TITHE AN OIREACHTAIS

AN COISTE UM CHUNTAIS PHOIBLÍ

TUARASCÁIL

Scrúdú ar Nithe a Bhaineann le Fáltais ó Cháin Chorparáide

Meitheamh 2018

HOUSES OF THE OIREACHTAS

COMMITTEE OF PUBLIC ACCOUNTS

REPORT

Examination of matters in relation to Receipts from Corporation Tax

June 2018

32/CPA/007

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GLOSSARY

Close company	An Irish resident company which is under the control of five or fewer participators or any number of shareholders who are directors.
Section 110 company	A Section 110 company is an Irish tax resident special purpose vehicle ("SPV") which holds and/or manages "qualifying assets" and which qualifies under Section 110 for a special tax regime that enables the SPV to attain "tax neutrality": i.e. the SPV pays no Irish taxes.
Knowledge Development Box	The Knowledge Development Box is a special instance of the use of Intellectual Property (IP). The term "box" means a separate set of rules. When a company develops its own IP, and uses that in the manufacture of product incorporating that IP, the profits on that product are taxed at a special reduced rate, i.e. 6.25%, half of the 12.5% standard rate.
REIT	A Real Estate Investment Trust is a company that earns rental income from commercial or residential property. It is exempt from Corporation Tax on income from their property rental business or on chargeable gains made on the disposal of assets of their property rental business. A REIT may be a single company or a group of companies.
Double Taxation Treaty	A Double Taxation Treaty is a formal agreement between two countries to avoid double taxation. Under these treaties cross-border businesses in their home countries receive credit for taxes paid abroad or an exemption or a deduction on earnings abroad.

CHAIRMAN'S PREFACE

The Committee of Public Account's examination of Corporation Tax arose from a review carried out by the Comptroller and Auditor General (C&AG) of the factors contributing to the volatile and highly concentrated nature of Corporation Tax receipts at a sectoral and national level in recent years.

Corporation Tax accounted for 15% of total tax receipts in 2016 but this tax has displayed considerable volatility in recent years. 70% of all Corporation Tax is paid by the top 100 companies and 37% by just 10 companies. Such a concentration represents a serious risk to the Exchequer and the Committee wished to understand fully this risk and how it might be best dealt with.

The Committee held three meetings in relation to its examinations during which it received a considerable amount of briefing information from the Department of Finance and the Office of the Revenue Commissioners. An independent tax expert was engaged to support the work of the Committee.

On behalf of the Committee, I would like to express my gratitude to everyone who participated in the hearings and also to those who provided detailed briefing in advance to assist the Committee in its deliberations. I would also like to express my appreciation to the Members of the Committee and the Secretariat for their work in relation to the Committee's consideration of the issues and preparation of this report.

I believe that this report is an important contribution to understanding the importance of Corporation Tax and the implications for the national finances. I believe that the recommendations made in this report need to be carefully considered and acted upon by the Department of Finance and the Office of the Revenue Commissioners.

I commend the Committee's Report to Dáil Éireann.

Sean Fleming

Seán Fleming, TD
Chairman, Committee of Public Accounts
June 2018

CONCLUSIONS AND RECOMMENDATIONS

It is the view of the Committee that:

CORPORATION TAX RECEIPTS

A.1 The highly concentrated nature of Corporation Tax receipts represents an unacceptable level of risk to the sustainability of the Corporation Tax regime and to overall exchequer income. The Department of Finance should carry out a review of the Corporation Tax system and bring forward proposals to address the risk associated with its highly concentrated nature.

A.2 It is not possible for Revenue to provide accurate details on PAYE paid by participators in close companies. Therefore, the Committee is not satisfied that Revenue can demonstrate that the application of close company rules is achieving its intended purpose. Revenue should determine and gather the appropriate information required to assess the effectiveness of the close company rules.

CARRY FORWARD OF TRADING LOSSES

A.3 Revenue data is lacking in detail on the breakdown of losses carried forward by companies. Revenue should:

- put in place procedures to analyse losses carried forward in order to identify those relating to trading losses and those relating to unused capital allowances;
- carry out an age analysis of current losses carried forward and put in place procedures to ensure that such analysis is carried out on a regular and systematic basis.

A.4 Greater priority should be given to the sustainability of Corporation Tax receipts on an annual basis. The carry forward of losses totalling €14.94 billion in 2016, by some 26,000 companies, reduced Corporation Tax receipts by €1.9 billion. The Department of Finance should consider the introduction of a 10 year time limit or sunset clause and/or other restrictions in respect of losses carried forward.

THE EFFECT OF DOUBLE TAXATION AGREEMENTS

A.5 A detailed analysis of double taxation relief (which reduced Corporation Tax receipts by €948m in 2015) should be carried out. Ireland's double taxation agreements with countries that do not provide for an exchange of information should be identified. The Department of Finance should ensure mechanisms are in place to verify any claims for double taxation relief made in Ireland by companies that are non resident in Ireland.

EFFECTIVE RATE OF CORPORATION TAX

A.6 The Department of Finance has identified eight approaches for calculating the effective rate of Corporation Tax on company profits. Of the eight it has identified two approaches as the most appropriate to measure the effective rate of Irish Corporation Tax. The Department of Finance should examine this matter such that there is general agreement on a single most appropriate method for calculating the effective rate of Corporation Tax on company profits.

REAL ESTATE INVESTMENT TRUSTS

A.7 The high percentage of Irish real estate being owned by non-Irish and non-EU institutions who may be liable for tax in other jurisdictions poses a risk to Ireland's tax base. The Department of Finance should carry out a review of the Real Estate Investment Trust (REIT) regime to ensure that domestic and EU ownership is being encouraged appropriately.

REPORT OF COMMITTEE ON EXAMINATION OF CORPORATION TAX

INTRODUCTION

1. The Public Accounts Committee (the Committee) has carried out an examination of receipts from Corporation Tax. The examination followed on from a review carried out by the Comptroller and Auditor General (C&AG) of the factors contributing to the volatile and highly concentrated nature of Corporation Tax receipts at a sectoral and national level in recent years. The C&AG reported on his review in Chapter 20, Corporation Tax Receipts, of his Report on the Accounts of the Public Services 2016.

