

# DÁIL ÉIREANN

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## AN COISTE UM CHUNTAIS PHOIBLÍ

## COMMITTEE OF PUBLIC ACCOUNTS

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*Déardaoin, 22 Feabhra 2018*

*Thursday, 22 February 2018*

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The Committee met at 9 a.m.

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### MEMBERS PRESENT:

|                            |                          |
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| Deputy Peter Burke,        | Deputy Alan Kelly,       |
| Deputy Catherine Connolly, | Deputy Marc MacSharry,   |
| Deputy David Cullinane,    | Deputy Catherine Murphy. |

DEPUTY SEAN FLEMING IN THE CHAIR.

## BUSINESS OF COMMITTEE

**Mr. Seamus McCarthy** (*An tArd Reachtaire Cuntas agus Ciste*) called and examined.

### Business of Committee

**Chairman:** We are joined by the Comptroller and Auditor General, Mr. Seamus McCarthy, as a permanent witness to the committee. He is accompanied by Ms Patricia Devlin, the deputy director of audit in his office. Apologies have been received from Deputies McDonald, Cassells, Aylward and Farrell. The first item on the agenda is the minutes of the meeting of 15 February 2018. Are they agreed? Agreed. The next item is matters arising from the minutes. I have one question in this regard. We wrote to the HSE a week or two ago about salary overpayments. Has any response been received? I understand we will have a reply to that next week. That is grand. It may or may not be a significant item. We will wait and see. We will move on to correspondence received. We have some correspondence today.

The first item of correspondence is No. 1105A, briefing material from the Revenue Commissioners for today's meeting. We will note and publish that.

No. 1107A is briefing material on corporation tax from Dr. Brian Keegan of Chartered Accountants Ireland for today's meeting. We will note and publish that and circulate it to the Committee on Budgetary Oversight and the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, both of which may also have an interest in it.

Under category B, correspondence from Accounting Officers or Ministers and follow-up to previous meetings of this committee, No. 1081 was received on 12 February last from the Higher Education Authority. It comprises a follow-up review report, carried out by Dr. Richard Thorn, regarding certain matters and allegations relating to the University of Limerick. We mentioned this last week. Dr. Graham Love has requested that the report be dealt with confidentially and that it not be published. He has also mentioned that there are three related ongoing High Court actions. Having checked with the Office of the Parliamentary Legal Adviser here in Leinster House, we have circulated the report. I propose that we will respect the request for confidentiality and therefore will not publish it. The report is available to members but is not being published. I ask members not to publish or circulate it by any other means. We will note the item for now.

**Deputy Catherine Murphy:** Do we have any idea of the timelines for the High Court cases that have been mentioned?

**Chairman:** No. We could not know that at this stage, in fairness.

No. 1087, is a letter from Mr. John O'Sullivan, who is the chief executive and commissioner of valuation. It is a follow-up to information requested at a previous meeting. We will note and publish that.

The next item-----

**Deputy Marc MacSharry:** Just a moment.

**Chairman:** Sorry

**Deputy Marc MacSharry:** The Chairman is booting along there.

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**Chairman:** I was about to move on to No. 1089. The previous item, No. 1087, is a letter providing figures “before and after the Tribunal determination for the valuations upheld and changed by the Valuation Tribunal by reference to .... the C&AG chapter”. Mr. O’Sullivan says in the letter that “because of the requirement to validate this information with the records of the Tribunal, I regret that it was not possible to have same included with the material forwarded to the Committee with my letter of 8th February” and accordingly, he is now asking us to include this document with our previous correspondence received from the Valuation Office. Is that okay?

**Deputy Marc MacSharry:** Is this an appropriate time to raise the issues I have with valuations of State properties, which I raised at previous meetings?

**Chairman:** Yes, did we ask-----

**Deputy Marc MacSharry:** Is the Comptroller and Auditor General doing any work on that? Does he recall that I raised the issue of no valuations, or historic valuations, of State properties?

**Mr. Seamus McCarthy:** Yes, I do.

**Deputy Marc MacSharry:** Are we doing anything?

**Mr. Seamus McCarthy:** We are certainly considering it again in the context of the current round of audits. I have not formulated a fixed opinion on it. We are in contact with the Department of Public Expenditure and Reform.

**Deputy Marc MacSharry:** I would respectfully recommend that this consideration should turn into one of the approved items.

**Deputy Alan Kelly:** I second that.

**Chairman:** Okay. We understand that issue. We ask the Comptroller and Auditor General to come back to us on that specific issue as part of his ongoing work. We will let him report back on whatever he thinks is the best and most efficient format from his point of view.

No. 1089 is a letter, dated 14 February 2018, from Mr. John McCarthy, who is the Secretary General of the Department of Housing, Planning and Local Government. Following our recent discussions on the funding of local authorities, we requested follow-up information on local government funding and local property tax allocations, as well as a note from the National Oversight and Audit Commission. We will note and publish that. We have that on our work programme. They will be coming before the committee in a couple of weeks. We will discuss that on our work programme.

No. 1091 is correspondence, dated 15 February 2018, from Ms Hilary Murphy-Fagan, who is the chief executive of the National Shared Services Office, providing follow-up information in relation to the previous meeting. I have marked item No. 8 on the correspondence in question and I want to raise it now. We asked her for a written explanatory note on how the figure for temporary rehabilitation remuneration is calculated. I was keen to know how they calculate this figure when people are out for extended periods on temporary remuneration for rehabilitation purposes. She wrote back to say that regulation 6 “provides that the rate of pay of temporary rehabilitation remuneration is the same as the rate of pension that the individual would be paid if they were to be ill-health retired”. In other words, I asked her how her office calculates this

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and she wrote to say that it calculates it in the same way that it calculates something else. We will have to go back to ask her to give us a specific information note on how this figure is calculated. It is not enough to say it is calculated in the same way as something else if we do not know how the something else is calculated either. Deputies will understand my question.

**Deputy Marc MacSharry:** The Chairman is moving so fast. Did we pass the response from the National Shared Services Office or is this the same one?

**Chairman:** That is the one I am talking about now. This is the one where they had the overpayments. It subsequently transpired that there were substantial overpayments in other payroll systems in the public service, the biggest one being the HSE. We will have a response from the HSE next week in relation to the level of overpayments in the HSE. At that point, we will be able to compile a more complete picture. The National Shared Services Office deals with a certain number of public servants only.

**Deputy Marc MacSharry:** On the same correspondence, but a different issue perhaps, we asked for a breakdown of the €812,000 training and development costs. I do not know whether this is an accountancy standard, but there is an awful lot of-----

**Chairman:** Which page of the document is the Deputy on?

**Deputy Marc MacSharry:** Page 4.

**Chairman:** Page 4.

**Deputy Marc MacSharry:** Yes.

**Chairman:** The figure is just over €811,000.

**Deputy Marc MacSharry:** I think I said at the meeting that training and development is a great place to stuff things.

**Chairman:** Yes.

**Deputy Marc MacSharry:** Sure enough, the document shows that €2,500 was paid for drinking water. Was that paid to Irish Water or-----

**Chairman:** Coolers.

**Deputy Marc MacSharry:** -----to Ballygowan?

**Deputy Alan Kelly:** Tipperary.

**Deputy Marc MacSharry:** Or Tipperary. Does the reference to “Professional / Corporate Subscriptions” relate to the chamber of commerce, to a golf club, to IBEC or to ISME?

**Chairman:** We will ask them for the details.

**Deputy Marc MacSharry:** Why would anybody be paying corporate subscriptions? If it is for the chamber of commerce, maybe it is reasonable enough. Who is getting their third-level fees paid? The relevant figure is €47,000. The figure for training - €270,000 - is still huge. Are we employing untrained people to the extent that such a significant amount of the budget needs to go into training? I suggest that €80,000 seems a lot for office security. I have made a couple of points on that. It would be useful to know which firm the audit and professional fees

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of €130,000 were paid to.

**Chairman:** Were they paid to the Comptroller and Auditor General's office?

**Mr. Seamus McCarthy:** No. As it is an appropriation account, we do not charge audit fees. They have an assurance process system.

**Chairman:** It could be internal audit.

**Mr. Seamus McCarthy:** Yes, outsourced internal audit. I cannot recall the supplier of those services offhand.

**Chairman:** Okay.

**Mr. Seamus McCarthy:** I think it is one of the big four.

**Chairman:** Yes.

**Deputy Marc MacSharry:** No doubt.

**Chairman:** Okay.

**Deputy Marc MacSharry:** It is definitely between the two canals in Dublin anyway. I suggest it is not Gilroy Gannon in Sligo.

**Chairman:** Okay. We will ask for further details in relation to the items mentioned here on the record.

**Deputy Marc MacSharry:** As a matter of form, I think we should be looking at the training and development cul de sac that stuff gets stuffed into so that we do not know for everybody.

**Chairman:** We will ask for a full breakdown.

**Deputy Marc MacSharry:** Does the Comptroller and Auditor General routinely look for that breakdown?

**Mr. Seamus McCarthy:** We would have it. The classifications of administrative subheads on appropriation accounts are dictated by the Department of Public Expenditure and Reform so that there is consistency across Departments. There are about ten or 12 subheads at most and everything has to be fitted within those.

**Deputy Marc MacSharry:** I thought the Comptroller and Auditor General was going to say the department of arts culture and design or something like that when drinking water and corporate subscriptions can be stuffed into training and development.

**Mr. Seamus McCarthy:** Incidental expenses are a broad church.

**Deputy Marc MacSharry:** What happened to the word "sundries"?

**Mr. Seamus McCarthy:** The Department of Public Expenditure and Reform does not use it.

**Deputy Marc MacSharry:** Does it not?

**Mr. Seamus McCarthy:** No.

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**Deputy Marc MacSharry:** I can say that it certainly does. It might not call it that.

**Chairman:** We will ask the secretariat to look into the issues the Deputy mentioned to get a further breakdown and information note on those items as well as the item I mentioned about the rehabilitative pay. We note and publish that.

Correspondence No. 1094B is from Ms Rosalind Carroll, director of the Residential Tenancies Board, dated 16 February providing a response to the committee's request for information on expenditure of €2.1 million for non-competitive procurement of legal fees. We will call up that document. Members can read paragraph 3.1 of the explanation for the delay in the competitive procurement process. If members have not had an opportunity to read that four-page reply, which deals with expenditure of €2.1 million for non-competitive tendering, we might just hold it over for discussion. For some reason I missed that and I did not get the-----

**Deputy Catherine Murphy:** I think it is one company as well.

**Chairman:** It is one company. We will hold that over and discuss it the next day because people might want to read that in full. We will note and publish it, but we will discuss it the next day.

Correspondence No. 1100B is from Ms Oonagh McPhillips, acting Secretary General in the Department of Justice and Equality, enclosing the governance framework agreement between the Department of Justice and Equality and An Garda Síochána. We note this. I note from the back page of page 28 of that document that that agreement was signed by the acting Garda Commissioner, Dónall Ó Cualáin on 20 November 2017 and Noel Waters on 20 November on behalf of the Department.

**Deputy Alan Kelly:** When was that received?

**Chairman:** I think there was some confusion. The Department thought it had sent it. We did not think we had received it.

**Deputy Alan Kelly:** We also requested correspondence from the CEO of An Garda Síochána. What is the status of that?

**Chairman:** We will have four further items of correspondence that we have just received and they will be circulated.

**Deputy Alan Kelly:** Has the correspondence that the CEO of the Garda was meant to supply in November-----

**Chairman:** We will come back to the Deputy over the course of the day and it will be circulated. It has just arrived. It was not in time for circulation yesterday and I do not have it before me.

**Deputy Alan Kelly:** The Chairman has to ask the question.

**Chairman:** The secretariat can contact the Deputy directly.

**Deputy Alan Kelly:** Will we also ask why it took three months?

**Chairman:** We will come to that. We will ask the secretariat to clarify that for the next meeting, together with the other items of correspondence we have not received that we will have before us the next day.

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Correspondence No. 1102B is from Mr. Patrick Hopkins, chairperson of the Charities Regulator providing requested information for today's meeting regarding charities holding shares in section 110 companies. We will note and publish that. We will discuss it with the Revenue Commissioners after lunch.

Correspondence category C is related to private individuals and any other correspondence. Correspondence No. 1068C is from a whistleblower regarding the University of Limerick dated 7 February 2018. The individual has been in contact with the committee previously and has sent a copy of a letter sent to the president of the University of Limerick for the attention of the committee. The individual expresses hurt that some of the people employed by the college who, she believes, cost her her job, have not been held to account. Can we note the correspondence for now? The letter states that the individual would welcome the opportunity to meet the Committee of Public Accounts either privately or publicly with reference to the email attached. As High Court proceedings are involved, we certainly will not hold a public meeting with the whistleblower. We will either do it in private or the members of the committee will find some mechanism.

I call Deputy Cullinane, followed by Deputy Kelly and Deputy Murphy.

**Deputy David Cullinane:** I apologise for being a few minutes late. I was delayed in traffic. I missed the first part where we discussed the Thorn report.

**Chairman:** No, we did not-----

**Deputy David Cullinane:** It is correspondence that was noted. It was agreed to publish it.

**Chairman:** No.

**Deputy David Cullinane:** Sorry, it was agreed not to publish it.

**Chairman:** We circulated it. It is to be noted by members of the committee, but because of High Court actions, we are not publishing it. We are asking people not to circulate it. We have it and we are noting it for now.

**Deputy David Cullinane:** Can we discuss the cover letter Dr. Graham Love sent?

**Chairman:** Okay. Let us finish it. We will come back to it.

**Deputy David Cullinane:** It is linked to this issue.

**Chairman:** I know the Deputy was late. Although we have moved on from that point, I will give him an opportunity.

**Deputy David Cullinane:** I know that.

**Chairman:** Can we agree? Okay.

**Deputy David Cullinane:** A number of items concern me in the cover letter. Dr. Love has indicated that no further action is required because this report has been given to us. We are not going to circulate it, but it has been given to us. The difficulty is that we will have a report from the Office of the Comptroller and Auditor General. We do not know what that report will contain. Therefore, it is not right to say that at this point no further action is required.

I am even more concerned about a second point. It states that on the basis of Dr. Thorn's



findings, the HEA is satisfied that no further action is required in this regard apart from the need for UL to implement fully the recommendations made by Deloitte. I have a difficulty with that. Deloitte should not set down recommendations. It can publish a report, but at some point we will have our own report which will deal with some of these issues. It is up to policymakers to set down what changes should be made and not Deloitte. I have no difficulty with Deloitte publishing a report setting out the problems. I have a difficulty if the university and the HEA are suggesting that the recommendations to fix problems will come from Deloitte. I do not accept that at all. Given that this will be part of our work programme, I am sure we will come back to it because we will have the special report from the Office of the Comptroller and Auditor General. We will have them back in here at some point. This letter is trying to bookend the issue by saying we have this report, there are recommendations from Deloitte and everything is okay, but it is not.

**Chairman:** What does the Deputy propose?

**Deputy David Cullinane:** I propose we write back to Dr. Love, thank him for his letter, but point out to him that we are awaiting a report from the Office of the Comptroller and Auditor General. We also need to ask what recommendations the HEA is making. This goes back to what we collectively have been saying for some time, namely, that the HEA is the body that should be setting down what changes should be made, not Deloitte or any other organisation which is a private company which should not be the body that recommends changes. What changes does the HEA recommend? It is the oversight body.

**Deputy Alan Kelly:** That is very well put. We need to write back. We need to draw a distinction. This is not Deloitte. It is the HEA. It is using that for cover.

**Chairman:** We have the Thorn report.

**Deputy Catherine Murphy:** We agreed last week that it would be in the work programme but that will depend on when the Comptroller and Auditor General's report comes back to us. Therefore, it will probably be closer to the summer before we deal with that.

**Mr. Seamus McCarthy:** Yes.

**Deputy Catherine Murphy:** Regarding the whistleblower, much of this would not have come to light without the assistance of a whistleblower. Yet again there was a significant consequence for the whistleblower. If it is going to be on the work programme, the most effective time to talk to the whistleblower, which we should do, would be closer to the point where we will deal with this on the work programme because it will be fresh in our memory and of more assistance. We should give some assurance that this matter will not be ignored and that we will revisit it.

I accept the point made about the Higher Education Authority, HEA. As several of us have repeatedly said, the HEA delegation was less than impressive when they were here. We want the HEA to change its culture of oversight. It should not be down to the Committee of Public Accounts to provide the oversight that the HEA is supposed to provide. It is not about outsourcing the job to some other agency or company.

**Chairman:** I will ask the secretariat, for next week's meeting, to propose ways to deal with the matter in our work programme.

**Deputy David Cullinane:** Will the Chairman or the secretariat set out the process?



**Chairman:** Yes.

**Deputy David Cullinane:** We have a report compiled by Dr. Thorn. The HEA appointed Dr. Thorn to examine this matter and compile a report, which we have received but will not publish. We also have the Deloitte report. Is it an internal audit report? Was Deloitte commissioned to do some work? Is Deloitte the internal auditor?

**Mr. Seamus McCarthy:** Yes. I think when UL was here last year it was announced that Dr. Thorn would undertake an examination of a number of issues in the university. While that work was going on, the university appointed Deloitte to look at matters. Deloitte reported in August. Dr. Thorn took account of that and the findings relating to that. He was commissioned to do a follow-up report. What the committee has today is the follow-up report, specifically relating to the contracts that were placed with two individuals whose employment was subject to a severance agreement. This, if one likes, dealt with one specific issue in the university.

Deloitte's recommendations were to the governing body. It is for the governing body to accept and own or, if one likes, make alternative proposals for actions to be taken. If one likes, Deloitte has no purpose in this beyond making its report to the governing body. Deloitte did not publish the report itself. It was the university that made it available to the committee following on from the committee's interest in its activities.

**Deputy David Cullinane:** Yes. I have no difficulty with Deloitte being employed to do a job, but this matter goes back to what I have said for some time. Again, Deloitte has compiled a report for a third level institute. Deloitte has been paid by the third level institute to analyse the difficulties within the institute. I would have preferred a different process. I would have preferred if the HEA based its recommendations on the report compiled by Dr. Thorn.

I accept what the Comptroller and Auditor General has said, that Deloitte was commissioned by the university to do a job of work and it reported back to the board, which is independent and which can accept, reject or do what it likes with the recommendations. Dr. Thorn was then asked to do a separate piece of work and he would have incorporated into his work, if I am right, the Deloitte recommendations.

**Mr. Seamus McCarthy:** He was aware of them.

**Deputy David Cullinane:** Was he aware of them?

**Mr. Seamus McCarthy:** Yes.

**Deputy David Cullinane:** The HEA should be do its own work and make its own decisions. It can have the recommendations from Deloitte and it will have a report from Dr. Thorn. The authority should set out what it believes should happen and not simply say that it will accept the recommendations made by Deloitte, which is a body that was employed and paid specifically by the institute. That is my personal view of this matter and people may disagree with such a view. I do not accept that this is the process that will get us to the best place in terms of accountability.

**Chairman:** Has the Comptroller and Auditor General done further work on this matter?

**Mr. Seamus McCarthy:** Yes. I am examining the severance cases specifically, and they will be dealt with in the report. The Deloitte report specifically looked at those as well and raised some matters of concern. They are matters of concern for me and I am including a full

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review of their findings in my consideration as to what happened.

**Chairman:** Will that include the Thorn report and the HEA's conclusions?

**Mr. Seamus McCarthy:** All of that is within the remit-----

**Chairman:** The HEA has said nothing further is required.

**Mr. Seamus McCarthy:** I am not going to prejudge.

**Chairman:** I just repeated what the HEA said in its letter.

**Mr. Seamus McCarthy:** I note that.

**Chairman:** What is the timescale for the Comptroller and Auditor General?

**Mr. Seamus McCarthy:** I have a draft report on my desk at the moment.

**Chairman:** Yes.

**Mr. Seamus McCarthy:** We are working on it with a view to getting it out to the university. We will have supplementary questions and requests for information from it. When I get those back, I will incorporate them in the report. We are looking at months, certainly.

**Chairman:** Is it a couple of months away?

**Mr. Seamus McCarthy:** Yes.

**Chairman:** Some High Court cases are pending. Does that impede the Comptroller and Auditor General in doing his work or does he just have to be careful?

**Mr. Seamus McCarthy:** I will have to be very careful. I do not anticipate not reporting because there are High Court cases.

**Chairman:** Okay.

**Mr. Seamus McCarthy:** We will work around those.

**Chairman:** We have had a Deloitte report, Thorn No. 1 report, Thorn No. 2 report and the HEA's conclusions. The Comptroller and Auditor General has deemed that it is necessary for him to compile a further report. Therefore, we will not accept any recommendations from anybody on the matter until we see his conclusions and his report comes back before the committee.

**Deputy Catherine Murphy:** Agreed.

**Chairman:** Around that time we will meet the lady who wrote - the whistleblower. We will decide closer to the time. I am cautious about having a meeting in public but we may choose to do so. We will meet her but the format has yet to be agreed. Does Deputy MacSharry wish to comment on this topic?

**Deputy Marc MacSharry:** When we finish correspondence, will we discuss the financial statements?

**Chairman:** We have not reached there yet.

**Deputy Marc MacSharry:** That is all right.

**Chairman:** Can we agree on this matter? To an extent the ball is in the court of the Comptroller and Auditor General while he completes his report. There is no point in us trying to pre-empt his report by us doing anything in the meantime. I think that is the sensible thing to do and the matter will be placed on our work programme.

**Deputy Alan Kelly:** What about the whistleblower?

**Chairman:** I think that we will just wait for the Comptroller and Auditor General's report. Do members want the committee to write to the HEA in the meantime?

**Deputy Alan Kelly:** No.

**Chairman:** Will we wait until the Comptroller and Auditor General produces his findings?

**Deputy David Cullinane:** We have a report from Deloitte that includes recommendations. I have no difficulty with Deloitte conducting an examination that identifies problems. In my view, it is up to the HEA to make recommendations and not Deloitte. Obviously it is up to the governing body of any university to employ independent organisations to carry out an analysis and make recommendations and they will be guided by that. The HEA is the governing body. As we have said for some time, the HEA needs to adopt a more hands-on approach and not simply say that Deloitte has done a report and it accepts the recommendations made by Deloitte. No, the HEA has a role.

