

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoin, 15 Samhain 2018

Thursday, 15 November 2018

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Alan Farrell,
Deputy Shane Cassells,	Deputy Marc MacSharry,
Deputy Catherine Connolly,	Deputy Catherine Murphy,
Deputy David Cullinane,	Deputy Jonathan O'Brien.

DEPUTY SEAN FLEMING IN THE CHAIR.

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

Business of Committee

Chairman: We are joined today by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness to the committee. He is joined by Ms Mahin Fitzpatrick, senior auditor. We will meet the Revenue Commissioners today and a number of chapters in the report of the Comptroller and Auditor General relate to Revenue. We will also have a private meeting in the afternoon. I suggest, therefore, that for reasons of time we confine our discussion on the business of the committee to one hour. We will go as far as we can and commence our meeting with the Revenue at 10 a.m. That is agreed.

Apologies have been received from Deputies Pat Deering and Peter Burke. I will hold over the minutes of the previous meeting for the moment. Arising from the previous meeting, the clerk will circulate wording tomorrow, for consideration next week, regarding our recommendation for a Dáil debate on the winding down of the National Asset Management Agency, NAMA. We agreed last week that there should be a Dáil debate on the issue but we have to table a formal motion, which must be circulated to members for their consideration in advance before it can be agreed. We can agree the motion for a Dáil debate on NAMA's expected surplus next week.

No. 3 is correspondence. The first category is category A, briefing documents and the opening statement for today's meeting. No. 1709A is from Mr. Niall Cody and encloses a briefing document. No. 1723A is the opening statement for today's meeting. We will note and publish these documents.

The next category of correspondence is category B, correspondence from Accounting Officers and Ministers in follow-up to meetings of the Committee of Public Accounts and other correspondence for publishing. We will hold over a number of matters from the previous meeting. We got through a significant number of items last week. I hope we will deal with all of them next week.

No. 1677B is from Chief Superintendent Dermot Mann of An Garda Síochána and is dated 31 October 2018. It provides information requested by the committee on the operation of CCTV by local authorities. It sets out the relevant legislation and statutory instruments and refers to the CCTV advisory committee and community CCTV schemes. I know of a number of local authorities where CCTV schemes have not yet been finalised. Given that the letter will be of interest to many people, we will note and publish it.

No. 1693B is from Ms Orlaith McBride, director of the Arts Council, dated 1 November 2018, enclosing an information note requested by the committee providing details in respect of matters raised in the audit opinion of the Comptroller and Auditor General regarding the 2017 financial statements. Significant issues arise in this regard and the one which attracted our attention in the first instance was the circumstances that gave rise to €196,000 in funding being provided to an outside agency that went into liquidation. The Arts Council has provided a detailed and comprehensive response. I note that it dealt with the organisation in question, Filmbase, for 30 years. We can understand, therefore, why the money continued to be paid each year. The council did not get the audited accounts it sought for 2016. It wanted the matter examined by its internal auditors but shortly afterwards Filmbase into liquidation. The Arts

Council is dealing with the liquidator to try to recover the moneys but it is listed as a trade creditor. It made payments to some of those who should have been paid by Filmbase to avoid them being left high and dry. It is doing all it can at this stage to recover the money. When dealing with liquidators, people have to wait and see, as we all know.

No. 1698B is from Ms Katherine Licken, Secretary General of the Department of Culture, Heritage and Gaeltacht, dated 6 November 2018, providing details requested by the committee on the performance delivery agreement between the Department and Galway 2020. I propose we note and publish that correspondence.

Deputy Catherine Connolly: I welcome that because it has taken some time to get this information. I would like an opportunity to come back to it.

Chairman: We can hold over discussion on it until next week.

Deputy Catherine Connolly: The Chairman can publish it now.

Chairman: We will publish it and hold over the discussion.

Deputy Catherine Connolly: I acknowledge the correspondence.

Chairman: That is fine. We will discuss it next week.

Deputy Catherine Connolly: We may not need to discuss it.

Chairman: No. 1700B is from Mr. Maurice Buckley, chairman of the Office of Public Works, OPW, providing a breakdown requested by the committee of the costs incurred by the OPW in respect of the recent visit by Pope Francis. We will note and publish this.

Deputy Catherine Murphy: I would like to come back to that again. We can publish it and I will raise it again next week if that is all right.

Chairman: We will publish it and hold over discussion until the next meeting. We will place it in the public arena, rather than sitting on it, in order that people can see the significant costs involved.

No. 1703B is from Mr. Paul Dunne, CEO of the Local Government Management Agency, LGMA, dated 2 November 2018 in respect of a request from the committee for a copy of a report arising from a value for money review of Irish Public Bodies, IPB, insurance. Mr. Dunne advises that the report is subject to a non-disclosure agreement between the LGMA, Irish Public Bodies and PricewaterhouseCoopers, PwC, dated 2 September 2015. Mr Dunne has written to IPB and PwC to request their consent for the LGMA to release the report to the committee and is waiting for a response. It is important to point out that this was a report on insurance claims. It became clear during our discussion with the State Claims Agency that the section 38 organisations come under the State Claims Agency and account for between €3 billion and €4 billion of activity each year. I asked whether the local authorities could come within the remit of the State Claims Agency. The local authorities currently obtain cover through IPB insurance and we asked for a copy of the value for money report. We have been told it is very difficult to obtain a copy. In addition, Mr. Dunne of the LGMA confirms that “there are currently legal proceedings in being in relation to the release of the Report bearing Reference - High Court Record No. 2017/321MCA.” In addition, he notes that the case “is an appeal by IPB of a decision of the Information Commissioner with regard to the release of the Report under the Freedom of Information Act, 2014.” The Information Commissioner has said that this is to be released

but Irish Public Bodies has gone to the High Court to prevent it. As Chairman of the Committee of Public Accounts, I will watch this closely but the proper procedure is that, if the report has been carried out on the question of public bodies, which are funded substantially by a Vote of the Oireachtas even if they are not directly accountable to this Oireachtas, having insurance policies for claims made against them by members of the public, it should be published. It is very disappointing to hear that Irish Public Bodies is going to the High Court to prevent such an important report being published when the Information Commissioner has said it should be published. We will come back to this because there is a big insurance issue here. We are also dealing with matters relating to the State Claims Agency. Claims to local authorities might not specifically be under our remit but they are in the same space as far as the public are concerned. It is disappointing that IPB is trying to block the release of this report.

