



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

# Annual Report 2019



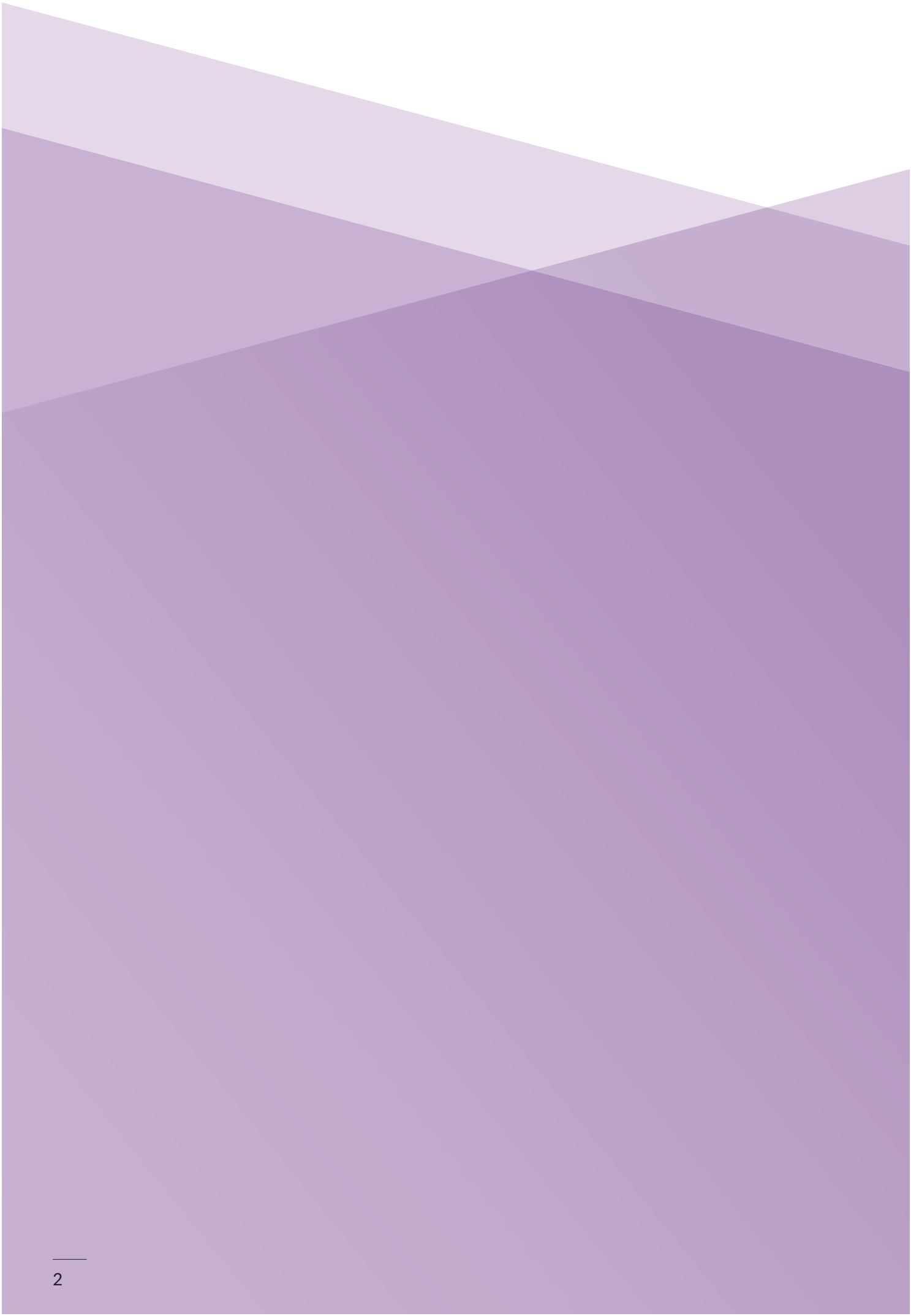
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# Foreword

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

2019 was a significant year for the Tax Appeals Commission (TAC) in which the Commission 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 of this report, but some points worth highlighting are:

- The TAC closed 1,584 appeals during 2019; the quantum of monies involved in the closed appeals amounted to approximately €665m.
- The TAC issued 111 determinations in 2019 clearing a quantum of approximately €60m.
- The TAC scheduled 224 hearings in 2019 and has scheduled a further 112 for 2020 with a total quantum of €181m. Further hearings will be scheduled as the year progresses.

None of this would have been possible without the commitment and hard work of the Commission's staff during 2019. We are truly fortunate to have such an excellent team and are sincerely appreciative of their support and assistance over the past year.

In addition, key personnel were recruited and started working in the Tax Appeals Commission in 2019. We were delighted to welcome three new Temporary Appeal Commissioners who were appointed by the Minister for Finance, Paschal Donohoe TD. Commissioners Paul Cummins and Fiona McLafferty commenced in September and Commissioner Charles Phelan commenced in December. On the administrative team, our new Chief Operations Officer, Ms. Sinead Boyle, joined in February and our recruitment campaign added 11 additional staff to our appeals administration, IT and Finance teams. On 31 December 2019 we had a staff of 28 with 4.5 vacancies remaining.

In 2019 we made significant progress on our three-year organisational transformation programme to

deliver on the recommendations in the O'Donoghue Report. We were pleased to appoint our Audit and Risk Committee in 2019. The Committee has met twice and has a full programme for 2020, working closely with our internal auditors. In addition, we commenced work on significant IT infrastructure projects which will be key to the Tax Appeals Commission delivering improved processing of appeals in the years ahead.

2019 also saw the enactment of the Finance (Tax Appeals and Prospectus Regulation) Act. The amendments in this Act will allow the Minister for Finance to recruit a Chairperson for the Commission. This will be a significant appointment in 2020.

We are conscious that a great deal remains to be done in 2020 and in the coming years and 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 challenges it has faced. The Commission is in a far better position than it was a year ago; we believe that great improvements have already been made and are optimistic that they will continue in 2020 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

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 he/she/it no longer wishes to proceed with his/her/its 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
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.

Notice of Appeal	The document which first notifies the TAC of a taxpayer's wish to bring an appeal. Section 949 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 seized 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, which is the difference between the assessment and what the Appellant considers is due.
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
CATCA 2003	Capital Acquisitions Taxes 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
RCT	Relevant Contracts Tax
SPCCC	Single Person Child Carer Credit

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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, Mr. Michael Noonan TD, to reform the role, functions and structure of the Office of the Appeal Commissioners (OAC), the Tax Appeals Commission (TAC) was established on 21 March 2016. Governance, operations and developments of the Tax Appeals Commission in 2016, 2017 and 2018 are addressed in our previous Annual Reports.

The Finance (Tax Appeals and Prospectus Regulation) Act 2019 was enacted on 10 December 2019 and certain provisions of that Act were commenced by Ministerial Order on 18 December 2019. Enactment of the said provisions enables the appointment by the Minister for Finance of a Chairperson of the Tax Appeals Commission.

The appointment of a Chairperson of the TAC is imminent and will make a significant impact in terms of the governance and operations of the Tax Appeals Commission.

## Finance (Tax Appeals and Prospectus Regulation) Act 2019

Subsection 4F of the Finance (Tax Appeals and Prospectus Regulation) Act 2019 entrusts the Chairperson with the overall responsibility for the management and control of the administration and business of the TAC and such other functions as may be assigned under the Act. The Act identifies the following functions of Chairperson:

- to ensure the integrity of the accounting and financial reporting systems of the Tax Appeals Commission;
- to ensure that appropriate systems of control are in place in relation to risk management, financial and operational control and legal compliance obligations;
- to ensure compliance with Freedom of Information obligations;
- to ensure compliance with data protection obligations;
- to ensure the functions of the TAC are performed efficiently;
- to determine the priority of appeals having regard to the interests of justice and the efficient operation of the Act and Part 40A of the Taxes Consolidation Act 1997.

Subsection 4F provides that the Chairperson shall establish and maintain efficient and effective systems and procedures so as to secure the processing, adjudication and determination of appeals in a timely and effective manner. The legislation provides that the Chairperson shall be the Accounting Officer and shall be accountable to the Minister for Finance for the efficient and effective management of the Commission and for the due performance of his/her functions.

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The Finance (Tax Appeals and Prospectus Regulation) Act 2019 also effects the following changes to Part 40A of the Taxes Consolidation Act 1997, as amended;

Section 949AP of the Act of 1997 is amended by the substitution of the following subsection for subsection (3):

- ‘(3) The notice referred to in subsection (2) shall—
- (a) state in what particular respect the party concerned is dissatisfied with the determination,
  - (b) state in what particular respect the determination is alleged to be erroneous on a point of law,
  - (c) be sent to the Appeal Commissioners within 21 days after the date of the notification of their determination under section 949AJ (1), and
  - (d) be sent to the other party when it is being sent to the Appeal Commissioners.’

Section 949AQ of the Act of 1997 is amended by the insertion of the following subsections after subsection (7):

- ‘(7A) The party requesting the case stated shall—
- (a) compile a copy of the exhibits specified in the case stated, and
  - (b) include the copy of the exhibits so compiled with the case stated when sending it to the High Court in accordance with subsection (7).
- (7B) Where the party requesting the case stated does not have within his or her possession or control or within his or her procurement, for the purposes of complying with subsection (7A), a copy of an exhibit specified in the case stated, the party requesting the case stated may request the Appeal Commissioners to instruct, by notice in writing, the other party to provide a copy of the exhibit to the party requesting the case stated.
- (7C) Where the Appeal Commissioners receive a request under subsection (7B) from the party requesting the case stated, the Appeal Commissioners may instruct, by notice in writing, the other party to provide a copy of the exhibit to the party requesting the case stated.
- (7D) Where a party receives a notice under subsection (7C) and the exhibit to which the notice relates is within that party’s possession or control or within his or her procurement, that party shall provide a copy of the exhibit within the time specified in the notice.’

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# Statutory Basis of the Tax Appeals Commission

The Tax Appeals Commission (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 Finance (Tax Appeals and Prospectus Regulation) Act 2019, the Taxes Consolidation Act 1997, as amended, and related legislation.

The Finance (Tax Appeals) Act 2015 (“the 2015 Act”) 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 came into force.

Section 10 of the 2015 Act 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 provisions of the Finance (Tax Appeals and Prospectus Regulation) Act 2019, which amend the 2015 Act to enable the recruitment of a Chairperson for the TAC and make other technical amendments, were activated by Ministerial order dated 18 December 2019. The remaining sections will be activated by Ministerial order following the appointment of a Chairperson.

As of 31 December 2019, the Commission had 28 staff including two Appeal Commissioners, four Temporary Appeal Commissioners, three Case Managers and a number of administrative staff who support the Commissioners in their work. Recruitment for a Chairperson is currently underway.

The TAC will review its legislative procedures and statutory mandate on an ongoing basis with a view to refining its processes to achieve efficiencies in terms of the appropriate conduct of appeals.

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# Functions of the Tax Appeals Commission

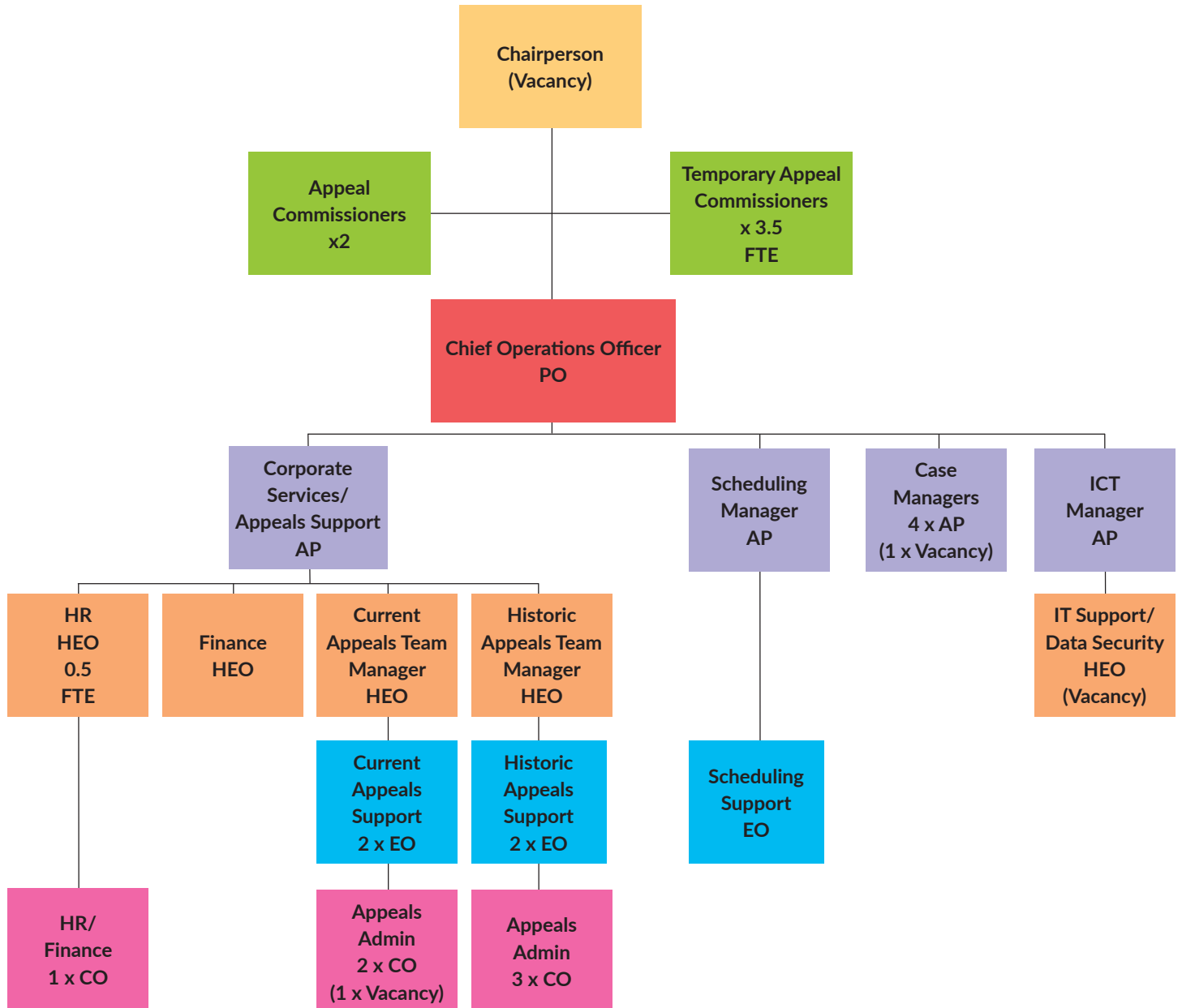
The main role of the TAC is to adjudicate, hear and determine appeals against decisions and determinations of the Revenue Commissioners concerning taxes and duties. The specific functions of the Appeal Commissioners are set out in section 6 of the Finance (Tax Appeals) Act 2015.