2. The findings of the C&AG's review can be summarised as follows:

   - Three sectors of the economy account for around 70% of the total Corporation Tax receipts — financial and insurance activities; manufacturing (including pharmaceutical manufacturing); and information and communications;
   - In 2016, 37% of Corporation Tax receipts were paid by the top 10 taxpayers. 70% of receipts were paid by the top 100 taxpayers;
   - In 2015, the average effective Corporation Tax rate applying to all companies was 9.8%;
   - 13 of the 100 companies with the highest taxable income had an effective tax rate of less than 1%, reflecting the use of significant tax credits and reliefs, in particular double taxation relief and research and development tax credits.

3. The Committee's examination focused on the following aspects of Corporation Tax receipts:

   - The risk to the Exchequer presented by the concentration of Corporation Tax receipts;
   - Issues relating to tax residency;
   - The effect of double taxation agreements;
   - Tax Reliefs and the effective rate of Corporation Tax;
   - The carry forward of trading losses;
   - Real Estate Investment Trusts;
   - State Aid and the Apple case.

   Other issues relating to Corporation Tax raised during the Committee's examination included charities, Section 110 companies, and international comparisons.

4. The Committee's consideration of Corporation Tax was assisted by the expertise of Dr Brian Keegan of Chartered Accountants Ireland who was contracted by the Committee for this purpose.

5. The Committee invited a selection of Irish and foreign owned multi-nationals[1] to voluntarily assist it during the course of its examination. Only one of the invitees, GlaxoSmithKline plc, agreed to meet with the Committee. However, the Committee decided not to proceed and engage with just one company as it was unlikely to have been representative of the multinational sector.

6. The Committee's examination was conducted over three meetings listed as follows:

Table 1: List of Committee Meetings

Date	Witnesses	Matters discussed
30 November 2017	Revenue Commissioners	Chapter 20 Corporation Tax Receipts
15 February 2018	Dr Brian Keegan Chartered Accountants Ireland	Private meeting
22 February 2018	Dr Brian Keegan Chartered Accountants Ireland	Public Briefing meeting
	Revenue Commissioners and Department of Finance	Chapter 20 Corporation Tax Receipts

CONCENTRATION OF CORPORATION TAX RECEIPTS AND RISK TO THE EXCHEQUER

7. Corporation Tax is a direct tax chargeable on a company's profits and collected by the Revenue Commissioners (Revenue). The tax is charged on profits (income and gains), wherever arising (with some exceptions), of companies deemed to be tax resident in the State by virtue of having been incorporated in Ireland subject to a number of exceptions which look at where the company is managed and controlled.

8. Companies that are not resident but which trade in the State through a branch or agency are subject to Corporation Tax in respect of profits attributable to the branch or agency.

9. The Corporation Tax Code distinguishes between trading income and passive income. For a company to avail of the 12.5% rate of Corporation Tax on its trading profits, the company must demonstrate a degree of regular commercial (i.e. trading) activity associated with generating

[1] *The other companies invited were: Apple, Citibank, CRH plc, Glanbia, Google, JP Morgan, Kerry Group, Pfizer, Ryanair DAC*

the income. Passive income is the general term for income derived from investments, e.g. rental income from property investments, which is subject to Corporation Tax at 25%.

10. In general, where a company owns an asset and the mere ownership of that asset produces an income, the company's income from this asset will not be trading income and the income will be taxed at the 25% rate of Corporation Tax accordingly.

11. As the difference between the Corporation Tax rates on trading income and passive income is substantial, Revenue has procedures in place to ensure that the correct Corporation Tax rate is applied based on the circumstances of a company's activities. In particular, the establishment of a new company in Ireland with non-Irish directors or shareholders will generally attract attention at the corporation and/or VAT registration stage and Revenue can review if the company is actually trading in substance in Ireland for the purposes of accessing the 12.5% rate.

12. However, the Committee was informed that there is no clear definition of "trading" in Irish tax legislation. A significant body of case law on this subject along with a list of established and long standing tests known as the "Badges of Trade" and Revenue guidance, are used in assessing if an activity is trading.

Table 2 details the rates of Corporation Tax in Ireland:

Table 2: Corporation Tax Rates

Trading income	12.5%
Passive income	25%
Capital gains	33%
Income attributable to the Knowledge Development Box	6.25%
Close Company Surcharge: • Service companies • Other companies	 15% 20%

13. Revenue was unable to provide the Committee with an estimate of the amounts collected under each tax rate and stated that this is due to the manner in which the tax assessment calculation operates. However, Revenue did provide information in respect of taxable income returned at the different rates from Corporation Tax returns filed for 2014 and 2015. This information is detailed in Table 3:

Table 3: Taxable Income Returned

	2014 €m	2015 €m
Taxable income – 12.5% rate	48,249	63,000
Taxable income – 25% rate	2,454	2,077
Capital gains	1,595	2,536

14. Revenue also informed the Committee that the amount of tax liability associated with companies claiming Knowledge Development Box (KBD) relief is less than €5m for 2016. Revenue stated that it is possible that this figure could change due to the 24 month period available to claim the relief. KDB is a new tax relief introduced by the Finance Act 2015 for companies whose accounting period commences on or after 1 January 2016. The initiative applies to income which arises from patents, copyrighted software and, in relation to smaller companies, other intellectual property such as an invention which could be patented. A company which qualifies for the regime will be entitled to a deduction equal to 50% of its qualifying profits. In effect, the profits arising from patents, copyrighted software or Intellectual Property equivalent to a patentable invention are taxed at 6.25% (i.e. half of the 12.5% rate).

15. The C&AG's examination found that Corporation Tax receipts have displayed volatility in recent years and that Corporation Tax receipts accounted for 15% of total tax receipts in 2016. Information provided by Revenue to the Committee confirmed this volatility. The outturn for 2015 tax receipts was €6.873 billion which was €2.298 billion or 50% up over the figure forecast for the year. For 2014 the outturn was just some 5.4% over the figure forecast. The Committee requested and obtained information in Table 4 from Revenue in regard to receipts under all tax heads from 2003 to 2017.