Deputy Catherine Murphy: There is a cost associated with doing it too, in the form of legal costs at High Court level. Different arms of the State are doing different things. There is supposed to be an open Government approach which, in theory, would give a much clearer view of how decisions are made and should reduce the need for freedom of information requests, as well as the costs of administration and other things. However, this approach does not seem to have permeated some arms of the State. Its building on Usher's Quay is called Local Government House but the Local Government Management Agency seems to have an enclosed mindset, even in the context of engaging with us as we saw last week.

Chairman: There is also a building on Conyngham Road.

Deputy Catherine Murphy: Is there anything we can do? Do we have any idea of the timeline?

Chairman: The LGMA said it has written to PricewaterhouseCoopers and Irish Public Bodies and that, if they consent, it might obviate the need to go to court.

Deputy Catherine Murphy: Is there anything relating to non-disclosure agreements which is inconsistent with the freedom of information legislation?

Chairman: The Information Commissioner has ruled on it.

Deputy Catherine Murphy: This goes back further than that.

Chairman: I suspect there is commercial sensitivity, though I do not know for sure, rather than non-disclosure. The non-disclosure agreement is probably there because of commercial sensitivity.

Mr. Seamus McCarthy: One cannot contract one's way out of a legal obligation to provide information.

Chairman: There is a statutory obligation. I will say something on behalf of the public. We all talk about joined-up Government and this is an example of the issues. Local government is seen as the local arm of the Government and if local governments go to the High Court to prevent the release of information they are preventing the release of information to other public bodies. People can make multiple claims against different local authorities and State bodies and it is not in the public interest when people make sure that information is not shared. There should be some information relating to the total number of claims against all State bodies. People need to know because it involves billions of euro in liabilities.

Mr. Seamus McCarthy: The committee might want to note that the education and training boards, ETBs, all use Irish Public Bodies as their insurer so they are within the committee's remit. There is a question as to whether value for money is being achieved and how these bodies ensure that is the case.

Chairman: We might ask the ETBs to demonstrate to us what actions have been taken to ensure they are getting value for money.

Mr. Seamus McCarthy: It is a legitimate avenue to go down.

Deputy Catherine Murphy: We have to separate the management side of local government from the elected representatives.

Chairman: Members of local authorities would be in Irish Public Bodies, however.

Deputy Catherine Murphy: Yes, but it is the Local Government Management Agency that is blocking this. The same distinction will apply to the ETBs so we will need to hear from both sides.

Chairman: Who is the chairperson of Irish Public Bodies? Perhaps we should write to that person.

Mr. Seamus McCarthy: According to the letter, it is IPB which has taken the appeal to the High Court, not the LGMA.

Chairman: As of now the LGMA says it has written to PwC and IPB to get their consent. We will make a note to come back to this in December. We will keep an eye on it and we will note and publish the reply. It is a bigger issue than people appreciate.

No. 1704B from Mr. Maurice Buckley, chairman of the OPW, is dated 7 November and provides follow-up information requested by the committee at the meeting of 11 October. Correspondence No. 1722, dated 13 November and which was received yesterday, is related and provides a copy of an internal report on the acquisition of Miesian Plaza on Baggot Street, which is the headquarters of the Department of Health. There is an amount of documentation in both items and I propose to note and publish them. There is a lot in them, much of which is technical, with one document of 204 pages.

Mr. Seamus McCarthy: In total there are nearly 300 pages.

Chairman: All our printers worked overtime to produce them. There is a large amount of documentation on the agreement by the Department of Public Expenditure and Reform to proceed on the basis of value for money. There is a valuation report from Jones Lang LaSalle, dated 31 March, which looked at the Central Bank complex on Dame Street, which we also inquired about. There is also an appendix on rents and comparable lettings. We have correspondence from a former valuer of the OPW, whom we will meet in due course and we will include this in the items of correspondence for that day. There is no need for us to get into the specifics of these detailed reports at this stage, though I wish to highlight one item.

No. 1704B includes a chronological note from the OPW relating to the Eyre Square building and on the 50 flood protection schemes under CFRAM. It also gave us a report on arbitration and a historical breakdown of the proportion of leased versus owned office accommodation. In 2009, 51% of its overall portfolio was leased and 49% owned but in 2015 44% was leased versus 56% owned, so the office has been in a position to let go of some of its leased buildings

over a period of time. This is on page 12 of the document, if members want to have a look at it.

Finally, No. 1704(xvi) is a letter with 17 or 18 appendices about the national children's science museum, which is an issue nobody had really heard of. There is a detailed briefing note on that scheme and a three-page document. It seems to be an orphan project and no Department seems to want to own it. The last sentence states:

The Chairman [that is obviously of ICML, the organisation involved in this] believes that the relationship between the State and the ICML requires [further] redefinition, taking guidance from the views of the current Government. In what might prove to be a positive development, the promoters have now indicated that they would be prepared to transfer the project to full State ownership on completion.

That is a little step in the right direction because the matter had been bogged down in terms of the ownership and management of it. We will certainly note and publish that because most other capital cities have a children's science museum and we should have one. Perhaps there has been some progress in that regard. We will note and publish it and if anyone wants to come back to it at a later date, they may do so.

The next item is 1705B from Ms Pamela Carter, parliamentary affairs division, Department of Health, responding to the following matters raised at our meeting last week: CervicalCheck helpline; and terms of reference of the expert group on tort and management of clinical negligence claims. We will note and publish that, but hold it over. I am sure we will come back to the clinical negligence issue because of the State Claims Agency, and also, in due course, the CervicalCheck issue.

Deputy Catherine Murphy: I want to make two points about that. First, I think we have conflated the issue we are trying to deal with in respect of the State Claims Agency and CervicalCheck.

Chairman: Yes.