**Chairman:** I propose we write back to Dr. Graham Love, who is the chief executive of the HEA, and enclose two things: first, a transcript of the discussion that takes place today, and second, draw his attention to the fact that the committee awaits a report from the Comptroller and Auditor General and, therefore, we cannot accept or reject his letter but will note that we received it and we will reach our own conclusions on the matter when we receive the report.

**Deputy David Cullinane:** Please highlight the fact that we are not finished with the matter because we have not done our work and the Office of the Comptroller and Auditor General has not completed its special report.

**Deputy Alan Kelly:** How will we respond to the lady from UL?

**Chairman:** I think we will write to her promptly and acknowledge that the committee has agreed to meet her, in principle. The format and timing will be discussed with her but we will agree, in principle, to do that.

**Deputy Alan Kelly:** Yes.

**Chairman:** We have decided what to do with No. 1068 after a discussion.

The next item, No. 1083, is correspondence from an individual dated 9 February 2018. It requests the committee to investigate the correctness of the opinions stated by the local authority in a Kerry County Council planning zoning document, which is attached. I printed it for myself, and as the document is 200 pages in length, I chose not to read it last night. This matter is outside the remit of the committee. I propose that we write to the individual advising him that he should contact the Department of Housing, Planning and Local Government. Is that agreed? Agreed. Let us not go there.

## BUSINESS OF COMMITTEE

The next item, No. 1084, is correspondence from an individual, dated 13 February 2018, updating the committee with a copy of correspondence between him and the Minister of State at the Department of Education and Skills, Deputy Mitchell O'Connor, regarding St. Angela's College, Sligo. This matter has been before the committee before. The secretariat has written to the individual and enclosed the information provided by the Department of Education and Skills and the HEA, as well as the relevant transcripts on the matter. We will note that.

**Deputy Marc MacSharry:** Is that the back of it?

**Chairman:** No. We got an update that we have already sent to the individual, and this is a further response.

**Deputy Marc MacSharry:** I am interested in this matter because I have received a lot of correspondence on this matter. I want to make sure that we cover all of the areas that we have to and we do so appropriately because the individual in question does have very serious concerns. I know we passed it to the HEA but we need to be happy as a committee that the HEA is doing what we would like it to do. What did it say in the response?

**Chairman:** We have it in front of us and we will get the secretariat to email the response because we have had it before us previously. If the Deputy has some correspondence he feels the committee has not received-----

**Deputy Marc MacSharry:** It is probably the same as I am getting.

**Chairman:** It probably is. The secretariat will email it to the Deputy.

**Deputy Marc MacSharry:** Could I have a look at that?

**Chairman:** If Deputy MacSharry wants to raise it next week he can, if he is not happy. We have two items of correspondence, Nos.1085 and 1089, dated 13 February, from an individual in respect of overcharging by a bank, the bank's response and matters related to the appointment of a receiver. The matter is outside of the remit of the committee and I propose we advise the correspondent to contact the Office of the Financial Ombudsman. Is that agreed?

**Deputy David Cullinane:** Agreed.

**Chairman:** Correspondence No.1086 dated 7 February is from an individual regarding a planning matter in Roscommon County Council. We have only received a copy. We will note it. We are not required to do anything. Correspondence No.1088 dated 14 February is from an individual in respect of expenditure relating to the Irish language. The individual questions whether value for money is being achieved. While it does not seem the correspondent is a supporter of the Irish language, the question of whether value for money is being achieved in relation to Irish language teaching and spending is a question which strong supporters of the language may also wish to address. I believe Oifig an Choimisinéara Teanga has dealt with these issues in the past. Does anyone want to deal specifically with it? We will note it but not take specific action. There is no specific requirement.

Correspondence No. 1090, is from Mr. Patrick O'Sullivan, head of the technical unit and actuarial adviser at the Pensions Authority, dated 14 February enclosing a reply to our request for information on the Córas Iompair Éireann, CIÉ, pension scheme for regular waged staff. We will note this. Deputy Cullinane might want to speak.

**Deputy David Cullinane:** This is the correspondence we received from Mr. O'Sullivan.

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I have met some of the workers and unions involved on this outside of my work on this committee. I am sure other members have as well. This is something the unions raised with me. The Pensions Authority was informed on 4 September 2009 that the scheme was no longer in compliance with the statutory funding standard as set out in Part 5 of the Pensions Act.

In the wake of the financial crisis the authority adopted a general policy of allowing schemes extra time to enter into a funding proposal, which they were required to do. Has the Pensions Authority the right to override what is a statutory instrument? That is what seems to have happened here. A separate briefing document, prepared for CIÉ and released under an FOI request, was given to the secretariat. It is not in the pack for this week. I think it was sent yesterday. It refers to CIÉ pensions and superannuation schemes. One paragraph refers to the board's responsibilities as set out in the statutory base rules. It goes on to say that independent legal advice would suggest it would be difficult for the board to ignore the advice recommended by the authority, unless there was some compelling reason to believe that the authority's recommendation was flawed. There is no reason to believe the data on which the valuation is based is incorrect.

I have two questions. Does the authority have the right to override what is a statutory instrument? The second and bigger issue is one the unions are asking us to try to establish. Is there a policy in CIÉ to engage in deliberately underfunding the defined pension scheme in an effort to make it insolvent at some point? There are serious questions that need to be answered.

**Chairman:** Does the Deputy want us to write directly to the Pensions Authority with those two specific questions?

**Deputy David Cullinane:** To both CIÉ and the Pensions Authority.

**Chairman:** We will address both questions directly.

**Deputy Catherine Murphy:** I received quite a bit of correspondence as well. I suspect we all did. There is obvious frustration given this is a semi-State company. What can we, as the Committee of Public Accounts, do directly on this? Does it come under the remit of the Comptroller and Auditor General?

**Mr. Seamus McCarthy:** The Pension Authority does but CIÉ does not.

**Deputy Catherine Murphy:** Can we do it via the-----

**Chairman:** Pardon?

**Deputy Catherine Murphy:** Can we do it via the-----

**Mr. Seamus McCarthy:** There is probably a difficulty. Perhaps the committee needs to consult about that. To intervene in a determination of the Pensions Authority would probably be outside the remit of the committee. I certainly would not want to be trying to second guess a determination by the Pensions Authority. If there are grounds for action, then it is for those who are affected by it to take an action against the trustees or-----

**Deputy David Cullinane:** I am certainly not looking to intervene in a decision made by the Pensions Authority but I am asking whether it has the authority to intervene in this case. Has it overstepped its mark? It may not have. There is a statutory instrument here which is clear. It seems from the correspondence the extra time was allowed. Perhaps it does have that authority. I think would should certainly try to establish whether it has or not.

## BUSINESS OF COMMITTEE

**Chairman:** We will ask and get a reply. We will come back then. We will note that and we will follow it up with the specific questions raised. Correspondence No. 1092C from an individual dated 16 February regarding the sale of land by the congregation of Christian Brothers at Clonkeen College in Blackrock in County Dublin. The individual wrote to the committee regarding this matter last year. We sent the response from the Department of Education and Skills to the individual. The person has now asked the committee to look at the role of the Department of Education and Skills arising from its failure to safeguard fully the State's investment in schools that were built on land owned by third parties, and in particular on lands owned by religious orders.

This may be an interesting point. I propose we write to the Department of Public Expenditure and Reform for an information note on the models used to protect capital investment by the State on land owned by private or charity entities. This has far reaching effects, with the State investing money in lands not in its ownership. A local authority would not build a house on land it did not have the title deeds to. We want to get a note from Department of Public Expenditure and Reform on that. We will come back to that broad issue. Agreed.

The next item is correspondence 1093 from Deputy Alan Kelly suggesting amendments to our working document in relation to our report. We will come to that in private session and we will have another meeting after today before we finalise it.

**Deputy Alan Kelly:** At least one more. We are not going to get much time today.

**Chairman:** We are finishing at the vote regardless, because we are here in the afternoon with Revenue and the Department of Finance. Correspondence No. 106 from-----

**Deputy Alan Kelly:** Have we dealt with this issue of UCC?

**Chairman:** It will be next week.

**Deputy Alan Kelly:** It is not on the correspondence list.

**Chairman:** No, we will discuss in private session about progressing the correspondence. We are going into private session in a few moments. Correspondence No. 1106 is from Deputy Shane Cassells in respect of our proposed engagement on funding of local authorities. We will discuss that as part of our work programme because we are bringing in the local authorities. That is the end of correspondence just for now.

We move on now to statements of accounts received since the last meeting. They are coming up on the screen now. The first one is St. Patrick's Teaching College, a clear audited opinion, with attention drawn to the recognition of deferred pensions, as is normal. St. Patrick's Teaching College was incorporated into Dublin City University with effect from 1 October 2016. Is that the final set of statements?

**Mr. Seamus McCarthy:** We are looking at that. There may be a technical necessity to have one final cessation account but it would be for a very short period.

**Chairman:** Okay, we will note that. The University of Limerick, a clear audited opinion, with attention drawn to the pensions issue again. The university procured a material level of goods and services during the year without competitive tendering. We will certainly be coming back to UL as part of our work programme. The next item is Oifig an Choimisinéara Teanga. It monitors compliance with the provisions of the Language Act 2003, a clear audited opinion.



## COMMITTEE OF PUBLIC ACCOUNTS

The next item is the Health and Social Care Professional Council, a clear audited opinion, and again attention is drawn to the pensions liability issue by the Comptroller and Auditor General. The following item is the Regulator of the National Lottery Regulator's Administration account, a clear audited opinion. Then we come to the National Lottery Fund, a clear audited opinion.

Will the Comptroller and Auditor General just explain that to us? We know the regulator is paid by the lottery operator, as I understand it. It is meant to regulate the new games or new contracts that come up. That is a small item. Camelot, the operator of the national lottery, every so often transfers money. What is the flow a month? Where does it go?

**Mr. Seamus McCarthy:** The funds flow into the National Lottery Fund.

**Chairman:** So it does not go into the Central Fund.

**Mr. Seamus McCarthy:** After the payment of prizes and so on, a part flows to the Central Fund.

**Chairman:** Does money flow from the Central Fund to the National Lottery Fund?

**Mr. Seamus McCarthy:** No. There are no flows from the Central Fund to the National Lottery Fund.

**Chairman:** Why would money go from Camelot to the Central Fund on the one hand and the National Lottery Fund.

**Mr. Seamus McCarthy:** From Camelot the money goes into the National Lottery Fund.

**Chairman:** Does all the money go into the National Lottery Fund?

**Mr. Seamus McCarthy:** All the money from Camelot goes into the National Lottery Fund. Prizes are paid out of it.

**Chairman:** Surely, the National Lottery Fund receives the net amount after the prizes.

**Mr. Seamus McCarthy:** Small prizes are paid locally, but the large prizes are paid from the National Lottery Fund.

**Chairman:** So who administers this fund?

**Mr. Seamus McCarthy:** It is overseen by the regulator. The regulator is the accountable person for the National Lottery Fund.

**Chairman:** There is no issue with the national lottery, but I am just curious. I will get a copy of the accounts and look at them for the next day.

**Deputy Marc MacSharry:** I see a reference to deferred pension. Will Mr. McCarthy explain that to me?

**Mr. Seamus McCarthy:** The universities are obliged in their accounting to recognise the liability for pensions that have accrued to staff of the universities and retired individuals. In order not to have a huge deficit on their balance sheet, they recognise a matching asset, which effectively is saying that in the future we will receive funding from the Exchequer equivalent to the amount of our liability so that we will be in a position to pay the amount. This is what



we are drawing attention to. They are making an assumption that they will receive funding to cover those liabilities.

**Deputy Marc MacSharry:** So it is smoke and mirrors.

**Mr. Seamus McCarthy:** I would not call it smoke and mirrors, I would call it something that people should be aware of when they look at the accounts and that is why I draw attention to it.

**Deputy Marc MacSharry:** It is a bit like the Government numbers the IOUs, it is as good as cash. The Exchequer will give it to us, provided it has money.

**Mr. Seamus McCarthy:** Yes but there is no expectation.

**Deputy Marc MacSharry:** Would it be normal to have a clear audited opinion based on that?

**Mr. Seamus McCarthy:** The reasonable expectation is that the funds will be made available to them in the future.

**Deputy Marc MacSharry:** By the State?

**Mr. Seamus McCarthy:** That is the principle upon which the pension schemes are based.

**Deputy Marc MacSharry:** Is that permitted under law or is it just the practice?

**Mr. Seamus McCarthy:** It is what is required under FRS 102, which is the accounting standards that they are using.

**Deputy Marc MacSharry:** Is FRS 102 specific to State bodies?

**Mr. Seamus McCarthy:** No, it is applied generally.

**Deputy Marc MacSharry:** If I have a private company and I identify my pension liability, can I put it in my accounts under this standard as a deferred pension, based on notional profitability?

**Mr. Seamus McCarthy:** No, Deputy.

**Deputy Marc MacSharry:** How does one do it in the private sector?

**Mr. Seamus McCarthy:** In the private sector, most of the schemes would be defined contributions schemes, once the payments are made, that is it as far as the business is concerned.

**Deputy Marc MacSharry:** That is what I was asking. I asked if there is one rule for State entities and a different rule for private entities to which Mr. McCarthy replied “no”.

**Mr. Seamus McCarthy:** The schemes are different. Under a defined contribution scheme, once the business makes the contributions to the pension fund in the course of the year, that is the end of the liability. There is no further liability for the business.

**Deputy Marc MacSharry:** Does that mean it does not come up for them, even if there is a hole in the pension fund?

**Mr. Seamus McCarthy:** The pension fund is what the pension is. It is not a question of

there being a hole in it. What the beneficiaries of the pension scheme get is what is in the pension pot. A defined benefit scheme is more general in the public sector, and the State as well operates on a pay as you go basis, so what the State does, as pensions require to be paid, is to fund the public body to pay those pensions. The accrued liability that staff have earned is recognised as a future liability.

**Deputy Marc MacSharry:** Chairman, I have two more questions, and I promise I will finish then.

The Comptroller and Auditor General has given the University of Limerick a clear audited opinion, but obviously Deputy Cullinane and others have serious concerns about Limerick. Was this an exceptional year, where everything was tickety-boo?

**Mr. Seamus McCarthy:** The clear audit opinion is in relation to the financial statements and whether they properly reflect the transactions in the year and are related to the year. It is not a clear audit opinion in relation to all operations or all activities of the college.

**Deputy Marc MacSharry:** Are we going to have meetings about that? Okay.

**Mr. Seamus McCarthy:** If there are matters I have concerns about from a propriety perspective, I would draw attention to them, but until such time as I have completed work on the matters we have talked about earlier, there is no reason for me not to give a clear audit opinion.

**Deputy Marc MacSharry:** I see here that the health and social care professional council promotes standards of professional education, training, competence and so on. It is a clear audit opinion, but it states, attention is drawn to the non-recognition of pension costs and liabilities.

**Mr. Seamus McCarthy:** In this situation, I gave a note on it to the committee a couple of months ago, there is a specific direction from the Minister for Health in relation to health bodies that they do not account for pension liabilities in their financial statements. They account for pensions as they pay them, and because that is not consistent with what is required under FRS 102, I draw attention to it. It is a deviation from FRS 102. They do give a true and fair view in their financial statements, but it does not recognise that they have liabilities in relation to future pension payments to their staff.

**Deputy Marc MacSharry:** Can the Ministers of various Departments do that?

**Mr. Seamus McCarthy:** There is provision for the Minister for Health to make that kind of direction.

**Chairman:** We have touched on an important issue. Again it is an issue because one would have assumed that the reporting of all public bodies would be in line with approved international accounting and financial standards, but the Minister can overrule that in legislation. On the legislation for the HSE, in particular, and other health organisations such as we have seen here, there is a statutory provision to account for it in the way the Minister says so, notwithstanding that it is not in accordance with international accounting standards.

Another major example of this that the Comptroller and Auditor General will give is the almost €2 billion in claims against the State, mainly for medical negligence is not recorded in the HSE's financial statement. There is no organisation of this size anywhere in the world that can produce its financial statement, given that it has a calculated estimated liability of the claims against it, and utterly exclude them. They put a little note to say the State Claims Agency are

dealing with it, but they are not recorded in the accounts in the normal way. It is in line with the legislation passed by the Oireachtas but it is not in line with anything else.

**Mr. Seamus McCarthy:** I draw attention to it.

**Chairman:** The Comptroller and Auditor General draws attention to where the Ministers have passed legislation to the effect to ignore the international standards, so this is another example where the Comptroller and Auditor General highlights that.

We will now move on to the work programme. We will come back to the third level colleges separately. I wish to highlight that on Thursday, 8 March there is a meeting on the funding for local government. What I am proposing to do is to manage the meeting by breaking it up into two chunks. In the morning we will deal with the central government funding of local authorities, and the Department of Housing, Planning and Local Government will be here to deal with that, as the funding body. We will also deal with the Local Government Fund on that day, even though that is closing down a bit, but it was in existence last year; funding from the Department of Transport, Tourism and Sport which goes to local authorities; and, funding from Transport Infrastructure Ireland. There is a special report of the Comptroller and Auditor General on motor taxation. In the morning session, I propose that we agree to deal with the funding of local government, and that includes the roads funding as well as funding directly from the line Department.

**Deputy David Cullinane:** Does it include housing?

**Chairman:** I will come to that in a minute.

I propose that in the morning we will deal with local government funding, transport funding, Transport Infrastructure Ireland, TII, the Local Government Fund and the special report. In the afternoon, we will deal with the rest of the Department's Vote for housing, planning, community and local government separately. We can then let the people from Transport Infrastructure Ireland, TII, go. They do not need to be here when we are discussing housing in the afternoon. Essentially, we are looking at a morning and afternoon session.

**Deputy David Cullinane:** Will the Chairman circulate a note on that?

**Chairman:** Yes. There will be two halves to the meeting.

**Deputy Alan Kelly:** I hope TII's approach is consistent with what it said here several months ago.

**Deputy Catherine Murphy:** Will the local property tax will be part of that morning session?

**Chairman:** Yes, as part of special funding in local government. We have received an information briefing note. Are we agreed to divide the work into two halves? We do not want to mix housing up with roads. Housing is an issue in its own right to be dealt with separately in the afternoon.

The work programme is an ongoing item and people can come back on it.

**Deputy Alan Kelly:** Can we make suggestions for the 29 March slot?

**Chairman:** Yes.

## COMMITTEE OF PUBLIC ACCOUNTS

**Deputy Alan Kelly:** I suggest between now and the next meeting we think about who we should bring in from the third level sector.

I wrote to the committee about UCC. For a third level college to spend €500,000 on a partnership with Cork Opera House is one matter. The reply to that from UCC was that funding from UCC comes from non-taxpayer revenues. However, we need to have public revenues in the first place to be able to generate non-taxpayer revenues. We have had this debate here for hours with all third level colleges. The partnership and the link-up is a separate matter. To claim the college has non-taxpayer generated revenue, when the reason it has income in the first place is because of taxpayer funds, is a laugh.

**Chairman:** Do the universities have separate funds to deal with taxpayer moneys and non-taxpayer moneys?

**Mr. Seamus McCarthy:** No, their income is their income. What UCC is referring to is donations, fees paid by students-----

**Chairman:** SUSI.

**Mr. Seamus McCarthy:** Effectively that money is the money of the student to spend where he or she wishes. They may have other on-campus activities generating-----

**Deputy Alan Kelly:** Basically it all goes into one big pot. The idea it can be separated out, the college can spend €500,000 and then come crying looking for money for everything else is a laugh. Whatever about the particulars for each college which we all went through, the message has not got through in this case.

**Deputy Catherine Murphy:** We have had two sizeable pieces of correspondence on open disclosure and contingent liability of €2 billion and the State Claims Agency. We were told a pilot study was commenced eight years ago. If the open disclosure proposal was fully implemented, it could end up being a good model for reducing liability on the courts or legal side. Has that been factored in?

**Chairman:** We will have the NTMA, the State Claims Agency and the HSE in on the same day. The biggest end of the State Claims Agency's work is medical negligence.

**Deputy David Cullinane:** There are a range of issues on which we are waiting for reports. We are waiting for a report from the Comptroller and Auditor General's office on the University of Limerick. We have accepted that until we get that report, we cannot advance it. We need to get that report first and then we can deal with it.

There is the report on the consistency of intellectual property policy across all third level sectors. The report on Waterford Institute of Technology has still not been published as it is still with the legal people. There was the issue of spend on legal and consultancy fees. We got a report on this but it is still sitting there. There is the UCC issue which Teachta Kelly raised.

Can we have a report from the secretariat on all of the outstanding issues for the third level sector for the next meeting? Maybe from that, we will be in a position to decide what we can and cannot deal with. Maybe the Waterford report might be out by then.

**Chairman:** We will do that for the next meeting. We will be back to the work programme next week.

Is there any other business?

**Deputy Marc MacSharry:** When An Post was in some time ago, I asked for a schedule of Prize Bond winners over the past 20 years. An Post said no problem. None of us knows anyone who ever won it. Has any correspondence come back on this? If not, we might request it.

**Chairman:** We will follow that up.

**Deputy Marc MacSharry:** I have to leave now but I will be back for my slot at 2.30 p.m.

**Chairman:** That is okay.

**Deputy Alan Kelly:** When are we dealing with what transpired in the Dáil last week and the references to the Committee of Public Accounts?

**Chairman:** We can do it later in private session.

*Meeting suspended at 10.06 a.m. and resumed at 10.11 a.m.*

## **Comptroller and Auditor General 2016 Report**

### **Chapter 20: Corporation Tax Receipts (Resumed)**

**Dr. Brian Keegan** (*Director of Public Policy, Chartered Accountants Ireland*) called and examined.

**Chairman:** Today we will resume our consideration of Chapter 20 of the Comptroller and Auditor General's report of 2016. The chapter is on corporation tax. It is important that members of the public remember that corporation tax accounted for 15% of total tax receipts in 2016. This tax has displayed considerable volatility in recent years. Some 70% of all corporation tax is paid by the top 100 companies, and 37% by just ten companies. Such a concentration represents a serious risk to the Exchequer and the payment for public services in the years ahead. The committee wishes to understand fully this risk and how it might best be dealt with.