16. Table 4 shows that after PAYE Income Tax and VAT, Corporation Tax is generally the next highest yielding tax head. Table 5 shows that Corporation Tax as a percentage of total net tax receipts fluctuated during the period 2003 to 2017 but has made a significant contribution to Exchequer income, in the range of 10% to 16% depending on the year.

Table 4: Total Receipts by Tax Head 2003 to 2017

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
PAYE Income Tax	7,209	8,111	8,637	9,389	10,155	10,069	8,488	7,777	8,496	9,058	9,508	10,778	10,950	11,985	13,071
PAYE USC												3,171	3,640	3,287	3,131
Self-Assessed Income Tax	1,342	1,892	1,961	2,047	2,094	1,519	846	815	811	883	1,039	1,332	1,434	1,915	1,844
Self-Assessed USC												476	534	681	593
Universal Social Charge (Total)									3,114	3,790	3,930				
Life Assurance Exit Tax												130	247	228	184
Deposit Interest Retention Tax	153	144	167	254	472	654	614	446	473	581	499	435	300	170	118
Professional Services Withholding Tax	255	323	342	400	537	604	597	564	555	542	542	533	564	583	634
Dividend Withholding Tax	196	225	232	285	325	350	156	218	179	252	234	195	600	272	324
Income Levy							1,138	1,446	184	45		4	3	2	
Other Income Taxes												78	71	49	73
VAT - on imports	927	1,021	1,217	1,469	1,540	1,367	991	1,053	1,089	1,471	1,274	1,478	1,577	1,546	1,733
Internal VAT including VAT MOSS	8,789	9,696	10,908	11,982	12,978	12,065	9,647	9,050	8,663	8,695	9,051	9,679	10,361	10,894	11,545
Excise	4,736	5,066	5,391	5,696	6,003	5,600	4,901	4,835	4,872	4,759	4,986	5,134	5,463	5,801	6,016
Corporation Tax	5,155	5,335	5,503	6,685	6,393	5,071	3,889	3,944	3,500	4,215	4,270	4,617	6,873	7,352	8,201
Stamp Duty on Shares	256	261	324	406	609	419	208	182	195	172	252	282	424	410	449
Stamp Duty on Property	1,075	1,461	2,002	2,989	2,381	1,045	330	199	135	105	152	275	301	389	381
Other Stamp Duty	334	348	348	236	254	299	464	581	1,053	1,149	929	1,122	551	380	365
Capital Gains Tax	1,436	1,528	1,982	3,099	3,097	1,424	545	345	416	413	367	539	692	819	826
Capital Acquisitions Tax	214	190	249	343	391	343	256	237	243	283	279	356	400	415	460
Customs	137	174	226	255	273	245	208	229	240	242	248	275	331	311	335
Local Property Tax											316	493	469	463	476
TOTAL NET RECEIPTS	**32,214**	**35,775**	**39,490**	**45,536**	**47,502**	**41,074**	**33,279**	**31,918**	**34,221**	**36,656**	**37,875**	**41,383**	**45,786**	**47,954**	**50,758**

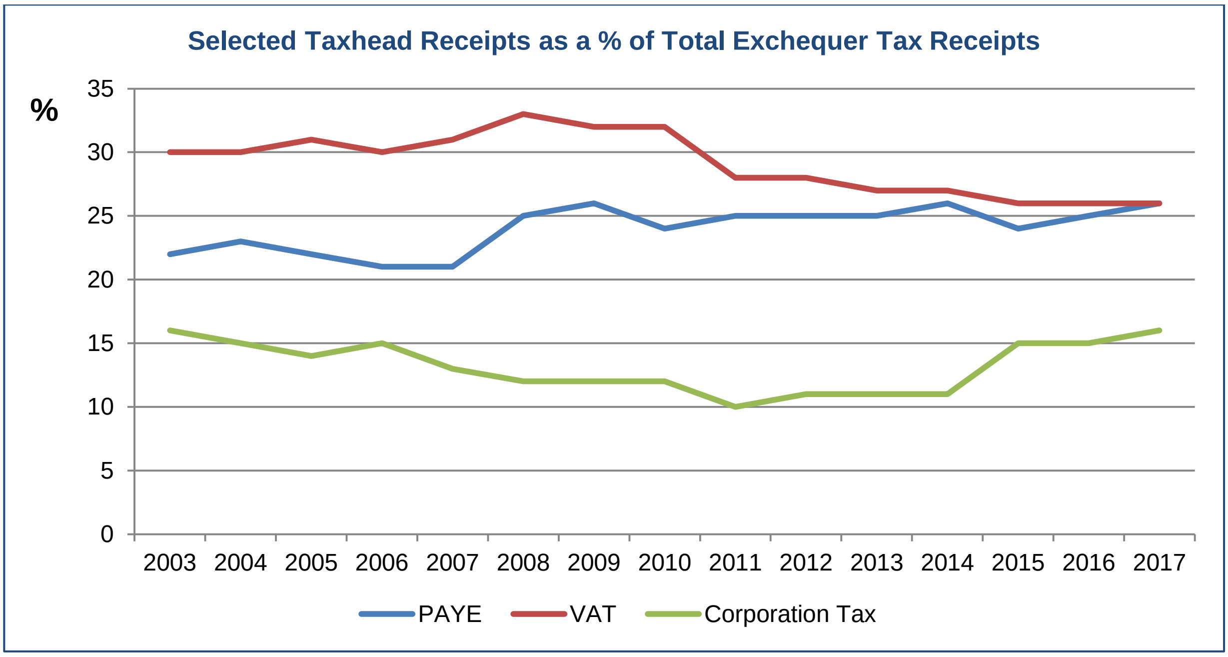
Table 5: Corporation Tax as a Percentage of Total Net Tax Receipts 2003 to 2017

2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
16%	15%	14%	15%	13%	12%	12%	12%	10%	11%	11%	11%	15%	15%	16%

17. The Committee notes that Revenue's 2017 Annual Report published on 25 April 2018 shows that Corporation Tax receipts were €8.2 billion in 2017 and that total tax receipts was €50.8 billion.