Deputy Catherine Murphy: I do not believe we have adequately dealt with the issue of the contingent liability as a consequence of that, and it is something we will have to return to in time.

Chairman: The contingent liability for CervicalCheck.

Deputy Catherine Murphy: The contingent liability for the HSE.

Chairman: All medical negligence.

Deputy Catherine Murphy: Yes. I have had contact, as I am sure have other members, with people following the meeting last week about other strands of liability. A broad range of issues make up that liability and we almost have to decouple them from where the liability lies if we are to get to an approach that involves a different system. Despite what the State Claims Agency says, one has to go legal. What we heard about the way claims occur nearly always has to be legal. It is not about mediation in the way we understand mediation. If a couple are getting divorced, the two parties sit in different rooms with another person to try to work things out, and they never end up anywhere near the court. That is now how it is in this case; one almost has to make a statement of claim. We will never get beyond that to a different system unless the system itself is challenged. That is not to say that the State Claims Agency should

not robustly go through claims. Obviously, people will make claims that are overstated and so on but I do not believe we have got to the point where we are looking at the process in the kind of detail necessary to address that.

On the second issue, CervicalCheck, we were spun a yarn last week about the length of time it is taking to release the slides. I continue to have conversations with seven families and a solicitor on the practical side of things. I restate that people are waiting for slides from April, May and June, which are not being released. We were told that the average waiting time was 22 weeks but that is a fib, and we should not accept that from the HSE.

Chairman: Does the Deputy want us to follow up on that this morning?

Deputy Catherine Murphy: I most certainly do because we are not being told the truth. In terms of the lived experience of people, they would not be contacting us if everything was working out fine. They are categorical in stating that they cannot proceed even to the next stage. We were told that only 38 signed up to the-----

Chairman: The Royal College of Surgeons, the London-----

Deputy Catherine Murphy: Yes. The reason that is occurring is because people have not been able to get their slides to make a judgment call as to whether they will sign up. The release of the slides is an impediment to a range of different aspects. We are being told certain points that do not match with the experience of people who have had a failure on the State side in terms of the way information was relayed to them, at the very least.

Chairman: On the last point, we will write to the HSE today specifically requesting the number of slides that have not been released to date. We will request the figure per month in terms of when the requests started, from October going back to March. We need to find out the number still outstanding from last April, May, June and so on and if they do not know it, that says it all. They should be able to give that information promptly.

Mr. Seamus McCarthy: My understanding from the evidence presented last week was that they were speaking about the time that elapses between the applicant for the slides issuing instructions, that these are the persons who are to receive the slides. They may be measuring two different things. An approach may have been made in April or May but, in clarifying the information the applicant needed to supply, they were not in a position to supply the slides until they got all the information. It may be down to a definition of what is being measured that may be the explanation. I understand the difficulty. If somebody makes a request, that should be the starting point of the clock. That would be my argument.

Deputy Catherine Murphy: Yes, but we should not allow people in this situation to be tied up in figuring out what way a State agency has decided to define something. For example, one of the solicitors involved told me that Quest Diagnostics had been releasing the slides in June and July but it was told to cease releasing them until a protocol was put in place. That was put in place in August. I accept there needs to be security around the slides-----

Mr. Seamus McCarthy: And chain of evidence.

Deputy Catherine Murphy: -----and all of that, but the HSE appears to have become very legalistic. It is tying this up in a hugely administrative approach. I do not believe any of us expected that releasing slides to 221 individuals or families would be tied up in that. It is certainly not the message the public are getting. There is a war going on here.

Mr. Seamus McCarthy: I am not disagreeing with the point the Deputy is making. It is just that when the committee is writing to the HSE, it needs-----

Chairman: We should ask for information on the first point of contact by them.

Mr. Seamus McCarthy: Yes, and if it has measures already in place and it is providing information, that it would give a definition of what it is measuring and reporting.

Chairman: Yes.

Mr. Seamus McCarthy: That can often bedevil an engagement where the definition of what is measured is not what one would normally expect it to mean. It is to watch for that.

Chairman: We will ask them for information on the first point of contact. If they want to provide additional information on the number of people, of the 221, they have written to seeking clarification, they can give us that as well.

Mr. Seamus McCarthy: Yes, because that is part of the story.

Chairman: On the Deputy's point about the overall clinical negligence issue on the other claims, the last meeting was the first time we got beyond the €2 billion figure that is out in cyberspace, so to speak. We have begun to break it down and we asked for very detailed specific information, not down to identifying people. Quite a bit of information will come to us, more than anybody in the public arena has seen previously, which is very important. That is an issue to which we will certainly return and deal with in depth.

The next item is 1706B from Mr. Paddy O'Keeffe, Tax Appeals Commission, dated 7 November 2018, providing an update requested by the committee on high value appeals. We mentioned the large number of high value appeals. If people want to raise it with the Revenue witnesses today, they are free to do so. We will note and publish that.

No. 1707B is from Mr. Ray Mitchell, dated 8 November 2018, providing a briefing note in regard to circulars in the context of the regularisation process provided for in a HSE circular regarding the regularisation of acting posts in conjunction with the new arrangements for the filling of short-term posts and the reintroduction of senior staff nurse positions. Essentially, some people felt that while the HSE said it sent out the circular and the information to the different heads of the organisation, many people on the ground are saying that it never worked its way down to that level. This letter makes that clear and we note and publish this and send it back to the correspondent who raised this matter with us in the first place and to let staff who are still aggrieved in relation to the process know that there is no cost to putting in a claim and there is a grievance procedure in this matter which is outlined in section 4 of that briefing note.

No. 1711B is from Ms Mary Lawlor, communications and public affairs manager with NAMA, providing further details requested by the committee on Project Nantes. I propose we send a copy of this to Deputy Wallace who raised the matter and on whose suggestion I also raised the matter here. I will read that letter because it is interesting and gives a broader perspective on the matter. I will skip a sentence or two because it is so big but because of the amount of money involved and the controversy I will respond on this because there was an article on this issue in the Sunday newspapers as well. The letter reads as follows:

I refer to your letter dated 23 October 2018 in which you requested additional information regarding Project Nantes.