The area of corporation tax in a global economy is complex and poorly understood by many people. Dr. Brian Keegan, director of public policy on taxation with Chartered Accountants Ireland, was contracted by the committee to provide a briefing to it to develop its understanding. In our first session last week, in private session, he gave us a briefing. We are here today to provide that briefing in public session for the benefit of the public who want to follow the discussion. He is accompanied today by Ms Norah Collender, also from the institute. In the afternoon, we will have further engagement with the Revenue Commissioners and the Department of Finance to bring our consideration of this matter to a conclusion for now.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter to only qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice

to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members of the committee are reminded of the provisions of Standing Order 186 that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policies.

I thank Dr. Brian Keegan for the briefing documentation he has already provided to the committee and for the update we received from him in recent days. I invite him to make a brief opening statement. May we note and publish the opening statement and briefing document provided for the meeting today?

**Dr. Brian Keegan:** Certainly.

**Chairman:** I ask Dr. Keegan to make his opening statement. We will not have any lead speakers. Each member will put questions to Dr. Keegan as we go along.

**Dr. Brian Keegan:** I thank the committee for the opportunity to contribute to its work in so far as it relates to an examination of corporation tax in Ireland. Members will have received our briefing document on corporation tax. I am happy to provide any further explanations and whatever clarifications I can in the course of the meeting this morning. I am joined today by my colleague Ms Norah Collender.

Any charge to tax on companies in Ireland hinges on the concept of residence. All developed countries operate residence rules by virtue of the place of incorporation, or the place of management and control, or a hybrid arrangement. In Ireland, the charge to corporation tax is, first and foremost, based on the place of incorporation. A company incorporated here is tax resident here.

In Ireland, the headline corporation tax rate is 12.5%, but other rates also apply to companies. Investment or passive income is taxed at a rate of 25%. Capital gains — namely profits arising from the sale of a capital asset, such as land or buildings — are taxed at 33%. Many companies are subject to further surcharges on profits, and these companies are known as close companies. The majority of companies in Ireland are close. Close companies are defined as companies that are owned and controlled by a small group of people; often they are family ventures.

The Irish tax system operates to ensure that, all else being equal, it is more costly in tax terms for a business to operate through a company compared to operating the business through sole ownership, even though the prevailing company rate of 12.5% is far lower than the top rate of income tax, 40%, plus USC and PRSI. That is because money leaving the company is taxed under the income tax regime while money remaining in the company is taxed under the corporation tax regime and then potentially surchargeable at a rate up to 20%.

One of the consequences of the close company legislation is that relatively few companies in Ireland pay corporation tax, and those that do pay small amounts. Most corporation tax is typically paid by non-close companies, that is, publicly quoted companies or multinationals.

There are other special classes of company that feature in the Irish tax system. For example, real estate investment trusts allow investors purchase shares in investment property while taxing the returns as if the investors had directly bought the investment property and rented it themselves. Charities are subject to an exemption from mainstream taxes. A section 110 com-



pany is a particular type of company used to facilitate asset management in the International Financial Services Centre.

There are also particular tax regimes that can apply depending on the nature of the company's activities. Incentives exist for investments in intellectual property, for the development of intellectual property through research and development, and for the exploitation of intellectual property recognised under the knowledge development box rules. We have provided an outline of the rules applying to these special classes of companies and incentives in the briefing document.

The Irish Corporation Tax system also works within a framework of international agreements and conventions, not least our undertakings by virtue of our membership of the European Union.

No taxes can be modified by the European Union without unanimous agreement among the 28 EU member states. In terms of corporation tax specifically, there exists a number of EU directives to ensure that, within the confines of EU member state borders, no double taxation accrues when EU-based companies pay each other dividends, royalties or interest, nor should there be a tax penalty when companies seek to merge their businesses across EU member state borders.

The EU treaties also provide for the safeguarding of four fundamental freedoms – the freedoms of movement of people, goods, services and capital. All Irish law, not just corporation tax law, must be compliant with these principles. Under the state aid rule, no country can grant a selective advantage to a company or to a sector of which other companies or sectors cannot avail.

Beyond EU membership arrangements, Ireland is also party to more than 70 bilateral double taxation treaties, which attempt to ensure that a company cannot be taxed twice in two different jurisdictions on the same profits. These relieving measures are mainly policed by systems of withholding taxation.

To conclude these opening comments, we were asked to describe the discretion available to the Revenue Commissioners in the pursuit of their responsibilities under the taxes Acts. In so far as Revenue officers have any discretion available to them, that discretion is circumscribed by the legislation. We have described in the briefing note the main circumstances in which discretion or judgment might be applied. I would be happy to expand on these further and, indeed, on any aspect of the briefing note.

**Chairman:** I thank Dr. Keegan. We are talking only about corporation tax today. We are not talking about other taxes. Dr. Keegan said no taxes can be modified by the European Union without unanimous agreement. Is he talking about corporation tax specifically?

**Dr. Brian Keegan:** Corporation tax but also income tax and, for that matter and for practical purposes, VAT. All EU member states operate a VAT system. It is a condition of accession to the European Union that a VAT system be introduced.

**Chairman:** With regard to the income tax bands that change every year and the tax credits that are announced in the budget, do they specifically require unanimous agreement?

**Dr. Brian Keegan:** No, they are sovereign issues for Ireland.



**Chairman:** Corporation tax is also sovereign?

**Dr. Brian Keegan:** It is, correct.

**Chairman:** That is okay, I just wanted to check that. Who would like to pose a few questions? The document is now published. We ask people who have an interest in this area to download and read it.

**Deputy Catherine Murphy:** I thank the witness for the update and following through on some of the questions we asked last week. I am interested in the section on transfer pricing. That comes out of the report, Review of Ireland's Corporation Tax Code, by Mr. Seamus Coffey. If transfer pricing were to be extended to non-trading transactions that would include transfer pricing examination of matters such as renting property, how would that apply in respect of real estate investment trusts, REITs? The witness has described withholding tax to us and the tax being liable.

I will put an example. If 80% of shareholders were in one of the other European countries, essentially the tax liability, with the exception of the withholding tax liability, is in the country of their origin. Would this recommendation in the Coffey report have any bearing on where the tax liability might fall? We are seeing, in effect, property become mobile for the first time. The understanding was that property was the one thing that could be taxed in one location and was not mobile. Where would that intersect with these real estate investment trusts, if at all?

**Dr. Brian Keegan:** It is an interesting point. The Deputy's conclusion, "if at all", is probably the answer. When we speak of transfer pricing, we are normally speaking about transactions between connected companies, most often those under common ownership. A REIT is by definition a kind of stand-alone management arrangement for a particular property or group of properties. Transfer pricing arrangements might conceivably apply if two REITs were in common ownership in different jurisdictions. I am not aware if that is a common structure. They are probably separate issues and I do not see any immediate interaction between the two.

**Deputy Catherine Murphy:** What bearing would the Coffey recommendation have and on what sector?

**Dr. Brian Keegan:** There might be a situation where one company was renting a property belonging to another company, maybe at a discounted rate. If this is a strict arm's length transaction between two associated companies, would that be allowed? That is where it would come in. Generally, transfer pricing has to do with sales of products between companies. They are the trading transactions talked about. However, when talking about rental, as currently constituted, Irish transfer pricing would not look at those kind of structures.

**Deputy Catherine Murphy:** In respect of bank debts or liabilities, we read not long ago that one particular bank that had been bailed out would not have an expectation of a tax liability for about 20 years. Is there a way of disaggregating some elements of commercial trading? I refer to the banks. I can understand a small company may have accumulated debts and writes those debts off against taxes. That is understandable. I can visualise why that would be required. Is there a way of separating out the two? Can a bailed-out bank be treated differently for tax purposes? Can portions of the corporate sector be separated out or must there be equal treatment right across the board?

**Dr. Brian Keegan:** The general principle, and this harks back to the Chairman's original question, is that we have to abide by EU regulations on state aid. For that reason, to take the

most obvious example, we cannot apply a different tax rate to a bank than a corner shop. It has to be 12.5%. We cannot make a distinction between different sectors of industry. The same principles would apply where availability of tax reliefs was being restricted.

Technically, it would be possible to draft legislation which would restrict the use of losses in a particular industry such as banking, manufacturing or whatever industry one cares to choose. Whether that would be permissible under EU rules which ensure no one sector can be favoured over another is a question that would really have to be teased out. Having said that, there are procedures, and Ireland does this all the time, whereby we approach the European Union, say we are proposing to do this in our tax legislation and ask whether it is acceptable under state aid rules. Conceivably, some kind of arrangement might be possible, but on first principles, we would need to be cautious about doing it.

**Deputy Catherine Connolly:** I appreciate Dr. Keegan's presentation. It was very interesting.

**Dr. Brian Keegan:** I thank the Deputy.

**Deputy Catherine Connolly:** What sparked it, of course, and we will be talking later about this, was chapter 20 from the Comptroller and Auditor General's report. I said this in private session last week. I refer to variation in the payment of corporation tax and the difference at what is set at 12.5% and the actual effective rate. That is to place it in context and where we are coming from. In 2016, corporation tax receipts accounted for 15%. Dr. Keegan clarified things for us in private session. How many companies are in Ireland?

**Dr. Brian Keegan:** From memory there are 175,000 registered companies - something of that order.

**Deputy Catherine Connolly:** And the vast majority would not come under corporate tax.

**Dr. Brian Keegan:** If they are registered in Ireland, *prima facie* they are chargeable to tax in Ireland. However, a significant number of companies are dormant. They might be included in that count. There are a significant number of companies which for various reasons, such as charitable status, might be exempt. Again, I am speaking from memory here but I can verify the figures, I think approximately 60,000 to 70,000 companies are actually paying corporation tax in Ireland. That would seem to be the breakdown.

**Deputy Catherine Connolly:** In 2016, corporation tax was paid by more than 44,000 companies. Of the 175,000 companies then, about 44,000 pay corporation tax?

**Dr. Brian Keegan:** Yes.

**Deputy Catherine Connolly:** Only a small number of that 44,000 pay-----

**Dr. Brian Keegan:** Significant amounts.

**Deputy Catherine Connolly:** -----significant amounts. Okay. That is even more worrying when we look at that figure because it is within three or four sectoral areas. Is that correct?

**Dr. Brian Keegan:** Yes, it is.

**Deputy Catherine Connolly:** Banking, insurance, manufacturing and-----

**Dr. Brian Keegan:** Pharmaceuticals.

**Deputy Catherine Connolly:** -----pharmaceuticals, and IT?

**Dr. Brian Keegan:** IT, yes.

**Deputy Catherine Connolly:** There is an enormous number of companies, but within that only about 44,000 are paying corporation tax. Within that group again is another tiny group. From the figures given by the Chair, we have 100 companies paying 70% of the corporation tax and ten companies paying 36%. That is the background, is it?

**Dr. Brian Keegan:** Yes, it is.

**Deputy Catherine Connolly:** Within those 100 companies and the ten companies, there is huge variation as to paying 12.5% down to zero. Perhaps Dr. Keegan could enlighten us as to the reasons for that?

**Dr. Brian Keegan:** There are a number of reasons. I will take some of the individual components in turn. The first is something we have dwelt on a little in our briefing document, which is the notion of a close company. The vast majority of companies in Ireland are held by a relatively small number of people.

**Deputy Catherine Connolly:** Those close companies are separate from the 175,000 companies?

**Dr. Brian Keegan:** No, they are within that number.

**Deputy Catherine Connolly:** They are within that. I beg the witness's pardon.

**Dr. Brian Keegan:** There is no distinction in company law between a close company and an ordinary company. A close company is purely a tax distinction. It relates, fundamentally, to the number of shareholders, that is, five or fewer. The idea behind a close company is to ensure that individuals do not put their businesses through as a company and avail of a 12.5% rate instead of a 40% rate. The laws are almost penal and are designed to ensure that if someone is incorporating a business in Ireland, he or she has to have very good commercial reasons to use a company structure and should not be doing so for tax purposes. There are special rules to do with leaving moneys in the company whereby if they are not distributed out, they are surcharged. There are special rules on how much money a director or shareholder can take out of the company without a tax penalty and so on. The combined effect of all those rules is that it is much more efficient for close companies to pay out their profits by way of salaries to the participators. Therefore, those profits, which one might expect to be taxed under corporation tax rules, are actually taxed under the income tax rules because they are paid out by way of salary or ultimately, by way of dividend. That happens because it is tax inefficient to do otherwise because the tax system is designed to ensure it is inefficient to do otherwise. The consequence of that is that the bulk of corporation tax is paid by more widely held companies which typically, by definition, are bigger companies. They tend to be multinationals and they tend to be publicly quoted. Due to the nature of the economic environment in which we all find ourselves, an increasing amount of the value and profitability of the corporate sector is derived from intellectual property. By contrast, 100 years ago the profitability of the corporate sector was mainly derived from the holding of natural resources. Things have moved on and it is those industries which have a very high reliance on intellectual property, like the pharmaceutical and ITC sectors, that are making the big money now. It is a by-product of economic factors on the one hand and the particular structure in Ireland on the other. The Irish structure is pretty unique in terms of how it actually penalises individuals. The UK started off with a similar set of arrangements

in the 1970s, which have been very much watered down since, but we have retained the strict close company regime and that is a big factor in explaining why there are relatively few companies paying corporation tax. It is not that tax is not being paid or that Irish companies are not making profits but that the tax on those profits tends to be collected through the income tax as distinct from the corporate tax system.

**Deputy Catherine Connolly:** Most tax comes from the PAYE system-----

**Dr. Brian Keegan:** That is right.

**Deputy Catherine Connolly:** ----- and within the PAYE system, close companies pay tax through salaries that are taxed. Is that the way it works?

**Dr. Brian Keegan:** In the context of a director -an owner-manager - of a close company, effectively tax on the profits of that business are paid by way of the wages being paid to that director; he or she pays income tax through the PAYE system. It is not as if the company profitability - if it exists - is disappearing or falling out of the tax system somewhere.

**Deputy Catherine Connolly:** That is okay. I just wanted to get an overview of the close company structure, which Dr. Keegan has just explained. I now ask Dr. Keegan to address the issue of the variation noted in the chapter by the Comptroller and Auditor General. I ask him to explain that to people. The statutory rate is 12.5% but the effective rate can vary from 12.5% right down to 0%. In private session Dr. Keegan said that there are many legitimate reasons for that and I ask him to explain those reasons to the committee now.

**Dr. Brian Keegan:** To reduce the volume of taxable profit, there are relatively few reliefs in the Irish corporation tax code. One of the reliefs, to which Deputy Catherine Murphy alluded earlier, is based on losses being carried forward. Where a business has incurred losses in previous years, it can carry those losses forward and offset them against the taxable profits in the current period or a future period. That is certainly a contributing factor. There are also provisions whereby if a company engages in capital investment like buying new plant or machinery or intellectual property - things like copyrights, patents, trademarks and so forth - it can use the money expended on those capital assets to reduce the amount of profit that is subject to tax. That is above the line, so to speak, and one comes up with the taxable figure and tax is charged at 12.5% or 25%, as appropriate. However, below-the-line credits can arise, mainly in two areas. They can arise in terms of the indigenous tax credit for research and development, which is a huge factor in the Irish tax system. It is very much tied up with the notion of intellectual property and therefore, by definition, it is tied up with those companies which tend to make the most money because of their economic structure. We also operate a system of tax credits whereby if holding companies in Ireland are receiving a dividend from abroad, a credit attaches to those dividends by virtue of foreign tax paid by foreign subsidiaries, for example. That would reduce the overall effective rate.

There are factors above the line that reduce the actual taxable profit and there are factors below the line which, after the tax is calculated, reduce the amount of tax payable. Both sets of factors influence the so-called effective rate.

**Deputy Catherine Connolly:** Mr. Keegan is saying that the effective rate for the top ten or top 100 companies can be as low as 0% because of legitimate ways of not paying tax through use of research and development credits or the purchase of intellectual property. Is that correct?

**Dr. Brian Keegan:** The focus has to be on the effective rate of tax on profits which are

properly chargeable to tax in Ireland.

**Deputy Catherine Connolly:** That is okay. I am just trying to understand it all. The Revenue Commissioners will be coming before the committee and we want to understand the system.

**Dr. Brian Keegan:** I think the Deputy's summary is very fair.

**Deputy Catherine Murphy:** Can I just expand a little on that? It would be quite useful to hear about the changes that were made in the UK with regard to smaller companies. Usually when there is a newspaper headline relating to corporate tax, the response is that a small number of companies pay the vast majority of corporate tax and that is actually the case. However, Dr. Keegan has drawn a distinction between close companies and how their tax is treated and other companies. In actual fact, we are not comparing like with like. We are not talking about 107,000 companies being liable for corporate tax - only a portion of those companies are liable. Dr. Keegan also described the tax treatment of close companies as "penal". It could be viewed as an inhibitor in terms of Irish companies growing if we cannot apportion tax in a fair way and if some groups of companies are enjoying a disproportionately advantageous tax treatment in comparison with others. Smaller or close companies appear to have a bigger hill to climb. What changes did they make in the UK? Were those changes assessed in terms of whether they improved the prospect of survival of companies or the flourishing or even the incorporation of those companies if they grew enough to trade outside of the jurisdiction?

**Dr. Brian Keegan:** It is hard to say. In very basic terms, the UK replaced its close company legislation with a procedure known as IR35. That procedure allows Her Majesty's Revenue and Customs to look through the corporate structure and tax the individuals as if the earnings of the company had arisen directly to themselves. It is a much more convoluted structure. The great advantage of our close company regime is that it is well defined and well understood. When I say "penal", I should clarify what I mean. If one is trying to game the system and trying to use the corporate structure to have profits taxed at 12.5% instead of at the income tax rate, one will get caught. It is for that reason that Irish business owners are careful to ensure that those rules are not triggered and that money is paid out and accounted for through the income tax system. The net effect is probably the same but the revenue authorities in the UK found they had to impose the IR35 mechanism to effectively undo the undoing that they had done on their close company regime. I hope that explains it for Deputy Murphy.

**Deputy Catherine Connolly:** Of the top 100 companies, most are probably benefitting from the research and development credit. To be fair, they are probably companies that are most suited to carrying out research and development, like pharmaceutical companies. Is that right?

**Dr. Brian Keegan:** Yes.

**Deputy Catherine Connolly:** Is it the case the other companies in Ireland, mainly indigenous companies, are not able to make the most of the research and development credit or similar methods for reducing the corporation tax payable?

**Dr. Brian Keegan:** Given the way our tax system is structured, there are very few reliefs available to the corporate sector outside of research and development so one must then look at the underlying activity in the company. We might have spoken during private session last week about a warehousing company in the midlands. It is not reliant on research and development or



on new techniques or new software for its profitability. By definition, therefore, it is not going to engage in research and development in the first instance and, as a result, will not be able to avail of tax incentives for such activity. By and large, there are very few incentives left in the corporate tax system. One of the by-products of the reduction of the main rate from 40% to 12.5% was the elimination of various reliefs. For example, there used to be a system known as free depreciation whereby if a company bought an asset, it could write the full cost of that asset straight off against its tax liability. All of those kind of reliefs went and we are left with the 12.5% rate, research and development and the knowledge development box. That is really all that is left.

**Deputy Catherine Murphy:** What difference has the knowledge development box made?

**Dr. Brian Keegan:** It is very hard to say because it has not been in existence long. I do not mean to be flippant in any way. I think it is only in its second year of operation. I am not clear that there is any particular evidence even from the returns of the extent of its take up. All I can say about the knowledge development box is that, unusually, it was not designed to be compliant with OECD regulations. They took the OECD regulations and applied them in the design of it. There was already an OECD-proof structure for knowledge development box regimes. They are available in a number of different territories. It would have been brought in to complement the overall Irish tax incentive offering. It sits alongside research and development so there is the research and development relief and then by virtue of the fact that a company is doing research and development, it can then apply what it has developed further in pursuit of the knowledge development box tax relief as well.

**Deputy David Cullinane:** I thank Dr. Keegan for his document. I was not here for the private session last week due to a hospital appointment but I read the document.

There are three areas I wish to discuss with Dr. Keegan. He talked about capital investment as one of the allowances that can be used to reduce a company's corporation tax. We know that, in 2014 and 2015, there was a spotlight on intangible assets and the 80% cap was reduced for a period. This resulted in the amount involved increasing from €2.7 billion to €29 billion, so it was quite substantial. The number of companies that availed of it was quite small. Could Dr. Keegan talk me through what actually happened there? I do not know whether he has a competency in this area.

**Dr. Brian Keegan:** There were a number of factors. First, it would appear that intellectual property, by which I mean copyright, trade marks and patents, assets which are intangible but which add to the value of a product being created, must be located somewhere. As a consequence of the OECD base erosion and profit shifting project, BEPS, which really tried to get to the heart of cross-border transactions, it became less and less worthwhile for those assets to be located in what were known as traditional tax havens such as Bermuda and the Cayman Islands so they were brought on shore into legitimate tax regimes of which Ireland is one.

**Deputy David Cullinane:** Could Dr. Keegan explain what happened? I understand the concept of it. There was an 80% cap, which was changed in 2014. What was the nature of that change? There was another change in 2017 or this year but it was not made retrospective. Could Dr. Keegan explain the position in terms of percentages and figures and what is or is not allowed?

**Dr. Brian Keegan:** Let us say that I spend €1 million buying a patent, that I am manufacturing a product and that I make €100 profit for the sake of round figures. I can reduce that €100

by virtue of the €1 million I have spent on the patent but I am only allowed to reduce it so that there is some tax left in the charge. Of the €100 I have made on the product using the patent, I can only reduce that by 80% so there will always be €20 left in charge. When the intellectual property regime was introduced, that 80% restriction was there. It was removed some years later and was reinstated by virtue of the Finance Act 2017.

**Deputy David Cullinane:** Was it removed in its entirety?

**Dr. Brian Keegan:** Yes. The net effect of-----

**Deputy David Cullinane:** Does Dr. Keegan have any idea how much that cost?

**Dr. Brian Keegan:** It would have been a cashflow cost rather than an overall absolute cost. The value, in tax terms, is paid. In respect of the €1 million a company would have spent on acquiring the patent in the first place, that allowance remains until I have exhausted it but I cannot exhaust it by reference to 100% of my profits each year. I can only exhaust it by reference to 80% of my profits each year so what is happening is that the tax benefit of the company's investment in the patent is being deferred slightly rather than being extinguished completely. In so far as there is a cost, and I do not know what the cost would have been, it is a cost that is deferred rather than-----

**Deputy David Cullinane:** Notwithstanding how it works and leaving aside accountancy jargon, I would imagine that when the change happened and the 80% cap disappeared for a time, there was a cost to the taxpayer. I would imagine that it did cost the taxpayer money and we took in less because this was an allowance that was greater than what existed in the past so surely it is possible to calculate what the cost was. I am not saying Dr. Keegan would have the information but surely it is possible to do it.