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 Appeal Commissioners in the exercise of their functions, including section 3 which establishes the Tax Appeals Commission as a body corporate, section 6 which establishes the functions of the Appeal Commissioners and section 10 which requires the Tax Appeals Commission and its members to be independent in the performance of their functions.

The Finance (Tax Appeals and Prospectus Regulation) Act 2019 provides for the appointment of a Chairperson to the Tax Appeals Commission. The process of recruitment in respect of the Chairperson, who will also be an Appeal Commissioner, is underway at the time of preparation of this annual report.

# Organisation Chart



# Key Outputs and Public Service Activities

The objective of the Tax Appeals Commission is to fulfil its obligations under the Finance (Tax Appeals) Act 2015 (as amended), the Taxes Consolidation Act 1997 (as amended) and related legislation, thereby ensuring that all taxpayers may exercise, where appropriate, their right of appeal to an independent body against decisions of the Revenue Commissioners that affect them.

The following key outputs and public service activities provide performance information to support the TAC in assessing the outputs and outcomes from public expenditure. This is important in ensuring value for money and to improve the effectiveness and efficiency of public expenditure by linking the funding of the TAC to the results delivered.

## Key High-Level Outputs and Public Service Activities:

Indicator	2016	2017	2018	2019	Output Target 2020
<b>Processing Tax Appeals</b>					
No. of Appeals Closed	206	690	1,438	1,584	1,500
No. of Determinations Issued*	26	34	42	111	70
No. of Appeals on Hand at year-end**	2,151	3,208	3,459	3,370	3,200
No. of Hearings scheduled	n/a	65	167	224	250
Quantum of Appeals on Hand***	€1.4bn	€2bn	€4bn	€3.7bn	€3.5bn
<b>Organisational Capacity</b>					
No. of staff members at the TAC	7	12.5	19	28	33

\* One determination issued in 2019 was related to 32 individual appeals.

\*\* A review of all appeals opened and closed on the Case Management System from 21 March 2016 took place in 2019. Each individual appeal was reviewed separately. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the opening figure differing slightly to the Annual Report 2018 figure.

\*\*\* It is difficult to provide an actual quantum figure, as 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), in cases where the parties disagree in relation to the precise quantum of tax in dispute or where the monetary value of an appeal is not always calculable (e.g. in appeals where the rate of tax is in dispute, in appeals in relation to the refusal of Tax Clearance Certificates, or where the quantum in dispute represents a refusal of loss relief or deductions).



### Context and Impact Indicators:

Indicator	2016	2017	2018	2019
<b>Processing Tax Appeals</b>				
Establishing finality and certainty for Appellants and Respondents in respect of tax disputes – (Metric: Number of appeals closed)*	206	690	1,438	1,584
Establishing certainty for the exchequer and PAC in respect of the quantum of tax due – (Metric: Quantum of taxes regarding Appeals Closed) **	€11m	€241m	€569m	€665m
Providing clarity on the interpretation of Irish Tax Law and assisting in its refinement and effectiveness – (Metric; Number of Determinations issued)***	26	34	42	111
Number of Hearings Scheduled	n/a	65	167	224

\* A review of all appeals opened and closed on the Case Management System from 21 March 2016 took place in 2019. Each individual appeal was reviewed separately. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the opening figure differing slightly to the Annual Report 2018 figure.

\*\* It is difficult to provide an actual quantum figure, as 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), in cases where the parties disagree in relation to the precise quantum of tax in dispute or where the monetary value of an appeal is not always calculable (e.g. in appeals where the rate of tax is in dispute, in appeals in relation to the refusal of Tax Clearance Certificates, or where the quantum in dispute represents a refusal of loss relief or deductions).

\*\*\* One determination issued in 2019 was related to 32 individual appeals.

## 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 2019, the Tax Appeals Commission continued to monitor progress of the current appeal files and made decisions (and gave directions where appropriate) 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 2019, 92 current appeals were listed for hearing, which is an increase of 23% compared to 2018. In addition, 60 determinations were issued in relation to current appeals, which is an increase of 240% in comparison to 2018. 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 the year current appeals were received and how many of them were closed by the end of 2019:

Year	No. of Current Appeals Received*	No. of Current Appeals Closed By End of 2019*	No. of Current Appeals remaining
2016	901	709	192
2017*	1,747	869	878
2018	1,689	848	841
2019	1,495	658	837
Total	5,832	3,084	2,748

\* A review of all current appeals opened and closed on the Case Management System from 21 March 2016 took place in 2019. Each individual appeal was reviewed separately. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the opening figure differing slightly to the Annual Report 2018 figure.

While there was a significant increase in the number of appeals received in 2017 compared to 2016, the number received in 2019 is marginally smaller than 2018. While the number of appeals received has risen substantially since 2016, the number of current appeals closed has also increased. In 2016, a total of 196 current appeals were closed. This increased to 482 in 2017, 1,101 in 2018 and 1,305 in 2019.

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Overall, since 1 January 2016, the TAC has received 5,832 current appeals and has closed 3,084 in the same period, with 2,748 current appeals on hand on 31 December 2019.

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 account for over 42% of all appeals received by the TAC. In 2018, 6.6% of all appeals related to more than one tax type but this decreased to 5.5% in 2019.

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 concerning appeals received (see Note 1 on page 47) which describes how 'quantum in dispute' figures are estimated.

On 31 December 2019, the quantum in dispute in relation to appeals received in 2019 totalled €379 million and the quantum in dispute in relation to current appeals closed in 2019 totalled €427 million. Seven appeals received in the final two weeks of December 2019 amounted to approximately €170 million. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2019 would have totalled €209 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. Commissioner Kennedy's appointment was renewed in June 2019 for a further three years. Following his detailed initial review of the files, 1,599 of the appeals were grouped with related appeals or with leader-follower appeals. In light of this review, the number of individual appeals reduced from 2,758 to 1,159. A review of all legacy appeals opened and closed on the case management system from 21 March 2016 took place in 2019. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the opening figure differing slightly to the Annual Report 2018 figure.

A total of 109 legacy hearings affecting 467 individual appeals with a total quantum of €209m were scheduled for hearing in 2019. From the total number of hearings scheduled, 37 appeals proceeded to hearing, 13 appeals settled prior to hearing and 59 appeals were postponed to enable the parties to progress a resolution.

During 2019, 205 appeals were closed (i.e., the appeals were either determined, settled, withdrawn or dismissed). As of 31 December 2019, 526 legacy appeals remained open. Approximately 250 of those appeals have been progressed to an advanced stage.

Commissioner Kennedy completed 13 determinations in relation to 19 appeals in 2019 with a quantum of €41 million. 7 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 Chapter 11, which addresses cases stated.

Case Management Conferences continued to be effective in progressing legacy appeals, 10 case management conferences were scheduled in 2019, which affected 30 appeals with a total quantum of €30m.

The Tax Appeals Commission has already scheduled 23 hearings for legacy appeals in 2020, involving 80 appeals with a quantum of €16m.

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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 (TAC).

There were 170 pre-establishment appeals on hand in the TAC as of 1 January 2019.

During 2019, a thorough review was carried out on all 170 open appeals with appropriate action taken in order to advance matters. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the opening figure differing slightly to the Annual Report 2018 figure.

Significant progress was made and by year end 74 pre-establishment appeals, with a quantum in dispute totalling €55,690,000, had been closed.

Of the 74 appeals closed, 45 were closed by means of determination (this includes a 'leader - follower' appeal where the same determination issued in respect of 32 appeals). A further 7 appeals were dismissed by the TAC for failure to comply with a direction issued 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, consolidation or withdrawal of 22 pre-establishment appeals. In addition, 39 pre-establishment appeals with a quantum of €39,855,573 were listed for hearing and 9 were listed for case management conference.

There are now only 96 pre-establishment appeals remaining open as of 31 December 2019 and each file is being progressed in line with the review carried out during 2019.

## Cases Stated

Section 949AP of the Taxes Consolidation Act 1997 provides that a party who is dissatisfied with an Appeal Commissioner's 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 2019, the Commissioners signed 10 cases stated pursuant to section 949AQ TCA 1997 to enable determinations to be appealed to the High Court.

In addition to the foregoing 10 cases stated, the Tax Appeals Commission (TAC) had 34 pre-establishment cases stated on hand at the beginning of 2019, 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. Of these, 3 requests for case stated were withdrawn during 2019, while 3 appeals have requested a re-hearing. Case Management Conferences took place in February 2020 to progress the remaining applications for cases stated and correspondence is ongoing in relation to the remaining requests. The pre-establishment cases stated are 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't	2016	2017	2018
2016	0					
2017	3		1	2		
2018	11	4	5		1	1
2019	10	3	3	1	2	1

In 2019, the High Court handed down judgment in the following appeals by way of case stated:

- *Nationwide Controlled Parking Systems -v- Revenue Commissioners* [2018] No. 154R;
- An appeal in relation to determination 30TACD2018 which has not been made public.

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# Determinations Overview

Please note that this chapter is a commentary highlighting relevant issues in the context of 2019 determinations, in general terms. For detailed information on all published determinations please see our website at [www.taxappeals.ie](http://www.taxappeals.ie)

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

The statutory limitation period which applies to taxpayers seeking a repayment of tax provides that claims for repayment must be made within four years after the end of the tax periods to which they relate.

The Tax Appeals Commission ("TAC") has previously issued a number of determinations in relation to this matter and 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 the power to disapply the rule for extenuating circumstances, or to create exceptions to the four-year rule on compassionate grounds.

Where it has been established that a claim for repayment 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.

The TAC issued the following determinations in 2019 in relation to 'out of time' appeals:- **14TACD2019, 20TACD2019, 69TACD2019, 70TACD2019 and 01TACD2020.**

## Vehicle Registration Tax

The TAC receives a substantial volume of appeals each year in relation to VRT and during 2019 issued 30 VRT-related determinations.

Many of the appeals relate to disputes between taxpayers and Revenue in relation to the value attributed to a vehicle's '*open market selling price*' ('OMSP') (see determinations **45TACD2019, 53TACD2019, 57TACD2019, 58TACD2019, 60TACD2019, 62TACD2019, 63TACD2019, 64TACD2019, 65TACD2019, 66TACD2019, 67TACD2019, 68TACD2019, 71TACD2019, 11TACD2020, 10TACD2020 and 11TACD2020**). 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.

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*'Transfer of residence relief'* was considered in 9 VRT determinations issued in 2019, namely **10TACD2019, 19TACD2019, 27TACD2019, 39TACD2019, 40TACD2019, 43TACD2019, 51TACD2019, 52TACD2019** and **07TACD2020**. In these appeals, the Appellant had sought relief from VRT on the transfer of their 'normal' residence from another country into the State, pursuant to section 134(1)(a) of the Finance Act 1992. Statutory Instrument no. 59/1993 Vehicle Registration Tax (Permanent Reliefs) Regulation 1993 sets out the conditions which must be met in order to qualify for the relief.

In determination **10TACD2019** the relief had been refused by Revenue as their position was that, although the Appellant's 'normal residence' for the purposes of the VRT legislation had transferred from the UK, paragraph 4(a) of S.I. 59/1993 required possession and use of the vehicle for a 6-month period prior to relocation. It was determined that the expression '*in the possession of and used by .... for a period of at least six months...*' means that a vehicle owner who wishes to avail of the relief will be required to demonstrate reasonable use of his/her vehicle over the stipulated six-month period, in this regard, absences will be permissible if reasonable. While the Appellant had taken a seven-week holiday during the six-month period, the Commissioner determined that the Appellant had satisfied the requisite statutory conditions and was entitled to avail of the transfer of residence relief.

Determinations **34TACD2019, 42TACD2019, 44TACD2019 & 61TACD2019** dealt with the question of whether the imposition of a VRT *late registration charge* was correct. The determinations found that the legislation as it is written is clear and unambiguous and does not afford any discretion on the application of the charge where the vehicle was registered outside of the 30-day statutory time frame. In appeals **44TACD2019** and **61TACD2019**, the Commissioner found that the Appellant had in fact registered the vehicle within the prescribed 30-day period.