As regards the first and second queries raised in the letter, NAMA wishes to point out that Project Nantes was only one of a number of separate transactions involving the debtor connection. Overall, the connection's par debt was €489 million on acquisition by NAMA. This included some €260 million of debt categorised as equity-backed loans which had been advanced to the connection by the participating institutions i.e. these loans were secured not by property collateral but by intangible assets (such as personal guarantees) which had no tangible value. NAMA did not pay the participating institutions any consideration for these €260 million equity-backed loans. Thus, only €229 million of the €489 million par debt acquired was secured by tangible property assets with a realisable market value.

That is important because it means that in relation to this particular person, the amount of loans that NAMA took over was €489 million - €229 million of that amount was secured by property and the other €260 million was only secured by way of a personal guarantee and because the personal guarantee was not tangible, NAMA paid zero for that €260 million. It is important to put it out there that NAMA did not pay for a considerable amount of the €489 million because it only effectively paid for a portion of the €229 million. That said, the taxpayer was caught in the hoop for all of it because we bailed out the banks for the shortfall. NAMA might say that its side of it is clear but the taxpayer was caught for 100% of that unsecured loan because the banks had to receive funding as a result of that. The letter continues with the following:

The debtor connection agreed to initiate a programme of asset sales and debt refinancing so as to maximise recovery for NAMA ... Ultimately, total proceeds of approximately €200 million were realised from loan, property and other loan security realisations. As part of the disposal programme, a loan sale of debt with a par value of €352 million, designated Project Nantes, realised proceeds of €26.6 million. This transaction included €241 million (€260 million at acquisition) in equity-backed loans (for which NAMA had not paid consideration) and €111 million par debt secured by assets. Therefore, the €26.6 million realised for Project Nantes related to par debt loans of €111 million (part of the original acquired property-secured par debt of €229 million).

Thus, in total, proceeds of approximately €200 million were realised from the asset sales and loan sale/refinancing, equating to a recovery of 87% of the original acquired property-secured par debt of €229 million. The proceeds realised were well in excess of the recovery target set by NAMA for the connection and the acquisition value paid by NAMA to the participating institutions.

As regards the third query raised in the Committee's letter, I can advise that NAMA has been investigating this matter. As part of this, NAMA undertook a review of the written confirmations and warranties in respect of section 172(3) of the NAMA Act 2009, which were provided by the borrowers and purchaser at the time of the loan sale in 2012. These confirm that the borrower and purchaser were compliant with the requirements of section 172(3) of the NAMA Act 2009. Following enquiries raised by NAMA, it has been established that the party who has been identified as a director of the purchaser entity was not a NAMA debtor.

Maybe there was another connection with a NAMA debtor but the letter says that the person was not a NAMA debtor so there is wiggle room there. The letter continues with the following:

NAMA wishes to be helpful to the Committee but is required by law to operate by reference to the prohibitions on disclosure of confidential debtor information.

Essentially it cannot say more. There is some information there but there is still some wiggle room in there. Some people are interested in that and I read it into the record because it is big money, it is a matter people are concerned about and it has attracted much public comment.

We note and publish that letter. Is that agreed? Agreed.

Deputy Catherine Connolly: I want to say something on that. Note and publish it and I would like to come back to that.

Chairman: We will be coming back to it.

Deputy Catherine Connolly: The Chair has done the right thing reading it and highlighting it. We are sitting here now, notwithstanding much commentary in the newspapers lately. Three of us here are looking at this as ordinary Deputies trying to make sense of it as one item of correspondence-----

Chairman: One of about 50 items of correspondence today.

Deputy Catherine Connolly: We are talking about wiggle room and the effort to pursue the €173 million and then we were told it was not a NAMA debtor and so on. We have to go back and look at that but how long will that take to check that, make sense out of it and talk to the people who have raised concerns about it? It is one item of correspondence. What the Chair has put on the record is important but it is equally important to put on record what we are faced with on the Committee of Public Accounts, not to mention what is before us today. We have to try to understand that as ordinary Deputies to try to hold a system to account.

Chairman: We will write back to NAMA arising from that letter to say that it has established that the person identified as a director of the purchaser entity was not a NAMA debtor. We will write back straight up asking if there was any connection between that person and a NAMA debtor. Maybe that person was not a NAMA debtor but we want to know if there was any connection and NAMA should know that and the nicely-----

Deputy Catherine Connolly: Not alone should NAMA know that but it has a duty to explain to us. We are not here to go through something minutely to try to find details. The onus is on every organisation that comes in here to disclose to us that everything has been done properly. It is being pushed the other way.

Chairman: NAMA does say in the last paragraph that it is constrained by the legislation from disclosing details. However, what we are asking is not an unreasonable question. The Deputy is right. We could have just noted and published it and moved on. Serious issues are raised and people feel that we should follow matters through and of course we do so we will go back and ask for further clarification of that.

Mr. Seamus McCarthy: I have asked for further information on this transaction. I have not received all of the information that I require yet. When I have that information I will consider whether I need to do further investigation of the matter with the potential of making a report but I have not made that decision as of yet.

Chairman: The big question we asked here that day was about what level of verification has been made of the section 172 declarations and I gathered that they had not done that. That is a bit like Revenue saying it is a self assessment system but that there is no audit in place.

Mr. Seamus McCarthy: We raised that in the second section 226 report which the Chair

already discussed with NAMA. We said that it was a concern that it was taking assurances at face value. The same discussion can be had with Revenue. That creates a significant declaration and it is a legally important declaration. It is a control process that is not insignificant but verification or standing up of matters is obviously important.

Chairman: Do these declarations have any legal standing outside of the State because this is a sale transacted in Europe?

Mr. Seamus McCarthy: That may be where there is a greater difficulty. I could not answer that.

Chairman: See? It is wide open.

Deputy Catherine Murphy: It certainly shows the kind of underpinning there was, if I can use that term, for some of the banks' transactions. The banks went out and-----

Chairman: We are not finished with it.