18. The following chart compares the trend in Corporation Tax receipts with receipts under the PAYE and VAT taxheads over the period 2003 to 2017 expressed as a percentage of total tax receipts to the Exchequer. PAYE figures used do not include USC.

Table 6: Selected Taxhead Receipts as a Percentage of Total Exchequer Tax Receipts



19. Revenue informed the Committee that:

- there are approximately 175,000 companies incorporated in Ireland;
- a significant proportion of these are either dormant or have charitable status;
- approximately 44,000 (25%) of the 175,000 registered companies pay Corporation Tax;
- 36% of Corporation Tax paid is accounted for by 10 companies and 70% is paid by 100 companies.

20. The Committee notes that in its *Draft Stability Programme Update for 2018*, the Department of Finance recognises the risk to public finances posed by the concentration of payments of Corporation Tax by the top 10 companies. The Update includes a fiscal risk assessment matrix. In the matrix the only risk rated with a High likelihood is that in relation to Corporation Tax concentration. The matrix includes the following commentary on the impact of this risk: "*Corporation Tax revenue has increased significantly in recent years and the 'Top10' payers contribute just under 40% of this tax, leaving this component of the public finances exposed to idiosyncratic shocks creating a concentration risk".*

21. Revenue also informed the Committee that the majority of the 175,000 companies incorporated in Ireland are categorised as "close" companies. A close company is an Irish resident company which is under the control of five or fewer participators (more generally these are the shareholders) or under the control of any number of shareholders who are directors.

22. Revenue stated that it applies specific anti-avoidance rules to close companies. The rules are designed to prevent situations where the profits of close companies are accumulated in a company. In the normal course of events profits are distributed to shareholders who then pay income tax on these distributions. The close company rules seek to prevent shareholders or their relatives and business associates from extracting funds or value from a close company in a manner that avoids or reduces potential tax liabilities. Most close company profits are taxed through the income tax system which reduces the number of companies that ultimately pay Corporation Tax.

23. Close company surcharge provisions are designed to discourage the retention of passive income (i.e. investment and rental income) and professional income in close companies. The surcharge takes the form of an additional Corporation Tax liability of 20% (or 15% in the case of a service company) if the close company has not distributed the relevant income during the accounting period or within 18 months of the end of the accounting period.

24. At the request of the Committee, Revenue provided information on the number of close companies in 2014 and 2015, the amount of Corporation Tax paid by these companies, an estimate of PAYE paid by participators in these companies and details of the number of companies and amounts paid in regard to the close company surcharge in 2014 and 2015. The information provided is summarised in Table 7.

Table 7: Close Companies

	2014	2015
Number of close company Corporation Tax returns	110,898	116,421
Estimated Corporation Tax liability	€770m	€632m
Estimate of PAYE liability of shareholders and other participators in close companies	€128m	€134m
Number of companies returning close company surcharges	4,794	4,607
Amount of surcharge returned	€20.7m	€21.4m

25. Revenue informed the Committee that it is not possible to provide details on the PAYE paid by participators in close companies. The figures shown are the estimated PAYE liability of shareholders and other participators in close companies.

26. The Committee noted the C&AG's findings in regard to the proportion of Corporation Tax contributed by the eleven sectoral categories of the economy. Table 8 outlines the C&AG's findings in regard to the proportion of total tax paid by the top four sectors of the economy.

Table 8: Proportion of Total Tax Paid by the Top Four Sectors of the Economy

Economic Sector	% of total Corporation Tax paid in 2016
Financial and Insurance activities	28%
Manufacturing (including pharmaceutical manufacturing)	25%
Information and Communications	17%
Wholesale and Retail trade	14%
Total for remaining seven sectoral categories	16%
Total	**100%**

27. In its April 2018 publication, Corporation Tax 2017 Payments and 2016 Returns, Revenue states that out of the 2017 top 100 companies, there were 51 US companies paying €4.25 billion in Corporation Tax and a small number (less than 10) UK companies paying €128 million. There were just over 10 Irish companies in this category, paying €370 million, while other countries in the top 100 accounted for a further €1.11bn in Corporation Tax payments.

ISSUES RELATING TO TAX RESIDENCY

28. Section 23A of the Taxes Consolidation Act 1997 changed tax residency rules such that any company incorporated in Ireland on or after 1 January 2015 is deemed to be tax resident in Ireland. This rule applies unless the company is treated as tax resident in another country under the provisions of a Double Taxation Treaty. Irish tax resident companies pay Irish Corporation Tax on their worldwide profits. Companies that are not tax resident in Ireland but trade through a branch or agency in Ireland are required to pay Irish Corporation Tax on their Irish branch or agency income.

29. Revenue also provided information in relation to changes to tax residency of companies incorporated in Ireland prior to January 2015:

- The change in the residency rule does not take effect for companies incorporated before 1 January 2015 until the end of a transition period, which ends on 31 December 2020;
- During the transition period, a company incorporated in Ireland before 1 January 2015 may still be regarded as resident in Ireland where any of the following circumstances apply:
  a) The company is managed and controlled in Ireland; or
  b) The company is regarded as resident in Ireland in accordance with an anti-avoidance provision introduced by Finance Act 1999; or

c) The company is regarded as resident in Ireland in accordance with provisions introduced by Finance Act 2013 to ensure that an Irish incorporated company cannot be 'stateless', in terms of its place of tax residence, as a result of the mismatch between Ireland's company residency rules and those of a country with which Ireland has a double taxation treaty. The term commonly used to describe this previously stateless situation is *"double Irish".*

30. If an Irish incorporated company is not regarded as Irish resident during the transition period under any of the three rules referred to in a) to c), it will be regarded as resident in Ireland from 1 January 2021 unless, under the terms of an applicable double taxation agreement with Ireland, it is regarded as resident in another country.

