued relating to appeals heard in 2017	2		3			5	276
Determinations issued relating to appeals heard in 2016		3	1			4	1,981
<b>Total</b>	<b>9</b>	<b>9</b>	<b>8</b>	<b>15</b>	<b>3</b>	<b>44</b>	<b>3,521</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figures is calculated.

Summary of Determinations issued in 2018 by tax type	
IT	26
CAT	2
CT	1
VAT	5
VRT	10
<b>Total</b>	<b>44</b>

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The following table outlines the total number of appeals closed in 2018:

Reason for Appeal Closures	No. of Appeals Closed	Quantum* €000
Determinations Issued	44	3,521
Dismissed	162	24,419
Merged	19	6,778
Refused	324	12,608
Settled	668	455,359
Withdrawn by Appellant	223	64,618
<b>Total</b>	<b>1,440</b>	<b>567,303</b>

\* See Note 1 on page 33 which sets out how the 'quantum in dispute' figures are calculated.

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## Case Management Conferences in 2018

During 2018, 159 CMCs, affecting 600 appeals, were scheduled by the TAC and 110 of these, concerning 386 individual appeals, proceeded to CMC. The duration of the CMCs ranged from less than an hour to two days; most concluded within a day. CMCs were found to be particularly beneficial in progressing older appeals or appeals in which an impasse had arisen.

Matters discussed at CMC may include:

- clarifying the issues between the parties and identifying areas where agreement might be reached;
- identifying any additional written materials that are to be provided by either party in advance of the hearing;
- the time required by both parties to prepare additional written materials which will be required for the hearing;
- whether it would be useful in advance of the hearing to have a jointly agreed description of the facts in writing or other jointly agreed approaches to the collation of written evidence or legal arguments to be heard at the hearing;
- confirming that all directions issued by the Appeal Commissioners in the appeal have been complied with;
- whether, in addition to the provision of written materials, any other steps are required to be taken in advance of the hearing;
- the estimated time required for the hearing; and
- agreeing a suitable time and date for the hearing which is convenient for all parties.



The following provides information on the outcome of the CMCs scheduled in 2018:

Outcome	No. of CMCs held		Total No. of Appeals affected	
	2018	2017	2018	2017
<b>Scheduled but deferred before CMC:</b>				
Settled / Withdrawn prior to CMC	13	20	28	22
Adjourned prior to CMC	36	33	186	74
<i>Subtotal</i>	49	53	214	96
<b>Proceeded:</b>				
Settled / Withdrawn after CMC	10	4	28	11
Dismissed	17	34	18	34
Awaiting determination without a need to proceed to hearing	3	3	4	353
CMC to be re-scheduled	28	21	114	26
Hearing to be scheduled	39	4	195	4
Proceeding	13	23	27	51
<i>Subtotal</i>	110	89	386	479
<b>Total</b>	<b>159</b>	<b>142</b>	<b>600</b>	<b>575</b>

Although 159 CMCs were scheduled in 2018, 36 were adjourned or deferred before a CMC could take place. Due to the increase in adjournments, the TAC reviewed its procedures for scheduling CMCs and took the following steps;

- The TAC now issues CMC notices 3 to 4 months in advance so that, should an adjournment take place, there will be time to schedule another CMC or appeal hearing in place of the adjourned CMC.
- The TAC increased the number of CMCs scheduled for hearing in anticipation of the fact that adjournments will arise in relation to some of those CMCs.

The following table provides information on category/ year in which the TAC scheduled a CMC in 2018:

Outcome	Category / Year received					Total 2018
	Legacy	Pre Estab.'d	2016	2017	2018	
<b>Scheduled but deferred before CMC:</b>						
Settled / Withdrawn prior to CMC	12	1				13
Adjourned prior to hearing	34	2				36
<i>Subtotal</i>	46	3				49
<b>Proceeded:</b>						
Settled / Withdrawn after CMC	10					10
Dismissed	10	3	3	1		17
Awaiting determination without a need to proceed to hearing	3					3
CMC to be re-scheduled	25			3		28
Hearing to be scheduled	35	2	1		1	39
Proceeding	10	1	2			13
<i>Subtotal</i>	93	6	6	4	1	110
<b>Total</b>	<b>139</b>	<b>9</b>	<b>6</b>	<b>4</b>	<b>1</b>	<b>159</b>

# Progress Made on Appeals in 2018

In addition to closing 1,440 appeals in 2018, the TAC also:

- Issued 1,030 requests for a Statement of Case from Appellants in relation to 911 individual appeals and 1,295 requests from the Revenue Commissioners, relating to 1,154 individual appeals
- Issued 472 requests seeking an Outline of Arguments from the Appellant in relation to 409 individual appeals and 431 requests from Revenue, relating to 394 individual appeals
- Sought additional information on 294 occasions, in relation to 258 appeals
- Granted 184 requests (made by the Revenue Commissioners or by Appellants) for an extension of time to comply with a TAC direction, in relation to 165 appeals
- Granted a request for a stay in proceedings on 210 occasions, regarding 196 appeals
- Held 110 Case Management Conferences, relating to 386 appeals
- Listed 167 hearings in relation to 248 appeals
- Issued 42 determinations in relation to 44 appeals

The following outlines the position at year-end.

Category	No. of Appeals on Hand		Difference
	End 2017	End 2018	
Legacy	981	728	(253)
Pre-Establishment	248	163	(85)
2016	483	279	(204)
2017	1,492	1,085	(407)
2018		1,198	1,198
<b>TOTAL</b>	<b>3,204</b>	<b>3,453</b>	<b>249</b>

Correspondence issued by the TAC in progressing appeals in 2018			
	Appellant	Revenue	Total
No. of Extensions Granted	96	88	<b>184</b>
No. of Requests for Additional Information	261	33	<b>294</b>
No. of Hold/Stay Requests Granted	53	157	<b>210</b>
No. of Statements of Case Requested	1,030	1,295	<b>2,325</b>
No. of Outlines of Arguments Requested	472	431	<b>903</b>

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## Governance and Administration

The Appeal Commissioners are members of the Tax Appeals Commission. Their primary functions are prescribed by section 6 of the Finance (Tax Appeals) Act 2015. In addition to the work in relation to the processing, adjudication and determination of appeals, the Appeal Commissioners are responsible for the proper, efficient and effective running of the Commission and are accountable to the Oireachtas for the discharge of their duties. They are also accountable to the Minister for Finance in relation to the production of the Commission's Annual Report.

Under the Finance (Tax Appeals) Act 2015, the Appeal Commissioners hold office for a period of seven years and 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 preceeding year; this report is submitted in discharge of that duty. The Commissioners are also accountable in respect of any other reports requested by the Minister pursuant to section 21 of the 2015 Act.

The Commission is a Civil Service body, under the aegis of the Department of Finance and as such, in its management and operations, is guided by the Civil Service Code of Standards and Behaviour. The Code of Governance, which is based on the code of standards, will be updated in line with the implementation of the recommendations in the O'Donoghue report.

### Case Management System

The Commission is in the process of assessing and reviewing the efficacy and future development of its case management system. This process is being carried out in the context of the recommendation contained in the O'Donoghue Report that there be a re-engagement between the Commission and the Revenue Commissioners in relation to the provision of IT systems design, support and hosting facilities. In addition, the Report recommended that an interdepartmental group chaired by the Commission be established to explore options for the electronic exchange of information between the Commission and the Revenue Commissioners to assist in creating better efficiencies within the operations of the Commission, particularly in the context of inter-agency communication with Revenue.

The Revenue Commissioners have produced a high-level scoping document on the Commission's case management system and external interfaces, and this is being discussed by the Administrative Working Group established in accordance with the recommendations of the O'Donoghue Report.

In the interim, the Commission is in the process of adding additional functionality to its case management system to help improve efficiencies in a number of areas, namely:

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- Online capabilities for Appellants which will feed directly into the case management database
  - Tracking and responding correspondence, and
  - Aids to appeal scheduling and the production of reports

Over the course of 2019, additional enhancements will be made to the case management system to provide a robust and efficient system to manage all current appeals, and to form the source of the information that is highlighted in this report, as well as being used to generate reports to, for example, the Department of Finance or members of the Oireachtas.

The Commission is confident that with the additional resources sanctioned by the Department of Finance, the Commission can develop a fit for purpose platform from which we can gather information that not only assists with the management of appeals but may be of assistance to Government, in the development of evidence-based policy on tax matters.

### **Case Management and Scheduling**

During 2018, the Commission conducted a recruitment programme to secure three Case Managers, the purpose of which was to secure tax-qualified personnel to assist with the research, preparation and processing of appeals. Following a review of the workload and operations of the TAC in August 2018 by the Department of Finance, it was recommended that two additional Case Managers be recruited to facilitate greater disaggregation of work and increased use of delegated authority. The Commission intends implementing this recommendation during 2019.