Mr. Seamus McCarthy: There is something to note. While there is a prohibition on the disclosure of information under section 202, it is important that the committee note that subsection (5) reads: "Nothing in subsection (2) prevents the disclosure of information ... in the course of giving evidence before a House of the Oireachtas or a Committee of either or both such Houses". There is an onus on NAMA to present information and to provide the assurances to which Deputy Connolly referred.

Chairman: We will ensure that NAMA is made aware of that point in our reply. We are not legal experts. We cannot be expected to know the subsections of section 202. I thank Mr. McCarthy for highlighting it. How could we be expected to know the full details of that? We will revert to NAMA on that basis. We will note and publish the correspondence but will follow up on it.

Next is No. 1714 B from Dr. Des Fitzgerald, president of the University of Limerick, UL, providing an update on steps taken by him to ensure the conclusions of the Thorn report are fully and swiftly implemented. Dr. Fitzgerald states that there is a sharp focus on ensuring that matters are dealt with fully and finally to restore the reputation of the university.

I will make a remark once we put the letter on screen. There are multiple pages to it and I do not have the relevant part to hand. The issue I wish to refer to is on page 3, step No. 8. It reads: "At a hearing of the PAC, in the press and in communications to UL staff, I apologised on behalf of the university to the regulatory bodies, to current and former employees and to the people of the Mid West for what was revealed in the Thorn Reports." It is all well and good apologising to staff and former staff, but what is the current position? Saying "I am sorry" is fine, but has anything been done in practice? I want to know the current status of the staff to which Dr. Fitzgerald referred. They may have been whistleblowers. Without identifying them by name, we need a note on their current employment status and how that apology was given practical effect. If it has not been given proper legal effect, it is only words.

Deputy Catherine Murphy: Asking Dr. Fitzgerald to do that is one thing, but I want to hear how the whistleblowers felt.

Chairman: We will not preclude that.

Deputy Catherine Murphy: I know. An apology does not necessarily reflect how they

feel about the situation. We should deal with that.

Chairman: I am testing Dr. Fitzgerald by asking that question.

Deputy Catherine Murphy: When this report was laid before us, there was an expectation that we would re-engage with the whistleblowers, but we have pushed that out and have still not done it.

Chairman: I will ask that the reply, when it is sent to us, meets a level of candour and openness and provides the full details about the people concerned in our questions. We will judge Dr. Fitzgerald's words then. Let us hope that everything he said measures up. When we see the reply, we will examine it, and if we have to take the matter further, we will. I am asking the question.

Mr. Seamus McCarthy: At the end of that page, he also refers to an additional report on UL by me. It is a special report that is with the Department and has to be published by the end of the month.

Chairman: So we could have it next week.

Mr. Seamus McCarthy: It will provide further context for the letter.

Chairman: Great.

Deputy Catherine Connolly: We can take the two together and make a decision.

Chairman: Absolutely. It is on our work programme.

Next, we held over No. 1595 C from our previous meeting. We will revert to it.

Correspondence Nos. 1674 C, dated 22 October, and 1716 C, dated 7 November, are from an individual who made a submission to the Department of Public Expenditure and Reform regarding the OPW in terms of "Strengthening Civil Service Accountability and Performance". We requested the relevant report at our meeting with the OPW. Members will recall that the report reviewed five specific properties. The individual also provides the details of other properties on which he believes value for money was not achieved, namely, the former Passport Office and the Garda offices on Harcourt Street. The individual believes that an independent report should be commissioned by the OPW.

We have dealt with the correspondence from Mr. Maurice Buckley, chairman of the OPW, which provided considerable information, including background information, regarding recent developments in the property management division. While we might have to return to this topic in the new year, I propose that we ask the chairman to provide a further update on developments to ensure effective property management and that we advise the correspondent accordingly. We have agreed to invite in the former employee who wrote the report. This is on our work programme. We will deal with the matter as soon as we set a date.

The next correspondence is No. 1697 C from an individual, forwarded to the committee, regarding a value for money query relating to the Strategic Banking Corporation of Ireland, SBCI. The bank is audited by the Comptroller and Auditor General and I propose that, with the correspondent's permission and appropriate redactions, we forward the correspondence to the SBCI. I understand that the clerk to the Committee on Finance, Public Expenditure and Reform, and Taoiseach has been in correspondence with that organisation. I propose that the

two clerks liaise and seek an update on any intended action. Is that agreed? Agreed. This correspondence has gone to two committees.

No. 1710 C from an individual dated 8 November relates to property leases undertaken on behalf of the State by the OPW. We will note this correspondence and take it into consideration during our meeting with the former OPW employee.

Nos. 1712 C and 1713 C, dated 7 November, are from an individual who has been in correspondence with us regarding Cork Education and Training Board, ETB. The board has advised the committee that the individual agreed a full and final settlement with it of all outstanding complaints, including a provision that the individual would not apply for any further position within the ETB. The Department of Education and Skills provided advice to the effect that the individual was free to accept or reject any or all of the settlement, and encouraging the individual to engage with the ETB, through the individual's legal advisers, to reach a settlement. The responses from the ETB and the Department were forwarded to the correspondent. I propose that we advise the correspondent that our consideration of the matter is now closed. Has anyone a comment on this? I think we taken it as far as we can? While it sounds severe, the person, with the individual's legal advisers, signed the agreement. We are not going to unravel an agreement into which someone entered freely, full stop. That is all I can say.

That marks the end of today's correspondence.

Deputy David Cullinane: I wish to raise two issues quickly. Has the Comptroller and Auditor General's report into Waterford IT been noted?

Chairman: No.

Deputy David Cullinane: Can we note it and place it on our work programme?

Chairman: Yes.

Deputy David Cullinane: Can we write to RTÉ for an update on the Eversheds Sutherland report and its implementation? It identified a number of staff who possibly were on bogus self-employment contracts. A commitment given in the report was that each of those staff members would be contacted individually to ascertain the status of his or her contract. My understanding is that has not happened in the majority of cases. There was a clear commitment in the independent report. Can we write to RTÉ seeking an update?

Chairman: Yes.

Deputy David Cullinane: Specifically, have the people who were identified been contacted, and if not, why?

Chairman: We will do that. We will include the WIT report in our work programme. We can certainly deal with that matter.