31. The Committee noted that companies that do not have a branch in Ireland but receive income from Irish sources, such as rent from Irish property, pay income tax on that Irish income and the rate is currently 20%.

THE EFFECT OF DOUBLE TAXATION AGREEMENTS

32. The Committee heard evidence that a company is considered to be resident for tax purposes in Ireland if the company is incorporated in Ireland. Non-resident companies, are taxed on income sourced in Ireland, for example rental income from an Irish property. As a result, the same income could be subject to taxation in an overseas jurisdiction as well as in Ireland.

33. A double taxation treaty is an international agreement between Ireland and another country. It seeks to reduce the risk of a company being subject to taxation on the same profits in both countries (double taxation).

34. Ireland as a member of the OECD bases its double taxation treaties on that organisation's Model Convention. The OECD model helps to remove or reduce tax barriers to cross-border trade and investment by eliminating double taxation should two countries have a legitimate claim to tax on income belonging to the same company. Double taxation treaties apply to income tax, Universal Social Charge, Corporation Tax and Capital Gains Tax. Broader treaties are in place with the UK.

35. The Committee established that double taxation treaties normally contain provisions to cover:

- Elimination or reduction of withholding taxes on monies paid by businesses from one country to another. For example Deposit Interest Retention Tax (DIRT) is a withholding tax – the tax which is charged on deposit interest received from banks. Other forms of payments between companies are also subject to withholding taxes. These include interest, dividends and royalties. A double taxation treaty will, for instance, set a limit on the amount of withholding tax a country can levy when such payments are being made;
- Consensus as to where profits from a trade should be taxed;
- Credit for taxes paid in the other jurisdiction;
- "Tie-breaker" conditions to help determine the residence of the taxpayer in dual residence scenarios and procedures for resolution of disputes between two competing claims of tax authorities, typically in transfer pricing situations.

36. The Committee examined the issue of transfer pricing. This is a term used to describe two different concepts:

- the opportunity to move profits from one country to another by varying the price charged between related parties for goods or services;
- the requirement imposed by tax legislation that income be computed on the basis of arm's length prices between related parties.

37. When treaties operate correctly, cross-border businesses in their home country receive credit for taxes paid abroad or an exemption or a deduction on monies earned abroad.

38. The Committee sought to determine the two way flow and net position of the cost to Ireland of double tax taxation relief claimed by companies in Ireland in respect of tax paid in other countries. It also sought to determine the tax paid in Ireland by companies who are tax resident in a jurisdiction with which Ireland has a double taxation treaty.

39. The Committee requested information from Revenue in relation to countries covered by a Double Taxation Agreement with Ireland. In response, Revenue stated that the main source of income of a non-resident company that is liable to Irish Corporation Tax is profits of a trade carried on through a branch in Ireland. Certain other sources of income of non-resident companies may, subject to certain exemptions set out in law, be liable for income tax in Ireland, such as, rental income, interest income or dividends from Irish companies.

40. The Committee sought to determine the net position between Ireland and the jurisdictions with which the State has a double taxation agreement. It requested an analysis of the double taxation relief cost of €948m in 2015 by reference to the countries in which the tax was paid and in respect of which relief was claimed.

41. Revenue was unable to provide the analysis of the double taxation relief cost of €948m because their statistical information is based on data captured on Corporation Tax returns and the returns do not require a company to itemise total double tax credits claimed by reference to each country in which foreign tax has been paid.

42. Revenue also stated that while it does have information from Corporation Tax returns on the number of non-resident companies which file returns in Ireland and the amount of Corporation Tax paid, it does not have information available in relation to any claims for double taxation relief made by these companies in their country of tax residency.

43. At the time of publishing of this report Ireland has signed double taxation treaties in place with 74 countries, 73 of which are in effect.

EFFECTIVE RATE OF CORPORATION TAX

44. The Committee heard evidence that due to the impact of allowable reliefs, the effective rate of Corporation Tax paid by a company may differ significantly from the statutory rate.

45. The Committee noted that the C&AG had examined the effective rate of Corporation Tax for the top 100 Corporation Tax payers in 2015, ranked by taxable income, and the results are outlined in Table 9.

Table 9: Effective Rate of Corporation Tax by Top 100 Taxpayers in 2015

Effective rate	Number of companies
0%	8
Between 0% and 1%	5
Between 1% and 5%	1
Between 5% and 10%	7
Between 10% and 12%	14
12% or more	65
Total	**100**

46. A 2014 report produced by the Department of Finance identified eight approaches for calculating the effective rate of Corporation Tax on company profits. The eight approaches considered by the Department of Finance resulted in estimated effective rates ranging from 2.2% to 15.5%.

47. While the report notes that there is no single best measure of the effective rate, two of the approaches are identified as the most appropriate to measure the effective rate of Irish Corporation Tax on the total profits that are subject to Irish tax. These are:

- Effective tax rate on 'net operating surplus' — taxes on the income or profits of corporations divided by net operating surplus, both taken from the national accounts, provide an overall effective tax rate. This measure results in an effective rate of 8.4% (2012);
- 'Tax due' as a proportion of taxable income — these figures are obtained from Revenue's Corporation Tax Distribution Statistics and this measure results in an effective rate of 10.4% (2011).

48. The Committee noted that while 79 of the top 100 companies had an effective Corporation Tax rate of between 10% and 15%, 13 had an effective rate of less that 1% and that this reflects the use of significant tax credits and reliefs, in particular double taxation relief and research and development tax credits. Revenue has calculated that the overall effective rate for 2015 is 9.8%.

49. The Corporation Tax Code includes a number of tax reliefs and tax credits which may have the effect of reducing the tax liability of a company. The principal ones are:

- the research and development tax credit;
- capital allowances for intellectual property;
- the "knowledge development box".