**Dr. Brian Keegan:** I would have thought that it would be possible to calculate the impact.

**Deputy David Cullinane:** Dr. Keegan does not have an idea of what that is, however. Has it ever been calculated? Has the figure ever been published?

**Dr. Brian Keegan:** I am not aware that it has been. That is not to say it has not been. It is just that I am not aware of it.

**Deputy David Cullinane:** It is stated on page 47 of Dr. Keegan's document that section 851A of the Taxes Consolidation Act ensures that Revenue must treat the affairs of individual taxpayers in strict confidence except in a number of specific circumstances, which is correct. Why is that the case? Why would we treat them in strict confidence? What are the specific circumstances relating to exemptions?

**Dr. Brian Keegan:** There has been a practice, probably since the establishment of this State, whereby the individual affairs of taxpayers have always been treated confidentially and Revenue reports back, as it does every year in its annual report, in the round on how many taxpayers it has dealt with, how much tax it has collected and under which tax heads. However, the actual precise individual affairs of taxpayers never came to light except in the context of court proceedings, for example, if a taxpayer took a case through the courts relating to their tax affairs. Only at that stage would the actual individual breakdown of a taxpayer's affairs become known.

**Deputy David Cullinane:** Do a taxpayer's affairs not constitute a legal agreement? A taxpayer has a legal obligation to pay tax.



**Dr. Brian Keegan:** Yes.

**Deputy David Cullinane:** It is not a gentleman's agreement.

**Dr. Brian Keegan:** Absolutely not.

**Deputy David Cullinane:** It seems to be treated as a gentleman's agreement, however, particularly if it is kept secret, if it cannot be deliberated upon and examined publicly and if we cannot have full public accountability and transparency. Are we treating it then more as a gentleman's agreement than a legal agreement?

**Dr. Brian Keegan:** I am not sure I understand the distinction regarding a gentleman's agreement. It has been the practice right the way along that a taxpayer's affairs are strictly private and confidential. For example, there is no way of establishing purely in terms of tax rules what any individual's income is or what are his or her personal circumstances. Sometimes those personal circumstances can be very sensitive. For example, if an individual is claiming medical expenses, he or she might not necessarily want that to be out in the public domain. That has been the case irrespective of whether or not the taxpayer is an individual or a body corporate. We only ever see the detailed workings of an individual taxpayer's affairs, be they corporate or individual, in the context of judicial proceedings.

**Deputy David Cullinane:** Once the tax is collected, however, it is public money.

**Dr. Brian Keegan:** Absolutely.

**Deputy David Cullinane:** It may be an ideological argument but I would imagine that once it becomes public money, there needs to be an element of public scrutiny. However, Dr. Keegan has given reasonable arguments. I am trying to establish why a person's tax affairs are so secretive because I have raised this in the past with Revenue. Different countries approach it in different ways. We have gone down the road of absolute secrecy while other countries have not.

**Dr. Brian Keegan:** To clarify, I can only describe the situation as it prevails-----

**Deputy David Cullinane:** Absolutely.

**Dr. Brian Keegan:** -----and without prejudice.

**Deputy David Cullinane:** I was only getting Dr. Keegan's opinion on the reason. I have raised my final point previously. The Comptroller and Auditor General carried out a report on it as well. I do not believe it was a special report. It relates to hospital consultants who were able to establish companies for the purpose of avoiding income tax. I want Dr. Keegan to walk me through how an individual with a high net worth can establish a company for the purpose of booking his or her income. This has been prevalent in certain sectors. Does Dr. Keegan have data on how many individuals do this?

**Dr. Brian Keegan:** No. I am not aware of data on that.

**Deputy David Cullinane:** But Dr. Keegan is aware of the practice.

**Dr. Brian Keegan:** Yes.

**Deputy David Cullinane:** Dr. Keegan is also aware that, for example, senior presenters in RTE who are on six-figure salaries do this. It has often been put in the public domain how they would set up companies that would be paid by RTE or, in the case of a consultant, by the

hospital. The person would then get a salary from that company on which he or she would pay income tax.

**Dr. Brian Keegan:** That is right.

**Deputy David Cullinane:** The salary would be a portion of the overall amount, but the rest would be treated as profit on which corporation tax would be paid. Talk me through how that happens. Is that approach available to every worker in the State?

**Dr. Brian Keegan:** Like everything else, it is in theory, but I imagine that most employers prefer to have their employees as employees.

**Deputy David Cullinane:** Why?

**Dr. Brian Keegan:** For starters, we have a distinction in tax - I do not want to get technical in any way - between a contract of services and a contract for services. If one is an employee, one is engaged by an employer to provide under a contract for services. An employee also has all kinds of entitlements under the employment and labour laws and protections that exist within the State's ambit. If one is providing a contract of services, for example, if one is trying to operate through a company, then one no longer has those kinds of protection. That is one aspect of it.

I will use a simple example to show how it works in practice. Let us say that I was to incorporate my business and that, instead of invoicing as Brian Keegan, I invoiced as Brian Keegan Limited. It would simply be a matter for me of putting the work through the company. The company would keep its own books and records. Invoices would be issued from Brian Keegan Limited and that money would belong to Brian Keegan Limited. As the Deputy rightly pointed out, I would be paid a salary by the company. In so far as the profits of the company were not extinguished from the salary, those profits would be liable to tax at 12.5%. The wrinkle, which links with the previous questions on close company rules, is that, if I leave the money that was taxed at 12.5% in the company, it becomes liable to a surcharge of 20% after 18 months. For me to avoid that, I would have to pay out the money I had left in the company by way of a dividend, in which case it would be immediately taxable under the income tax rules. These are all of the wrinkles.

As I said in private session, when I am asked by individuals from time to time whether it is worth their while to incorporate, I always tell them not to do it for tax purposes. If there is a commercial reason for doing it, for example, if they need the protection of limited liability, then by all means they should do it, but they should not do it for tax reasons because there is no tax advantage.

**Chairman:** Next is Deputy Murphy. I will pose a few questions shortly.

**Deputy Catherine Murphy:** A couple of further questions occur to me, the first of which is on auditing research and development. Some companies operate on a leading edge basis. As they manufacture, research and development is happening. How is that audited?

**Dr. Brian Keegan:** That is a good question and ties back to one of Deputy Cullinane's points. It is one of the rare occasions where Revenue will have recourse to an outside expert or party to investigate the actual activities of the company that is claiming the research and development tax credit to ensure that it is bona fide research and development and there is an entitlement to the credit. Beyond that, it is audited in the same way as any activity of the com-

pany being audited.

**Deputy Catherine Murphy:** People's concept of research and development is someone in a lab testing things, but many companies also have a production line or the line is their research and development.

**Dr. Brian Keegan:** Yes.

**Deputy Catherine Murphy:** Is that not just plain manufacturing?

**Dr. Brian Keegan:** Specific guidelines are issued by Revenue to assist companies in dividing between their routine manufacturing activity and their research and development eligible activity. As long as they follow those guidelines, it is possible for companies to establish clearly in euro and cent exactly how much they should be eligible for. There is also an auditing process, one that can be two-staged. First, Revenue's audit ensures that the legislation and guidelines are being properly followed. Second, there can be a further investigation involving an external technical expert to ensure that the kind of work that is being undertaken is bona fide research and development and, therefore, eligible.

**Deputy Catherine Murphy:** I will pick up on Dr. Keegan's response to a point that was made about companies. He stated that, if money was still in a company, it would be subject to another tax after a certain time. Profitable multinationals are subject to tax. What happens to the money that is left in those companies?

**Dr. Brian Keegan:** If the multinational is not a close company, the surcharge does not apply.

**Deputy Catherine Murphy:** It only-----

**Dr. Brian Keegan:** It only relates to close companies.

**Deputy David Cullinane:** I will add something that I should have asked. Dr. Keegan stated that there may not be a tax advantage to incorporate. If a large portion of what in normal circumstances would be considered a salary is treated as profit from a company and is subject to corporation tax, can whatever is left in the company be invested in, for example, property or something else? It would not be drawn down as a dividend on which tax would be paid.

**Dr. Brian Keegan:** No. The Deputy is right that money that is left in a company is frequently invested in property, but that does not extinguish the requirement to distribute profits. As far as the tax system is concerned, it does not care where the profits have gone. They are just undistributed profits. The only commercial situation where the surcharge would not apply would be where there was a company law reason for a distribution not being capable of being made, for example, if the company was insolvent, but we are discussing the extreme edges there. Generally speaking, it does not matter what the company does with the money. It is not absolved of the requirement to pay the surcharge.

**Ms Norah Collender:** A company will end up paying a higher tax liability of 25% on any income from the investment.

**Deputy Catherine Connolly:** At the risk of raising a rotten apple, I will discuss the Apple case in a general way. It was mentioned in the up-to-date briefing document. The witnesses referred to residency. Is incorporation of the company important?

**Dr. Brian Keegan:** Yes.

**Deputy Catherine Connolly:** The situation also depends on double taxation agreements, residency and so on. However, there are always criteria that determine where a company is taxed. Dr. Keegan was at great pains to say that tax cannot be avoided. It has to be paid somewhere.

**Dr. Brian Keegan:** It does. That has been the case. I will preface these comments by saying that the regime now is radically different to what it was five years ago.

**Deputy Catherine Connolly:** That is what I wanted to discuss. I have read the up-to-date brief. What I gathered from Dr. Keegan's document last week was that criteria existed, the situation depended on whether one was a company or an individual and on whether there were double taxation agreements with specific countries, etc.

**Dr. Brian Keegan:** That is right.

**Deputy Catherine Connolly:** The criteria are clear. Dr. Keegan was at pains to say that, in the case of close companies, trying to use that system to try to avoid paying tax would be punitive.

**Dr. Brian Keegan:** Yes.

**Deputy Catherine Connolly:** I read this document last night, but then I considered Apple. According to page 37, the head office was not tax resident in any country. I do not want to get into the specifics, as I understand the matter is before the courts, but I will ask in a general way as a result of what Dr. Keegan stated. There was a head company, with two companies operating in Ireland - Apple Sales International and Apple Operations Europe. A decision was made to tax them based on their operations in Ireland. Most of the profits go to the head office. We knew at the time that the head office was not tax resident in any country, including Ireland or the US. Could that happen now?

**Dr. Brian Keegan:** It cannot happen now in so far as Irish law applies. The rule was changed in 2014 to ensure that if, for whatever reason, an Irish incorporated company appeared to not be taxable anywhere, it defaulted to being taxable here.

**Deputy Catherine Connolly:** From 2014?

**Chairman:** 1 January 2014.

**Deputy Catherine Connolly:** So prior to that, in addition to Apple, any company could have been or was doing this for all we know. Companies could have done exactly what Apple did, namely, not have been resident in any country for the purposes of tax but could have had two branches in Ireland that were only caught for limited amounts here while the vast profits went to a company that was not tax resident anywhere. Our regime tolerated that. We asked no questions prior to the change.

**Dr. Brian Keegan:** All I can describe for the Deputy is the factual situation. I have given her the factual situation as has been relayed-----

**Deputy Catherine Connolly:** Dr. Keegan is very good.

**Dr. Brian Keegan:** -----by the Commission. I have tried to explain it as well as possible

and without any-----

**Deputy Catherine Connolly:** I appreciate that and I do not expect Dr. Keegan to comment. Am I wrong if I say that there could have been 1,000 companies or 100 companies doing that?

**Chairman:** We will ask Revenue that question.

**Dr. Brian Keegan:** Not in any way to dodge the question, I will make a few general observations. First, I used the word “arbitrage” in private session and it was not the right word to use. I will default again, with the Chairman’s permission. In so far as there was gaming of the system, it had to do with cross-border arrangements.

**Deputy Catherine Connolly:** What did it have to do with?

**Dr. Brian Keegan:** Cross-border arrangements. Second, while this is a generalisation, I think it is a fair one. The emphasis on Irish tax law in recent years has moved away from companies being resident by virtue of where they are centrally managed and controlled to the default position being that they are taxable by virtue of their place of incorporation, which is here. The rule involving central management control is still very important in the context of our dealings with businesses in double taxation treaty countries but the general taxing rule is considerably tighter now than it was five years ago.

**Deputy Catherine Connolly:** It could not be looser.

**Dr. Brian Keegan:** I can only describe it as it was.

**Chairman:** I want to ask a few questions that relate directly to Dr. Keegan’s presentation. I am following his document. Paragraph 1.4 on page 7 addresses trading income versus passive income. Passive income is generally a term for income derived from investment - rental income from property investments - that is subject to a tax of 25%. For a company to access the 12.5% rate of corporation tax on its trading profits, it must demonstrate a degree of regular commercial trading activity associated with generating the income. How does a company say it is trading? How much of its income has to be trading income versus passive income to qualify for the 12.5% rate?

**Dr. Brian Keegan:** The ratio does not matter, it is the degree of activity. The actual amount does not matter. Tax does not generally work on *de minimis*. It does not distinguish as to whether there is 5%, 10%, 15% or 20% which is passive. Generally speaking, it is not often an issue because if a company is trading, it is fairly obvious. If it is buying and selling stuff, manufacturing, or providing services, it is trading.

**Chairman:** Give me an example of a grey area.

**Dr. Brian Keegan:** A grey area would be if there was a company which was involved in property management and had perhaps one or two properties in its portfolio. Is the income from those properties passive? Is the investment the company has made in properties passive? If the company has a dozen properties in its property portfolio, is actively managing them, buying here and selling there and doing those kinds of things, has it moved from a passive return on a property investment to a trading return because it is actively dealing and actively managing those properties? That would be a typical grey area.

**Chairman:** I will move to a few points on page 14. Taxation of real estate investment trusts is mentioned. It states that shareholders are taxed where a real estate investment trust, REIT,



pays a distribution in the form of a property income dividend, and the property income dividend paid to a corporate shareholder is subject to a 25.5% rate. It continues to state that the property income dividend paid by a member of a group to another member of the REIT is exempt from corporation tax and that the property income dividend is taxed at 12.5% in the hands of institutional investors such as banks. We have a 25% rate, a 12.5% rate and a 0% rate, an exemption. Will Dr. Keegan flesh that out for me verbally? When I look at taxation of REITs, there are three different tax rates.

**Dr. Brian Keegan:** I can try. I can only describe legislation as I find it. That is the legislation as we find it.

**Chairman:** Give me examples of who is on 25%, who is on 0% and who is on 12.5%. Perhaps that is what people can relate to. We understood the example about the rental property. Give us an example of this. I know it is an unusual one and Dr. Keegan might not get them all off the top of his head but people can understand this if they can see an example they can relate to.

**Dr. Brian Keegan:** If there is a manufacturing company with a surplus which is looking for an investment for that surplus, it might invest in REITs. The return on the REIT is passive in nature. It is taxed at 25% on that. Banks and institutional investors tend, going back to our first example about passive investment, to actively manage their investments. Therefore, the rate which is attracted is 12.5%. As a general principle, there is no tax on inter-company dividends within Ireland because the notion is that an Irish company has already paid its tax and is paying a dividend to another Irish company so there would be a double charge of tax if there was tax on those dividends. That, in very broad terms, describes the three.

**Chairman:** It is within a group, essentially.

**Dr. Brian Keegan:** It is within a group, correct.

**Chairman:** Next is page 21. I am just moving through them and picking up a few little points as I go. We might put the question on the BEPS action plan of the G20, commenced in 2013, to Revenue. It is stated on page 21 that the purpose of the action plan is to enhance transparency for tax administration, providing adequate information to assess high-level profit shifting and other BEPS-related risks, as a crucial aspect of tackling the BEPS problem. Will Dr. Keegan translate what I have read out into simpler English?

**Dr. Brian Keegan:** If one is sitting in a Revenue office in Dublin and a company submits a set of accounts, and all that is available is a company's profit, expenses and its net chargeable amount of tax and the amount of tax it pays, one is just getting a snapshot of one activity and does not necessarily have an overview of where that activity fits in a broader international context. One would probably know where the company is headquartered but not necessarily if it has other subsidiaries or fellow group companies in different territories. The notion behind country-by-country reporting is that the revenue authority would get an overview of all the companies in that group which are subject to common ownership, where they are operating and how much tax they are paying in each individual territory. A revenue authority, whether in Ireland or wherever else, is not looking at a company's affairs in isolation and can form a better overall picture of what is at issue.

**Chairman:** I am moving on to page 23, the issue of companies paying dividends. I thank Dr. Keegan for his briefing note. That is a matter we will raise in more detail with Revenue in

the afternoon. The briefing note was helpful for that.

I am moving on to page 26 of the briefing document and the capital allowance relating to intellectual property. We are talking about research and development. I refer to the final paragraph on page 26, which states:

Tax relief 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.

A company has to have clear procedures for accounting separately and I would imagine that to claim a big tax credit, it would maybe have to have an independent audit from a scientific point of view and a financial point of view which, by way of comparison, the public sector does not seem to be able to do when it comes to investment in spin-out companies identifying how much was spent.

That is not Dr. Keegan's topic. We will come back to it.

**Dr. Brian Keegan:** To clarify, that is not really an independent audit in that Revenue brings in an outside expert, so it is very much part of the Revenue audit process. Revenue engages a specialist. For example, there may be some branch of electronic engineering. Revenue might engage a specialist in that branch of electronic engineering to assist it. It is not independent in that sense. It is not the company which commissions the independent adviser; it is Revenue.

**Chairman:** Essentially, this allowance is not a self-assessment issue. One must send it in and Revenue can check it. Is it self-assessment?

**Dr. Brian Keegan:** All allowances are self-assessment. Everything is there to be claimed. The question is what Revenue will do to that claim in the course of an audit.

**Chairman:** Revenue does not require an independent audit.

**Mr. Seamus McCarthy:** Revenue spot-checks it.

**Chairman:** It only spot-checks it. Does it not require an independent audit? Some of these figures are very significant - hundreds of millions.

**Mr. Seamus McCarthy:** Yes, they are. We reported on this previously, as the Chairman will recall. Revenue does not require a scientific test to be applied. The taxpayer makes a self-assessment that the expenditure he or she is incurring fits within the definition of research and development.

**Chairman:** We will take this up with Revenue in the afternoon, and it is quite clear I will tease the matter out in respect of the verification of these hundreds of millions we are talking about. The same paragraph goes on to state:

The credit equates to 25% of a company's qualifying R&D expenditure ... The company can also take a deduction worth 12.5% for revenue type R&D expenditure ... in arriving at taxable profits. Effectively a company reduces its tax liability by ... 37.5%.

There is kind of a double benefit from-----

**Dr. Brian Keegan:** There is.

**Chairman:** It is an incentive. It is very generous.



**Dr. Brian Keegan:** It is a very powerful incentive because there is the benefit of the credited 25%, which reduces the actual amount of tax calculated, but there is also the 12.5% deduction, which reduces the amount of the taxable profit on which the tax is calculated in the first instance.

**Chairman:** I am moving on to page 28 of the document. I am making it easy for people to follow what I am referring to. I refer to one of the middle paragraphs and to the knowledge box. It states:

When a company develops its own IP, and uses that in the manufacture of a product incorporating that IP, the profits on that product are taxed at a special reduced rate. In Ireland that reduced rate is 6.25%, that is to say, half of the 12.5% standard corporation tax rate.

There is therefore a special reduced rate. I think Dr. Keegan mentioned in his opening statement the 12.5% corporation tax rate, passive income being taxed at 25% and capital gains being taxed at 33%. However, this figure is only taxable at 6.25%, and we know from the briefing note we received in the afternoon that Revenue says about €5 million was in the system in 2016. It does not have more recent figures. That is, again, a very attractive-----

**Dr. Brian Keegan:** Yes, it is a very attractive prospect.

**Chairman:** Could a company get the benefit of that 6.25% and then get the benefit of the 37.5% reduction as well on the 6.5%?

**Dr. Brian Keegan:** In practice, a company cannot get the benefit of the 6.25% unless it has been in a position to avail of the 37.5% because the two are inextricably linked. One cannot claim a knowledge development box rate unless one has carried out qualifying research and development-----

**Chairman:** In other words - and we will ask Revenue about this - a company's income in respect of this aspect of its activity is taxable only at 6.25%. Is that correct?

**Dr. Brian Keegan:** Yes.

**Chairman:** Then the company can get effectively a 40% reduction on that 6.5%. That probably leads to a maximum possible effective rate on that level of activity of 3.5%.

**Dr. Brian Keegan:** It is a few percentage points. The Chairman is quite correct.

**Chairman:** Wow. We have learned something new today about this and we will take that up with Revenue. I know it is a relatively new tax allowance, but the members and witnesses can see why I wanted to raise it. This is how a company can easily get an effective rate combining that 6.25% and that 37.5% write-off on the 6.25%.

I move to page 42. I thank Dr. Keegan. He has given us a summary note on the Coffey review, which was carried out by Seamus Coffey. For the record, I understand Mr. Coffey made a presentation some time ago to the finance committee so I did not invite him here today to repeat what he has already said in the Houses of the Oireachtas. What he said is reported on the record. He makes a number of recommendations in the review, and we as a committee will take note of pages 42, 43 and 44 of Dr. Keegan's briefing relating to this. We will not restate the recommendations. They are already on the public record. Mr. Coffey essentially highlights the risk to the taxpayer of over-reliance on this and talks about intellectual property, base erosion and profit shifting and transfer pricing. Dr. Keegan's summary note on this is helpful to us.

I turn to page 45. I refer to the issue of tax residency in the second paragraph. I think I asked Dr. Keegan about this on the previous occasion while the committee was in private session. An individual's tax residence can be primarily determined by their physical presence. Generally an individual is considered to be resident for tax purposes in Ireland if they spend 183 days or more in Ireland in any one year. That is six months. I cite the example of someone who spends four months in one country, four months in another country and four months somewhere else. He or she is not resident for tax purposes anywhere. I know Dr. Keegan will say he or she pays tax on the income generated in each of those areas, but a clever person could have the majority of his or her income somewhere else and not be tax resident anywhere. That can happen.

**Dr. Brian Keegan:** I cannot think of a reason it might not. There is no hook on an individual as there is with a company. One always knows where a company was incorporated. There is not that same link in the case of an individual. One must look at where the individual is physically located at a point in time.