Further recruitment was also conducted to appoint two personnel who have been tasked with the scheduling of hearings. During 2018, 167 hearings relating to 248 appeals were scheduled for hearing over 202 days. The TAC had no hearing rooms available at its premises until July 2018 and was obliged to rent external spaces for conducting CMCs and hearing appeals. Despite this, the number of hearings scheduled in 2018 doubled compared to 2017.

As of the end of 2018, a further 64 appeals have been scheduled for 2019, relating to 256 individual appeals. The scheduling unit has also created space in the schedule after each hearing to allow the Commissioners to draft their written determinations. The scheduling unit also maintains a list of appeals ready for hearing which can be scheduled for hearing at short notice where previously set down appeals are adjourned or settled in advance of hearing.

### **Code of Governance and Statement of Strategy**

In August 2017, with the assistance of the Institute of Public Administration, the Commission produced and published its Code of Governance. A 3-year Statement of Strategy was finalised and published later in the year.

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It is clear that the process of implementing the recommendations in the O'Donoghue Report will lead to changes to our Code of Governance and our Statement of Strategy and revisions will be made in updated versions of these documents as we implement the Report's recommendations.

## Risk Management and Internal Audit

### Risk Management

During 2018, the Institute of Public Administration was engaged by the Commission to advise the Commission regarding best practice in relation to risk assessment and management and to conduct staff training in relation to these issues.

The Commission has prepared a draft risk management policy but has not yet been in a position to finalise and implement same. Its inability to do so resulted primarily from the shortage of staff and resources experienced by the Commission during 2018. Furthermore, the policy requires approval of and supervision by an Audit & Risk Committee. Notwithstanding repeated efforts, the Commission has not been able to secure external persons willing to chair and/or join the proposed Audit & Risk Committee.

Pending the establishment of the Audit & Risk Committee, the Commission arranged for external providers to train Commission staff on issues relating to governance and risk management.

Progress on this recommendation was also hindered by the fact that the Commission did not have a Head of Administration for the final quarter of 2018. In the absence of a Head of Administration, the Appeal Commissioners convened and chaired monthly Senior Management Team meetings with members of the four main role divisions within the Commission (Case Managers, Scheduling, Human Resources and Administration) to ensure that operational matters within the Commission were functioning appropriately and the operational risk was being properly managed.

To enable the implementation of the recommendations in the O'Donoghue Report, the Minister for Finance has approved a doubling of the Commission's staff numbers and of the Commission's annual budget. The O'Donoghue Report further recommended that the provision of corporate supports (including Internal Audit, Health and Safety Services and Risk Management) for the Commission should be a responsibility of the Department of Finance in the short term, and that the Civil Service Management Board should be asked to consider how best a shared service solution for these areas might be progressed for the Commission and other small agencies as the need arises in the future.

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The Commission has, in the context of the Administration Working Group chaired by the Department of Finance in pursuance of the O'Donoghue Report recommendations, requested the Department to assist the Commission in establishing the Audit & Risk Committee as a matter of the highest priority, and in particular has asked the Department to assist in locating suitable and willing external members of the Audit & Risk Committee.

### Internal Audit

Pending the establishment of the proposed Audit & Risk Committee (discussed above), the Commission's Audit Group (comprising the Head of Administration, an Assistant Principal, an Internal Auditor and an external Project Manager) continued to meet until October of 2018. The Audit Group has not met since the departure of the Commission's former Head of Administration.

The Audit Group has agreed an Internal Audit plan for the period from 2018 to 2020 with the Internal Auditors. To date the Internal Auditors have issued various reports including draft reports in respect of the Risk Management Plan and Internal Audit Charter.

The TAC has renewed its contract with the Internal Auditors until August 2019. During that period, the Internal Auditors are scheduled to cover audit reviews in respect of the following:

- File Management Review
- Review of the System of Audit Control

### Comptroller & Auditor General

The C&AG conducted an interim onsite audit of the TAC in December 2018. This interim audit related to the year ended 31 December 2018. The following areas were covered:

- Governance including Internal Audit
- HR/Payroll
- General Non-Pay Expenditure
- Case Management System
- Fixed Asset Register and Procurement
- Accounts Preparation/Journals, etc.

The final audit in respect of the year ended 31 December 2018 will take place after 31 March 2019.