50. The C&AG also reported that:

- For the years 2011 and 2012, the utilisation of losses brought forward accounted for the largest tax relief at almost €1.5 billion in each of the two years;
- For the period 2013 to 2015, capital allowances accounted for the largest category of credits and reliefs available in each year;

- In 2015, capital allowances accounted for 54% of the overall cost of credits and reliefs at €5.8 billion, with losses brought forward accounting for 25%;
- Relief for double taxation was the third highest cost in 2015 at €948 million;
- The cost of capital allowances increased from €2.4 billion in 2014 to €5.8 billion in 2015, an increase of almost 150%. This increase is consistent with companies' increased investment in productive assets such as plant and machinery in 2015;
- The cost of the research and development tax credit also increased significantly from €553 million in 2014 to €708 million in 2015 (a 28% increase). The number of claims related to this tax credit decreased over the same period by 2%.

TAX RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT (R&D)

51. The Committee noted that an R&D tax credit is available to companies that are subject to Irish Corporation Tax. R&D includes basic research, applied research and experimental development in the fields of natural sciences, engineering and technology, medical sciences and agricultural sciences.

52. The Committee also noted that tax relief for R&D takes the form of a tax credit which reduces the company's tax liability. This can arise based on either revenue expenditure or capital investment. The credit equates to 25% of a company's qualifying R&D expenditure for the accounting period in question. The company can also take a deduction worth 12.5% for revenue type R&D expenditure in arriving at taxable profits. Effectively a company can reduce its tax liability by up to 37.5% of qualifying R&D expenditure in an accounting period.

53. The Committee requested a breakdown of the number of companies claiming the R&D tax credit together with the amount claimed and Revenue provided the information detailed in Table 10 for the period 2011 to 2016.

Table 10: Cost of R&D Tax Credit 2011 to 2016

	Number of claimants	Cost of credit €m		Total €m
		Credit	Cash Repayment	
2011	1,049	-	-	261
2012	1,543	-	-	282
2013	1,576	185	236	421
2014	1,570	227	326	553
2015	1,532	349	359	708
2016 (Provisional)	-	434	240	674

54. The Committee noted that in the five year period to 2015 the annual cost of the R&D tax credit increased by 171% while the number of claimants increased by 46%.

55. The Committee noted that reliefs such as R&D are not available to many indigenous companies, simply by virtue of the nature of their trade (retail, warehousing etc) and their small scale.

CARRY FORWARD OF TRADING LOSSES

56. Under the Corporation Tax Code, where a company has losses or, subject to certain rules, carried forward losses from a previous accounting period, these can be used to offset against the company's Corporation Tax liability in a variety of ways. These ways include offsetting against current year profits, transferring losses to other companies in a group, offsetting in certain circumstances against a previous year's tax liability, or simply carry forward to a future year.

57. The Committee requested information from Revenue in relation to companies carrying trading losses forward, specifically:

- The number of companies and estimated amounts of losses carried forward;
- Sectoral and aged analysis of losses carried forward.

58. Revenue provided the information requested, which is outlined in Table 11. However, it was unable to provide the required information regarding an age analysis of losses because such information is not available to it. This is because an age profile is not returned on the tax returns but also due to the manner in which unused capital allowances from earlier years are returned as losses carried forward in later years.

Table 11: Losses Carried Forward by Sector for 2015

Sector	2015		
	Number	€m	Average €m
Financial and Insurance Activities	2,227	124,175	55,800
Administration and Support Service Activities	3,784	37,966	10,030
Information and Communications	4,461	10,534	2,400
Construction	9,695	9,999	1,030
Manufacturing	4,224	8,305	2,000
Transport and Storage	1,935	8,382	4,330
Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles	10,402	7,628	730
All Other Sectors	18,626	11,347	610
Total	**55,354**	**218,335**	**3,900**

59. The Committee was concerned at the extent of losses carried forward (€218 billion at end-2015) to be offset against future Corporation Tax liabilities. It was also noted that 57% of the losses related to the Financial and Insurance Activities sector.

60. An estimated €40 billion of the €218 billion is attributable to companies, mostly in the financial sector, that are unlikely to use the losses as they are in liquidation or have ceased operations. This leaves a net carry forward of €178 billion against future Corporation Tax liabilities.

61. The Committee was informed that the losses in question can be carried forward indefinitely, i.e. the current Corporation Tax Code does not include a time limit or "*sunset clause*" or other restrictions for the offsetting of losses.

62. Updated provisional information provided by Revenue for 2016 showed the total losses carried forward to be €213.6 billion.

63. The Committee was informed that the €214 billion in losses carried forward at end-2016 comprises actual trading losses and unused capital allowances. However, when the Committee requested a breakdown of the losses figure into these two components, Revenue informed the Committee that it was unable to provide the analysis requested.

64. In a letter dated 30 April 2018 the Department of Finance provided the Committee with the following information:

- The issue of the restriction of corporate losses (including the possibility of a 'Sunset Clause') was considered by the Department of Finance's Tax Strategy Group (TSG) in 2011;
- During the Committee Stage of the Finance Bill 2017, the Minister for Finance agreed that his Department would produce a report on the effect of limiting tax reliefs on losses carried forward for banks. It is intended that the imposition of a sunset clause will be considered in this report and comparison will be made with the approach taken to losses by other administrations.

65. The letter also pointed out that provisions did exist previously in the case of banking institutions participating in the NAMA process under which only 50% of such institutions' taxable trading income in any year could have been sheltered by losses carried forward by these institutions. However, the 50% restriction imposed on these institutions was removed in the Finance Act 2014.

66. The introduction of some restrictions would have the effect of increasing Corporation Tax receipts on an annual basis. The Committee also acknowledges this could reduce the value of the State's investment in certain institutions.

67. In its April 2018 publication, Corporation Tax 2017 Payments and 2016 Returns, Revenue states that around 25,800 companies used losses in 2016 totalling €14.9 billion, at a cost to the Exchequer of €1.9 billion.

68. By way of international comparisons, Table 12 details countries where there are restrictions on losses carried forward.