Determination **18TACD2019** concerned an appeal against a VRT charged in relation to a *motor vehicle conversion*. The vehicle was originally categorised as a category N1 vehicle with five seats and had been converted to a category N1 vehicle containing two seats. The Appellant stated that he expected to pay VRT in the sum of €200 in accordance with s.132(3)(d)(ii) of the Finance Act 1992. The Respondent was of the view that the vehicle did not qualify for the €200 rate as the vehicle was not a category N1 vehicle that 'at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats'. As a result, the Appellant was charged VRT in accordance with s.132(3)(c). The Commissioner determined that as the vehicle was not 'at all stages of manufacture ... a category N1 vehicle with less than 4 seats', the vehicle did not satisfy the requirements of s.132(3)(d)(ii) thus the VRT charge should stand.



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## Capital Acquisitions Tax

Determination **29TACD2019** concerned the issue of whether payments made to the CEO of a company from its two main shareholders were subject to income tax as emoluments in accordance with section 112 TCA 1997 or whether the payments comprised a gift from the shareholders to the Appellant, taxable in accordance with the Capital Acquisitions Tax Consolidation Act 2003, as amended ('CATCA2003').

The Appellant submitted that the payments were made to him in respect of his personal qualities, and for gratitude, appreciation, admiration and friendship. That they formed part of the personal equation and were not taxable as an emolument arising from employment.

The Revenue Commissioners contended that the payments were made in recognition of the Appellant's significant contribution to the successful re-flotation of the company. They arose, they submitted, from his role as CEO and were emoluments assessable to tax under Schedule E.

The Commissioner found that the payments received by the Appellant were for the exceptional services rendered by him which contributed significantly to the increase in value of the shares of the private equity firms (the principal shareholders) who generated a substantial return on their investments. The Commissioner further held that it was not possible to separate the Appellant's individual excellence from his role as CEO in circumstances where the means of demonstrating his excellence was by being CEO, by acting as CEO, and by delivering exemplary results as CEO.

In conclusion, it was determined that the payments made to the Appellant constituted taxable emoluments assessable to income tax in accordance with section 112 TCA 1997.

## Capital Acquisitions Tax, Exemption for Qualifying Expenses of Incapacitated Persons

Determination **32TACD2019** related to an inheritance taken by the Appellant from his uncle, on which he claimed relief under section 84 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003), as he intended to use the inheritance for the medical care and maintenance of his two children, who had physical disabilities.

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Section 84(2) provides an exemption from CAT where a benefit *“is taken exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity and Revenue is satisfied that it has been or will be applied to such purpose.”* The Appellant argued that while the deceased was not aware of the exemption provided for in section 84(2), he was sympathetic to the condition suffered by the children and in leaving money to the Appellant in his Will, he intended the monies would be used to provide for the ongoing care of the Appellant’s children.

The Revenue Commissioners contended that the exemption did not apply because the benefit must be taken by a person who is permanently incapacitated. The Appeal Commissioner found that, for the purposes of Section 84 CATCA 2003, the Appellant’s children were permanently incapacitated and the inheritance had been or would be applied exclusively to funding qualifying expenses. Section 84 is silent as to the identity of the recipient of the benefit; it simply requires the recipient to take the gift or inheritance exclusively for the purposes of discharging qualifying expenses of an individual who is permanently incapacitated. Thus, the Commissioner determined that Revenue were incorrect in law in refusing relief on the basis that the Appellant rather than his children received the inheritance.

The Appellant’s appeal was therefore allowed.

## Income Tax-Interest Relief

The primary issue in determination **47TACD2019** concerned interest relief claimed by the Appellant pursuant to section 248 of TCA 1997, as extended by section 250.

The facts were that the Appellant invested in a company . The investment was funded partially by the Appellant’s own funding but to a large extent was also funded from a loan taken out in Turkish lira. The company was raising finance for the purpose of investing in an Irish property and also investing through a wholly-owned subsidiary company in a financial derivative (“the Derivative”) issued by a securitisation vehicle that tracked the performance of the European Property Real Estate (EPRA) Index. A hedging transaction was also undertaken to ensure that the loan would be repaid in the event of a depreciation of the Turkish lira.

Revenue argued that the somewhat complicated transactions involved a circular flow of monies back to the investor and hence the interest deduction should be restricted to the net economic cost to the investor of the overall transaction. Revenue challenged the Appellant’s interest relief claims based on non-compliance with four statutory provisions, namely section 248(2)(c), section 248(3), section 250(2)(a) and section 817A of TCA 1997. Accordingly, Revenue denied

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the relief by amending the notices of assessment for the years under appeal.

The Commissioner determined that the tax assessment made by the Respondent for the earliest year under appeal was lawfully made within 4 years from the end of the chargeable period in which the return was delivered, and therefore the tax arising on same was due and payable in light of his findings below.

Firstly, the Commissioner found that the sole or main objective of investing in Investco was to obtain a reduction in a tax liability. Consequently, the relief should be denied pursuant to section 817A for all years under appeal.

Secondly, the Commissioner found that under the Articles of Association of Investco, the Appellant was disqualified from acting as a director in respect of the years of assessments due to his failure to attend a directors' meeting "*for a period of six calendar months without special leave of absence from the other directors*", and therefore relief should be denied in respect of the years under appeal.

Thirdly, the Commissioner found that the Appellant did not perform any active duties as a "*part-time director*" as required by section 250 and therefore could not be considered to be a "*part-time director*." As such, the relief for the interest paid on the loan to acquire the shares in Investco should be denied.

Fourthly, the Commissioner found that to import the anti-avoidance and recovery of capital provisions within section 248 into section 250, as contended for by Revenue, would be to act contrary to the express statutory wording contained in section 250 and therefore contrary to the Constitutional scheme. Accordingly, the Commissioner refused to endorse the approach adopted by the Revenue.

In light of the above points, the Commissioner determined that the assessments for the years under appeal should stand.

### Income tax- Case I or Case V income

When the provision of emergency accommodation came under the remit of Dublin City Council (DCC), the Appellant commenced the provision of emergency accommodation for indigenous homeless persons and non-nationals. This service was governed by a standard agreement with DCC. (Determination **09TACD2020**)

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The Appellant had sought to classify the income derived from DCC as rental income and claimed section 23 relief against that income for the tax years 2010 and 2011. Revenue asserted that the income was derived from trading activities and had assessed the Appellant under the provisions of Schedule D, Case I.

The Commissioner determined that it was highly unlikely that the Appellant would enter into an agreement with DCC without establishing the specific obligations required of him in light of the fact that the agreement with DCC was worth a significant sum of money per annum. The Appellant ran the property under strict rules agreed between him and DCC. The Commissioner found that a landlord/tenant relationship did not exist between the Appellant and DCC, or indeed with the homeless persons staying in the property. The Appellant remained in occupation of the property and provided services substantially beyond those normally provided by a landlord. The payments that were made by DCC to the Appellant were not in the nature of rent. It was further found that there was no lease between DCC and the Appellant; rather, the Appellant agreed to provide lodgings and other substantial services for homeless persons who were referred to him.

By virtue of the agreement with DCC and the actual services performed by the Appellant, the income received from DCC was not rent derived pursuant to a landlord and tenant agreement but was instead income received on foot of an agreement to provide miscellaneous services.

The Commissioner therefore determined that the Appellant was not involved in a rental activity taxable under Schedule D Case V but the carrying on of a trade pursuant to the agreement with DCC. As such, the income tax assessments raised by the Revenue should stand.

### **Income Tax and Application of Double Taxation Agreement (DTA)**

Determination **36TACD2019** related to Revenue's refusal to refund PAYE withheld in respect of a distribution that the appellant had received in 2012 from an Approved Retirement Fund (ARF). PAYE was operated on the basis that the distribution constituted "emoluments to which Schedule E applies". The Appellant claimed that section 784A of TCA 1997 was not applicable.

In 2011, the Appellant and his wife acquired a Maltese property which he occupied periodically with this wife. In December 2011, the Appellant disposed of his Irish home to a Trust of which he and his son were trustees and his children were beneficiaries.

The Appellant submitted that he was tax resident in Malta under the Ireland-Malta DTA and as a result, was not liable to Irish tax on the distribution under Article 18 (Pensions, annuities and

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similar payments) or, alternatively, Article 21 (Other income), being a “catch all” provision of the DTA.

The Appellant submitted that he did not have a permanent home available in Ireland but did have a permanent home available in Malta. The Revenue Commissioners disagreed, submitting that the disposal of the property to the trust did not prevent it being a “permanent home available” to the Appellant in Ireland for DTA purposes.

The Commissioner determined that the Appellant was a treaty resident of Ireland in 2012 under the tie-breaker clause in Article 4, as his centre of vital interests was located in Ireland in 2012, due to the fact that the greater part of his personal and economic relations were situated in Ireland in that year. Ireland therefore had primary taxing rights in respect of the distribution, and the Appellant was not entitled to a refund of PAYE withheld.

For completeness, the Commissioner considered the application of the DTA as if the Appellant had been treaty resident in Malta. The Commissioner determined that the distribution from the ARF did not come within Article 18 of the DTA and did not come within Article 21 of the DTA.

### **Income Tax Treatment of PAYE Payments - Accruals or Receipts Basis.**

In determination **48TACD2019** the Commissioner considered section 112 of TCA 1997 and the refusal of Revenue to treat salary payments made to the Appellant in 2019 but relating to earnings in 2018 as taxable in 2018. The Appellant was a PAYE taxpayer in both 2018 and 2019. She took a career break in August 2017 and returned to work approximately a year later.

In 2019, the Appellant was paid 3 weeks’ pay in respect of work done in December 2018. Under the PAYE system, the payment was treated as earnings in 2019. The Appellant disputed this as she would have had a lower tax liability if the payments were treated as 2018 earnings, as she had available credits due to her career break which would have attracted a lower quantum of tax.

The Commissioner determined that there was no ambiguity attached to the relevant legislation, which clearly provided for the year 2018 and onward that tax payments under the PAYE system “*shall be computed on the amount of emoluments paid to the person in the year to assessment*”. Accordingly, he determined the Appellant was not entitled to have her December 2018 earnings taxed in 2018. The Commissioner, in response to the sense of unfairness expressed by the taxpayer in her submissions on her tax treatment, reiterated that the TAC

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does not have any jurisdiction on the fairness of the application Irish tax law and can only determine an appeal in accordance with legislation.

Determination **49TACD2019** (which considered section 531AM(1) and section 531AL(1) TCA of 1997) related to the imposition of Universal Social Charge (USC) on income earned by the Appellant in 2014 but paid in 2015. The Commissioner determined that Revenue were correct imposing USC on the Appellant's maternity leave payments in 2015.

### Income Tax-Residence Status of Appellant and Quantum of Earnings

Determination **23TACD2019** concerned the liability to tax of the Appellant in respect of income from an unknown or unlawful source. The Appellant contended that he was not resident or ordinarily tax resident in Ireland and he was not domiciled in Ireland for the tax years in respect of which the Notices of Assessment were raised.

The Commissioner dealt with the preliminary issue regarding the right of appeal available to non-chargeable persons such as the Appellant and determined that the appeal should proceed as to do otherwise would be contrary to statute, the Constitution and the European Convention on Human Rights.

In the absence of any evidence being adduced by the Revenue and based on the *viva voce* evidence of the taxpayer, the Commissioner determined that the Appellant was not tax resident in the State as he had left Ireland at a young age and had lived abroad since then, only returning to Ireland sporadically. The Commissioner further determined that, based on the evidence adduced, the Appellant was not tax resident in Malta for DTA purposes.

The Commissioner determined that as a non-resident individual, the Appellant was only liable to tax in respect of his Irish source income. On that basis, the Commissioner quantified the Appellant's Irish source income based on the evidence he provided as to the number and quantum of business transactions he concluded while in Ireland.

### Income Tax-Split-Year Residence Relief

Determination **25TACD2019** related to the refusal of Revenue to grant split-year residence relief to the Appellant in respect of his US employment income on his return to Ireland from the US in 2014.

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The Appellant and his wife went to the US in 2013, intending to remain abroad for a number of years. However, due to his wife's promotion and the requirement that she work in Ireland in her new position, the couple returned to Ireland in 2014.

Revenue granted split-year residence relief on a concessional basis to the Appellant on his departure from Ireland in 2013 but refused to grant concessional relief in respect of his return to Ireland in 2014. Thus, he was fully liable to Irish income tax on his employment income in 2014. The Appellant was aggrieved with the refusal to grant split-year residence relief which would have sheltered his US employment income from Irish tax for the period prior to his relocation to Ireland.

The Commissioner found as a material fact that the Appellant was tax resident in Ireland in 2013 as he spent more than 183 days in Ireland in that year. Accordingly, he determined the Appellant did not meet the prior year non-residence condition set out in section 822(1)(a)(i) of TCA 1997 and did not meet the statutory requirement to qualify for split-year residence relief.

The Commissioner further stated that it would be inappropriate for him, based on the established caselaw, to embark on a consideration of whether a liability to tax is unfair given the lack of equity in relation to tax. Likewise, he determined that the operation of a non-statutory concession of the Revenue was not a matter within the jurisdiction of the TAC. He commented that a potential avenue of relief could possibly be a claim for legitimate expectation but again he concluded this was not a claim within the remit of the TAC's jurisdiction. The Commissioner accordingly refused the Appellant's appeal and upheld the Revenue's assessment to income tax for 2014, subject to adjustment for credits by way of DTA relief in accordance with the Ireland/US DTA.

## Income Tax-Entitlement to Seafarer's Allowance

Determination **02TACD2020** related to the refusal by Revenue to grant Seafarer's Allowance to the Appellant for the years 2012-2015. Section 472B of TCA 1997 provides an entitlement to a tax deduction when the statutory requirements relating to Seafarer's Allowance are satisfied. The relief would have been available to the Appellant if he could establish that he spent at least 161 days absent from the State for the purposes of performing duties of a qualifying employment.