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The Commission also has an internal audit function in place to strengthen our control environment and control procedures. During 2018, the internal auditors continued their internal audit programme and have issued draft reports in relation to their findings to date.

### HR Function

The HR Officer has responsibility for the delivery of the HR role in the Commission. This is done with the support of the Commission's Service Level Agreement ('SLA') with the Revenue Commissioners. The SLA provides that Revenue will provide administrative support to the implementation of the HR function in the Commission.

In 2018, the HR Officer worked with staff on implementing their learning and development plans. The Commission sourced the majority of its formal training through One Learning. This included training in IT, Management, Probation, Project Management and Irish. In-house training modules on specific areas of tax were also provided by the Case Managers in the Commission. The Department of Finance and the Revenue Commissioners supported the Commission in the development and progression of its training objectives. In addition, the Revenue Commissioners provided induction training and the Department of Finance facilitated the attendance of Commission staff on its Diploma in Taxation Policy and Procurement courses. An induction manual has also been prepared for all new entrants to the Commission. In early 2019, GDPR training took place for all staff of the Commission.

The Commission is ensuring compliance with PMDS and the framework is used to clarify roles and establish goals which reflect the Commission's Statement of Strategy. A workforce plan is in place and this reflects the recommendations of the O'Donoghue Report. The Commission was unable to access the Civil Service HR Shared Services Platform in 2018 but has since established a communication link between both parties and records are being updated accordingly. The Commission's payroll is managed by the Payroll Shared Services Centre.

### Recruitment

The Tax Appeals Commission, in conjunction with the Public Appointments Service, ran a specialised competition for the appointment of Case Managers/Tax Specialists at Assistant Principal level.

- Two Case Managers at A.P. level were recruited from this competition and a third A.P. was recruited through a PAS Interdepartmental Competition. They assist with the research, preparation and processing of tax appeals.
- Two additional support staff were recruited to assist with the processing of appeals.

The Commission is also working with PAS to secure the additional staff sanctioned by the Department of Finance on foot of the recommendations in the O'Donoghue Report.



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### Section 21 Reports

The Appeal Commissioners submitted their Annual Report for 2017 to the Minister for Finance in March 2018, in compliance with section 21(1) of the Finance (Tax Appeals) Act, 2015.

The Commissioners did not, during 2018, make any report to the Minister for Finance pursuant to section 21(5) of the 2015 Act, nor did the Minister request the submission of any report pursuant to section 21(6) of the Act.

### Legal Advice Sought

During 2018, the Commission sought legal advice from an external firm of solicitors, under the sanction of the Department of Public Expenditure & Reform.

### Engagement with 3rd Parties

The Commission had significant interaction with 3rd parties in the course of 2018, largely with the Department of Finance, but also with, inter alia:

- Department of Public Expenditure & Reform
- Office of the Revenue Commissioners
- Office of Public Works
- Office of the Attorney General
- Chief State Solicitor's Office
- Office of Government Procurement
- Office of the Comptroller & Auditor General
- Institute of Public Administration
- The Courts Service
- Public Appointments Service
- Irish Tax Institute

The working relationships have been productive and have been pursued in order to provide the Commission with a stronger base from which to improve its operations in 2019. We will continue to work with these bodies to progress mutually beneficial outcomes.

### Procurement

The Commission conducted several procurement exercises during 2018 for:

- Design of the Annual Report
- Printing Services
- ICT hardware
- GDPR Training

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All requests for tender were conducted via the Government's Procurement Framework, the e-tenders system, or in compliance with procurement guidelines where the estimated value of the tender was below advised thresholds.

### Office Move

In June 2018, the TAC relocated to its new offices in Fitzwilliam Court, Leeson Close, Dublin 2. The new office premises offer substantially increased floor space for open plan areas, offices, consultation rooms and file storage, in addition to providing three hearing rooms for conducting appeals. The space available at the new premises will accommodate increased staff numbers at the Commission and the additional hearing rooms provide significantly increased capacity in respect of the scheduling and hearing of appeals.

The TAC received considerable assistance and co-operation from the Office of Public Works in relation to the office move and fit-out of the premises, for which the Commissioners and staff of the Commission are sincerely grateful.

### Review of Operations of TAC

On 6 June 2018 the Minister of Finance, Mr. Paschal Donohoe TD, commissioned an independent review of the workload and operations of the TAC, appointing Ms. Niamh O'Donoghue former Secretary General of the Department of Social Protection, to carry out this review.