**Chairman:** In other words, for the purposes of our work on corporation tax, that is not an issue as residency is clear for a corporation.

**Dr. Brian Keegan:** I only mentioned individual tax residence to compare and contrast the different approaches.

**Deputy Alan Kelly:** Is there plan to look at changing the residency component of this, tweaking it or anything like that?

**Dr. Brian Keegan:** Is this in connection with individuals?

**Deputy Alan Kelly:** Yes.

**Dr. Brian Keegan:** It has been tweaked on several occasions-----

**Deputy Alan Kelly:** I know that. It has been tweaked in recent years.

**Dr. Brian Keegan:** -----in recent years.

**Deputy Alan Kelly:** I know. I saw the changes, but it is still loose enough.

**Dr. Brian Keegan:** Again, I can only describe the law as it stands. One of the constraints under which we operate all the time is that the double taxation treaties, which we have dealt with in a certain amount of detail in this paper in so far as they relate to corporations, also relate to individuals. We cannot claim taxing rights over individuals who may be nationals of countries that engage with treaties.

**Deputy Alan Kelly:** I know. It is quite limited what Chartered Accountants Ireland-----

**Chairman:** The final point I want to highlight in Dr. Keegan's report is 4.12 on page 54, entitled, Limitation of double taxation treaties. The second paragraph outlines the fear the public probably has. It reads: "A concern frequently levelled against double taxation treaties is that they sometimes achieve double non-taxation - that is to say the interaction of the rules means that income does not get taxed at all." Will Dr. Keegan flesh out that statement? People get very concerned that, while double taxation agreements are set up to make sure one does not pay tax twice, Dr. Keegan believes it is possible there might be double non-taxation rather than double taxation. Can he give us an example of what we are talking about?

**Dr. Brian Keegan:** We have already teased out situations in which companies are engaged in cross-border transactions. This kind of situation might arise if, for example, a company has a number of operations, one of which may be in a very low-tax jurisdiction, perhaps a jurisdiction known as a tax haven, where a particular double taxation treaty stipulates that there is no withholding tax on royalties going to that particular territory. This will result effectively in a form of double non-taxation in that income is taxed neither in the paying company nor in the receiving company. It is these kinds of situations, to take a very straightforward example, that give rise to concerns.

**Chairman:** Those are the issues in Dr. Keegan's report I wanted to raise. The committee thanks him for the briefing documentation and thanks his colleague, Norah Collender, who was here with us the previous day as well, for the work. The purpose of this is that when we meet Revenue and the Department of Finance, we have a body of research that we have been able to take on board and take into account and which assists us in discussing what commenced with a chapter in the Comptroller and Auditor General's report on corporation tax.

The committee will now go into private session until the voting session in the Dáil. We will be back at 2.30 p.m. with officials from the Revenue Commissioners and the Department of Finance.

*The committee went into private session at 11.20 a.m., suspended at 1.10 p.m. and resumed in public session at 2.30 p.m.*

**Mr. Niall Cody** (*Chairperson, Revenue Commissioners*) and **Mr. John Hogan** (*Assistant Secretary, Department of Finance*) called and examined.

**Chairman:** We are dealing with the 2016 Annual Report of the Comptroller and Auditor General, chapter 20, which deals with corporation tax receipts. We had a briefing session this morning from Dr. Brian Keegan of Chartered Accountants Ireland on corporation tax. We hope to bring our consideration of this matter to a close this afternoon following our meeting with Department of Finance and Revenue officials. We are joined today by Mr. Niall Cody, chairperson of the Revenue Commissioners, Ms Jeanette Doonan from the corporation tax branch, Dr. Keith Walsh and Mr. Liam Gallagher. From the Department of Finance, we are joined by Mr. John Hogan, assistant secretary of the tax division, Mr. Rónán Hession, Mr. Pat Leahy and Mr. John Palmer. I remind members and those in the Public Gallery to switch off their phones entirely. That means putting them onto airplane mode because they will interfere with the recording system if they are only on silent.

This is a continuation of our previous discussion on this matter. I gave the witnesses details on the Defamation Act 2009 when they were last here and this is merely a continuation of that, so I do not propose to say it again because I said it to them already as part of this process. I understand there is not an opening statement because it is a continuation of a previous meeting. That is completely logical. I thank the witnesses for the information provided. We had a useful exchange this morning for the benefit of the committee and for the public watching to get an understanding of this area. We all know that we never stray into the tax affairs of any individual company or such. That goes without saying for all sides of the House. We will proceed with the first speaker, Deputy Marc MacSharry, who has 20 minutes. People will follow with ten minute slots thereafter.

**Deputy Marc MacSharry:** Thank you, Chairman. I will not be using my 20 minutes and I will be happy to cede time to my colleagues. I thank the deputation for coming in. Following

our queries last week, the Revenue Commissioners sent a detailed note to us and I thank them for that. It is an example for other Departments and State agencies in terms of how they could to respond to and respect this committee in the work it is trying to do. I have some queries following from the last day. It is okay to talk about Apple?

**Chairman:** We can ask for an update. Much of what we covered is in the public area. It is progressing at European level. There has been progress; the Revenue Commissioners gave us as much information as possible the last day. We are not breaking any new ground.

**Deputy Marc MacSharry:** You will stop me, Chairman, if I stray into any areas that I should avoid.

**Chairman:** I will try, whether I am successful is another issue.

**Deputy Marc MacSharry:** You will be, Chairman. I will start with a basic question. We often hear the term “aggressive tax planning” in media and from commentators. Is that a term used by the Revenue?

**Mr. Niall Cody:** We regularly use the term “aggressive tax planning”. We see that. The Oireachtas lays down the legislation and the intention of the legislation. There is tax planning and tax avoidance. It is a grey area and there is no clear line. We see certain practices as aggressive tax planning or aggressive tax avoidance. The practitioners involved in this area would not see it in that way at all. Ultimately, when we form a view that there is unacceptable tax avoidance, we will challenge individual cases. Ultimately, such cases will be a matter for the courts to decide.

**Deputy Marc MacSharry:** I understand that. The term is used by the Revenue Commissioners. Is it fair to say, or otherwise, that it would tend to be used to denote non-compliance?

**Mr. Niall Cody:** Non-compliance is essentially non-compliance with the law.

**Deputy Marc MacSharry:** It means not paying tax.

**Mr. Niall Cody:** That strays into the area of tax evasion and non-payment. Tax avoidance is different. Tax avoidance is using the law as set out but maybe not as intended. It is a different line between tax evasion and tax avoidance. If there is tax evasion, various things can result, up to and including prosecution. If it is tax avoidance or tax planning that goes wrong, then it is not tax evasion. Some of the practices span a line between avoidance and evasion. We were before the committee last year and we discussed some aspects of the various projects we have done, including those relating to contractors and medical consultants. Some of that strayed into tax evasion. It was probably intended or started off as tax avoidance. Committee members will see cases where we end up with audit settlements and there are penalties – that is not avoidance. There are special rules around avoidance.

**Deputy Marc MacSharry:** If company A used the law to the nth degree to minimise its tax liabilities, would it be described as aggressively planning?

**Mr. Niall Cody:** It depends. Let us suppose the company used the law as intended to avail of incentives and schemes that are laid down and intended by the Oireachtas and provided for in law. If the company uses these to the nth degree, then that is perfectly acceptable. It is different when a person misuses them. If Deputy MacSharry had the same conversation this morning, he might have received a different answer.

**Deputy Marc MacSharry:** I was not here this morning. It is a self-generated question.

**Mr. Niall Cody:** I did not take it as a trick question but there are many answers to the question, depending on who is answering.

**Deputy Marc MacSharry:** So be it.

Another thing we hear about frequently in media is brass plate companies. It would be an interesting point for Mr. Cody to tease out for the viewers at home. What is the understanding of brass plate companies? I am not a tax consultant or anything like that. To me a brass plate company is where someone puts up a brass plate inscribed with Joe Bloggs Limited, but that is it.

**Mr. Niall Cody:** Essentially, in the simplest terms, in a brass plate company there is no substance. Generally, with companies registered for corporation tax there is substance to them. The Irish system is based on ensuring substance. Foreign direct investment is all about increasing employment and having actual substance in Ireland. There are special rules in respect of incorporating companies and changes in Irish residency rules going back to 1999. The rules were introduced to try to prevent abuse of Irish companies by entities that have no presence or substance in Ireland.

**Deputy Marc MacSharry:** I wish to make a couple of points on Apple to understand how we approach things, if that is possible. Again, if I am straying into territory that is not permitted, stop me, Chairman. Have we the €13 billion in an escrow account yet?

**Chairman:** It is fine to answer that question.

**Deputy Marc MacSharry:** I simply decided to check because I am sure some of the Revenue Commissioners representatives know.

**Mr. John Hogan:** I can update the committee on where we are with the escrow process. As I recall, when we last met the committee it was towards the end of November. At that stage I was trying to help the committee to understand the process behind what we had done to that point. We had detailed discussions with the company to agree the framework for the escrow fund and its establishment. I was trying to articulate, as best I could, the different procurement processes under way that would put in place the infrastructure by which we could collect and manage the funds.

In our subsequent letter I acknowledged the feedback from the Chairman and Deputy MacSharry to the responses we gave. We were trying to be as clear as possible in terms of the timelines that we expected to meet over the first quarter of 2018 and in terms of when we would see the moneys begin to flow.

Our focus in recent months has been assisting and supporting the National Treasury Management Agency, which is managing the procurement process for us. In parallel, agreement was reached shortly after we last met the company in terms of the framework. That was approved by the company at board level and by Government in January. Our minds have been concentrated in recent weeks in supporting the NTMA in terms of its procurement process. We are at the stage now where we thought we would be, that is to say, the process for the appointment of the custodian agent to receive the funds is almost complete. We have entered the standstill period, which runs for up to 14 days. We expect to make an announcement shortly on the identification of the agent that will manage the moneys for us.



In parallel, there is a process of procuring the services of investment managers. We expect this process, which is rather advanced, will be completed through the course of early March. Once we have contracts signed, all of that will allow for the custodian to put the accounts in place to capture the money and for the investment managers to be active in managing the money. Our best guess is that all of that will facilitate the flow of funds into the account through the course of quarter 2, as early as possible. That is what we would hope for and anticipate.

**Deputy Marc MacSharry:** Is there any indication of the amount this has cost us so far?

**Mr. John Hogan:** Is the question in terms of the cost?

**Deputy Marc MacSharry:** What is the outlay so far in this process?

**Mr. John Hogan:** Several different processes are under way in creating the legal agreement and so on. Perhaps one of my colleagues can look for the details.

**Mr. Pat Leahy:** The cost of the whole recovery is approximately €2.5 million at this stage.

**Deputy Marc MacSharry:** Is it planned that the fund will be self-financing when it is operational?

**Mr. Pat Leahy:** The costs would be met from within the fund.

**Deputy Marc MacSharry:** Between now and endgame where the money is captured and the money is in place, is that €2.5 million expected to grow significantly? Are there any estimates on that?

**Mr. Pat Leahy:** We would not have estimates at this stage. It would be difficult to estimate, but it should not be substantially bigger in terms of the recovery at this stage since much of the legal work is more or less completed, but there could be some costs.

**Deputy Marc MacSharry:** So far, the preparation costs have been about €2.5 million. From Mr. Leahy's account we are hoping that within two months this money will be in place.

**Mr. John Hogan:** That is our estimate.

**Deputy Marc MacSharry:** That is fine.

I know the State position is that the €13 billion does not accrue to us. The European Commission has indicated the amount of tax Ireland has to collect could be reduced if other countries, where sales of Apple products took place, lay claim to some of that taxation. At this point have any other countries indicated directly or indirectly through media reportage that a proportion of this money, should it be collectable, would accrue to them rather than to us?

**Mr. John Hogan:** I think the Deputy is right. There have been indications from the Commissioner at the time she issued her decision that other countries may express an interest in terms of accessing the funds, but to date there have been no expressions of interest from another member state.

**Deputy Marc MacSharry:** Nobody has put their hands up yet.

**Mr. John Hogan:** No.

**Deputy Marc MacSharry:** Depending on how the court case goes, there could be a queue



outside.

**Chairman:** Mr .Cody wants to come in on that.

**Mr. Niall Cody:** Just to add a little bit, as Mr. Hogan has indicated, both of us wrote to the committee after the last hearing with an update on elements of the case. Our responsibility in relation to the case is to finalise the calculations. At that stage I indicated that we had completed about 90% of the figures and work has continued on that. Now over 95% of the calculations are completed. We have indicated to the Commission that by the end of April we will have sent all the calculations to the Commission. It then has to get back to us.

**Deputy Marc MacSharry:** I know we covered this when dealing with correspondence, but for the viewers at home, these calculations are on-----

**Mr. Niall Cody:** As the Deputy said, the Commission did not indicate in its decision how much state aid was involved. In the press release it gave an indication that it is in the region of €13 billion. However, when there is a state-aid finding like that we have to then calculate what the actual state aid is, having regard to all the figures. We have been engaged in calculations for both the companies over each of the years of the state aid.

**Deputy Marc MacSharry:** Both companies being ASI and AOE.

**Mr. Niall Cody:** ASI and AOE. In that context we have to engage with the company on the figures. Then we have to agree the figures with the European Commission on each of the years and the calculations. That process has been ongoing. Figures get sent over to the Commission; it feeds back to us; we have meetings; and that process is continuing. We have agreed with the Commission that all our calculations - the final number of calculations - will be with it before the end of April and then it is a matter of how long they take to come back to us. When the escrow arrangement is in place, the plan is that money will start being lodged even before the final figures are calculated. It is just for the information of the committee.

**Deputy Marc MacSharry:** We are doing these calculations based on an assumption that it may win its case and we are calculating what that state aid would have been worth to us. I am guessing it is confidential at this stage whether Revenue concurs broadly with that figure or if it will be more or less.

**Mr. Niall Cody:** The process is confidential, but it is in that ballpark.

**Deputy Marc MacSharry:** We are in that ballpark.

There were two tax rulings on Apple in 1991 and 2007 which related to how the profits of Apple Sales International and Apple Operations Europe were assessed in Ireland. Is that correct?

**Mr. Niall Cody:** Yes.

**Deputy Marc MacSharry:** The majority of profits were allocated to a head office within Apple Sales International, with the remainder allocated to the Irish branch of Apple Sales International. Is that correct?

**Mr. Niall Cody:** We are straying into the subject that is the matter of the litigation. That is a Commission interpretation of the position.

**Deputy Marc MacSharry:** I see.

**Mr. Niall Cody:** Our obligation under the Irish law is to tax an Irish branch on the activities of the Irish branch. The opinion would have been about the calculation of the Irish branch activities, and the profits and incomes relating to that. I do not think I can go into an argument-----

**Deputy Marc MacSharry:** I appreciate that.

When dealing with the Irish branch of a multinational, are we only as good as the information we get in terms of where the head office is? How does one prove that?

**Mr. Niall Cody:** What we are obliged to do is administer the Irish tax system and the Irish tax code.

**Deputy Marc MacSharry:** In so doing, if the head office is domiciled in the United States, France or wherever, it is reasonable for us to determine what taxes are being paid in-----

**Mr. Niall Cody:** The legislation would have provided that they were taxable in respect of their income of the Irish branch. Our responsibility is to administer the Irish tax code and not the worldwide non-Irish activity. So, we would have looked at what happened in Ireland in any branch and looked at the tax liability in respect of that.

**Deputy Marc MacSharry:** I will leave it there and give my colleagues some time.

**Deputy Catherine Murphy:** Obviously, the context of this discussion is the chapter from the Comptroller and Auditor General. We then wrote to a number of multinational companies and invited them to respond. It is worth pointing out that one or two of them were very complimentary about the large taxpayers' unit in Revenue.

**Chairman:** The large case unit.

**Deputy Catherine Murphy:** It is worth saying they were very complimentary about the efficiency of the large case unit.

We know that a small number of very large companies pay a sizeable portion of corporation tax. They fall in sectors such as financial, insurance, manufacturing including pharmaceutical, and information and communications. We also know the effective rate very much depends on what can be set aside against the 12.5%. The frustration is that even though the 12.5% is generous, in some cases only a tiny proportion of that ends up being paid.

We are told that research and development is the main area against which tax can be set aside. I imagine that there is a limited amount of research and development that can be put into financial and insurance activities. However, one could lose a fortune in pharmaceutical manufacturing because there is ongoing development of new drugs which we are told is very expensive. Is there a bit of a conundrum in that we are giving very generous research and development write-offs for, for example, the pharmaceutical sector, when we have some of the most expensive drugs in the world. Does that get factored into the approach to research and development in that particular sector, for example? I do not think it is possible to say it is the same with other sectors. A computer costs largely the same here as it does elsewhere. However, drugs fall into a different category. Does that come into play at all?

**Mr. John Hogan:** It is more a policy issue. It is very difficult for us to prescribe a scheme that looks right through to the end point, that is, the pricing that is being charged by particular

companies or sectors. We look at the research and development policy and, as the Deputy mentioned the last day, our research and development tax credit is one of the few credits we have in the corporate tax area. I think it was evaluated in 2016. I will confirm with Mr. Hession if that is correct. From our assessment of the effect of the overall tax credit, we were seeing 60% additionality in terms of research and development activity in the State as a result of the availability of the credit. When that is considered in terms of industrial policy, we are complementing where we would like to see our economy going, which is creating high value and well paid employment opportunities for young educated people who are coming from our universities and so on.

To draw the thread from the individual research and development tax credit right down to the pricing policy is quite difficult, however. Even at that, its benefit is that it is a general measure available across the economy, depending on the level of research and development activity undertaken. Compartmentalising it on the basis of particular factors then moves it into an area where it no longer is a general measure and is in the area of state aid, and we are into a completely different conversation then.

**Deputy Catherine Murphy:** It is one particular sector, however. It is not like one is buying new machines and those machines will produce something for three or four years. It is highly likely there will be a continuous demand for research in, and development of, drugs. Is that not the case? How does one audit it? It is probably Revenue.

**Mr. John Hogan:** I refer to the rules and the application of it. I will ask Mr. Hession if there was anything in terms of our analysis back in 2016 which broke it into the individual sectors that might help the Deputy.

**Mr. Rónán Hession:** We published an economic evaluation in October 2016 around budget time that gave a sectoral breakdown. In terms of the sectors, 42% of the credit was in manufacturing, 32% was in ICT and 15% was in professional, scientific and technical activities. Some of the pharma sector could be in either manufacturing or the scientific category. The credit works by giving €1 back for every €4 spent on qualifying research and development which can be offset against a company's corporation tax bill. It is not linked specifically to pricing with an objective of the research and development tax credit being to make drugs more affordable at the other end. The area of drugs pricing is obviously complex and they are sourced and developed all over the world.

**Deputy Catherine Murphy:** I am just making the point that we are kind of losing out on either end. We are being very generous on one end because most of the tax collected from these companies will be collected from the people employed in the companies rather than the companies themselves. It is a big set aside. Yet, at the same time, on the other end, we do not get any advantage.

I will move on to another area that we explored. It relates to real estate investment trusts, REITs. Last week we explored this with the tax consultant who has been assisting us. For example, in the case of a real estate investment trust, we are told the only real tax that is paid is paid by the company that is managing it, although it is not the only tax. Most of the tax liability will be on the shareholders, that is, the people who own the shares. If they are 90% in France, they pay 20% withholding tax here and are liable for the tax, with the 20% discounted, in France. I use that as an example.

We are now moving into a situation where property has become mobile whereas it had been

a thing one could guarantee was fixed. How does that relate to people who own property here and would be liable to pay tax on it here, for example? Is the way this is handled encouraging a different type of ownership? Many of these might have bought assets cheaply and may well be competing in an entirely different way with people who are, say, accidental landlords in terms of their tax treatment. Is there an evaluation or a modelling of that?

**Mr. Rónán Hession:** The logic behind the tax treatment of REITs and other investment vehicles is that one wants to put the investor in the same position as someone who, say, just bought a house and rented it out. With funds taxation, we are saying that there will be a double layer of tax law without some adjustment to the tax law. This is because the fund will pay tax and then the individual will pay income tax on his or her drawdown. In general, funds taxation in OECD countries is about stripping out what would otherwise be a double layer of taxation. REITs are generally new builds and they have to adopt a particular model. For example, 85% of their profit has to be paid out. It cannot retain the profit in the fund and avoid taxation. It has to be pumped out of the fund. The Deputy is right that there is a 20% withholding tax and the investor will then pay income tax in the same way as the Deputy or I would pay tax on rental income from a house we had bought.

A couple of years ago a problem was brought to our attention by our colleagues in Revenue. The use of funds in the area of property was creating a risk to the Irish tax base. In the Irish tax system and international tax system, one always retains the taxing right to property in one's jurisdiction. One should not let that leak out of one's base. There was a concern that structures were available to some of the property developments and those buying distressed loans - the Deputy referred to those who were in the so-called section 110 companies - where Ireland was at risk that the tax rights to property was leaking out of our base, with consequent unfairness to other types of investors. There was a general sense that the tax system was not designed to allow that type of leakage.

Therefore, a number of changes were made two Finance Bills ago to ensure, first, that section 110 companies could not avoid tax. They were not allowed to sweep the profits out. They are subject to a 25% tax rate. They pay the investor rate rather than the lower 12.5% rate. When it came to property, that got taxed at 25%. In terms of other types of funds, where they had investors overseas, we took the 20% withholding tax that was on REITs and applied it to those types of funds. They are Irish real estate funds, IREFs. These funds have a reasonable component, that is, a 25% component, of Irish property.

The issue the Deputy raised is very germane to the tax policy debate in the last number of Finance Bills. It is an area in which changes have been made. We will start to see what difference it has made to the figures this year as the tax returns come in. Given what we understand from their public information, we expect that some of them will move out of funds structures and perhaps incorporate as regular companies, which is as it should be.

**Deputy Catherine Murphy:** On banks and bank debt, not that long ago we saw a newspaper headline that one of the banks which had the benefit of surviving as a consequence of citizens bailing it out was not expected to pay any tax for the next 20 years. This was because it is able to write off its losses, which are our losses, against its own balance sheet. If I find at home a medical receipt from five years ago, as an individual taxpayer I would not be able to seek to write that off against my tax liability. I can well understand that companies will write off debt over time, but then there is the idea that this can be indeterminate, particularly for a sector which had the benefit of the public bailing it out. What modelling or consideration has been given to limiting sectors such as that one? Can that kind of sector be divided up in terms

of the avoidance of paying tax? They may well end up being sold and it would be a different entity that would own them. Does that come into play?