A qualifying employment is an employment, the duties of which are performed on a sea-going ship. A sea-going ship is one defined as a ship registered in the Member State's Register and which is used solely for the trade of carrying passengers or cargo for reward.

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On his own evidence, the Appellant conceded that the ship was used partially for research operations. The Commissioner therefore determined that he could not find the ship was used solely for the carriage of cargo or passengers. The Commissioner further determined that the Appellant had not produced any evidence in accordance with the “badges of trade” test to support an argument that the ship was used for the purposes of a trade. The Commissioner determined that the conditions to secure entitlement to Seafarer’s Allowance were not met and accordingly he upheld the refusal of Revenue to grant the Allowance.

### VAT, Transfer of Business Relief

Determination **15TACD2019** related to the disallowance by Revenue of an input credit entitlement claim by the Appellant on the grounds that transfer of business relief applied to the transaction in question in accordance with section 20(2)(c) of VATCA 2010. This section applies where there is a transfer of assets to an accountable person where the transfer of such assets constitutes the transfer of an undertaking or part of an undertaking capable of being operated on an independent basis. Where the conditions of the relief are met, the transaction is deemed not to be a supply of goods.

The facts of the appeal involved the transfer of premises, stock, fixtures and fittings to a company. The Appellant operated the business as a hotel. The Commissioner accepted the submission of the Revenue Commissioners that there was no requirement in section 20(2)(c) for the transferor of the business to be an accountable person. As the Appellant did not dispute the fact that it traded in the relevant period, the Commissioner found that the Appellant could not succeed in its argument that it did not intend to trade. The absence of a licence to operate as a hotel trade was held not to preclude a transaction falling within section 20(2)(c). Accordingly, it was determined that section 20(2)(c) applied as there was a transfer of assets to an accountable person where the transfer of such assets constituted an undertaking or part of an undertaking capable of being operated on an independent basis and which was so operated. Accordingly, the deeming provision in section 20(2)(c) VATCA 2010 applied to the transaction, deeming it not to be a supply of goods. On this basis, the Commissioner determined that the Appellant was not entitled to VAT input recovery in relation to the transaction and that the assessment raised by Revenue should stand.

### VAT

Determination **03TACD2020** related to a claim for a refund of VAT. The Revenue allowed a refund of VAT for the taxable period November-December 2009 as it was within the 4-year period after the end of the taxable period to which it related. However, the Revenue disallowed



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a claim for a VAT refund in respect of the period January-February to September-October 2009 on the basis the claim was made outside the 4-year statutory time limit.

This issue in this appeal was whether, having regard to the statutory scheme setting out the rules for apportionment on dual use input together with the refund provisions in relation to the recovery of VAT, the Appellant was entitled to recovery of VAT claimed in respect of the periods January-February 2009 to September-October 2009 inclusive.

The Appellant was a subsidiary of a financial services and technology service provider. It provided services to customers, some of whom were based in the European Union and some of whom were located outside the EU.

Prior to 2013, the Appellant proceeded on the basis that its activities were VAT exempt and it therefore had no entitlement to VAT recovery. The Appellant filed its VAT return up to the end of 2013 on the basis of its understanding that it was providing services which were exempt from VAT in accordance with Schedule 1, paragraphs 6 and 7 of VATCA 2010 and in relation to which there was no entitlement to VAT recovery of input credits.

In 2013, following a review of its activities by the agent for the Appellant, the Appellant took the view that it carried out activities that fell within the definition of 'qualifying activities' for the purposes of section 59(1) of VATCA 2010, allowing for a deduction of VAT pursuant to section 59(2).

In December 2013, the Appellant filed an amended VAT return (titled 'Supplementary VAT3 Return') for the period November-December 2009 showing a VAT refund.

The Commissioner determined that a taxpayer has a right to deduct from the moment VAT becomes chargeable in accordance with Article 167 of Council Directive 2006/112/EC and not otherwise. It is in light of this right to deduct that time limits must be read and interpreted.

The Commissioner found that there was no basis for characterising the amended VAT return in respect of the taxable period November-December 2009 as a return in relation to the review of apportionment of dual-use inputs in accordance with section 61 of VATCA 2010 and Regulation 17 of S.I. 639/2010.

The Commissioner determined that the amended November-December 2009 return filed on 30 December 2013 did not constitute an effective means of claiming a repayment of VAT for taxable periods other than November-December 2009 and that the amended November-December 2009 VAT return did not constitute a valid claim in respect of input credits applicable to prior taxable periods.

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The Commissioner accordingly determined that the Respondent was correct to refuse the Appellant's claim for a refund of VAT in respect of the taxable periods January-February to September-October 2009 on the basis that the claim made on 30 December 2013 was not made within 4 years after the end of the taxable periods to which it related.

## VAT

Determination **16TAC2020** involved four consolidated appeals initiated by a telecommunications company against determinations and assessments made by the Respondents in relation to non-EU Roaming Charges, Cancellation Charges, Bill Pay Broadband and an out of time claim.

The Non-EU Roaming Issue related to whether VATCA 2010 provides for a refund of VAT where 'telephone cards' are used outside of the EU by 'bill-pay' customers. The Commissioner determined that it was not possible to distinguish for VAT purposes between 'prepay' and 'bill-pay in-bundle' options for non-EU roaming telecommunication services. Therefore, as the Appellant was entitled to a reduction in tax payable in respect of a "telephone card" for its 'prepay' customers, a tax reduction also applied to the VAT charged to its 'bill-pay in-bundle' customers in respect of the said roaming services.

As a consequence of the Commissioner's above finding, it was not possible to apply conflicting rules to the place of supply of telecommunications services simply by reference to the means by which those services are billed. Therefore, identical telecommunications services which were used and enjoyed by 'in-bundle' and 'out-of-bundle' customers outside the EU could not be treated differently irrespective of the timing of billing or payment for those services. Consequently, the Appellant was also entitled to a reduction in tax payable in respect of the 'bill-pay out-of-bundle' option for non-EU roaming telecommunication services to its customers where those services were used outside the Community.

The cancellation charges issue related to the VAT treatment of cancellation fees charged by the Appellant to its customers where the customer terminated a fixed term contract prior to the end of contract date. As the relevant EU caselaw (and in particular the *MEO* judgment) was binding on the Commissioner, he concluded that where a customer enters into an agreement for telecommunication services as governed by the price plan for the commitment period, a charge to VAT arises with reference to the agreed contractual right to use those services for that period irrespective of non-usage of those services.

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The Bill Pay Broadband issue involved the VAT treatment of customers who did not exhaust their entire data allowance in any given month, and whether the amount of consideration was proportionate to the unused data. As with the above cancellation charges issue, the Commissioner concluded that a charge to VAT arises with reference to the agreed contractual right to use that amount of data irrespective of whether the customer uses those services.

The *out of time* issue related to whether the limitation periods for a reclaim of VAT were outside the time-limit provided for in section 99 of VATCA 2010. The issue for determination was whether section 99 breached the EU law principle of equivalence. The Commissioner held that stamp duty could be regarded as a “true comparator” with VAT in relation to the time limit for claims for the repayment of taxes. He concluded that the principle of equivalence had not been breached by Revenue in refusing to entertain a claim for a repayment of VAT on the basis that the claim was made outside of the four-year time limit provided for in Section 99(4) VATCA.

## Excise duty and VAT

Determination **41TACD2019** was concerned with the application of the standard rate of VAT, as opposed to the reduced rate, to the supply of a large proportion of mineral oil where the Appellant failed to comply with Regulations pertaining to the holding and use of ‘Marked Mineral Oil’. A substantial amount of the VAT in dispute related to the disallowance of VAT input credits on the basis that the Respondent was not satisfied that the transaction occurred as documented.

In the course of the appeal, the Appellant failed to provide the requisite information and evidence which would have allowed the Commissioner to conclude that the transactions actually took place. The Commissioner also concluded that, based on the evidence and submissions made at the hearing, numerous contraventions of the Mineral Oil Regulations occurred and the Appellant had failed to show how its supplies fell within the exception to the standard rate that is provided for in the VAT Act. As a result, the Commissioner determined that the standard rate of VAT at 23% should apply to the supplies and the VAT input credit was denied on the purchases where the evidence furnished was insufficient to allow the Commissioner to conclude as a material fact that the purchases actually took place.

Contraventions of the Mineral Oil Tax Regulations 2012 and the requirements of section 99(10) of the Finance Act 2001 were considered in some detail in determinations **41TACD2019** and **59TACD2019**. Detailed evidence was heard regarding the contraventions of the Regulations in

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both these appeals, and the interpretation of the anti-avoidance provision contained in section 99(10) was considered at length. As excise duty on mineral oils is covered by an EU Directive, the application of EU Law was also examined.

Where the requirements of section 99(10) and the Mineral Oil Regulations 2012 are not met, the mineral oil supplies are deemed to have been supplied as road diesel and the supply is liable to duty at the standard rate, as opposed to the reduced rate. The compliance obligations for traders in this sector are detailed and specific.

A considerable amount of EU case law was relied upon by both sides and considered in the determination. The Commissioner noted that in tax appeals the burden of proof rests with the Appellant to show that, on the balance of probabilities, the assessments made by Revenue are incorrect. In cases involving reliefs or exemptions, it is incumbent on the Appellant to demonstrate that it falls within the relief and has complied with the Regulations and conditions pertaining to that exemption. In both these appeals, the Commissioner found that the Appellants had failed to discharge the burden of proof and the Excise Duty assessments were upheld.

Determination **68TACD2020** concerned an appeal against the denial of VAT input credits by the Respondent on the basis that the Appellant knew or should have known that he was participating in a transaction connected with the fraudulent evasion of VAT.

The legal tests arising from EU jurisprudence were considered in detail. In arriving at a decision and based on the evidence submitted during the appeal, the Commissioner attached weight to objective factors that impinged upon the question of whether the Appellant knew or ought to have known that it was participating in a transaction connected with fraudulent evasion of VAT. The cumulative effect of each objective factor led to the Commissioner's conclusion that the only reasonable explanation for the purchases was that the purchases were connected to the fraudulent evasion of VAT.

## Other tax heads and determinations

Determinations have also issued in relation to the following:

### Directors' emoluments

Section 997A(3) of 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

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documentary evidence to show that the tax deducted has been remitted to Revenue. This section was considered in determination **13TACD2019**. The Appellant argued that there was an entitlement to claim a credit for the tax deducted from the Appellant's emoluments by the Company notwithstanding that such taxes were not remitted to the Respondent. The Commissioner found that this argument failed to recognise that companies, as inanimate bodies, can only act through the actions of their directors and in accordance with their contractual and fiduciary obligations and powers vested in the board of directors in accordance with the Articles of Association. The Commissioner further found that the demonstrable effect of section 997A is to deny persons in positions of control and influence over a company's business activities from claiming a credit for unpaid taxes that ought to have been deducted and remitted by such companies to the Revenue Commissioners.

#### **Trade Losses – s.662 TCA restriction of relief for losses in farming or market gardening**

Determination **33TACD2019** considered the refusal by Revenue to allow the Appellant's claim for trade losses against the Appellant's PAYE income for the years under appeal. The claim was disallowed on the basis that the rules set out in section 662 of TCA 1997 precluded the Appellant from claiming relief for losses under section 381 TCA.

The Appellant was a shop assistant who also carried on the trade of farming. He began farming alongside his father in 1998 and in 2001 he inherited 26 acres of land from his father which he continued to farm. The Appellant gave evidence that the lands were in very poor condition when he inherited them and that he had done what he could over the years to improve the lands and to build up the farm trade to a point where it would become profitable and produce for him a return on the money and time he had invested.

The Commissioner found in relation to the requirements of section 662 that during the years under appeal, and in the years preceding that, the Appellant's time, work and financial investments were all intended to improve the farm and develop the farm trade to a point where it became profitable. The Commissioner further found that it was always the Appellant's wish and intention that his farming trade would ultimately become profitable, and that he carried on the trade of farming on a commercial basis and therefore found that the Appellant satisfied the requirements of section 662(2)(a) for the years under appeal.

Notwithstanding the Appellant being *prima facie* eligible for relief by reason of his having met the criteria in section 662(2)(a), section 662(2)(b) limited the entitlement to claim losses as a relief when a loss has been incurred in carrying on the trade during each of the prior three years.

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The Appellant's farm trade made a loss during every year from 2007 to 2014 inclusive. Section 662(2)(d) contains a saving provision, and states in essence that section 662(2) shall not limit relief where a claimant shows that his activities in the year following three years of losses are of such a nature and carried on in such a way as would justify a reasonable expectation of profits in the future if those activities had been undertaken by a competent farmer or market gardener, and that if the farmer or market gardener had undertaken those activities at the beginning of the loss-making period, he could not reasonably have expected the activities to become profitable until after the end of the year following the prior period of loss.

The Commissioner found on the evidence that the Appellant met the criteria detailed in section 662(2)(d) and accordingly the limitation on relief contained in section 662(2)(b) did not apply to the Appellant.

### Employee Tax Credits

In Determinations **30TACD2019** and **31TACD2019**, the Appellant was a person entitled to a contributory pension pursuant to section 108 of the Social Welfare Consolidation Act 2005, having satisfied the conditions set forth in section 109 of that Act and had claimed and been granted that pension for the years under appeal. The amount of the pension had been increased pursuant to section 112(1) of the 2005 Act because the Appellant's spouse was a "qualified adult" within the meaning of the Act.

The matter to be determined was whether a claim for the employee tax credit under section 472 TCA 1997 should be allowable on the increased pension of the State contributory pension paid in respect of a dependent spouse.

The Commissioner found in both cases that the Appellant was entitled pursuant to section 472(4)(b) of the Taxes Consolidation Act 1997, as amended, to the employee tax credit with reference to that income.