Ms. O'Donoghue's report was published on 9 October 2018. The report made a number of recommendations in relation to staffing, resources, governance and operations of the TAC.

On budget day the Minister for Finance, Mr. Paschal Donohoe TD, stated: *'Today I am publishing an independent review of the operations and resources of the Tax Appeals Commission, which I commissioned earlier this year. I fully support the recommendations of the review, which include the sanctioning of additional staffing resources at all levels and additional funding for improved IT systems, so that the Commission can adequately address its caseload and remit.'*

The TAC welcomed the Minister's support in relation to the O'Donoghue report and is working with the Department of Finance and with other bodies, to implement the recommendations contained in the report.

The recommendations in the report are set out in further detail in the chapter entitled *Review of Workload and Operations of the TAC* on page 30.

## Funding and Expenditure

The TAC is funded through Vote 10 of the Estimates as approved by Dáil Éireann. The allocations to the Commission and its predecessor the OAC have increased significantly in 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 2017 and 2018 were €1.605 million and €1.626 million respectively. This represented a substantial increase in the funding allocated to the Commission and to the Office of the Appeal Commissioners in previous years.

On Budget Day 2018, the Minister for Finance announced that to give effect to the recommendations in the O'Donoghue Report, he had sanctioned additional staffing resources at all levels and additional funding for improved IT systems. The estimate provision for 2019 has been increased to €3.208 million, an increase of some 97%.

The below table sets out an analysis of the Commission's administration expenditure in 2018.

Expenditure Item	2018 Estimate Provision	2018 Outturn	2017 Outturn
	€ ,000	€ ,000	€ ,000
Salaries, wages and allowances	1,226	1,088	753
Travel and subsistence	70	4	1
Training and development and incidental expenses	30	145	91
Postal and telecommunications services	30	8	9
Office equipment and external IT services	200	117	252
Office premises expenses	70	4	16
Total Expenditure	1,626	1,366	1,122

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 2018 and it is anticipated that the audited accounts of the Commission will be published by the Comptroller and Auditor General later in the year as part of his 2018 annual report on the accounts of the public services.

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## Appendix - Customer Service Charter

The TAC is committed to providing a high standard of service in accordance with the principles, practices and procedures set out in the Corporate Governance Standard for the Civil Service and specifically, the Code of Practice for the Governance of State Bodies. The TAC operates in accordance with the principles of Quality Customer Service approved by Government.

This office provides an independent appeals process in relation to the hearing and adjudication of tax disputes, such that we hear and determine appeals against decisions and determinations of the Revenue Commissioners, concerning taxes and duties.

This Charter sets out the standards we aim to meet in carrying out our statutory functions. We will measure and evaluate our performance against these standards and report on our findings in our Annual Report each year.

### Contact by Telephone

If you contact the TAC by telephone, we will try to:

- answer your call as promptly as possible;
- give you our name and area of work when we answer the call;
- be courteous and helpful at all times;
- answer your query in full or, if we can't do so immediately, take your details and call back as soon as possible;
- respond to all voicemail messages, promptly.

### Written Correspondence

If you send us a letter, fax or email, we will try to:

- ensure you receive a full reply, within 20 working days;
- include a contact name, reference number (where appropriate) and other contact details (phone, fax, email);
- write to you in simple and clear language and avoid using technical terms, unless absolutely necessary.

### Complaints to the TAC

If you complain to the TAC, about our actions, we will try to:

- acknowledge your complaint within 7 days;
- tell you how long it may take us to examine the complaint;

- 
- keep you advised of progress with our examination;
  - inform you as promptly as possible and as clearly as possible, of the outcome of our examination.

### Visitors to the TAC

If you attend at the TAC in person, we will:

- treat you with courtesy, respect your privacy, so far as possible and be fair in our dealings with you;
- meet you at the agreed time, if you have an appointment;
- endeavor to provide appropriate facilities for a hearing, or meeting, as the case may be;
- keep our public offices clean and tidy, ensuring that they meet health and safety standards.

### Equality/Diversity

- we are committed to providing a quality service that upholds the rights of an individual to equal treatment in accordance with equality legislation;
- we will aim to ensure that our services and facilities are accessible to all, including those with special needs.

### Service through Irish

If requested by an individual who has interaction with the Tax Appeals Commission, we will endeavor to liaise with the person in Irish; or if we are unable, we endeavor to secure the services of an interpreter.

### Review Procedure

The TAC's policy and procedures are kept under review by management within the organisation and are subject to external audit by the C&AG.