Table 12: Restrictions on Losses Carried Forward in some OECD Member States

Country	Note	Loss carry-forward	Restrictions
Canada	1	20 years limit	Change of ownership and activity
Netherlands	1	9 years limit	Change of ownership and activity
Switzerland	1	7 years limit	Change of ownership and restart of activity
United States	1	20 years limit	Change of ownership
United Kingdom	2	See note 2	See note 2

Note 1: 2011 OECD Report on the tax treatment of corporate losses in a number of OECD member States.

Note 2: The UK has recently introduced restrictions on the total amount of losses that can be utilised against profits for accounting periods from I April 2017. These restrictions apply to carried-forward trading losses as follows:

- *The overall amount of profit that can be relieved using most types of carried-forward losses (including carried-forward trading losses incurred either before or after I April 2017) is restricted to the amount of an allowance up to £5 million, plus 50% of remaining total profits after deduction of the allowance.*

The above restrictions on the use of losses in a particular accounting period do not change the right to claim the losses indefinitely.

STATE AID AND THE APPLE CASE

69. The Committee examined the consequences of and follow-up to the European Commission's decision of 30 August 2016 that Ireland had granted illegal State aid to Apple in the form of a failure to tax profits from sales activities by Irish branches of two Apple companies.

70. The Department of Finance informed the Committee that in line with the Commission's decision, Apple must be deprived of the benefit of the alleged State aid through two actions:

- The calculation of the amount of the aid (the Commission's estimate is €13 billion);
- The process by which Apple is deprived of this sum.

71. The Committee was informed that the recovery of the contested Apple State aid was to be achieved by the establishment of an escrow fund to which the State aid amount calculated would be deposited by Apple. The final transfer of funds from the escrow fund will take place only when there has been a final determination in the European Courts over the validity of the EU Commission's decision of 30 August 2016.

72. On 29 May 2018 the Department of Finance confirmed to the Committee that:

- The total amount of the contested State Aid has been calculated at €13.1bn plus EU interest;
- €1.5bn including relevant EU interest has been transferred by Apple to the escrow fund to date;
- The transfer of total contested State Aid to the escrow fund is expected to be completed by the end of September 2018.

WITHHOLDING TAX ON DIVIDENDS AND OTHER DISTRIBUTIONS

73. The Committee noted that Chapter 8A of Part 6 of the Taxes Consolidation Act 1997 contains the Dividend Withholding Tax (DWT) provisions which were introduced in 1999. Dividends paid and other distributions made by Irish-resident companies are generally liable to a dividend withholding tax at the standard rate of income tax (20%) for the year of assessment in which the distribution is made.

74. An Irish resident company making a distribution is required to withhold the tax, file a return and pay any DWT due to Revenue by the 14th day of the month following that in which the distribution was made.

75. Revenue provided the Committee with information on DWT deducted at source by Irish companies and collected by Revenue between 2014 and 2017 and this is detailed in Table 13 (figures do not include DWT refunds which may fall to be made after the shareholders' returns are filed and assessed):

Table 13: Dividend Withholding Tax 2014 to 2017

2014	€268.53m
2015	€605.37m
2016	€375.36m
2017	€431.09m

REAL ESTATE INVESTMENT TRUSTS (REITS)

76. REITs are companies that earn rental income from commercial or residential property. Under special rules they are exempt from Corporation Tax on income from their property rental business or on chargeable gains made on the disposal of property assets. A REIT may be a single company or a group of companies. The rental properties held by the REIT can be located anywhere and are not restricted to Ireland.

77. A company or principal company of a group of companies qualifies as a REIT if it can satisfy a number of conditions, mainly:

- resident in the State, and not resident in another territory;
- incorporated under the Companies Act;
- has its shares listed on the main market of a recognised stock exchange in an EU member state; and
- is not a close company.

78. Shareholders in a REIT are taxed at the 25% rate of Corporation Tax where the company pays a distribution in the form of a property income dividend. A property income dividend paid by a member of a group REIT to another member of the same group REIT is exempt from Corporation Tax. A property income dividend paid to institutional investors such as banks is taxed at 12.5%.

79. The taxation of non-resident shareholders of a REIT is determined by the country in which they are tax resident.

80. In its consideration of the tax arrangements for REIT's the Committee noted a recent trend where an increasing proportion of Irish property assets are owned by non-residents. The Committee heard that there was concern that structures were available, to some property developers and those buying distressed loans, which could put the State at risk that the tax rights to property was leaking out of its tax base.

APPENDIX 1: COMMITTEE MEMBERSHIP

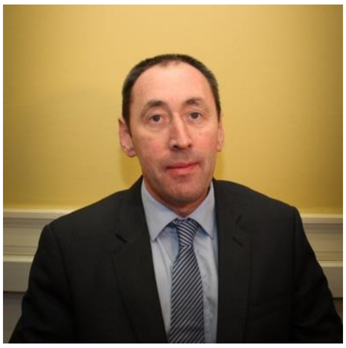

Bobby Aylward (FF)


Peter Burke (FG)


Shane Cassells (FF)


Catherine Connolly (I4C)


David Cullinane (SF)

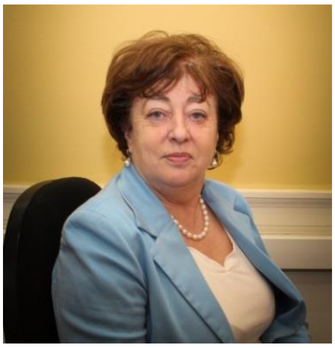

Pat Deering (FG)


Alan Farrell (FG)


Seán Fleming (FF)

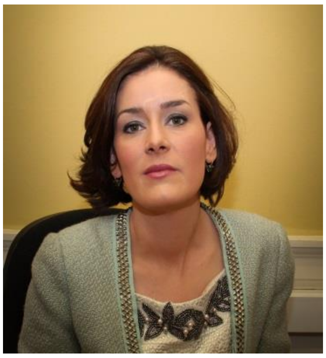

Alan Kelly (Lab)

Marc MacSharry (FF)



Catherine Murphy (SD/GPTG)

Jonathan O'Brien (SF)



Kate O'Connell (FG)