### 'No Loss to Revenue' Concession and Badges of Trade

Determination **24TACD2019** considered whether there was a general failure to operate the PAYE Regulations in respect of payments to certain employees. The Appellant contended that the payments would not have given rise to PAYE if the Regulations had been operated correctly. The Appellant sought to avail of the 'no loss to Revenue' concession provided in the Code of Practice for Revenue Audit and Compliance Interventions. The Commissioner found that the TAC had no jurisdiction with respect to the application of this concession.

This appeal also considered whether the Appellant had been carrying on a commercial trade of car remodelling/car dealing. The 'six badges of trade' were considered in some detail and,

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based on the evidence and circumstances pertaining to the 'six badges' in this appeal, the Commissioner determined that the Appellant was not carrying on a commercial trade.

### **Tax rate applicable to Taxable Income which include Relevant Interest - S.261(c)(i)(II) TCA 1997**

Determination **06TACD2020** concerned the application of section 261(c)(i)(II) of TCA 1997 and how this section impacts on the application of the reduced income tax rate and standard rate cut off point. A large portion of the Appellant's income was deposit interest subject to DIRT. The Appellant also had significant allowable medical expense deductions relating to nursing home costs in the relevant years. The Respondent argued that the application of section 261(c)(i)(II) meant that the Appellant's taxable income, after deductions, was subject to tax at the applicable DIRT rate, and that the 20% rate and standard rate cut off point rules did not apply.

The Commissioner determined that the meaning and interpretation of section 261(c)(i)(II) was ambiguous. The Commissioner determined that the rules pertaining to the correct order of relief for deductions and the standard rate cut off point rules were not superseded by section 261(c)(i)(II).

### **Burden of Proof in respect of claiming Medical Expense relief under S.469 TCA 1997.**

Determination **54TACD2019** concerned the evidence required in order to substantiate a relief deduction for nursing home fees under section 469 of TCA 1997. In this appeal, the Respondent audited the Appellant's relief claim and withdrew relief for costs which the Appellant could not substantiate with evidence that they had defrayed the costs.

In determining the appeal, the Commissioner reiterated that in taxation appeals considering an entitlement to reliefs, the burden of proof is on the taxpayer to demonstrate that they are so entitled.

### **Mandatory Electronic Filing – S.917EA (4) TAC 1997**

Determination **37TACD2019** considered the denial of an exclusion request made by the Appellant from their obligation to comply with the mandatory electronic filing regulations.

The Commissioner found that the Appellant fell clearly within the scope of the mandatory obligations and had failed to discharge the burden of proof that they could not reasonably be expected to have the capacity to make electronic returns or that they were prevented from doing so by reason of age or infirmity.

### **Electronic VAT Reclaims – Section 101 VATCA 2010 – Intra-Community refunds of tax**

In determination **46TACD2019**, the Appellant was a taxable person in another EU member

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state. The determination concerned the approval and payment process in force in Ireland when claiming a refund through the EU's EVR system. Arguments were heard from both sides in relation to the correct interpretation of Irish VAT legislation, the EU Directive and recommended EU processes. The Appellant attached significant weight to the fact that the EU state where it was resident applied less onerous approval methods when processing refunds.

The Commissioner found that the Irish VAT legislation provisions applicable in this appeal in respect of the information and documents requested to validate a refund claim, were provided for in the Directive and that the Tax Appeals Commission did not have jurisdiction to adjudicate on the fairness of the application of the Irish VAT regulations. The Commissioner determined that the onus was on the taxpayer to establish clear entitlement to the VAT refund in accordance with the Irish VAT legislation.

#### **Tax status of unsolicited monetary literary award**

The issue in determination **04TACD2020** was whether the prize monies received from an international literary award should form part of the profits of a professional writer. The Appellant argued that a previous UK Special Commissioners decision to not tax a similar unsolicited award should also apply in Ireland and that the prize monies should not form part of the writer's taxable profits.

The Commissioner considered relevant Irish legal precedents and noted that there were divergences between UK and Irish case law in the important characteristics used to establish whether the prize was taxable under Case II or not. The Commissioner accepted that the Appellant's arguments would be compelling in a UK context but emphasised that there were differences in Irish jurisprudence. He concluded that the Appellant had failed to discharge the burden of proof and had not shown that the prize money should not form part of the writer's taxable profits.

#### **Tax relief on once off pension contribution**

In determination **38TACD2019** the Appellant paid a pension contribution before the relevant filing date for his income tax return, ten months after the year end. However, the Appellant did not file his income tax return on time and the Respondent refused to grant tax relief in the previous year as the election to back date the contribution had not been made on time. The legislation provided in section 787(15) of TCA 1997 that relief shall not be given "*except on a claim made to and allowed by the inspector.*" The Commissioner found that the requirement in the legislation to notify the Inspector on or before the filing date was unambiguous and that the Appellant had failed to provide evidence that he had met these requirements.



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### Corporation Tax Deductibility of Foreign Withholding Tax on Dividends

Determination **08TACD2019** considered whether a deduction could be claimed under section 81(2) of TCA 1997 for foreign withholding tax incurred in respect of dividends received. The Appellant's Irish business was that of market making and providing liquidity in complex financial products. In its capacity as a market maker in equity options on multiple European exchanges, the Appellant was obliged to provide liquidity to the market by buying and selling options.

Risks could be hedged by offsetting stock positions in correlated positions. In the normal course of its trade, the Appellant would regularly hold stock positions over dividend record dates and would therefore receive dividends. This was an unavoidable consequence of its trading activities.

The issue under appeal was whether tax withheld on foreign dividends derived in the course of its trade was a deductible expense in accordance with section 81 to the extent that the withholding tax could not be offset as a credit against the Appellant's tax liability. The Appellant was precluded from claiming an exemption from corporation tax under section 21B(4)(c) TCA 1997 and the withholding taxes were also denied a credit from double taxation relief provisions of section 35 and Schedule 24. The Appellant was therefore taxed on dividend income without a corresponding entitlement to a credit or a deduction for the foreign tax withheld on that income.

The Appellant argued that, although taxes are generally not deductible on these grounds, in certain circumstances they may be deductible. Revenue did not agree and argued that foreign withholding taxes on dividends are inherently taxes on income.

On consideration of the facts, the Commissioner was satisfied that any withholding tax suffered on a dividend that could not be reclaimed under a relevant double taxation agreement ('DTA') constituted a final cost of entering the trade, similar to a "cost of sale" in accounting terms, and impacted the final net profit or loss realised on the overall trade.

The Commissioner noted that there is no principle of tax law that excludes taxation as a deduction against profits where that taxation is not based on the underlying profits. Furthermore, the Commissioner referred to the deductibility of Irish and foreign stamp duty, Irish and foreign irrecoverable VAT, foreign Financial Transaction Tax and employer's PRSI.

The Commissioner determined that this case should be distinguished from determination **02TACD2018**, which considered similar issues in the context of foreign withholding taxes incurred on royalty income. In the present case, the Commissioner noted that royalty income

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withholding tax differs from dividend withholding tax because royalty income arises from a licensing right and is income that is earned. The Commissioner concluded that, in contrast, in the instant appeal the dividends were not earned and merely flowed from the trade of buying and selling securities.

The Commissioner concluded that any dividend withholding tax suffered by the Appellant was tax incurred in making the overall trade rather than in earning dividend income. The taxes suffered were in effect the price of carrying out the particular trade the Appellant conducted, as the primary objective of the Appellant was to derive a profit from its aggregated trade of its share acquisition and its related hedging strategy. Hence, such taxes were disbursements of the business laid out wholly and exclusively for the purpose of the trade.

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination.

### **Status of US LLC for Purposes of Irish Group Relief**

Determination **17TACD2019** concerned the entitlement of the Appellants to group relief pursuant to section 411 of TCA 1997.

The appeal related to a Delaware LLC that controlled the capital of a number of companies, including three Irish-resident companies, that made various group relief claims under section 411 in 2010, 2011 and 2012. Both the surrendering company and the claimant companies were Irish-resident companies while the LLC was not tax resident in Ireland.

For corporation tax loss purposes, section 411 defines a group of companies as a parent company and its 75% subsidiary companies.

Prior to the Finance Act 2012, references to a “company” in section 411 applied only to a company that was tax resident in an EU or EEA Member State. The Finance Act 2012, which took effect from 1 January 2012, amended section 411 to include companies that are resident in a territory with which Ireland has a DTA for the purposes of determining whether a group exists.

The LLC did not elect to be treated as a corporation for US federal income tax purposes and thus was treated under the default rules as disregarded. Consequently, its income was taxed as that of its members, being five individual owners who were tax resident in the US.

Revenue refused the group relief claims on the grounds that the LLC was not a “company” and in particular was not a company for Irish tax purposes. Furthermore, they argued that the

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LLC was transparent for US tax purposes and pursuant to the default US tax treatment, it was to be treated as an entity disregarded from its owner. Revenue also challenged the entitlement to group relief on the basis that the LLC was not resident in the US for the purpose of a tax equivalent to Irish corporation tax.

The Commissioner considered caselaw discussing how the Irish Revenue should treat a foreign entity for Irish tax law purposes. In this regard, he heard evidence from US legal and tax expert witnesses and then considered whether the LLC was sufficiently analogous to an Irish company in terms of traits and characteristics to be treated as a body corporate for Irish corporation tax purposes. He determined this to be the case.

The Commissioner further determined that on a literal interpretation of Article 4 of the DTA, the LLC was not liable to tax in the US in respect of the years under appeal. However, the Appeal Commissioner found that, in consideration of the technical nuances of Irish group relief and the apparent disconnect with the US tax code, a purposive interpretation of international treaties should be adopted. Accordingly, the Commissioner determined that LLC should be considered as liable to tax in the US and this tax corresponded to corporation tax in the State by virtue of all of its income being fully and comprehensively taxed to Federal Income Tax under the US Tax Code, albeit at the member level.

In light of the above, the Appeal Commissioner determined that the LLC was a body corporate, and that the Appellants were entitled to avail of group relief pursuant to Section 411 TCA 1997.

### Dividend Withholding Tax

Determination **16TACD2019** considered as a preliminary issue the question of whether Revenue's right to make or amend an assessment should be restricted to four years under the provisions of section 955(3) of TCA 1997. Revenue had issued Notices of Assessment to dividend withholding tax (DWT) in 2018 in respect of distributions made in the years 1999 to 2010. The Appellant had failed to file DWT returns in respect of the distributions but had disclosed details of them, and the fact that no DWT had been deducted, on its corporation tax returns (Forms CT1) filed for the relevant years.

The Appellant maintained that it was not obliged to withhold DWT on the basis that the distributions were made out of disregarded income within the meaning of section 141(5) of TCA 1997 (the substantive issue).

The Commissioner decided to first hear the preliminary issue as it could potentially be dispositive of the substantive issue. The Commissioner then determined that section 955(3)

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provides protection only where the taxpayer's statutory obligations have been fully met. The Commissioner determined that, as the taxpayer had failed to file a DWT return, it had not made a full and material disclosure of material facts on the relevant DWT return and therefore could not avail of the out of time restriction afforded by section 955(3).

It is expected that the substantive issue will be heard in 2020.

### Capital Gains Tax

Determination **28TACD2019** considered whether a refund should issue in respect of CGT paid in error in respect of shares held by a milk supplier in Newmarket Cooperative Creameries Limited (NCC). The Appellant asserted that the shares constituted a "chargeable business asset", as defined in section 598(1) of TCA 1997, and were used by him in his farming activities and that he should accordingly be entitled to CGT retirement relief.

The Respondent refuted the Appellant's assertion and argued that the shares were held as an investment and therefore were "excluded assets" for CGT retirement relief purposes.

The Commissioner found that the purchase of milk by NCC was dictated by the milk quota system and that any shareholding in NCC had no impact on this. There was no evidence that the shares constituted a licence or that the shares by the Appellant were used for the purposes of farming. "Use" is an active word, and the holding of the shares was merely a passive activity. The shares were not an asset and were simply a bundle of rights.

After detailed consideration of the principles of statutory interpretation as applied for tax purposes, and in particular the distinction in the legislative definitions of "qualifying assets" and "chargeable assets", the Commissioner determined that the Appellant was not entitled to claim retirement relief on the disposal of his shares in NCC.

### Stamp Duty

Determination **67TACD2020** involved a dispute in relation to the availability of sub-sale relief in accordance with section 46 of the Stamp Duty Consolidation Act 1999, as amended ('SDCA'). There was some complexity to the background in relation to the transactions which is set out in detail in the determination.

The Commissioner determined that:

- the operation of section 46(1) SDCA does not accommodate the insertion of the name of the purchaser under the original contract into the sub-sale contract in circumstances

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where that purchaser no longer has capacity as vendor in respect of the sub-sale contract.

- that the joinder of a person in a contract for sub-sale in circumstances where that person's involvement is unnecessary or gratuitous, does not succeed in enabling a claim for sub-sale relief in accordance with section 46(1) SDCA 1999.
- that the conditions necessary to avail of sub-sale relief in accordance with section 46 of SDCA were not met and that the Appellant was thereby unable to avail of sub-sale relief.

The Commissioner determined that the assessment to stamp duty would therefore stand.

### Income Tax

Determinations **28TACD2020 to 59TACD2020** involved 32 individual Appellants. The appeals involved questions as to the deductibility of certain tax losses on behalf of the Appellants. The Appellants claimed that these losses were allowable Case I trading losses. The Respondent refused the losses on the grounds that they were not allowable trading losses. The Appellants duly appealed.

The losses were generated through complex transactions to acquire dividends from a particular British Virgin Island company, financed by a loan from a British Virgin Island lender. The Commissioner found that the transactions were carried out in order to generate a tax advantage for the participants (the Appellants), in the form of tax losses.