**Mr. Rónán Hession:** The principle at play in tax law is that we are going to tax you when you make a profit; conversely, as you work through the business cycle, if you made a loss in a previous period, you can carry it forward. We have seen the analysis Revenue published last year of the level of losses in the system. Overall, it is declining somewhat, but it is still very high, both in the banking sector and the corporate sector more widely. The banks obviously are carrying massive losses. Previously, the way that issue was approached was they were limited to only being able to offset them against half of their profits every year, but that became a problem a number of years ago when new European regulatory requirements under the capital requirements directive were introduced. That would have meant it would have required an injection of capital from the State into the banks to correct it. I think the policy change was made in 2014 to remove the restriction which at that stage was unique to the banking sector; other corporate sectors were not subject to it. Instead, the banking levy was introduced. I have to be careful not to stray into commenting on the merits of policy; I will just try to explain how the system works and why it is the way it is. The restriction on banks' ability to offset losses against profits was removed at the time, but in order to ensure revenue was still collected from the banking sector, the banking levy was introduced. It was due to expire in 2016 but was extended to 2020 or 2021.

**Deputy Catherine Murphy:** What does it bring in?

**Mr. Rónán Hession:** It brings in €150 million a year. There is another more esoteric argument, which is an honours level point and probably beyond my expertise. The banks have a deferred tax asset which obviously plays into their value. When shares are being sold in a bank, there is an argument that it brings forward the benefit of the deferred tax assets for the State. In other words, rather than wait for the tax revenue, the banks have a valuable deferred tax asset for which investors are prepared to pay now. That is really a point on which banking experts are more qualified to speak, but it is relevant in considering the balance between the public interest and the policy choice.

**Deputy Catherine Murphy:** There is one other element on which I want to touch, that is, special purpose vehicles. It is not that long ago when regulators complained that they did not even know what some special purpose vehicles, SPVs, were used for. Did either Revenue or the Department consult or advise the Central Bank on the ways in which special purpose vehicles should be regulated?

**Mr. Rónán Hession:** We have had some contact with the Central Bank on the issue and it produced its own analysis. One of the reasons we have ended up over time in a position of controversy with the funds is they are esoteric from a tax and a regulatory point of view and have thrived in that blind spot. Certainly, when I mention section 110 companies - the SPVs of most interest - that section of the tax Act was intended to be used for a genuine securitisation of the financial services industry, but it became primarily a vehicle for property and the acquisition of loans as opposed to a vehicle for property development. One of the changes made in the Finance Bill when we were addressing the tax problems was aimed at improving the level of information Revenue would receive from these funds because up until then there was a delay in the reporting of information and the detail was somewhat wanting. There should be better information available.

**Deputy Catherine Murphy:** Is Revenue satisfied that the regulators fully understand what



they are regulating? The controversy about section 110 companies was heightened at one point and changes were made. Is Mr. Cody satisfied that they went far enough? Is he satisfied that there are no other special purpose vehicles being used?

**Mr. Niall Cody:** To come back to what I was talking to Deputy Marc MacSharry about, our job is to ensure the tax system is administrated in accordance with tax legislation. Our large cases division has responsibility for the financial services sector in its entirety. One of its jobs is dealing with section 110 companies. As Mr. Hession stated, when they were put in place, it really had to do with international securitisation; there was no risk to Irish taxation. We would keep an eye on what was happening and would have a very close relationship with the Central Bank on an operational level, subject to the legislation in place on the exchange of information. It was in that context that in 2015 we identified the issue of property transactions within section 110 companies. We started a process to look at their use for Irish property transactions. That process continued through 2015 and 2016 and led to changes in the legislation to target the amount mentioned. As Mr. Hession stated, some of the issues are related to the level of information we receive. Our powers in that regard were increased to ensure we had greater sight of what was going on. That work is continuing. It is the ongoing job of a tax administration system to constantly look at what is going on. Sometimes it will take us a while to get our heads around what we are seeing. It comes back to companies, advisers and practitioners looking at the legislation, as laid down, and what is happening in other countries and applying the provisions.

**Deputy Catherine Murphy:** Would Mr. Cody say Revenue has sufficient resources to do that work? It seems to be a matter of ensuring the resources are available to close loopholes as quickly as possible. Are the available resources adequate?

**Mr. Niall Cody:** On the previous occasion we had a discussion about the resources available to us. Every time I attend a committee we have a discussion about the resources available to Revenue. In the simplest of terms, we could always do with more, but there is a process to be followed for how one takes people in, how one develops and trains them. We are going through massive change and a churn in numbers. I am conscious that in another committee room this morning the Minister was having a discussion about the Finance group of Estimates. I was talking to my colleagues and the Vote for Revenue was approved. That is really important. In the past four budgets we have put the case to the Minister for the allocation of additional resources.

**Deputy Catherine Murphy:** What was the outcome?

**Mr. Niall Cody:** Each year the case made has been supported by the Minister for Finance.

**Deputy Catherine Murphy:** In full.

**Mr. Niall Cody:** In full. What we try to do is make a reasonable case. We went from a position in 2007 where we had 6,600 full-time equivalents to a position in 2014 when we 5,700 during the moratorium. That represented a significant reduction in numbers. We are also in a situation where significant-----

**Deputy Catherine Murphy:** What is the figure now?

**Mr. Niall Cody:** The number of full-time equivalents is 6,114. It was really important to bring the number back up. At the same time, because of the demographics in the Civil Service - this is common across the service - 35% of the staff have over 35 years' service. We recruited



over 550 staff last year and will do the same this year. We will probably do more the following year. In an organisation the size of ours, that is a massive churn.

**Deputy Catherine Murphy:** It will be included in Mr. Cody's risk register as a high-end risk.

**Mr. Niall Cody:** As I stated on the previous occasion, the first time I attended the Committee of Public Accounts in March 2015 I said the biggest challenges facing me, as Accounting Officer, were presented by the issues of capability, staffing, recruitment, retention and developing staff to deal with the risks we were responsible for administering.

**Deputy Catherine Murphy:** Is Mr. Cody making an additional case this year? Does he have flexibility within what he was provided in the budget to continue recruiting? Is there an impediment now?

**Mr. Niall Cody:** No, some of the impediment around recruiting relates to managing the process while, in certain areas, the market is changing as well. The support that we have received from the Minister in resource cases has been exactly what we required but the solution is not just additional people. We have to get them in, develop them and then there is capability and culture. There is a challenge around that which I could talk about for a number of hours but I hope not to.

**Deputy Catherine Connolly:** I welcome Mr. Cody back. I wish it was the multinationals we had before us but Revenue is the second best in this regard. The context was set during this morning's session and in the Comptroller and Auditor General's chapter, which Revenue knows well, regarding the variation in the collection of corporation tax, with the effective rate ranging from 12.5% to 0%. I am sure Mr. Cody watched this morning's proceedings. Colleagues have mentioned the legitimate ways to avoid paying tax using research and development credits. Is it correct that for every €4 spent on research and development, €1 comes back?

**Mr. Niall Cody:** Yes.

**Deputy Catherine Connolly:** Using that credit legitimately, a number of major companies do not pay corporation tax. How many do not pay tax?

**Mr. Niall Cody:** I do not know whether it is useful to go back to our hearing on 30 November where we talked about the 13 companies that paid less than the 12.5% rate and to refer to the issues in this regard. The Comptroller and Auditor General's report sets out the effective rates well in tables.

**Deputy Catherine Connolly:** We know there is variation and we have been led to believe that headlines that say the companies pay nothing are unfair because there are many legitimate reasons they do not. Is that correct?

**Mr. Niall Cody:** Yes.

**Deputy Catherine Connolly:** For every €4 spent on research and development, €1 comes back. How does Revenue monitor that? Does it audit randomly?

**Mr. Niall Cody:** No, we monitor all risks having regard to our risk analysis system and our knowledge of what is going in the sectors and the companies. In 2016, we carried out 270 interventions in respect of research and development claims, of which 93 resulted in a yield and 177 resulted in a nil yield. In 2017-----

**Deputy Catherine Connolly:** I will just stick to 2016. What was the yield?

**Mr. Niall Cody:** The yield was just a small fraction short of €13 million. We can provide the figures, if the committee wants.

**Deputy Catherine Connolly:** No, that is okay. What percentage of the overall number of companies does 270 interventions yielding €13 million represent?

**Mr. Niall Cody:** Our audits and interventions in 2017 relate to previous years. In 2015, a total of 1,532 companies made a claim.

**Chairman:** And 1,486 in 2016, according to a reply to a parliamentary question I received earlier this week.

**Mr. Niall Cody:** Generally, when we carry out an audit, we are looking at activity the year before or the year before that.

**Deputy Catherine Connolly:** Let us discuss 2015. A total of 1,532 companies availed of the research and development credit. Did Revenue examine all of them?

**Mr. Niall Cody:** No, we operate a self-assessment system in which we carry out risk-based interventions. Many of the companies in the research and development area are in an ongoing, continuous process and, therefore, we look at them periodically. If there was a once-off claim, we might have looked at that because we did not know enough about the company.

**Deputy Catherine Connolly:** What was the yield in 2015 as a result of Revenue's interventions?

**Mr. Niall Cody:** I gave the 2017 figures.

**Deputy Catherine Connolly:** Mr. Cody gave us the 2016 figures.

**Mr. Niall Cody:** I am sorry. In 2017, we carried out 250 interventions, 90 of which were yielding and 160 were nil yielding. We recovered €16.7 million.

**Deputy Catherine Connolly:** So slightly fewer companies yielding but more money and fewer interventions. Why were there fewer interventions?

**Mr. Niall Cody:** It depends on the risk and the mix of interventions. Some cases will be more protracted, longer and more detailed. There are many factors in our mix of interventions.

**Deputy Catherine Connolly:** Is that yield a repayment?

**Mr. Niall Cody:** What will happen in the yield is, in some cases, it will be after money has been paid. In others, the claim will be checked before money is repaid so it is not repaid.

**Deputy Catherine Connolly:** It is not a repayment.

**Mr. Niall Cody:** It depends on what our intervention is in respect of and the timing of our intervention. Since the research and development credit was introduced in 2004, we have had a rolling intervention programme. In the earlier years, record keeping was not as good, processes were difficult-----

**Deputy Catherine Connolly:** What was the yield in 2015?

**Mr. Niall Cody:** I do not have the figures with me but-----

**Mr. Seamus McCarthy:** I did a chapter last year in respect of that. The figures were lower for 2015. There were 178 interventions with a total yield of approximately €13.5 million. I do not have the figure for the number of yielding cases to hand.

**Deputy Catherine Connolly:** Are these all different companies or are the same companies picked on?

**Mr. Niall Cody:** It depends. Some companies reappear and they have different claims in respect of different types of research and development while others are once-off. We discussed our large cases division earlier. One of the reasons we have such a division is to have a deep understanding of what goes in large companies that pay most of the tax. The division has a rolling programme. Approximately 80% of the companies that claim the research and development credit are smaller but probably only claim less than 40% of the total amount. The large companies carry out the largest element of research and development. They have make fewer claims but for more money.

**Deputy Catherine Connolly:** Does Revenue avail of external expertise in respect of this analysis?

**Mr. Niall Cody:** Yes.

**Deputy Catherine Connolly:** What is the cost of that? How is it managed?

**Mr. Niall Cody:** The Comptroller and Auditor General carried out a review of the research and development credit last year in a chapter and we touched on our experts. We engage experts in the particular field - generally academic but sometimes from industry - to look at what we call the science test. We are tax officials. When we carry out an audit of a particular research and development credit, for example, to do with biology, we have a panel of experts and we will tender-----

**Deputy Catherine Connolly:** Revenue seeks out the appropriate expertise to advise it.

**Mr. Niall Cody:** Yes, and they-----

**Deputy Catherine Connolly:** Is there a figure for the cost of that every year?

**Mr. Niall Cody:** There is but I am-----

**Mr. Seamus McCarthy:** We had a figure for 2015. A total of 18 experts were engaged by Revenue at a cost of just over €140,000. It was relatively small.

**Deputy Catherine Connolly:** Relatively small, that is, compared with the yield that it gets.

**Mr. Niall Cody:** Yes. There are two issues with research and development where yield can occur. One is if it fails what is called the science test. The other is if it fails the accounting test. Probably the biggest proportion has to do with accounting rather than science. We have issued very detailed guidance for the research and development credit which has been in place since 2004. That is 14 years of guidance and advance notice on research and development and what a company is entitled to claim. Our experts will examine certain aspects. I have seen some of the expert reports. They are comprehensive, detailed analyses of the science. If we have an expert in the field, the company probably has three experts for that process and there is considerable

engagement on those aspects.

**Deputy Catherine Connolly:** Mr. Cody said section 110 was being used in a way never envisaged. Has Revenue identified other issues emerging now?

**Mr. Niall Cody:** We are always watching what is going on in the economy.

**Deputy Catherine Connolly:** Is there a specific team doing that?

**Mr. Niall Cody:** Our large cases division has responsibility for the financial services sector, and one of the branches in that is responsible for the section 110 companies. It is examining aspects of it and deals with our colleagues in the Revenue legislation service to see what is involved and, where necessary, we-----

**Deputy Catherine Connolly:** Many politicians have raised section 110 in the Dáil. The last time Mr. Cody was before us he told us, and he is saying it again, that the Revenue proactively identified the difficulties with that and flagged it to Government.

**Mr. Niall Cody:** We flagged it to the Department of Finance and I know-----

**Deputy Catherine Connolly:** At the time, proactively-----

**Mr. Niall Cody:** Absolutely.

**Deputy Catherine Connolly:** Are there other issues that it is flagging proactively or has done over the past year or two?

**Mr. Niall Cody:** We are not in a position yet to flag anything else but we constantly monitor the position.

**Deputy Catherine Connolly:** In due course this year will Revenue flag issues?

**Mr. Niall Cody:** I do not know. Generally, it is not specific to section 110 companies.

**Deputy Catherine Connolly:** Mr. Cody talks about risk analysis and so on. Some Deputies did a great job in the Dáil explaining section 110 to us. I was not up to speed on it at the time. Mr. Cody says Revenue was proactively looking at that. Is it proactively looking at other issues now?

**Mr. Niall Cody:** We are looking at what is within scope of the section 110 companies. We do not look at them solely. We look across the board. No specific memo is being sent from Revenue to the Department of Finance on this issue.

**Deputy Catherine Connolly:** Is there one on any issue Mr. Cody can identify?

**Mr. Niall Cody:** It is very difficult to give an answer to that.

**Deputy Catherine Connolly:** It is. That is right.

**Mr. Niall Cody:** We have an ongoing engagement with the Department and we will wonder if there is something going on and-----

**Deputy Catherine Connolly:** If Revenue was so proactive on the section 110 companies, and I accept that it was, why did it take such an effort and so much debate in the Dáil specifically on that section to change it? Is there a mechanism for changing such that when Revenue

identifies problems, it goes forward and action is taken?

**Mr. Niall Cody:** There is a process every year in the context of the Finance Bill. The legislation has to be changed-----

**Deputy Catherine Connolly:** I know that. I am talking about Revenue's role in proactively coming forward.

**Mr. Niall Cody:** There is considerable debate about section 110 companies. Some of it had nothing to do with tax. Our role is in respect of tax provisions. It would have come out in the various releases of freedom of information requests and tax strategy papers around the property issue in 2015. It then has to go through a process-----

**Deputy Catherine Connolly:** I understand that. I want to raise two more issues, residency in 183 days and Apple. I will bite into that apple. I do not expect Mr. Cody to comment because of the court case but I want to run something by him about the acknowledgement. The two companies in question that operated in Ireland, Apple Sales International, ASI, and Apple Operations Europe, AOE, were taxed for the purposes of their activities in Ireland but the head company was resident nowhere for tax purposes. Is that right? That is accepted.

**Mr. Niall Cody:** The issue around Apple and the changes that were made in respect of stateless companies in the Finance Act 2014 have been well thrashed out.

**Deputy Catherine Connolly:** I understand that. I only wanted to get it clear in my own head. It was accepted that the company was stateless. The company that took in most of the profit would pay tax nowhere. Is that right? Take it away from Apple, call it Orange, or anything Mr. Cody likes. In other words, other companies could have been doing exactly the same.

**Mr. Niall Cody:** As I said earlier, our job is to ensure they are paying the Irish tax.

**Deputy Catherine Connolly:** I am not asking-----

**Mr. Niall Cody:** Sorry, will the Deputy let me finish the sentence?

**Deputy Catherine Connolly:** I will. Okay.

**Mr. Niall Cody:** On the issue of where the tax is ultimately due, our colleagues in the US would see it as being ultimately US tax.

**Deputy Catherine Connolly:** Mr. Keegan presented a paper this morning and updated us. He was a fairly neutral person when he set out, taking ASI as an example, that the ruling allowed a split of the profits recognised by ASI in Ireland. The majority of profits were allocated to a head office within ASI with the remainder and so on, and Irish corporation tax was applied to the profits of the Irish branch. The head office was not tax resident in any country, including Ireland or the US, did not have any employees or premises in Ireland and was therefore not assessed. That is factual. Does Mr. Cody accept that is fact?

**Mr. Niall Cody:** No.

**Chairman:** Is that the Commission's perspective?

**Deputy Catherine Connolly:** No, that is-----

**Mr. John Hogan:** We need to be careful here because we are talking-----

**Deputy Catherine Connolly:** That is okay.

**Mr. John Hogan:** I do not want to draw us into a discussion around the parameters of a case that is before the courts now.

**Deputy Catherine Connolly:** I will go back to a general point. Before all things changed utterly in Ireland, am I wrong in saying other companies were doing exactly this? They had head companies that were stateless. Is that right? That has changed completely.

**Mr. Niall Cody:** The Irish rules provided that a branch was taxable in respect of its Irish activity-----

**Deputy Catherine Connolly:** I know and Mr. Cody is very consistent about that and I am not questioning it. My question is addressed to anybody here. Were other companies doing the same thing, or could they have been? Under the existing law in Ireland there could be a stateless company getting most of the profit and not paying tax anywhere. Am I wrong?

**Mr. John Hogan:** Mr. Hession could talk through the change we made.

**Deputy Catherine Connolly:** No, I do not want to know about the change. I know there has been a change. I want to know the position then. Were companies doing this and were they allowed to do it before the changes came in? Is that a difficult question?

**Mr. John Hogan:** We would not have an insight into the arrangements of individual companies so it is difficult to answer that.

**Deputy Catherine Connolly:** No questions were asked because there was no need to ask questions under Irish law at the time.

**Mr. John Hogan:** Revenue's purpose and work around this is very much in the application of the Irish law, so it is difficult to go further than that. That is what Mr. Cody has been saying.

**Mr. Niall Cody:** We have said all the time that this is all about mismatches between different countries' rules. This is what the base erosion and profit shifting programme-----

**Deputy Catherine Connolly:** Or no country, more to the point. It is not the difference between different countries but between a country and no country.

**Mr. Niall Cody:** It actually is a mismatch. It has to be a mismatch between two countries. Our view of a branch is that the company belongs somewhere else. The other countries' view is that it does not.

**Deputy Catherine Connolly:** I will not hammer the point. I have made it. My last point was about residency. Could Mr. Cody please talk me through the residency conditions of 183 days? How do we get the information? Do we know how many individuals are benefiting from the rule or are outside it? Could he put an individual's tax residence in context for me?

**Mr. Niall Cody:** We have talked before about residence rules for individuals.

**Deputy Catherine Connolly:** Yes, and clearly it is 183 days or more.

**Mr. Niall Cody:** There are a lot of Irish people who are non-resident and they happened to leave the country recently. We are talking about a small number of probably high-wealth individuals.



**Deputy Catherine Connolly:** I just want Mr. Cody to put it in context.

**Mr. Niall Cody:** Relatively small numbers come into the category Deputy Connolly is talking about.

**Deputy Catherine Connolly:** What are the numbers?

**Mr. Niall Cody:** I do not have that number with me. A small number of people are in the category to which Deputy Connolly refers. We do not capture all of those numbers.

**Deputy Catherine Connolly:** That is what I am wondering.

**Mr. Niall Cody:** We actively monitor and manage high-wealth individuals in our large cases division, who are non-resident and who have a significant relationship to this country.

**Deputy Catherine Connolly:** How does Revenue do that if it does not know?

**Mr. Niall Cody:** I suppose we know who is involved. Many of those people have a close relationship with Ireland.

**Chairman:** They would have to file tax returns in respect of income earned in Ireland.

**Mr. Niall Cody:** Yes. We would have that information.

**Chairman:** Revenue would know them from that.

**Mr. Niall Cody:** It may be the case that we could come back to the committee with specific numbers.

**Chairman:** Can Mr. Cody can send us a note?

**Mr. Niall Cody:** Yes.

**Chairman:** I want to deal with the research and development tax credit. I tabled two parliamentary questions on the issue in the past week or so. I tabled one last night and one on 13 February. I asked for a breakdown of the tax credit based on different bands of tax payment by various companies. I got some information in one reply and more in another on the number of people involved. It was 1,535 companies for 2015 and 1,486 companies were able to claim R&D tax credit in 2016. The range of credit available by way of reduction in tax for those between €1 and €50,000 was 797 people. They were the small guys. I have information on the companies ranging from €50,000 to €100,000. The one people will be interested in is that Revenue said 13 companies were able to claim the R&D tax credit where the reduction of tax was in excess of €5 million in each of the 13 cases. I asked for the figures over €10 million and €50 million but, understandably, Mr. Cody said he would not give that information as it might identify the taxpayer and he aggregated the numbers over €5 million and that came to a total of 13 companies.

The first question related to the number of companies and the second question dealt with the amount of money. The Minister for Finance gave me the information but I am sure Revenue had an input into the reply. On the amount of corporation tax in respect of amounts payable over €5 million, which was 13 companies, the amount involved in 2016 was €440 million, which represented 65% of the total. I think I am correct in saying that. In total, 13 companies out 1,486, less than 1% of the companies, were able to claim research and development tax credit in the amount of €450 million out of a total of €674 million in 2016, which was 65% of

the total. Mr. Cody gave the figures of 80% and 40% but in reality when I look at the figures less than 1% of the companies have claimed 65% of the research tax credit on the basis that they are doing the most research. There is a logic to it, but I still want to put the figures out there. Part of our remit is to provide information to the public so that they can understand the corporation tax situation a little bit better.