No statements or accounts have been received since our previous meeting. That is extraordinary. It has been a quiet week for someone.

Mr. Seamus McCarthy: Yes.

Chairman: The next item is our work programme, which we will put on screen. Today we have the Revenue Commissioners and, in the afternoon, a private session. Next Thursday, we

will deal with a special chapter on hepatitis C treatment. Was the ultimate cost in the order of €1.5 billion?

Mr. Seamus McCarthy: The compensation schemes were put in place.

Chairman: We are asking the people from the HSE because that was as a result of medical negligence. We do not need to go back over CervicalCheck. We pencilled it in for next week, but we had it last week. We will come back to it through correspondence. We do not need to deal with CervicalCheck every second week.

Next week we hope to have a draft of our fourth periodic report. That will be prepared by the secretariat with no input from the members. It is not a members' report, but a committee report. Those who seek to print or publish a leaked version of it should be aware that it is not a Committee of Public Accounts-approved document - the committee had no input. They may publish it at their peril. That is all I say.

Deputy Catherine Murphy: Can we send an email to all people who are not present?

Chairman: The secretariat will give us a draft for our first consideration of the matter. I ask members to take some time out before the meeting to go through it. I would like to clear that with a view to publishing it early in December. It is essential that we do that. I want to try to clear the first reading of that report and then we might have a final one after that.

On 29 November, we will have officials from the Department of Employment Affairs and Social Protection before us. We will discuss several chapters of the Comptroller and Auditor General's report, the Social Insurance Fund and the Vote, which is one of the largest Votes. There is quite a lot and we probably will not get to complete all that work on that day and we might have to hold some of it over. I have listed everything related to that Department for the first day and we might have to come back to it.

Deputy David Cullinane: This is a very good example of something we were discussing last week. We will try to ask an Accounting Officer questions on many different issues. I am thinking about JobPath and some of the others. We had those officials in previously and we did not get information. They said they were not in a position to give us information. This is one of those meetings where we need to signal well in advance what we want from them so that we do not find next week that they do not have what we are looking for and we get frustrated. I would certainly take it upon myself to contact the secretariat outlining specifically the types of questions and issues I will raise and the type of information I want. I can foresee problems. It is a large Department, and there are many issues and chapters in the report.

Chairman: We will send a memorandum to all members asking them to ensure they do that because of the volume. We will not get to clear everything in that Department that day. I have listed the full programme for that Department but we will not get it all done.

Deputy Catherine Murphy: I envisage part of the problem lying with JobPath. The financial relationship between the particular companies and the Department is not something they will share with us because they will tell us it is commercially sensitive. That is at the heart of this. We are told we are almost at zero unemployment and large amounts are being expended on companies and may continue to be. If we cannot explore that, are we really getting under the bonnet at all?

Chairman: We want the up-to-date position to the end of September, the end of the most

recent quarter.

Mr. Seamus McCarthy: We were trying to do with the chapter to bring relevant performance information to the committee. Essentially in reaction to the committee's inquiries earlier in the year or at the end of last year, I decided to do this chapter to try to focus on the relevant performance issues. We had to be careful about certain commercial information. I think we have been and the Department was happy with that.

The committee's Standing Orders provide the option to hear certain information that is commercially sensitive in closed session.

Chairman: Private session.

Mr. Seamus McCarthy: Yes. That might be a possible avenue, if the committee wanted to pursue specific other points. That is a matter for the committee.

Deputy David Cullinane: That is a good option if we need it. When they appeared last time and the JobPath issue was raised, my recollection is that we got the figure for the overall spend. Two companies roll this service out. We got the overall figure but then we were told they could not give the breakdown for each company because then the other company would know. However, the other company would have known because the overall figure is the overall figure. Each company knows what it spent. We were in a kind of bizarre-----

Chairman: They could work out the balance; it is simple.

Deputy David Cullinane: It was ridiculous. Those are the types of issues. Do we want to be in that space again next week?

Chairman: We might suggest-----

Deputy David Cullinane: If it is necessary to go into private session, that is fine.

Chairman: We should put the officials on notice that to assist the committee deal with issues that may be commercially sensitive, we may use the procedure to go into private session for a short period.

There is one other aspect that doubles up. One of the significant payments by this Department relates to the rent supplement and the issue of HAP. Does the HAP come through the housing Vote or-----

Mr. Seamus McCarthy: Housing, but obviously there is rent supplement, which is also a very big programme.

Chairman: The rent supplement is easing up because HAP has been taken up. Because we are dealing with rent supplement which relates to housing, I will ask an official from the Department of Housing, Planning and Local Government - not the Secretary General, but the appropriate senior person with responsibility for the rent supplement-HAP issue - to be present. That will not be finished in the morning session, maybe we will just say to be here for the after-----

Deputy Catherine Connolly: Is that the Department of Employment Affairs and Social Protection?

Chairman: Yes.

Deputy Catherine Connolly: I thought the Chairman said “housing”.

Chairman: We do not want them saying that a particular issue relates to the Department of Housing, Planning and Local Government. We need somebody from that Department here on that day. That person does not need to be here for the entire meeting. I suggest to assist the witnesses that we will hold off discussing anything relating to rent supplement, housing and HAP until the 2.30 session. It is not possible to clear all that in the morning session. We will be here well into the afternoon. There is no point in having Department of Housing, Planning and Local Government officials sitting there from 10 a.m. I am trying to facilitate witnesses, rather than-----

Deputy Catherine Connolly: Rent supplement comes under the Department of Employment Affairs and Social Protection.

Chairman: Yes, but because that is connected with housing, I also want an official from the Department of Housing, Planning and Local Government to be present on that day.

Deputy David Cullinane: There is crossover.

Chairman: There will be crossover. Apart from having the Department of Employment Affairs and Social Protection officials, I also want to have an official from the Department of Housing, Planning and Local Government to deal with anything that they can answer that the Department of Employment Affairs and Social Protection officials cannot answer relating to numbers and-----

Deputy Catherine Connolly: I was confused because the Department of Housing, Planning and Local Government is down anyway.