The Commissioner determined that:

- the object and purpose of each dividend purchase transaction was to convert a loss-making transaction into a valuable transaction from a tax perspective for each of the Appellants by means of the generation of tax losses which were utilised by the Appellants to reduce taxable income.
- the Appellants were not carrying on a trade in financial instruments and securities.
- section 812 TCA 1997 did not apply to deem a dividend to be the income of '*the owner*' of the underlying securities where that owner is established outside the State and is neither within the jurisdiction of the Oireachtas nor within the charge to Irish tax and that based on the evidence and submissions in the appeal, there was no basis upon which to take the view that the Appellants were *not* subject to income tax on their foreign dividend income in accordance with section 18 TCA 1997.

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- the Appellants fell squarely within the charge to tax in section 18 TCA 1997 in respect of their foreign dividend income.
  - the expressions of doubt filed by certain Appellants failed to specify the doubt as required by section 955(4)(a). In addition, in accordance with s.955(4)(b) TCA 1997, the Commissioner determined that these expressions of doubt were not genuine and that the Appellants were acting with a view to the avoidance of tax.

The Commissioner upheld the amended Schedule D assessments raised by the Respondent in respect of the tax years of assessment 2009 and/or 2010.

### Other matters determined by the TAC

The TAC issued determinations during 2019 in respect of other tax matters not mentioned above, namely:

- Determination **05TACD2020** considered the entitlement of the Appellant to the tax relief commonly known as the *Artist's Exemption*.
- Determination **21TACD2019** considered the entitlement of the Appellant to the tax relief commonly known as the *Help to Buy Scheme*.
- Determination **55TACD2019** concerned an appeal against the refusal to grant relief for interest paid on a home loan in accordance with section 244 of TCA 1997, a relief commonly known as *mortgage interest relief*.
- Determination **50TACD2019** concerned the matter of whether a vehicle should be considered a '*new means of transport*' in accordance with section 1 of VATCA 2010 and liable to VAT on importation.
- Determination **13TACD2020** concerned an appeal against the refusal to grant the Appellant an exemption from income tax pursuant to section 192A of TCA 1997 which is an *exemption in respect of certain payments under employment law*.

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# Review of the Workload and Operations of the Tax Appeals Commission

On 6 June 2018, the Minister for Finance, Mr. Paschal Donohoe TD, commissioned an independent review of the workload and operations of the Tax Appeals Commission (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, 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. The TAC welcomed the findings of the Report and has worked in consultation with the Department of Finance and other bodies to implement the recommendations therein.

During 2019, with the support of the Minister and the Department of Finance, significant progress was made towards implementation of the Report's recommendations.

## Progress towards implementation

### Budget

The O'Donoghue Report recognised that a significant increase in the budget allocated to the TAC in 2017 was necessary to enable the implementation of its recommendations. As a result, the budget for 2019 was increased to €3.2million to reflect the projected cost of implementation during 2019. As discussed further in chapter 16, the TAC spent some €1.7million during 2019. The shortfall in spending, when compared with the budget allocation, was primarily a result of the time necessary to conduct recruitment processes and secure the additional staff recommended by the Report. By the close of 2019, the Commission had a staff of 28, effectively double the number of staff on hand at the close of 2018.

### Staff and Commissioner resources

A permanent Chief Operations Officer (COO) at Principal Officer Grade was recruited and commenced work with the TAC in February 2019. Additional staff were appointed during the year at Assistant Principal Officer, Higher Executive Officer, Executive Officer and Clerical Officer grades, allowing the structures in the TAC to be more closely aligned with the recommendations in the O'Donoghue Report. During September and December 2019, two additional full-time and one part-time temporary Appeal Commissioners were appointed to the TAC.

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A full time IT manager, tasked with developing an IT strategy and improving the IT operations within the TAC, was employed during the latter part of 2019. The Office of the Government Chief Information Officer has agreed to work with the TAC in 2020 to provide assistance with connecting the TAC to government networks and providing infrastructure and technical support.

A key recommendation of the O'Donoghue Report was the appointment of a Chairperson of the Tax Appeals Commission. The Finance (Tax Appeals and Prospectus Regulation) Act 2019, which amended the Finance (Tax Appeals) Act 2015, contains provisions for the establishment of the position of Chairperson of the Tax Appeals Commission. The Chairperson will have responsibility for the leadership, governance and strategic direction of the Tax Appeals Commission. A recruitment process is presently underway and an appointment is anticipated in Q2 2020.

### Case Management

The members of the Tax Appeals Commission are independent in the performance of their functions with regard to their individual caseloads awaiting further hearing and/or determination. Work has continued during the year to reduce each respective case load. Case Management Conferences (CMCs) have been used to progress appeals where appropriate and the new Temporary Appeal Commissioners have started work on hearings and determinations including section 949U determinations. The optimisation of the contribution of case managers by Appeal Commissioners in accordance with the provisions of the 2015 Act is continuing and a training and development programme for case managers, which was established in 2019, commenced in Q1 2020. In 2019, the administration team conducted a review of all case files, which was completed in Q1 2020.

### Corporate supports and Operations

The TAC has made significant progress towards improving provision for corporate supports during 2019. The O'Donoghue Report made a number of recommendations for the long and short-term provision of these functions. An internal review of corporate supports required by the TAC was carried out and our recommendation has been forwarded to the Department of Finance with a view to agreeing a sustainable corporate supports structure for the organisation during the coming year.



## Statistics

Number of Appeals per Year Received in the TAC	48
Appeals Received in 2019	50
Appeals Closed in 2019	51
Appeals - Main Tax Type	52
Multiple Tax Types	55
Appeals Listed for Hearing in 2019	56
Determinations	58
Case Management Conferences in 2019	61
Progress Made on all Appeals in 2019	64

*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, or*
- *the monetary value of an appeal is not always calculable (e.g. in appeals where the rate of tax is in dispute, in appeals in relation to the refusal of Tax Clearance Certificates, or where the quantum in dispute represents a refusal of loss or deductions).*

*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 2020, this report presents as accurate a picture as possible in relation to statistics in respect of the calendar year, 2019.*

# Number of Appeals per Year Received in the TAC

The Tax Appeals Commission (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'). 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't	Current			
				2016	2017	2018	2019
2016							
Appeals received in 2016*	2,357	1,159	297	901			
Closed in 2016	(206)	(1)	(9)	(196)			
Balance (31/12/16)**	2,151	1,158	288	705			
2017							
Appeals received in 2017	1,747				1,747		
Closed in 2017	(690)	(175)	(33)	(223)	(259)		
Balance (31/12/17)**	3,208	983	255	482	1,488		
2018							
Appeals received in 2018	1,689					1,689	
Closed in 2018	(1,438)	(252)	(85)	(204)	(406)	(491)	
Balance (31/12/18)**	3,459	731	170	278	1,082	1,198	
2019							
Appeals received in 2019	1,495						1,495
Closed in 2019	(1,584)	(205)	(74)	(86)	(204)	(357)	(658)
Balance (31/12/19)	3,370	526	96	192	878	841	837
Summary							
Appeals received	7,288	1,159	297	901	1,747	1,689	1,495
Appeals Closed	(3,918)	(633)	(201)	(709)	(869)	(848)	(658)
Balance (31/12/19)	3,370	526	96	192	878	841	837

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\*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 1,159 by grouping tax years of assessments relating to the same appellants and by grouping related issues.

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.

\*\*A review of all appeals opened and closed on the Case Management System from 21 March 2016 took place in 2019. Each individual appeal was reviewed separately. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the above figures differing slightly to the Annual Report 2018 figure.

Of general note in relation to all appeals:

- Over 50% of appeals (open and closed) in 2019 are, or were, managed by an agent for the appellant.
- Approximately one quarter of the appeals have multiple tax years of assessment or periods of assessment in dispute;
- Over 700 appeals currently on hand are identified as part of groups of appeals, where a similar issue(s) are under appeal.

## Appeals Received in 2019

The TAC received 1,495 appeals in 2019, which was 194 less than the number received in 2018. 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 2019 is broken down as follows:

2019 Month	No. of Appeals Received	Quantum* €000
Jan	162	27,742
Feb	114	5,582
Mar	117	8,325
Apr	101	6,582
May	116	16,746
Jun	97	13,258
Jul	128	87,348
Aug	130	3,263
Sep	109	6,825
Oct	113	4,934
Nov	143	14,522
Dec**	165	183,798
<b>TOTAL</b>	<b>1,495</b>	<b>378,925</b>

Tax type of Appeals Received***	No. of Appeals Received	% of Total	Quantum* €000
IT	625	42	43,759
VAT	311	21	30,074
VRT	184	12	542
CT	90	6	263,445
Other****	153	10	16,839
CGT	81	6	10,558
CAT	51	3	13,708
<b>TOTAL</b>	<b>1,495</b>	<b>100</b>	<b>378,925</b>

\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

\*\* Seven appeals received in the final two weeks of December 2019 amounted to approximately €170 million. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2019 would have totalled €209 million.

\*\*\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

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

# Appeals Closed in 2019

The Tax Appeals Commission closed 1,584 appeals in 2019, by determination, settlement, withdrawal, refusal, merging or dismissal of the appeal. With an increase in the number of staff and improved procedures, the number of appeals closed in 2019 was greater than the 1,438 appeals closed in 2018. 2019 is also the first year that the TAC closed more appeals than it received, resulting in a fall of 89 in the number of appeals on hand at year end. An outline of appeals closed in 2019 is as follows:

2019 Month	No. of Appeals Closed	Quantum* €000
Jan	91	206,647
Feb	59	121,786
Mar	107	51,709
Apr	92	23,450
May	120	45,157
Jun	149	27,648
Jul	153	16,289
Aug	110	15,664
Sep	174	11,893
Oct	216	6,619
Nov	176	87,095
Dec	137	51,137
<b>TOTAL</b>	<b>1,584</b>	<b>665,094</b>

Tax type of Appeals Closed**	No. of Appeals Closed	%	Quantum* €000
IT	777	49	117,638
VAT	256	16	80,712
VRT	175	11	409
CT	78	5	362,686
Other***	116	8	18,746
CGT	146	9	81,730
CAT	36	2	3,173
<b>TOTAL</b>	<b>1,584</b>	<b>100</b>	<b>665,094</b>

Category / Year Received	No. of Appeals Closed	Quantum* €000
Legacy	205	182,010
Pre Est't	74	55,690
2016	86	20,691
2017	204	330,505
2018	357	54,514
2019	658	21,684
<b>TOTAL</b>	<b>1,584</b>	<b>665,094</b>

Reason for Appeal Closures	No. of Appeals Closed	Quantum* €000
Determinations Issued****	119	59,442
Dismissed	95	12,645
Merged / consolidated	4	800
Refused	184	8,358
Settled	730	351,253
Withdrawn by Appellant	452	232,596
<b>TOTAL</b>	<b>1,584</b>	<b>665,094</b>

\* See Note 1 on page 47 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 as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

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

\*\*\*\* One determination issued in 2019 was related to 32 individual appeals. For legislative purposes, 32 separate determinations were issued.

## 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 relating to the main tax types disputed across appeals opened and closed in 2019:

Main Tax Type or Issue of Appeals Opened / Closed in 2019				
Tax Type *	No. of Appeals Received	Quantum** €000	No. of Appeals Closed	Quantum** €000
IT	625	43,760	777	117,638
VAT	311	30,074	256	80,712
VRT	184	542	175	409
CT***	90	263,445	78	362,686
Other****	153	16,838	116	18,746
CGT	81	10,558	146	81,730
CAT	51	13,708	36	3,173
<b>TOTAL</b>	<b>1,495</b>	<b>378,925</b>	<b>1,584</b>	<b>665,094</b>

\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

\*\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

\*\*\* Seven appeals received in the final two weeks of December 2019 amounted to approximately €170 million. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2019 would have totalled €209 million.

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

During 2019, income tax remained the tax most frequently appealed, arising in 42% of appeals received. VAT, VRT, CT and CGT made up a further 45% of the appeals on hand.

There was a fall of 281 in the number of income tax appeals received by the TAC which led to an overall percentage drop from 54% to 42%. At the same time, the number of VAT appeals grew by 115, which increased the overall percentage for VAT from 12% to 21%. The volume of remaining tax heads of appeals received in 2019 is broadly similar to 2018.

In 2019, the TAC received 142 appeals which referenced either PAYE, PRSI or USC. The combined total of these accounted for 9% of all appeals received in 2019. 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.