Those companies between €1 million and €5 million had R&D tax credit available to them of more than €100 million and there were only 49 companies in that group. Understandably, when I look at those two groups and all of the companies that were able to avail of the tax credits I work out that there are 188 companies over the four years, which gives an average of 50 companies per annum, that were able to claim €1.816 billion out of a total of €2.356 billion, namely 81%. The figures I was given relate to 2013, 2014, 2015 and 2016. An average of 40 companies has claimed more than 80% of the credit over the four years. That is a quite a lot in those particular areas and I wish to highlight that.

On the top 13 companies that I mentioned that were able to get 65% of the amount in 2016, it was an average of €34 million per company. Some of them might have been just over it and others were way over it. I estimated the average for those companies was €34 million in 2016 and €36 million in 2015. I think I am correct in my interpretation of those replies to my parliamentary questions. If that is Mr. Cody's general understanding we will not quibble over it. I want to put that on the record because we all talk about the 1,400, the majority of which are small companies but they are getting peanuts in terms of the value of the tax credit. I do not dispute the value I just want people to have a good understanding of those tax credits.

We wrote to Mr. Cody last weekend and we appreciate that we gave him short notice to provide a reply. He was good, as I think he has replied to each of the six questions we asked last week. We have the briefing note in front of us since yesterday. Some of the replies were easy to come by as they were taken from the annual reports and others probably required a bit of extra work. I wish to hone in on one which we have touched on already, namely, corporation tax and carrying losses forward. Losses forward are covered in Appendix No. 7 in the documentation supplied. The information is on screen now. That is where companies that had incurred losses in previous years can carry the losses forward against profits in a future year to reduce their tax liability. We have mentioned the banks already in our general discussion on this issue. The total amount on the schedule that I have been given for companies and corporations in Ireland carrying forward losses against future tax liabilities – I ask people to wait for this figure – I think I am right when I say it - is €218 billion, not million. That is losses forward by the corporate sector to be offset against profits in future years. We are told €40 billion relates to losses that are not expected to be used because those companies might be in liquidation but they had losses forward going into liquidation. That still leaves €178 billion of losses forward in the corporate sector to be offset against future corporation tax receipts. Mr. Cody can understand why the PAC is concerned about the receipts and potential risk to the taxpayer of that big overhang. Obviously the biggest sector of that is the financial and insurance activities which involves €124 billion, and that is the majority of the amount.

For the record, my reading of that is a fair representation. It is important that when we are drafting a report our facts are correct. I was staggered by the scale of the amounts involved. It is probably not news to some of the witnesses but it is a phenomenal figure that has not perhaps been discussed in the public arena. We do not expect it to be carried forward next year, with no corporation tax received. In my letter to the witnesses, I was really asking for an age analysis of this. How far back does this go? Is it recent or does it go back over five, ten, 15

or 20 years? Did the witnesses say they could not provide an age analysis and that the data is not collected in that manner? Some of this could conceivably be very old and there might not be much prospect of recovery. However, I would have thought that an age analysis would be available. How much of that €218 billion is from last year or from the year before? I know some comes forward each year and is utilised each year. I am surprised and a bit disappointed that the witnesses have not been able to provide an age analysis. It would have helped to inform public debate on corporation tax. I also feel it is important in light of the facts we mentioned with regard to some of the key banks in terms of the rule changes involving ECB issues and capital ratios. The banks may not be paying corporation tax for many a year to come if there is that level of losses forward in the system.

Has the Department of Finance considered a sunset clause on the losses forward? Most people have a period of time to draw down money, but the idea that these losses can be carried forward indefinitely is probably not fair to the taxpayer into the future. It has the potential to have a significant impact.

**Mr. John Hogan:** Not to my recollection. What we have here is a standard feature of how losses are treated internationally.

**Mr. Rónán Hession:** That is fair to say. The short answer is “No”, we have not looked at a sunset clause.

**Chairman:** I thought the Minister announced on budget day that he was carrying out a consultation on corporation tax and that the last day for receipt of submissions was 30 January. I want to ask about that consultation as well. Are the witnesses saying that nobody looked at the issue of losses forward as part of the consultation? Do the witnesses accept the scale of the figures?

**Mr. Rónán Hession:** The figures are published and they are as the Chairman has said. The corporation tax code was reviewed by Seamus Coffey last year; he provided his report in September and it was published. The Minister then launched a consultation process on implementing that report, and the deadline has just passed, as the Chairman has pointed out. That report did not make any recommendation in terms of change in the treatment of losses. It does not surprise us that it was not a feature of the submissions that have since come in.

The issue of losses arises, of course. It is an enormous amount. In the analysis of the 2015 corporation tax receipts was published by Revenue, which has since been updated to show the picture for 2016, we see that there are some 8,000 companies which have worked through losses and are starting to pay corporation tax. It is one of the factors driving the sustained increase in corporation tax receipts. To some extent the hangover from the financial and economic crisis is starting to work its way out of the system. We have not looked at a sunset clause in terms of the use of losses. As Mr. Hogan said, it is not a feature of international systems, but of course it is a valid debating point for legislators in terms of our tax code.

**Chairman:** I am pleased the witnesses accept that. To an extent, it could not be done because Revenue does not have an age analysis available, even if the Department wanted to look at it. The first thing the Department would have to do would be to carry out an age analysis itself. Such an analysis might have informed that level of debate. I am surprised that the review the Minister commissioned was solely based on the recommendations of the Coffey report and that it was so restricted, it seems, because one person did not make a recommendation on it. I am surprised that the review conducted did not go there. The fact that it was not in the

published consultation documents probably explains why so few submissions were received. Do the witnesses accept that there is a valid issue there? It seems to me there is a lack of information available from the Department of Finance and from Revenue in terms of how far back this goes. The issue has been relevant in recent debates, with the banks being allowed to carry losses forward. It has always been there but the scale and significance of it is far more relevant in people's minds than it was previously.

**Mr. Niall Cody:** The committee asked us for details last Friday, and we have tried to provide as much as we can. One of the issues around losses forward and the age analysis is that changes were made to the corporation tax return around 2012 to capture the losses carried forward. Before that the losses used were the only item itemised on the return form. That was changed, partially to identify the losses forward. The timing concerned the collapse of the economy, and there was a massive increase in losses, so we had to capture that risk to the corporation tax base. We have figures going back. When it comes to looking at individual companies we can actually trawl back through time. The challenge is to pull out that information in a statistical format. Since 2012 those figures have been captured in our systems.

Losses forward are made up of two component parts, which are the actual losses and unused capital allowances.

**Chairman:** Is there a breakdown of both available?

**Mr. Niall Cody:** They are carried forward together, as one number, because that is how the corporation tax return is set up. There is a mix. We talked about that during the week to see what element of the losses forward are unused capital allowances.

**Chairman:** The witness cannot answer that question at the moment.

**Mr. Niall Cody:** During my last appearance before the committee I said that we hope to publish our update analysis of the corporation tax receipts at the end of April. Mr. Hession mentioned our report on the analysis of the 2015 corporation tax returns and the 2016 payments. At the end of April, we will publish our analysis of the 2016 corporation tax returns and the 2017 payments. We were asked on the last occasion about some of the employment breakdown by companies, and we are trying to address that as one of the issues when the figures are a little bit more stable. We will try to update some of the information. We have been keen, since the big spike in corporation tax receipts, to put as much information as we can into the public domain to allow informed discussion around the issue.

**Chairman:** If I was to ask a parliamentary question, asking for a breakdown of the losses forward by size of companies, would it be answered? Revenue seems to be gathering information on a company by company basis.

**Mr. Niall Cody:** I know that the Chairman has expressed surprise previously due to the fact that when he mentioned a parliamentary question I could speak to him about it. We try to provide as much information as we can in response to parliamentary questions, but I envisage that what we would say, in the context of that parliamentary question, is that we are compiling a report on corporation tax and that we hope to have figures in 2018. The concern we would have is that we would put out something that is incorrect.

**Chairman:** We certainly would not want that.

**Mr. Seamus McCarthy:** We looked at the question of corporation tax losses carried for-

ward a number of years ago. We published a chapter in 2012 on this subject, so I have a couple of observations on the issue. At the time, the losses forward at the end of 2011 were approximately €183 billion. There has been an increase in the total amount. Some of those losses were used in the intervening period and some allowances were carried forward. An age analysis was not available at that stage. A point we made in the report is that analysis of the balances showed at that stage that 24 cases accounted for 57% of the total. From an age-----

**Chairman:** I ask Mr. McCarthy to repeat that.

**Mr. Seamus McCarthy:** Some 24 cases accounted for 57% of the total losses outstanding at the end of 2011.

**Chairman:** Out of a figure of-----

**Mr. Seamus McCarthy:** A total of €183 billion.

**Chairman:** Was that €3 billion apiece?

**Mr. Seamus McCarthy:** No, it was more. It was €9 billion apiece. These are enormous figures.

**Mr. Niall Cody:** It is far more concentrated-----

**Chairman:** A dozen or 15 or 20 companies may be responsible for the majority of the €218 billion.

**Mr. Seamus McCarthy:** Yes. However, it goes to-----

**Chairman:** Mr. McCarthy must have information on that from the large cases division.

**Mr. Seamus McCarthy:** Yes. It goes to the Chair's point on ageing the losses. By concentrating on a small number and looking at them on a case-by-case basis, one can at least establish without too much work that a substantial part of it dated from particular periods.

**Chairman:** Mr. Cody has some information in that regard from the large cases division.

**Mr. Niall Cody:** That is so. One of the things-----

**Chairman:** How much of the €218 billion is captured in the most recent large cases division?

**Mr. Niall Cody:** Some of our discussion on research and development, the concentration of corporation tax receipts and the fact that the top ten paid 37% of the total indicates that corporation tax is heavily concentrated on a relatively small number of companies. A key finding of the Coffey report is that corporation tax is heavily concentrated on a small number of companies. Dr. Keith Walsh and his team were looking at increasing the amount of information on losses, which is a big part of the process. In our April 2018 report we will try to give as much detail as we can while protecting confidentiality in terms of individual companies and our approach.

**Chairman:** Leaving aside the insertion of a sunset clause because the Department of Finance does not want companies to come back after ten or 15 highly profitable years to say they lost money 20 years ago and want it offset against future profits, has any country placed a monetary ceiling on the value of losses that can be carried forward? Have any of the witnesses from the Department heard of that? The inclusion of a ceiling and a sunset clause should be



examined. The witnesses will say the European Union would not like that, and members are aware of that, but do the witnesses appreciate my point in that regard? It is extraordinary to hear of the concentration in a small number of companies of much of the €200 billion in losses carried forward. It is not good for a country the size of Ireland to have that level of losses carried forward in the hands of a small number of companies because, as has been pointed out, it would give such companies a higher takeover value. For a company with a big corporation tax liability seeking to take over another company, a loss of hundreds of millions carried forward would probably be a more valuable asset than the takeover company itself. Ireland is in an odd position in that regard. We are here to discuss the level of risk this poses to the Exchequer because that is the essence of the report of the Comptroller and Auditor General. Has any thought been given to a ceiling or a sunset clause? “Not really” is the answer.

**Mr. Rónán Hession:** On the final point made by the Chair, Deputy Catherine Murphy earlier raised the that banks and other companies with losses are using them against their profits as opposed to holding them back to be used later. We expect companies to burn through their losses rather than retain them for future use. Even the banks are fully using them now, which works down a deferred tax asset over time. I do not want to improvise on this issue but I understand a number of changes were made to the UK system in its projected move to a 17% tax rate and several base broadening measures were implemented. I will ask my team to look into that further. There were some changes in terms of interest deductibility and there may have been changes in the area of losses but I would rather come back to the committee with the facts-----

**Chairman:** I ask Mr. Hession to send us a note in that regard.

**Mr. Niall Cody:** We were considering this. The changes in the UK in regard to losses is that they have tried to implement a system whereby one can carry forward losses and use them against one’s income in full up to income levels of €5 million, while above €5 million-----

**Chairman:** Someone has thought of putting in a ceiling.

**Mr. Niall Cody:** One can use-----

**Chairman:** It is reduced.

**Mr. Niall Cody:** -----up to 50% of the losses against profits above €5 million.

**Chairman:** It is scaled back.

**Mr. Niall Cody:** Most OECD countries have unlimited carry-forward but a table setting out the rules in the OECD countries has been published -----

**Chairman:** I ask that the committee be sent a note in that regard and on the changes in the UK even though it is in the OECD.

**Mr. Seamus McCarthy:** There was a restriction on the use of losses by NAMA-participating banks for a period.

**Chairman:** That is now gone.

**Mr. Seamus McCarthy:** It is gone but it goes to the point that limits can be imposed.

**Chairman:** And changed.

**Mr. Seamus McCarthy:** And changed.



**Chairman:** That limit was imposed around the time of the bank bailout and the establishment of NAMA and was eased off some time ago.

As regards the consultation that finished on 31 January, were any submissions received, what were the main themes and when will we see something in that regard? Did the Department of Finance carry it out?

**Mr. Seamus McCarthy:** Yes, it did.

**Chairman:** Were there many submissions?

**Mr. Rónán Hession:** Approximately 30.

**Chairman:** Have they been published on the Department of Finance website?

**Mr. Rónán Hession:** We will put them on it in due course. We do not normally publish submissions while the deliberative process is ongoing but they will be published in the next couple of months, probably before the summer.

**Chairman:** Reports have stated that the Department of Finance projects €8.5 billion in corporation tax receipts this year. How concentrated on a small number of companies will that be? It was stated that 33% of corporation tax collected in 2016 came from the top ten companies. What is the witnesses' opinion in that regard for 2018?

**Mr. John Palmer:** It is impossible to say at this point. We have-----

**Chairman:** The Department must have some estimates in that regard.

**Mr. John Palmer:** No, when we forecast corporation tax we work at the aggregate level of the overall base and then apply the relevant macroeconomic indicator, the main one being gross operating surplus. We also look at nominal GDP growth and the effect that will have. We then liaise very closely with Revenue to get information only it would have, such as whether some of the base from last year was a one-off, whether it is expecting large refunds and any other specific information it has which we can take into account in the forecast. As regards the concentration, the next information in that regard will be in the report referred to by Mr. Cody, which Revenue produces in April. That will indicate the concentration in respect of 2017. However, we do not forecast at a firm-specific level because we do not have the information to do so and can only work on the aggregate.

**Chairman:** I have another question for the Department of Finance. Is Deputy Cullinane happy for me to continue?

**Deputy David Cullinane:** I had plans to get to Waterford by 7 p.m.

**Chairman:** We are nearly finished. The changes brought in by the Department of Finance with effect from 1 January 2015 regarding tax residency of companies incorporated in Ireland prior to January 2015 do not take effect until 1 January 2021, which is a six year period. How did the Department decide on that six year opportunity? Why not three, four or eight years? What analysis led to deciding upon a six year period? What research was carried out in that regard or did six years just seem like a good idea?

**Mr. John Hogan:** I was not involved at that stage so am unable to provide specific information in that regard. However, when we make changes to tax regimes we usually consider

transition periods and I assume that on that occasion it was thought that a transition period of that nature was justified in terms of the change being made.

**Chairman:** We received information from the Department of Finance on close companies, which are companies controlled by five individuals or fewer. I wish to put on the record, because people are watching these proceedings, that we have been told that approximately 175,000 companies are registered for corporation tax in Ireland but this document also states that 116,000 of those are close companies. As such, the vast majority of the companies involved are very small. The witness estimated that the liability paid in PAYE by the subscribers to those companies was approximately €134 million. Appendix 5 states, “The number of returns for these companies for the tax year 2015 is 116,000 companies, and the estimated corporation tax liability is €632 million”. At a of 12.5%, I calculate that there is approximately €5 billion worth of profits in those small companies. Am I right in saying that? That is right. The briefing we received this morning held that the majority of tax connected with a close company is paid by way of salaries when the owners of the company withdraw it. From what Mr. Cody is saying, however, it seems that the vast majority of tax is paid by the companies directly.

I asked Mr. Cody about the surcharge he said that it amounts to €20 million, so quite a lot is retained that way. Why would companies let money sit there and pay a surcharge on it? Maybe Mr. Cody is not the one to answer that. The Revenue Commissioners are happy to get the surcharge. Is it clever tax planning for a firm to allow itself to be liable for a surcharge in a close company? Mr. Cody said that 4,600 companies returned surcharges of €21.4 million in 2015. Has he any observations on that? I know that he cannot speak for the taxpayer.

**Mr. Niall Cody:** I do not have any observations. We carry out a regular compliance programme on the close company surcharge. Various bodies have checked in different ways as to whether the close company surcharge has been applied properly. We have some yield from that process. However, I presume that sometimes things happen, money is sitting there and the company’s directors are happy enough to be making money.

**Chairman:** The money in question could be invested in some other asset. It might not be cash.

**Deputy David Cullinane:** I thank our guests and apologise for not being here earlier, as I was speaking in the Dáil. In the earlier exchanges, Mr. Cody referred to tax avoidance. He explained the difference between tax avoidance and tax evasion. There are phrases littered throughout the report to the committee from the Chartered Accountants Ireland representative, as well as in statements made by others. Reference is made to “tax efficiency” and “tax planning”. Is there a fine line between tax avoidance, tax efficiency and tax planning? What is the difference between them?

**Mr. Niall Cody:** As I said earlier, I am of the view that there are fine lines. Depending on who is sitting in this chair answering the question, there will probably be different interpretations. We actively look at cases whereby, as we see it, people have stepped over the line between tax planning and tax avoidance. In many cases it is ultimately determined by the courts. The courts probably find in our favour more often than not. However, that verdict comes in the aftermath of a very long process. I have spoken to this committee before about tax avoidance and our approach to it. I know my predecessors have all had that position. Various practitioners are of the view that we are obsessed with tax avoidance and that tax avoidance does not happen at all.

**Deputy David Cullinane:** There is obviously a distinction in law between tax evasion and tax avoidance. Tax avoidance is often seen as something similar to tax efficiency. One maximises advantage through the tax code. One might use it to one's own advantage in a way that was not intended, but it is not illegal. Is Mr. Cody saying that there are instances where the Revenue Commissioners looks at patterns or individual instances of what it sees as tax avoidance and then takes a case to allow the court to decide whether there were intentional breaches of the tax code?

**Mr. Niall Cody:** We challenge tax avoidance and raise assessments, and it is up to the taxpayer to appeal the assessments or not to do so. If a person appeals an assessment, the appeal will go through the court process. That is part of our ongoing work. We have dedicated teams looking at tax avoidance, and-----

**Deputy David Cullinane:** I wish to discuss an issue I raised previously. I raise it again this morning because I struggle to understand how it works, and why the system is the way it is. I refer to very high earners who set up companies rather than receive a salary. In other words, what would constitute a salary is paid to the company and then corporation tax is paid on most of this income and a salary is drawn down. This phenomenon was investigated in the context of a special report on hospital consultants compiled by the Comptroller and Auditor General. That report was more to do with the expenses claims, if my memory is correct. What is the purpose of that? Why would a person set up a company for that purpose? What is the incentive to do it?

**Mr. Niall Cody:** Obviously, the issues around company structure, personal services companies and employment structures have been the subject of a lot of controversy. For the past several years, we have had programmes addressing contractors and medical consultants which looked at aspects of those types of structures. Last year, we discussed the medical consultants. The Deputy is right, some of the issues related to abuse of expenses. However there were also issues with planning around the use of goodwill, and the transfer thereof between the company structure and the individual involved. We recovered some significant moneys there.

There are a number of reasons to take the approach the Deputy describes. One such reason concerns employers' PRSI. Some of this activity has to do with enhanced pension rules. In a way, one of the things-----

**Deputy David Cullinane:** I wish to comment on enhanced pension rules. This morning, I gave the example of a lot of the very senior broadcasters in RTE. It has been reported on several occasions that many of them set up these companies. They are on six-figure salaries and they pay corporation tax rather than income tax on a lot of the money they earn. We were told this morning that this is not being done to avoid paying tax. I am trying to understand why it is being done. Given what I have seen in other areas, it strikes me that this is a mechanism by means of which one can avoid paying tax. Is it the case that different rules apply in terms of how much of the profits made by such companies can be used to pay pension contributions? I am trying to understand the incentive involved.

**Mr. Niall Cody:** I have to be very careful in that I cannot speak about a small number of people or businesses in any area. I must respect taxpayer confidentiality. I must speak in generalities. The Deputy is absolutely right. Companies are set up, sometimes by high earners and sometimes by low earners, for different reasons in different cases. The use of intermediary structures can give rise to potential losses under a number of headings. There are different outcomes for employers' and employees' PRSI. I refer also to indefinite deferral of the payment of part or all of the remuneration with a consequent deferral of payment of the associated tax or

USC. There are also issues around the payment of unwarranted tax-free expenses. Generally, if an employee is getting expenses from a company, the company has a vested interest in ensuring that everything is proper there. Different pension opportunities and contributions can also be arranged. Those are some of the issues that arose in our work on contractors.

**Deputy David Cullinane:** The relevant issues then, are pension contributions, PRSI classifications and possibly allowances write-downs that would not be available to PAYE workers. There is a range of issues.

**Mr. Niall Cody:** There is a range of different issues.

**Deputy David Cullinane:** I do not want to be unfair to anybody, and I note that it is not illegal. By and large, however, I would imagine that, from an individual's perspective, the motivation would be a reduction in tax liability. Would that be a fair assessment?

**Mr. Niall Cody:** I do not want to comment on what would motivate a person to do something but it is sometimes also in the interests of the main company. I would like to talk a bit about the consultation process that took place on the use of intermediary type structures in self-employment arrangements which the Ministers for Finance and Employment Affairs and Social Protection launched last year. The report was published in January 2018.

**Deputy David Cullinane:** I saw that.

**Mr. Niall Cody:** That report addresses some of the issues in this area. What I have quoted about opportunity is in the consultation document, so I am not saying anything that is not on the public record. The Ministers have published the report and have undertaken to look at the policy issues it addresses. That issue is a policy matter. I know that there has been commentary about developments in the UK and what Her Majesty's Revenue and Customs has done in this area, but legislation is different in that jurisdiction. Particular provisions have been implemented in the UK which allow corporate structures to be looked through in certain circumstances. In a way, that is part of the range of options in this area.