Deputy Catherine Murphy: I think it has changed.

Deputy Catherine Connolly: The one I am looking at-----

Chairman: The Deputy is looking at the old one. We have changed. We are dealing with the Department of Employment Affairs and Social Protection. They cannot make it on that day.

Deputy Catherine Connolly: I understand. So it is just the Department of Employment Affairs and Social Protection.

Chairman: Yes, and we will discuss everything relating to all the chapters. It will be a big day because that Department has a very big expenditure.

Mr. Seamus McCarthy: I point out that in Chapter 20, PRSI contributions by the self-employed,-----

Chairman: We will need someone from Revenue.

Mr. Seamus McCarthy: ----- there are very big issues there. They crossover between Revenue and the Department of Employment Affairs and Social Protection.

Chairman: Under Chapter 20, PRSI contributions by the self-employed are collected by Revenue.

Mr. Seamus McCarthy: Correct.

Chairman: To address issues relating to rent supplement, which affects the Department of Housing, Planning and Local Government, we will ask for officials from those two areas to be here for the afternoon session.

Deputy David Cullinane: The Chairman made the point that we might not get through all of these because there are five chapters.

Chairman: And the Vote.

Deputy David Cullinane: The point is that we will all come in and touch on bits and pieces of it. How do we know if we have covered them or not? If we are to have two sessions, why would we not break it up and deal with certain chapters on day one? Otherwise we will just touch on stuff and how can we judge whether we have covered it?

Chairman: That is fine. Sometimes there are three or four chapters, as could happen today with Revenue. Members might concentrate 99% of their time on one or two and very little-----

Deputy David Cullinane: However, if we decide to concentrate on specific chapters on one day and do the due diligence on those chapters, and then deal with the other chapters in the next meeting-----

Mr. Seamus McCarthy: I believe the committee has provisionally allocated a second day for the Department of Employment Affairs and Social Protection on 13-----

Chairman: No date is finalised yet. I want to put everything up for discussion. I do not want to stop a member speaking on a particular matter. The Vote has to be there as the first issue. If somebody wants to ask about the Vote and that might go into overpayments, it will be hard to stop discussion on the Vote and some of the chapters but it will be our job to ensure we touch on every chapter. Some chapters will get more attention than others. That is why I am signalling-----

Deputy David Cullinane: Okay; we will get a second run to pick up on issues we might not-----

Chairman: We might decide on the day to hold over some of it for the second day.

Deputy Catherine Murphy: I have a small issue. Rent assistance and the rental accommodation scheme, RAS, are under the Department of Employment Affairs and Social Protection. I do not know which Department pays for leasing.

Mr. Seamus McCarthy: My understanding is that the Department of Housing, Planning and Local Government is responsible for RAS. It was established under the former Department of the Environment, Community and Local Government.

Chairman: We will ask the secretariat to investigate the RAS payment, and if that Department is responsible, it should be represented at the afternoon session of that meeting to deal with housing implications.

Deputy David Cullinane: Does RAS come through local authorities?

Deputy Catherine Murphy: No, the housing assistance payment, HAP, comes through local authorities.

Chairman: HAP comes through local authorities. Rent supplement is through the Depart-

ment.

Mr. Seamus McCarthy: My understanding is that rent supplement is the original support and RAS was then put in place by the former Department of the Environment, Community and Local Government. HAP was then developed on the housing side.

Deputy Catherine Murphy: RAS is still in operation and a different set of protections operates in that regard.

Deputy Catherine Connolly: We get a quarterly report in Galway regarding long-term leasing, short-term leasing, RAS, HAP and rent supplement. The last is delivered under the Department of Employment Affairs and Social Protection and is being phased out, while all of the other schemes are under the Department of Housing, Planning and Local Government.

Mr. Seamus McCarthy: Housing, yes.

Chairman: RAS is under the Department of Housing, Planning and Local Government. That is why we need an official from that Department to appear along with officials from the Department of Employment Affairs and Social Protection and the Revenue Commissioners on that day to deal with the collection of self-employed taxes. We will see how much progress we make. I do not want to exclude some chapters in case people queried that.

Deputy Catherine Murphy: We have done a piece on housing and will do another and a report.

Chairman: We will.

Deputy Catherine Murphy: Although some supports are channelled through local authorities, the fragmentation in this area is causing a great deal of confusion in regard to understanding what is being spent on housing, for example, and what will be the long-term obligations. It will be very difficult for the committee to get the total picture if we do not find a way to pull that together. We may have to compile two periodic reports, for example.

Chairman: We will hold the issues over. We will not split a topic across two reports because of our timetable. We can agree to hold one issue over until we complete the project. That happened once before. There is much to consider, such as approved housing bodies and so on, before we complete this issue.

Deputy Catherine Connolly: It is becoming clearer because all of the schemes are under local authorities except rent supplement, which is being phased out. All of the other schemes such as HAP, RAS, long-term and short-term leasing are under local authorities.

Chairman: Capital assistance schemes.

Deputy Catherine Connolly: Yes. It is confusing but at least we are getting an overall picture. We know from the Comptroller and Auditor General that the HAP payment doubled to €300 million from one year to another and will increase to €431 million or €451 million next year. The voluntary housing associations and the number of schemes that are in operation are very confusing, as is dealing with the amount of money being allocated to each scheme. That is where the difficulty is. Another difficulty is the amount of money being sent through these schemes to the private market.

Chairman: We will revert to that issue because we did not deal with the approved housing

bodies at the first meeting on this issue. We are scheduled to deal with payments to approved housing bodies. We were always going to have a second-----

Deputy Catherine Connolly: I agree with the Chair in that regard. I was never interested in the approved housing bodies, but rather what the Department is doing, the amount of money and the governance issues.

Chairman: Yes, and the outcome in terms of the number of houses being delivered. On that day representatives from the Department of Housing, Planning and Local Government and the Revenue Commissioners will be present for the afternoon session.