APPENDIX 2: COMMITTEE TERMS OF REFERENCE

Committee of Public Accounts

186. (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon: Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

c) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

a) power to send for persons, papers and records as defined in Standing Order 88;

b) power to take oral and written evidence as defined in Standing Order 85(1);

c) power to appoint sub-Committees as defined in Standing Order 85(3);

d) power to engage consultants as defined in Standing Order 85(8); and

e) power to travel as defined in Standing Order 85(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be

empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

a) Enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and
b) Enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of twelve members, none of whom shall be a member of the Government or a Minister of State, and four of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

APPENDIX 3: WITNESSES WHO PROVIDED ORAL EVIDENCE AND LINKS TO TRANSCRIPTS

30 November 2017

Principal Witnesses: Revenue Commissioners

Name	Organisation
Mr. Niall Cody	Chairman, Revenue Commissioners
Ms. Jeanette Doonan	Principal Officer, Corporation Tax Branch, Revenue Commissioners
Dr. Keith Walsh	Principal Officer, Statistics Economics and Research Branch, Revenue Commissioners
Mr. Liam Gallagher	Principal Officer, Revenue Commissioners, Liaison Officer, with the Comptroller and Auditor General's Office and the PAC
Mr. John McCarthy	Assistant Secretary, Department of Finance
Mr. John Hogan	Assistant Secretary, Department of Finance
Mr. Ronan Hession	Principal Officer, Department of Finance
Mr. Seamus McCarthy	Comptroller and Auditor General
Ms. Mahin Fitzpatrick	Auditor, Office of the Comptroller and Auditor General

Link to transcript 30 November 2017

15 February 2018 (private meeting)

Principal Witnesses: Chartered Accountants Ireland

Name	Organisation
Dr. Brian Keegan	Chartered Accountants Ireland
Ms. Norah Collender	Chartered Accountants Ireland
Ms. Crona Brady	Chartered Accountants Ireland
Mr. Seamus McCarthy	Comptroller and Auditor General
Mr. Brian Hill	Senior Auditor, Office of the Comptroller and Auditor General

22 February 2018

Principal Witnesses: Chartered Accountants Ireland

Name	Organisation
Dr. Brian Keegan	Chartered Accountants Ireland
Ms. Norah Collender	Chartered Accountants Ireland
Ms. Crona Brady	Chartered Accountants Ireland
Mr. Seamus McCarthy	Comptroller and Auditor General
Ms. Patricia Devlin	Deputy Director of Audit, Office of the Comptroller and Auditor General

Link to transcript 22 February 2018

APPENDIX 4: REFERENCES

The table below includes a list of sources by relevant paragraph/section number of this report.

Paragraph No.	**Source**
1	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
2	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
12	Revenue Commissioners briefing information for meeting on 22 February 2018
13	Revenue Commissioners briefing information for meeting on 22 February 2018
14	Revenue Commissioners briefing information for meeting on 22 February 2018 Finance Act 2015
15	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
16	Revenue Commissioners briefing information for meeting on 22 February 2018 Corporation Tax 2017 Payments and 2016 Returns
17	Corporation Tax 2017 Payments and 2016 Returns
18	Revenue Commissioners briefing information for meeting on 22 February 2018 Corporation Tax 2017 Payments and 2016 Returns
19	Revenue Commissioners briefing information for meeting on 22 February 2018
20	Stability Programme Update 2018
21	Revenue Commissioners briefing information for meeting on 22 February 2018
22	Revenue Commissioners briefing information for meeting on 22 February 2018
23	Revenue Commissioners briefing information for meeting on 22 February 2018
24	Revenue Commissioners briefing information for meeting on 22 February 2018
25	Revenue Commissioners briefing information for meeting on 22 February 2018
26	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
27	Corporation Tax 2017 Payments and 2016 Returns
28	Taxes Consolidation Act, 1997
29	Revenue Commissioners briefing information for meeting on 22 February 2018
30	Revenue Commissioners briefing information for meeting on 22 February 2018
31	Revenue Commissioners briefing information for meeting on 22 February 2018
32	Double Taxation Treaty Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
33	Double Taxation Treaty Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
34	Model Tax Convention on Income and on Capital
35	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
36	Chartered Accountants Ireland briefing information for meeting on 22 February 2018

Paragraph No.	**Source**
37	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
38	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
39	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
40	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
41	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
42	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
43	Revenue Commissioners follow-up information provided following meeting on 30 November 2017
44	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
45	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
46	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
47	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
48	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
49	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
50	Comptroller and Auditor General Report on the Accounts of the Public Services 2016, Chapter 20, Corporation Tax Receipts
51	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
52	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
53	Reply to Parliamentary Question 8921/18 and 8934/18 on Wednesday, 21 February 2018
54	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
55	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
56	Department of Finance correspondence to the Committee dated 30 April 2018
57	Revenue Commissioners briefing information for meeting on 22 February 2018
58	Revenue Commissioners briefing information for meeting on 22 February 2018
59	Revenue Commissioners briefing information for meeting on 22 February 2018
60	Revenue Commissioners briefing information for meeting on 22 February 2018
61	Revenue Commissioners briefing information for meeting on 22 February 2018
62	Revenue Commissioners briefing information for meeting on 22 February 2018
63	Revenue Commissioners briefing information for meeting on 22 February 2018
64	Department of Finance correspondence to the Committee dated 30 April 2018
65	Department of Finance correspondence to the Committee dated 30 April 2018
67	Corporation Tax 2017 Payments and 2016 Returns
68	Department of Finance correspondence to the Committee dated 30 April 2018

Paragraph No.	**Source**
70	Department of Finance correspondence to the Committee dated 12 January 2018
71	Department of Finance correspondence to the Committee dated 12 January 2018
72	Department of Finance correspondence to the Committee dated 29 May 2018
73	Taxes Consolidation Act, 1997
74	Taxes Consolidation Act, 1997
75	Revenue Commissioners briefing information for meeting on 22 February 2018
76	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
77	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
78	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
79	Chartered Accountants Ireland briefing information for meeting on 22 February 2018
80	Chartered Accountants Ireland briefing information for meeting on 22 February 2018