The following table outlines the top four tax types which were referenced in appeals from 21 March 2016. The increase in the number of 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)	Total No. of Appeals Received	IT	VAT	VRT	CT
2016	901	472	87	104	52
2017	1,747	1,116	141	129	126
2018	1,689	906	196	205	131
2019	1,495	625	311	184	90

\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

The following table provides an outline of the main tax types disputed across appeals opened and closed since the TAC was established in 2016:

Main Tax Type of Appeals Opened / Closed since 2016*								
	Total	IT	CT	CGT	VAT	CAT	VRT	Other**
<b>2016</b>								
Appeals Received	2,357	1,495	139	226	174	57	112	154
Appeals Closed	(206)	(102)	(14)	(7)	(9)	(6)	(31)	(37)
<b>Closing Balance</b>	<b>2,151</b>	<b>1,393</b>	<b>125</b>	<b>219</b>	<b>165</b>	<b>51</b>	<b>81</b>	<b>117</b>
<b>2017</b>								
Appeals Received	1,747	1,116	126	97	141	35	129	103
Appeals Closed	(690)	(409)	(44)	(72)	(55)	(11)	(48)	(51)
<b>Closing Balance</b>	<b>3,208</b>	<b>2,100</b>	<b>207</b>	<b>244</b>	<b>251</b>	<b>75</b>	<b>162</b>	<b>169</b>
<b>2018</b>								
Appeals Received	1,689	906	131	99	196	40	205	112
Appeals Closed	(1,438)	(823)	(95)	(93)	(107)	(34)	(169)	(117)
<b>Closing Balance</b>	<b>3,459</b>	<b>2,183</b>	<b>243</b>	<b>250</b>	<b>340</b>	<b>81</b>	<b>198</b>	<b>164</b>
<b>2019</b>								
Appeals Received	1,495	625	90	81	311	51	184	153
Appeals Closed	(1,584)	(777)	(78)	(146)	(256)	(36)	(175)	(116)
<b>Closing Balance</b>	<b>3,370</b>	<b>2,031</b>	<b>255</b>	<b>185</b>	<b>395</b>	<b>96</b>	<b>207</b>	<b>201</b>

\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

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

The following table provides an outline of the main tax types disputed across appeals opened and closed since the TAC was established in 2016:

Main Tax Type of Appeals Opened / Closed since 2016 by Quantum*								
	Total	IT	CT	CGT	VAT	CAT	VRT	Other**
	€m	€m	€m	€m	€m	€m	€m	€m
<b>2016</b>								
Appeals Received	1,476.68	482.57	511.23	224.53	97.98	67.35	0.17	92.85
Appeals Closed	(10.99)	(7.85)	(0.13)	(0.15)	(0.27)	(0.28)	(0.06)	(2.25)
<b>Closing Balance</b>	<b>1,465.69</b>	<b>474.72</b>	<b>511.10</b>	<b>224.38</b>	<b>97.71</b>	<b>67.07</b>	<b>0.11</b>	<b>90.60</b>
<b>2017</b>								
Appeals Received	849.13	82.39	605.84	22.44	118.39	6.92	0.65	12.50
Appeals Closed	(240.63)	(35.51)	(147.60)	(44.63)	(9.89)	(1.34)	(0.13)	(1.53)
<b>Closing Balance</b>	<b>2,074.19</b>	<b>521.60</b>	<b>969.34</b>	<b>202.19</b>	<b>206.21</b>	<b>72.65</b>	<b>0.63</b>	<b>101.57</b>
<b>2018</b>								
Appeals Received	2,532.25	91.74	2,333.75	17.10	71.11	9.62	1.82	7.11
Appeals Closed	(569.01)	(263.86)	(188.55)	(18.65)	(23.04)	(64.10)	(0.37)	(10.44)
<b>Closing Balance</b>	<b>4,037.43</b>	<b>349.48</b>	<b>3,114.54</b>	<b>200.64</b>	<b>254.28</b>	<b>18.17</b>	<b>2.08</b>	<b>98.24</b>
<b>2019***</b>								
Appeals Received	378.93	43.76	263.45	10.56	30.07	13.71	0.54	16.84
Appeals Closed	(665.1)	(117.64)	(362.69)	(81.73)	(80.71)	(3.17)	(0.41)	(18.75)
<b>Closing Balance</b>	<b>3,751.26</b>	<b>275.60</b>	<b>3,015.30</b>	<b>129.47</b>	<b>203.64</b>	<b>28.71</b>	<b>2.21</b>	<b>96.33</b>

\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is estimated. For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

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

\*\*\* Seven appeals received in the final two weeks of December 2019 amounted to approximately €170 million. Had these appeals been omitted from the annual total, the quantum figure for appeals received in 2019 would have totalled €209 million.



## Multiple Tax Types

The table below indicates the total number of appeals processed by the TAC across four categories of appeal (2016, 2017, 2018 and 2019 appeals) in which more than one tax type was being appealed.

Number of Appeals with Multiple Tax Types since 21 March 2016				
No. of Tax Types	2019	2018	2017	2016
2	72	79	150	58
3	10	24	35	13
4		9	14	2
5			5	1
<b>TOTAL</b>	<b>82</b>	<b>112</b>	<b>204</b>	<b>74</b>

In 2018, 6.6% of all appeals were in relation to multiple tax heads. The percentage for multiple tax head appeals reduced to 5.5% in 2019. The following table outlines the main multiple tax types which were referenced in appeals in 2019.

Summary of main Multiple Tax Types referenced in appeals received in 2019			
Tax Types	Appeals received with 2 Tax Types	Appeals received with 3 Tax Types	Quantum €000*
IT (incl. PAYE/PRSI/USC)	32	7	3,844
IT / VAT	16		3,812
IT / LPT	2		8
IT / CAT	6		3,764
Other	16	3	782
<b>TOTAL</b>	<b>72</b>	<b>10</b>	<b>12,210</b>

\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

## Appeals Listed for Hearing in 2019

During 2019, 224 hearings affecting 624 appeals with a total quantum of €851m, were scheduled for hearing over 377 days. In 2018, 167 hearings were scheduled in relation to 248 individuals appeals with a quantum of €58m. The duration of the hearings ranged from a half day to 3 weeks.

The following provides information on the outcome of the hearings scheduled:

Outcome*	2019	Quantum €000**	2018	Quantum €000**
<b>Scheduled but deferred or withdrawn prior to hearing:</b>				
Settled / Withdrawn prior to hearing	25	348,831	17	12,250
Adjourned / Deferred prior to hearing	127	350,456	90	35,468
<i>Subtotal</i>	152	699,287	107	47,718
<b>Proceeded:</b>				
S949AA – Withdrawn for non-attendance	4	65	5	133
Settled after hearing	9	14,820		
Hearing commenced and adjourned	30	38,427	14	4,412
Hearing concluded for determination	29	98,753	41	5,452
<i>Subtotal</i>	72	152,065	60	9,997
<b>TOTAL</b>	<b>224</b>	<b>851,352</b>	<b>167</b>	<b>57,715</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 hearings adjourned may have settled or may have become '*concluded for determination*'.

\*\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

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 224 hearings were scheduled in 2019, 127 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 2018. 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 6 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 2019, a further 112 hearings had been scheduled for 2020. These appeals relate to 208 individual appeals with a total quantum of €181m and are estimated to take 200 days to hear. Further hearings will be scheduled as the year progresses.

The following provides information in relation to the quantum of tax at issue, in respect of appeals scheduled for hearing in 2019;

Outcome*	Category / Year opened					Total 2019	Quantum** 2019 €000
	Legacy	Pre- Est't	2016	2017	2018		
Scheduled but deferred before hearing:							
Settled / Withdrawn prior to hearing	13	3	4	5		25	348,831
Adjourned prior to hearing							
- By Appellant	35	8	15	16	1	75	270,777
- By Revenue	24	4	7	11	2	48	76,625
- By the TAC			3	1		4	3,054
Subtotal	72	15	29	33	3	152	699,287
Proceeded:**							
Determined				2		2	9
Settled after hearing	5	1	3			9	14,820
S949AA – Withdrawn for non-attendance	1	1	2			4	65
Hearing commenced and adjourned	20	3	1	3	3	30	38,427
Hearing concluded and awaiting determination	11	3	2	5	6	27	98,744
Subtotal	37	8	8	10	9	72	152,065
Total	109	23	37	43	12	224	851,352

\* 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.

\*\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

# Determinations

Part 40A, Chapter 5 of Taxes Consolidation Act 1997 contains provisions for the notification and publication of determinations by the Tax Appeals Commission (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 2019 and the relevant publication period are set out below.

Number of determinations issued in 2019						
	No. of Appeals Determined			Total No. of Appeals affected		
	2019	2018	2017	2019	2018	2017
Determinations issued without the need for a hearing (s. 949U)	48	17	8	49	17	8
Determinations issued relating to appeals heard in 2019	16			21		
Determinations issued relating to appeals heard in 2018	3	18		4	18	
Determinations issued relating to appeals heard in 2017*	41	3	11	42	5	13
Determinations issued relating to appeals heard in 2016	3	4	15	3	4	19
<b>TOTAL</b>	<b>111</b>	<b>42</b>	<b>34</b>	<b>119</b>	<b>44</b>	<b>40</b>

\* One determination issued in 2019 was related to 32 individual appeals. In accordance with the legislation, 32 separate determinations were issued.

A total of 71 determinations issued in 2019 were published on the TAC website prior to year-end. 40 determinations were published on the website in early 2020. However, the remaining 8 determinations disposed of an additional 5 appeals on 5 separate occasions and a single determination disposed of 3 separate appeals at once.

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. Where appropriate, parties are encouraged to avail of the section 949U facility for a determination without a hearing.

The following table provides information on the quantum of tax in dispute in relation to determinations issued in 2019 and the category/ year in which the TAC received the appeal:

	Category / Year received						Total 2019	Quantum* 2019 €000
	Legacy	Pre-Est't	2016	2017	2018	2019		
Determinations issued without the need for a hearing (s. 949U)		1	7	14	19	8	49	430
Determinations issued relating to appeals heard in 2019	12	2		2	5		21	40,226
Determinations issued relating to appeals heard in 2018	2			1	1		4	757
Determinations issued relating to appeals heard in 2017**		39	2	1			42	17,906
Determinations issued relating to appeals heard in 2016		3					3	123
<b>TOTAL</b>	<b>14</b>	<b>45</b>	<b>9</b>	<b>18</b>	<b>25</b>	<b>8</b>	<b>119</b>	<b>59,442</b>

\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figures is calculated.

\*\* One determination issued in 2019 was related to 32 individual appeals. For legislative purposes, 32 separate determinations were issued.

Summary of Determinations issued in 2019 by tax type				
	2019		2018	
Tax Type*	No. of Appeals Determined	Quantum** €000	No. of Appeals Determined	Quantum** €000
IT	67	14,670	26	1,220
VAT	10	21,493	5	1,855
VRT	30	138	10	21
CT	4	6,562	1	188
Other***	6	16,521		
CGT	1	21		
CAT	1	37	2	237
<b>TOTAL</b>	<b>119</b>	<b>59,442</b>	<b>44</b>	<b>3,521</b>

\* For the purposes of tax head analysis an appeal containing more than one tax head has been counted as one appeal categorised under its primary tax head. An analysis of multiple tax types can be found later in this chapter.

\*\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

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

The following table outlines the total number of appeals closed in 2019:

Reason for Appeal Closures	No. of Appeals Closed	Quantum* €000
Determinations Issued**	119	59,442
Dismissed	95	12,645
Merged / consolidated	4	800
Refused	184	8,358
Settled	730	351,253
Withdrawn by Appellant	452	232,596
<b>TOTAL</b>	<b>1,584</b>	<b>665,094</b>

\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

\*\* One determination issued in 2019 was related to 32 individual appeals. In accordance with the legislation, 32 separate determinations were issued.

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## Case Management Conferences in 2019

During 2019, 39 Case Management Conferences (CMCs), affecting 65 appeals, were scheduled by the Tax Appeals Commission (TAC). 23 of these CMCs related to 47 individual appeals. 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 dealt with at CMC may include the following:

- 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;
- identifying the time required by both parties to prepare additional written materials which will be required for the hearing;
- identifying 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;
- identifying whether, in addition to the provision of written materials, any other steps are required to be taken in advance of the hearing;
- clarifying the estimated time required for the hearing;
- agreeing a suitable time and date for the hearing which is convenient for all parties;
- dealing with preliminary issues.

The following provides information on the outcome of the CMCs scheduled in 2019:

Outcome	No. of CMCs held		Total No. of Appeals affected	
	2019	2018	2019	2018
<b>Scheduled but deferred before CMC:</b>				
Settled / Withdrawn prior to CMC	2	13	2	28
Adjourned prior to CMC	14	36	16	186
<i>Subtotal</i>	16	49	18	214
<b>Proceeded:</b>				
Settled / Withdrawn after CMC	1	10	1	28
Dismissed		17		18
Awaiting determination without a need to proceed to hearing	1	3	4	4
CMC to be re-scheduled	2	28	2	114
Hearing to be scheduled	5	39	22	195
Proceeding	14	13	18	27
<i>Subtotal</i>	23	110	47	386
<b>TOTAL</b>	<b>39</b>	<b>159</b>	<b>65</b>	<b>600</b>

Although 39 CMCs were scheduled in 2019, 14 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 6 months in advance so that, should an adjournment take place, there will be sufficient 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 2019:

Outcome*	Category / Year received					Total for 2019	Quantum** 2019 €000
	Legacy	Pre- Est't	2016	2017	2018		
Scheduled but deferred before CMC:							
Settled / Withdrawn prior to CMC		1		1		2	19,130
Adjourned prior to hearing	3	4	6	1		14	49,770
Subtotal	3	5	6	2		16	68,900
Proceeded:							
Settled / Withdrawn after CMC	1					1	190
Awaiting determination without a need to proceed to hearing	1					1	20,568
CMC to be re-scheduled			2			2	
Hearing to be scheduled	3	2				5	46,289
Proceeding	2	2	1	3	6	14	12,061
Subtotal	7	4	3	3	6	23	79,108
TOTAL	10	9	9	5	6	39	148,008

\* 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.

\*\* See Note 1 on page 47 which sets out how the 'quantum in dispute' figure is calculated.

# Progress Made on Appeals in 2019

In addition to closing 1,584 appeals in 2019, the TAC also:

- Issued 552 requests for a Statement of Case from Appellants in relation to 484 individual appeals and 528 requests from the Revenue Commissioners, relating to 480 individual appeals;
- Issued 39 requests seeking an Outline of Arguments from the Appellant in relation to 35 individual appeals and 38 requests from Revenue, relating to 35 individual appeals;
- Granted 349 requests (made by the Revenue Commissioners or by Appellants) for an extension of time to comply with a TAC direction, in relation to 228 appeals;
- Granted a request for a stay in proceedings on 39 occasions, regarding 36 appeals;
- Held 39 Case Management Conferences in relation to 65 appeals;
- Listed 224 hearings in relation to 624 appeals;
- Issued 111 determinations in relation to 119 appeals.