**Deputy David Cullinane:** Okay. I thank Mr. Cody for that. I have a very quick question on Apple, which I know Mr. Cody has dealt with. He has said that Revenue is 99% of the way there in terms of calculating the liability. I imagine that, even though it is only two companies, Revenue will be going back over time. What is the time period it is looking back into?

**Mr. Niall Cody:** The state aid rules involve looking back ten years from the period in question.

**Deputy David Cullinane:** That would involve any payment which could be perceived as state aid to either of the Apple companies involved. What types of payments would they be in broad terms?

**Mr. Niall Cody:** As I said earlier, the figures are not finalised.

**Deputy David Cullinane:** I am not looking for the figures. I am asking whether it is to do with how their taxes were calculated or to do with write-downs, incentives and so on.

**Mr. Niall Cody:** I am sorry. I misunderstood. The Directorate General for Competition made a finding in respect of state aid. It found that the full incomes of the companies were properly taxable in Ireland. Ireland is obliged to calculate as if that is the final decision so we have to follow the methodology used by the Directorate General for Competition and calculate

what would have been the liability if its interpretation was correct. That is what we are trying to do.

**Deputy David Cullinane:** Forgive me if I am wrong, but was the judgment not that there was a special arrangement for Apple in terms of state aid rules which did not apply to other companies? Was that not the substance of the Directorate General's judgment? Perhaps the Department might have an answer to that question.

**Mr. John Hogan:** The essence of the argument is on the extent to which the activities of the company should have been taxed in Ireland. It is tricky to talk about the case specifically.

**Deputy David Cullinane:** It is not that tricky because the judgment was very clear. The judgment was that favourable treatment was given to Apple. Was that not the essence of the Commission's judgment?

**Mr. John Hogan:** That is the essence of the Commission's judgment.

**Deputy David Cullinane:** It was made in terms of state aid.

**Mr. John Hogan:** Correct, it was in terms of state aid. The issue is that judgment is the Commission's interpretation.

**Deputy David Cullinane:** And the Department is appealing that judgment.

**Mr. John Hogan:** We are appealing it and that case continues.

**Deputy David Cullinane:** I am just trying to understand the calculations. If all state aid which was given to those two Apple companies is being calculated, I would imagine that similar state aid was given to other companies, was it not? I am trying to establish what exactly the Department is looking at to arrive at whatever figure it will arrive at. I am sure it will be greater than €13 billion. Is it looking at state aid that was made available to Apple which was not made available to other companies or all state aid made available to Apple, or what was perceived to be state aid?

**Mr. John Hogan:** What we are talking about here is the calculation of the tax which was payable by the company on the basis of its activities, whether in this jurisdiction or elsewhere. It is not a payment. There are different forms of state aid. There can be benefits such as grants or payments, or there can be tax exemptions and so on. The Commission is looking at this not as a direct payment, but as the absence of payment of tax which the Commission has adjudicated should have been paid. That is the Commission's interpretation.

**Deputy David Cullinane:** Perhaps I can put it differently to help the witnesses understand me. I put this question to Mr. Cody. The judgment is that the State did not collect enough tax from Apple. That judgment was because of what the Commission saw as favourable state aid rules being applied to Apple, a special arrangement or whatever way one chooses to phrase it. That was the substance of its judgment, which the State is appealing. If Revenue were to apply to other companies the same formula which it is using to arrive at a figure in respect of Apple, could it arrive at a figure that would mean that such companies would also have a liability under those same criteria?

**Mr. Niall Cody:** The Commission has issued a decision. It is not a judgment. It will be up to the courts to determine the judgment. It has issued a decision on state aid to the two companies and nobody else.



**Deputy David Cullinane:** I understand that.

**Mr. Niall Cody:** Therefore, the issue as far as Ireland is concerned is that there is a decision in respect of the two companies and our job is to calculate what amount is involved. That is what we are doing.

**Deputy David Cullinane:** Yes, I understand that.

**Mr. Niall Cody:** It is not our job to calculate-----

**Deputy David Cullinane:** However, Revenue is obviously using a methodology to calculate this figure.

**Mr. Niall Cody:** Yes.

**Deputy David Cullinane:** Will Mr. Cody explain that methodology to me?

**Mr. Niall Cody:** We are following the decision of the Commission in respect of the two companies and calculating the liability having regard to tax involved in other countries, methodology, deductions and claims as if the decision reflected the Irish tax code, which it does not. That is what we are trying to do with the company and in agreement with the Commission. That process is ongoing and we are trying to get to the end of it.

**Deputy David Cullinane:** I appreciate that. I understand the point that Mr. Cody is making that, although this ruling will be tested in the court, it is a decision of the Commission and Revenue can only calculate a figure in respect of the two companies before it on the basis of that decision. I am just surmising that if a similar exercise were carried out on other companies using the same methodology, it is possible that other companies could also have a tax liability. It is possible and, I would say, probable.

**Mr. Niall Cody:** We have no authority to-----

**Deputy David Cullinane:** I am not asking Revenue to do it, I am-----

**Mr. Niall Cody:** Even if the Deputy asked us to do it or even if we wanted to do it ourselves, we would have no basis on which to do so. We are getting co-operation from the company because it is obliged to give it because of the way state aid works. There is a legal basis. We have no authority, however, to calculate liabilities which are not due under the Irish code. We have enough to do with trying to manage the Irish code.

**Deputy David Cullinane:** I will finish with the special report of the Comptroller and Auditor General. There is a quote which has been dealt with but on which I have some questions, "eight of the 100 companies with the highest taxable income had an effective tax rate of zero, including some who had negative rates", which are cases in which rebates were paid, "A further five had an effective rate of less than 1%." Mr. Palmer said earlier that corporation tax is highly concentrated, which it is, and that a small number of companies pay more than 30% of the total corporation tax take, which is also true. However, there are also a small number of companies that pay very little corporation tax. That is the other side of it which we are seeing this report. Perhaps this was already done, but can Mr. Cody help me to understand how those companies can end up with an effective corporation tax of zero or 1%? How would that be the case? These were companies with high taxable incomes.

**Mr. Niall Cody:** We had a long discussion about this when we were before the committee



on 30 November. We went through the 13 companies and the reason they have a low effective tax rate. There are essentially two reasons. The first is that they are in receipt of large amounts of foreign dividends in effect of which double tax relief was available to offset Irish tax payable. The second reason, which we spoke about earlier, was that they may have claimed research and development tax credits. On the foreign dividends, Ireland applies a credit system to ensure that foreign source income, including foreign dividends, is not doubly taxed. This means that an Irish resident company in receipt of foreign dividends is chargeable to Irish tax on that income at 12.5% or 25% depending on the country from which it is paid and whether the dividends are paid out of trading profits. Where certain criteria are met, however, a credit will be available against Irish tax in respect of any foreign withholding tax applied in the country of payment, as well as in respect of foreign tax suffered and the profits out of which the dividend has been paid.

We have provided a table to show what the effective rate would be if they were not entitled to the foreign tax credit. They have paid a higher rate of tax in the country in which the dividend comes from. Their effective rate is actually higher than 12.5%

**Deputy David Cullinane:** They would have paid tax in the other country.

**Mr. Niall Cody:** They would have paid tax in another country. It is not that they are not taxed on that income.

The second aspect is the research and development tax credit. This measure is a credit that allows for research and development investment. Again, if one was to take out the foreign tax credit, which is tax paid elsewhere, or the spending on research and development, then all those companies would have had an effective tax rate of around 12%. Of the 100 companies, if we discount the foreign tax credit and the research and development credit, only one company was below the 12% rate.

**Deputy David Cullinane:** I want to go through very quickly some of the allowances that are available. In the briefing document received by members, much of the information is about the tax treatment of intellectual property. The first one is the capital allowances for intellectual property. What are those allowances for a company?

**Mr. Niall Cody:** Capital allowances are claimable for expenditure. In the case of intellectual property this expenditure would be intangible. Section 291A provides for capital allowances for capital expenditure incurred in the provision of intangible assets for the purposes of the trade.

**Deputy David Cullinane:** What is the current position on that? There were changes, I believe in 2014, where the 80% cap was abolished but was brought back again. What is the current position?

**Mr. Niall Cody:** Currently it is an 80% cap.

**Deputy David Cullinane:** Okay, it the 80% cap is back again. With regard to the other capital allowances, what other allowances are available?

**Mr. Niall Cody:** We publish a table on the various allowances and credits.

**Deputy David Cullinane:** One is 7% of the expenditure on an intellectual property asset for each year over 14 years, followed by a 2% reduction in year 15. Is that one of the allowances?

**Mr. Niall Cody:** If it is useful for the Deputy I will read the note on the summary of the reliefs in the form of capital allowances. The scheme provided for in section 291A:

applies to a broad range on intangible assets (e.g. patents, copyright, trademarks, know-how) [and the goodwill to the extent linked with these] which are recognised as such under generally accepted accounting practice and which are listed as “specific intangible assets” in section 291A. ... Specified intangible assets are treated as machinery and plant for the purposes of allowances provided [under the scheme]. ... Allowances available under section 291A are based on the amount charged to a company’s Profit and Loss account or Income Statement for the accounting period in respect of the amortisation or impairment of the specified intangible asset. However, companies can opt instead for a fixed write-down period of 15 years at an annual rate of 7% of qualifying expenditure for 14 years and 2% in the final year. ...

A company must be trading to qualify for capital allowances (although pre-trading expenditure is eligible for allowances) and the specified intangible asset(s) on which capital expenditure is incurred must be used for the purposes of its trading activity. The expenditure must be incurred for bona fide commercial reasons and not as part of any tax avoidance scheme.

Claims must be made within 12 months of the end of the accounting period in which the capital expenditure has been incurred

**Deputy David Cullinane:** I am looking at it now. There are capital allowances for intellectual property and tax relief for expenditure on research and development and I believe this was dealt with by a previous speaker earlier. Is the knowledge development box, KDB, separate?

**Mr. Niall Cody:** Yes. The knowledge development box is a relatively new-----

**Deputy David Cullinane:** Could companies avail of the capital allowances, the tax relief on research and development and the knowledge development box or are they separate?

**Mr. Niall Cody:** If a company is availing of the knowledge development box, it will have had to engage in research and development and have patents. They are two sides of the coin. The research and development credit is about expenditure on research and development and the knowledge development box is for the tax rate on income arising out of the exploitation and commercialisation of a company’s patents. One flows through the other and if some research and development will not result in any income, then it will not succeed by its very nature.

**Deputy David Cullinane:** With regard to the types of companies that have patents or royalties and that avail of the knowledge development box and other intellectual property allowances, is it fair to say they have a lower effective corporation tax rate?

**Mr. Niall Cody:** The figures for the companies that appeared in the Comptroller and Auditor General’s report predate the whole of the first year of the knowledge development box. Companies utilising this rate is in the just recently-filed returns. There is a very small number, which I believe we have given in reply to parliamentary questions. The current cost of the knowledge development box for 2017 is in the region of €5 million. There is a very small number of claimants for this rate but they have two years in which to claim. It will be a while before we can be definitive on the 2017 process. Ultimately, the knowledge development box is a new scheme. It is heavily modified and is the first patent box that is fully in accordance with the OECD rules. There are significant conditions attached to it and it will be interesting see how it evolves over

time. My colleagues may want to contribute comments from the policy perspective.

**Mr. Rónán Hession:** It is exactly as Mr. Cody has said. It is a new incentive. It is quite limited in its availability. When it was introduced, we thought it might cost up to €50 million in a full year. It is probably more attractive to smaller start-up companies. A company will really only get the benefit if it has developed the patent or the copyrighted software here in Ireland. With some of the bigger companies, these aspects happen overseas in Silicon Valley and so on. While in theory some of the companies could get different parts of the research and development tax credit, capital allowances and so on, the KDB rate is quite limited - initially - for small-----

**Deputy David Cullinane:** Compared with intellectual property and research and development, it is on the smaller scale.

**Mr. Rónán Hession:** It is. The rules, as Mr. Cody has said, are OECD standard rules and everybody is following these rules internationally. I believe that Ireland was the first to introduce the OECD-compliant rules. The research and development tax credit is more for the expenditure and what the company spends. The company might not necessarily spend that on creating the patent. The KDB will only apply when the company creates an intellectual property asset. Not all research and development is about creating an intellectual property asset.

**Deputy David Cullinane:** I will finish on a positive note. I do not know if Mr. Cody follows the World Economic Forum in Davos. Joseph Stiglitz called the Irish tax state an enabler of the global “race to the bottom” in terms of corporation tax code. Is this of concern to Mr. Cody?

**Mr. Niall Cody:** We have had discussions like this a few times. Ultimately, my job and our job in Revenue is to administer the tax code. That is what we do. We implement the code and the legislation is provided by the Houses of the Oireachtas. That is our job.

**Deputy David Cullinane:** What of the Department of Finance? There were several Ministers in Davos also. They would have been there to hear some of the criticism.

**Mr. John Hogan:** The Minister for Finance, Deputy Donohoe, participated in a panel discussion at Davos, which included Professor Stiglitz. They would have had a face-to-face exchange on these issues.

**Chairman:** I have a few wrap-up questions that I did not get to the last time. We did not discuss the dividend withholding tax, which is referenced in Appendix 4 of the documentation supplied. I ask Mr. Cody to explain the figure listed for 2014, which is the amount of withholding tax on Irish companies paying dividends. Is most of that money paid to Irish people? How much of that sum is paid to foreign entities? I know that Revenue has details on the recipients of the withholding tax. How much of the withholding tax is paid to people who are resident in Ireland? How much of those dividends is paid to people from outside of this State?

**Mr. Niall Cody:** Does the Chairman mean the majority of dividend withholding tax paid in respect of Irish citizens and Irish taxpayers?

**Chairman:** Yes.

**Mr. Niall Cody:** Essentially, the dividend withholding tax is a methodology affecting income tax.

**Chairman:** I know that, yes.

**Mr. Niall Cody:** So the majority is.

**Chairman:** Curiously, the figure in 2014 was €268 million, then the amount jumped by 125% to €605 million in 2015, it dropped by 40% to €375 million in 2016, and jumped another 15% to €431 million in 2017. Why?

**Mr. Niall Cody:** Volatility.

**Chairman:** How can we plan public services when a tax more than doubles one year and shrinks to 40% another year? Can Mr. Cody give me an observation on the variation?

**Mr. Niall Cody:** I can. The dividend withholding tax is driven by the level of dividends paid out by the companies. Every so often there may well be a special event and I remember the fluctuation in 2015. Every month the Exchequer figures are published and Mr. Palmer gets his day on the news talking about the monthly figures.

**Mr. John Palmer:** What can I say?

**Mr. Niall Cody:** If there is a jump in any particular period, for any particular tax head, there is a focus on it and there is generally an explanation. There was probably what would be seen as a number of companies having significant dividend payments in 2015. Sometimes it has to do with a restructuring of their whole shareholder base. That resulted in an increase in dividend withholding taxes. Obviously a lot of the commentators will criticise the accuracy of forecasting. There are certain things that we cannot forecast because we do not know they are going to happen.

**Chairman:** Does it just happen?

**Mr. Niall Cody:** It just happens.

**Chairman:** Okay.

**Mr. Niall Cody:** I can assure the Chairman that whenever there is a significant increase or, more worryingly, a significant reduction in any tax head in any month, we look to see have we any information that can inform the Department. We certainly look to see if there is anything that indicates whether it is going to be continuing or sustaining. Interestingly, if one ignores the outliers or special payments, since 2014 there has been an 18% increase in the ordinary - if one wants to call it that - dividend withholding tax on an ongoing basis.

**Chairman:** Is Mr. Cody saying that 2015 was a little bit out of the ordinary?

**Mr. Niall Cody:** It was an outlier.

**Chairman:** Section 110 companies have been mentioned. Are they under control from the point of view of Revenue? Has Revenue a handle on the tax situation for those companies? It was a point of controversy.

**Mr. Niall Cody:** I must hesitate, and we have discussed various issues before. I do not think the committee will ever get me to come in here and say that I am happy and that we have everything under control because on the day we do that, somebody will find something the day after. Hopefully, it will be ourselves who will find it before somebody else does or the Comptroller and Auditor General will find something.

## COMMITTEE OF PUBLIC ACCOUNTS

Something like 900,000 cases are registered between corporation tax and income tax. A lot of them are very small and the Chairman would know the kind of base.

**Chairman:** Yes.

**Mr. Niall Cody:** We have to have a risk-based approach to look at what we are doing. We use our data, we use analytics and we use our risk evaluation analysis and profiling, REAP, system to try to identify trends but often, we are in a situation that we will always be after the event.

**Chairman:** Yes.

**Mr. Niall Cody:** In terms of the data on income tax and corporation tax, we are always looking 18 months after something has happened so I cannot say that everything is perfect everywhere.

**Chairman:** We wrote to the Charities Regulator about this issue and we got a letter back that included documentation. To be clear, charities must register with the Charities Regulator and the organisation has the power to remove somebody from the register of charities. The letter reads:

It should also be noted that determinations in relation to charitable tax status are entirely a matter for the Revenue Commissioners ... the Revenue Commissioners are not bound by any determination of the Authority as to whether a purpose is of public benefit or not.

The term "Authority" means the Charities Regulator. We seem to have a parallel system. The Charities Regulator can register charities and the Revenue Commissioners can grant a tax status with no regard to the Charities Regulator. Is that a good thing? That is what I got from the letter.

**Mr. Niall Cody:** On the whole area of regulation of the charities, I suppose for a long time there was essentially no system for regulating charities. We had a responsibility in tax status and then the Charities Regulator was set up. In the conversion from the pre-Charities Regulator to post-Charities Regulator, we provided them with our full charities database, which was the start of their register.

**Chairman:** There are 6,000 or 7,000 charities. How many of them are on the register?

**Mr. Niall Cody:** I think it was 6,000 or 7,000 and we can get the Chairman those figures. Since the Charities Regulator is in place we will not grant charity tax status for a charity if they are not a registered charity. The regulator is not saying that it has any role in determining the taxable exemption.

**Chairman:** I get it. That end of the business is done by Revenue.

**Mr. Niall Cody:** That business is, because one cannot be-----

**Chairman:** Revenue cannot give charitable tax status to somebody that is not on the register held by the Charities Regulator.

**Mr. Niall Cody:** That is not a charity. Correct.

**Chairman:** I got it.

**Mr. Niall Cody:** It would be useful to say that we have a very close working relationship-----

**Chairman:** Of course.

**Mr. Niall Cody:** -----with the Charities Regulator. Recently, back in January, we invited the charity regulator in to meet our management board to talk about our close relationship. We really welcome the regulator's existence because ultimately we ended up with a lot of questions-----

**Chairman:** About charities.

**Mr. Niall Cody:** -----in which we had no control over.

**Chairman:** Yes.

**Mr. Niall Cody:** For a new organisation with very limited small resources to start with-----

**Chairman:** Yes.

**Mr. Niall Cody:** -----I think it is doing a really good job.

**Chairman:** Finally, the last topic is the knowledge box and intellectual property, which we have mentioned a few times. The sector only started off last year and Revenue has said there was possibly only €5 million of taxable income or tax liability involved. In terms of companies that are entitled to half the corporation tax rate - 12.5% rate - such companies are entitled to the 6.25% tax rate. Those companies can also take a deduction worth 12.5% for revenue-type research and development expenditure. Also, they can get a credit that equates to 25% of the qualifying research and development expenditure, which is 37.5%. The top rate of tax for a company that earns income in that situation is 6.25%. Is that correct?

**Mr. Rónán Hession:** On the income that they have created, yes.

**Chairman:** On the income earned from the knowledge box - 6.5%. To get there, the companies have had to be able to get the benefit of the 25% and 12.5% rates, which brings the percentage to 37.5%. Am I right in saying that? That is the impression we were given at our meeting this morning.

**Mr. Rónán Hession:** Yes. Broadly speaking, that is correct. What the knowledge development box, KDB, is really about is that one spends money creating an intellectual property asset and the income that that asset creates is taxed at an effective rate of 6.25%. That will not necessarily apply to all at all-----

**Chairman:** I am only talking about what does qualify.

**Mr. Rónán Hession:** Yes. Likewise, the ordinary tax credit expenditure. The definitions of research and development are broadly the same, and KDB and the ordinary tax credit. One does get €1 back for every €4. One can benefit from both, yes.

**Chairman:** If there is a 37.5% allowance against the figure of 6.5%, effectively the top rate of tax on the income generated from the knowledge box that meets the requirements will be 6.25% by 0.625, which is 3.9%. Companies that qualify will only be liable for corporation tax on the income derived from that source to a maximum of 3.9%. Am I right?

**Mr. Rónán Hession:** The Chairman is quicker than me in doing the maths.

**Chairman:** Mr. Hession understands my argument.



## COMMITTEE OF PUBLIC ACCOUNTS

**Mr. Rónán Hession:** As the Chairman is speaking about a company that has many streams of income, it's overall effective tax rate may be a lot higher. The knowledge development box will cover a particular slice of it.

**Chairman:** I am only speaking about the part that is relevant to corporation tax. I mentioned the research and development tax credit. To give the figures for the research and development tax credit, the amount offset against the corporation tax liability in 2013 was €185 million; in 2014, €227 million; in 2015, €349 million, and in 2016, €434 million, giving a total of €1.195 billion. On the other side, there is the research and development repayable credit, or what I call a cashback. In 2013 Revenue wrote cheques to a value of €236 million; in 2014, €326 million; in 2015, €359 million, and 2016, €240 million, amounting to a cashback of €1.161 billion. The two figures add up to the sum of €2.356 billion mentioned for the four years in question, approximately half of which is a reduction in corporation tax liabilities, while the other half represents an electronic funds transfer in the other direction.

I thank the witnesses for coming back a second time to discuss the issue of corporation tax which we believed was important. I also thank the Comptroller and Auditor General and his staff for being with us. I thank Mr. Cody and his staff and the officials from the Department of Finance.

Our next meeting will be held on Thursday, 1 March, when we will meet officials from the Department of Culture, Heritage and the Gaeltacht to discuss chapter 15 of the 2016 report of the Comptroller and Auditor General dealing with the grant funding of the arthouse cinema in Galway and Vote 33 of the Appropriation Accounts for the then Department of Arts, Heritage, Regional and Gaeltacht Affairs.

*The witnesses withdrew.*

The committee adjourned at 4.55 p.m. until 9 a.m. on Thursday, 1 March 2018.