The following table outlines the position at year-end:

Category	No. of Appeals on Hand		Difference
	End 2018*	End 2019	
Legacy	731	526	(205)
Pre-Establishment	170	96	(74)
2016	278	192	(86)
2017	1,082	878	(204)
2018	1,198	841	(357)
2019		837	837
<b>TOTAL</b>	<b>3,459</b>	<b>3,370</b>	<b>(89)</b>

\* A review of all appeals opened and closed on the CMS system from 21 March 2016 took place in 2019. Each individual appeal was reviewed separately. Any inconsistencies or duplications were analysed and amended accordingly, resulting in the above figures differing slightly to the Annual Report 2018 figure.

Correspondence issued by the TAC in progressing appeals in 2019			
	Appellant	Revenue	Total
No. of Extensions Granted	180	169	349
No. of Requests for Additional Information	259	87	346
No. of Hold/Stay Requests Granted	22	17	39
No. of Statements of Case Requested	552	528	1,080
No. of Outlines of Arguments Requested	39	38	77

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## Governance and Administration

The Governance structure of the Tax Appeals Commission will change in 2020 with the appointment of a Chairperson in accordance with the Finance (Tax Appeals and Prospectus Regulation) Act 2019. Recruitment for this role commenced in January 2020.

The Tax Appeals Commission is presently comprised of two permanent Appeal Commissioners. Their primary functions are prescribed by section 6 of the Finance (Tax Appeals) Act 2015. In addition to their work in relation to the processing, adjudication and determination of appeals, the Appeal Commissioners are responsible for the proper, efficient and effective operation of the Tax Appeals Commission.

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 preceding year; this report is submitted in discharge of that duty. The Appeal Commissioners are also accountable in respect of any other reports requested by the Minister pursuant to section 21 of the 2015 Act.

The Tax Appeals Commission is a Civil Service body under the aegis of the Department of Finance and, as such, is guided by the Civil Service Code of Standards and Behaviour in its management and operations. The Commission's Code of Governance, which is based on the Code of Standards, will be updated on the appointment of the Chairperson, in line with the O'Donoghue Report.

### Case Management System

In September 2019, the Tax Appeals Commission (TAC) appointed a new IT manager with responsibility for maintaining and improving the current case management system (CMS). In Q4 2019, the Commission began a project to assess the feasibility of developing a new case management system that can help support the TAC in the achievement of its strategic goals, in accordance with the recommendation contained in the O'Donoghue Report.

In 2019, the case management system in use within the TAC was maintained and improved in the following key areas.

- Reporting: Improved statistics, delivery time, ease of use and delivery of reports.
- Process improvements: Increased automation of case management.
- Security.

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Reporting was a key area of focus in 2019, as the delivery of more accurate reporting will allow for improved productivity, analysis and decision-making, and organisational communication. Reports generated are used to monitor and improve delivery within the TAC and generate information required to report to other government bodies, e.g. the Department of Finance or members of the Oireachtas.

The development of the TAC's case management system aims to improve delivery of services to stakeholders, to automate more steps in the appeals process, to provide more up to date information, to produce reliable and timely statistics to facilitate management of the appeals process, and to facilitate reporting to external stakeholders.

The Tax Appeals Commission also plans a number of other improvements in the area of IT in 2020, namely Infrastructure, Network, Telephony, Security and Hardware.

### Case Management and Scheduling

In September 2019, two additional Temporary Appeal Commissioners were appointed to the Tax Appeals Commission (one on a part-time basis). A further Temporary Appeal Commissioner took up office in December 2019. This has allowed for the scheduling of additional hearings and the progression of determinations under the section 949U procedure (adjudication without a hearing).

During 2019, 224 hearings in relation to 624 appeals with a total quantum of €851 million were scheduled for hearing over 377 days. In 2018, 167 hearings in relation to 248 appeals with a total quantum of €58 million were scheduled for hearing over 202 days. While there was a lack of availability of hearing rooms in 2018, the number of complex hearings scheduled in 2019 was greater, as was the aggregate quantum of monies under appeal in respect of the 2019 appeals. The duration of the hearings ranged from a half day to three weeks.

There were 39 Case Management Conferences (CMCs) held in relation to 65 appeals in 2019 with a quantum of €148 million. In comparison, there were 159 CMCs scheduled in 2018. CMCs were found to be beneficial in progressing older appeals or appeals in which an impasse had arisen. This resulted in a large number of legacy appeals scheduled in 2018. There was not the same necessity to schedule CMCs in 2019.

As of the close of 2019, a further 110 hearings in relation to 188 individual appeals with a quantum of €188 million have been scheduled for hearing in 2020. The scheduling unit has also created space in the schedule post hearing, to allow the Commissioners to draft their written determinations. If a scheduled appeal is settled prior to hearing or adjourned, contingency planning by the scheduling unit provides for other appeals to be scheduled at short notice.

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## Code of Governance and Statement of Strategy

A three-year Statement of Strategy was published by the Tax Appeals Commission in 2017 and covers the period 2017-2020. A review of the Statement of Strategy will be carried out in conjunction with the revision of the Code of Governance following the appointment of a Chairperson.

## Risk Management and Internal Audit

### Risk Management

During 2019, the Tax Appeals Commission (TAC) established an Audit & Risk Committee (ARC). The process was co-ordinated by the Tax Appeals Commission's Chief Operations Officer. The Committee held its first meeting in October 2019.

A draft corporate risk register was prepared in advance of the December ARC meeting. The operational and strategic risks were identified and evaluated in light of the Tax Appeals Commission's objectives as set out in the Statement of Strategy 2017-2020.

The risk register identifies the key risks facing the Tax Appeals Commission. These risks have been evaluated and graded according to their likelihood and impact. The risk register details the actions required to mitigate risks.

Following review by the Tax Appeals Commission, the draft risk register was presented to the ARC. The ARC reviewed the risk register in December 2019 and provided feedback to the Commission.

The Tax Appeals Commission is in the process of formulating and finalising a Risk Management Policy and System. When finalised, this will be implemented to actively monitor and update the TAC's risk register to ensure appropriate actions are taken to mitigate risks that could impact on the achievement of the TAC's objectives.

In 2019 a Data Protection Officer was registered with the Data Protection Commission in compliance with the General Data Protection Regulation (GDPR). The Data Protection Officer underwent additional training. Support on documenting data protection policies and procedures, including a Data Protection Policy, was provided by a secondee from the Department of Finance. All staff at the Tax Appeals Commission attended GDPR training and have been briefed on the policy procedures.

### Internal Audit

During 2019 the internal auditors issued reports in respect of the following:

- 
- Review of Records management and Freedom of Information systems, policies and procedures.
  - Review of the Effectiveness of Internal Controls.

In September 2019, a tender process was carried out for internal audit services through the Office of Government Procurement (OGP). The contract was awarded and the Internal Auditors will present their 3-year plan to the Tax Appeals Commission and the ARC in early 2020.

### Comptroller & Auditor General

Having conducted an interim and final audit in respect of the year ended 31 December 2018, the Office of the Comptroller & Auditor General issued their opinion on the Appropriation Account, the Statement of Internal Financial Control, and other matters on 23 September 2019.

The C&AG agreed that the Appropriation Accounts prepared by the Commission properly presents the Receipts and Expenditure of Vote 10 - Tax Appeals Commission for year ended 31 December 2018. The C&AG expressed the opinion that they had obtained sufficient and appropriate evidence in carrying out their audit. In respect of the Statement of Internal Financial Controls the C&AG has responsibility to report in relation to the information contained in that statement by exception only. For the year ended 31 December 2018 the C&AG stated that there was *'nothing to report in that regard'*.

The interim C&AG audit in respect of the year ended 31 December 2019 took place in January/February 2020 and the final C&AG audit will take place after 31 March 2020.

### HR Function

The HR Officer has responsibility for the delivery of the HR role in the Tax Appeals Commission (TAC). This is done in conjunction with services provided by the Revenue Commissioners under a Service Level Agreement ('SLA'). The SLA provides that Revenue will give administrative support to the implementation of the HR function in the Tax Appeals Commission.

In 2019, the HR Officer supported staff in implementing the PMDS process and meeting their learning and development requirements. Areas where training was provided included IT, risk management, GDPR, HR, interviewing, communications, project management and induction. The Case Managers in the TAC also provided in-house training modules on specific areas of tax. The Department of Finance further supported the TAC in the development and progression of its training objectives by facilitating the attendance of TAC staff on its Diploma in Taxation Policy and Practice Course.

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In March 2019, the TAC introduced a manual time and attendance system for grades at Higher Executive Officer and below. This system supports the Commission's compliance with the Organisation of Working Time Act. A contract is now in place for the installation of an electronic system in early 2020.

In 2019, the Commission continued to be unable to access the HR Shared Services platform. However, a communication link exists between HR Shared Services and the Tax Appeals Commission with records being updated manually. The Tax Appeals Commission's payroll is managed by the Payroll Shared Services Centre.

### Recruitment

In 2019, the Tax Appeals Commission (TAC) sought to increase its staff complement through recruitment in accordance with the recommendations contained in the O'Donoghue Report. The Minister for Finance, Mr. Pascal Donohoe TD, approved the appointment of three Temporary Appeal Commissioners. Following his approval, two full-time and one part-time Temporary Appeal Commissioners were appointed to the TAC in Q3 and Q4 of 2019.

A permanent Chief Operations Officer at Principal Officer level commenced work at the TAC in February 2019. This followed 2 seconded Principal Officers from the Department of Finance who filled the role on a fixed-term basis.

In 2019, the TAC also increased its staff complement through recruitment from the Public Appointment Service panels. Three Assistant Principal Officers, one of whom was an ICT Manager, were appointed from the Public Appointment Service (PAS) panels. A Higher Executive Officer, four Executive Officers and four Clerical Officers were also recruited through PAS.

Two internal competitions for promotion were held in the TAC in 2019. One was for promotion from Clerical Officer to Executive Officer and one appointment was made from this competition. Another competition was held for promotion from Executive Officer to Higher Executive Officer and two appointments were made from this panel. These two competitions were held in accordance with the Office of the Commission of Public Service Appointments (CPSA) guidelines.

The Finance (Tax Appeals and Prospectus Regulation) Act 2019 which was signed into law in December 2019 provides for the appointment of a Chairperson to the TAC. The recruitment process for a Chairperson began in January 2020. The TAC expects to reach its full staff complement in 2020.

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### Section 21 Reports

The Tax Appeals Commission (TAC) submitted its Annual Report for 2018 to the Minister for Finance in March 2019, in compliance with section 21(1) of the Finance (Tax Appeals) Act, 2015.

During 2019, the TAC did not 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.

### Engagement with 3rd Parties

The Tax Appeals Commission had significant interaction with 3rd parties during 2019, including:

- The Office of the Revenue Commissioners;
- The Office of Public Works;
- The Office of Government Procurement;
- The Office of the Comptroller & Auditor General;
- The Public Appointments Service;
- The Irish Tax Institute;
- The UK Tax Tribunal;
- The Japanese National Tax Agency;
- The International Association of Tax Judges;
- The National Archives.

These 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 2020. We will continue to work with these bodies to progress mutually beneficial outcomes.

### Procurement

The Tax Appeals Commission conducted several procurement exercises during 2019. These included the procurement of:

- Legal services;
- Internal Audit services;
- Time and Attendance System;
- ICT Software/Hardware;
- Design and Print of Annual Report.



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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.

### **Review of the Workload and Operations of the Tax Appeals Commission**

A report on the workload and operations of the Tax Appeals Commission by Niamh O'Donoghue, former Secretary General of the Department of Social Protection, was published in October 2018. The Report made a number of recommendations in relation to the staffing, resources, governance and operations. The report was welcomed by the Tax Appeals Commission and significant progress was made during 2019 to implement its recommendations with the support of the Minister and the Department of Finance.

In accordance with the Report's recommendations, improvements have been made in the areas of governance, organisational structure, case management, corporate supports and operations. In 2020, the Tax Appeals Commission will continue to work towards completion of the improvements recommended in the Report, particularly in the areas of IT and process improvement.

## Funding and Expenditure

The Tax Appeals Commission (TAC) is funded through Vote 10 of the Estimates as approved by Dáil Éireann. The allocations to the TAC have increased significantly over recent years to cater for the increased expenditure required for additional resources, including staff and IT systems, which arose from the reform of the tax appeals system. The allocations (“Estimates”) to the Commission in 2017, 2018 and 2019 were €1.605 million, €1.626 million and €3.208 million respectively.

The below table sets out an analysis of the TAC’s administration expenditure in 2019.

Expenditure Item	2019 Estimate Provision	2019 Outturn	2018 Outturn	2017 Outturn
	€,000	€,000	€,000	€,000
Salaries, wages and allowances	2,508	1,407	1,148	753
Travel and subsistence	40	2	4	1
Training and development and incidental expenses	100	73	98	91
Postal and telecommunications services	20	13	8	9
Office equipment and external IT services	420	162	117	252
Office premises expenses	50	23	4	16
Consultancy and other services	70	93	48	0
<b>Total Expenditure</b>	<b>3,208</b>	<b>1,773</b>	<b>1,426</b>	<b>1,122</b>

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 2019 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 2019 annual report on the accounts of the public services.

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## Appendix - Customer Service Charter

The Tax Appeals Commission (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 insofar 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 TAC, 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 policies and procedures are kept under review by management within the organisation and are subject to external audit by the C&AG.