Is there anything in the work programme for 13 December? On 6 December we will deal with the Department of Communications, Climate Action and Environment and its Vote. The Comptroller and Auditor General has a chapter on cybersecurity and the energy efficiency fund and we will also deal with the national broadband plan on that day. The issue of cybersecurity is under that Department. However, I ask the officials to check whether the Army or the Department of Defence also has a role in cybersecurity. I understand that they do. We want that to be clarified. Am I correct in that regard?

Mr. Seamus McCarthy: They do have a role, yes.

Chairman: They do. The Army has a role in terms of cybersecurity and we need to have the appropriate people from the Department or the Army or the Defence Forces here for that discussion of cybersecurity, which is not confined to the Department.

Deputy Catherine Murphy: Can we get an indication of what the representatives will be able to discuss in that regard? I have seen a reply to a parliamentary question which stated that the-----

Chairman: On which topic?

Deputy Catherine Murphy: The budget for the secret service cannot be revealed because it is a secret.

Chairman: The Deputy was referring to cybersecurity.

Deputy Catherine Murphy: Some elements of cybersecurity will not be discussed by the representatives because they will not want to give away secrets. The committee will be examining finance and the process.

Chairman: The governance process, yes.

Deputy Catherine Murphy: However, there is no point in representatives attending to tell us that they cannot discuss certain issues.

Chairman: There is a chapter on the matter in the report of the Comptroller and Auditor General.

Mr. Seamus McCarthy: There is a chapter on the governance structure of our cybersecurity, which is the critical element. Are the elements in place, what are they and who is responsible for them? I do not think that anybody could argue that the committee could not be given answers to those questions.

Chairman: Those broad issues, yes.

Deputy David Cullinane: On the University of Limerick and Waterford Institute of Technology reports, might there be an opportunity to deal with those reports on the same day?

Chairman: It might be 13 December either.

Deputy David Cullinane: Before we make a decision on how to approach it, on the report on Waterford IT by the Comptroller and Auditor General, it would be of benefit if we had a sense of the status of the more substantial report to be compiled by the Higher Education Authority, HEA, and the Department. They were awaiting legal advice from the Attorney General in that regard. If the report is months or a year from completion, we could deal with the report of the Comptroller and Auditor General alone. However, if the substantial report is expected sooner, the committee could wait and address both reports on the same day. I asked about the status of that report at our most recent meeting. Was a response received in that regard?

Chairman: Not yet. We will follow up on it this week.

Deputy David Cullinane: Was it followed up?

Chairman: It will be dealt with this week. We have concluded the discussion on the work programme. There being no other business, we will suspend while the witnesses take their seats.

Sitting suspended at 10.17 a.m. and resumed at 10.25 a.m.

2017 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Vote 9: Office of the Revenue Commissioners

Chapter 17: Revenue's Progress in Tackling Tobacco Smuggling

Chapter 18: Management of High Wealth Individuals' Tax Liabilities

Chapter 19: Corporation Tax Losses

Mr. Niall Cody (*Chairman, Revenue Commissioners*) called and examined.

Chairman: We are dealing with the Appropriation Accounts 2017, Vote 9 - Office of the Revenue Commissioners; and from the Comptroller and Auditor General's report, Chapter 17 - Revenue's progress in tackling tobacco smuggling, Chapter 18 - management of high wealth individuals' tax liabilities, and Chapter 19 - corporation tax losses. The committee had many meetings on the last issue during the year and issued a special report on the topic some months ago.

We are joined today by Mr. Niall Cody, chairman, Mr. Mick Gilligan, principal officer, Ms Ruth Fennessy, principal officer, and Mr. Keith Walsh, principal officer from the Office of the Revenue Commissioners; by the Comptroller and Auditor General liaison at the office, Ms Clare Omelia; and by Ms Anna Donegan, principal officer, tax quality division of the Department of Finance.

I remind members, witnesses and those in the Public Gallery that all mobile phones must be switched off entirely or to aeroplane mode. Merely putting them on silent will still interfere with the recording system.

I wish to advise the witnesses 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 this committee. If they are directed by the committee to cease giving evidence in regard to a particular matter and they continue to so do, they are entitled thereafter only to a 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 nor make charges against any person, persons or entity, by name or in such a way as to make him, her or it identifiable.

Members are reminded of the provisions within Standing Order 186 that the committee shall also 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. While we expect witnesses to answer questions put by the committee clearly and with candour, witnesses can and should expect to be treated fairly and with respect and consideration at all times, in accordance with the witness protocol.

We will take the opening statement from the Comptroller and Auditor General.

Mr. Seamus McCarthy: The account of the receipt of revenue of the State collected by the Revenue Commissioners discloses taxes and duties remitted by Revenue to the Exchequer and receipts collected by Revenue on behalf of others. The 2017 Revenue account, which was certified in April 2018, was examined by the committee at a meeting last June.

Revenue's administration and operational expenses are charged to Vote 9, Office of the Revenue Commissioners, rather than the Revenue account. The 2017 appropriation accounts show that the total spent by Revenue in the year was €411 million. Taking account of appropriations-in-aid of €71 million, net expenditure under the Vote amounted to €340 million. The surrender for the year was €3.4 million.

Chapter 17 examines the actions taken by Revenue in recent years to tackle the issue of tobacco smuggling, which represents a significant risk to tax receipts. Revenue and the National Office for Tobacco Control commission an annual survey to estimate the extent of illicit tobacco related activity in Ireland. Based on the survey, Revenue estimates that 13% of cigarettes consumed in Ireland in 2017 were illegal, with an associated notional loss of revenue of approximately €229 million.

Revenue seizures of cigarettes and tobacco in 2017 were worth in excess of €20 million at normal prices, representing a potential loss to the Exchequer of €16 million in taxes and duties. Relative to the estimated overall loss of €229 million, this implies a Revenue detection rate for illegal cigarettes of approximately 7%. The value of any seizures that take place abroad with Revenue's assistance is not recorded as there is no formal mechanism in place to account for

such events.

Figure 17.7 refers to expenditure of more than €400,000 incurred by Revenue up to the end of August 2018 relating to the ongoing holding in Dublin Port of a ship that was seized in 2014 for carrying illegal cigarettes and tobacco. Significant disposal costs may also arise. This expenditure is charged to Vote 9.

Revenue published its first stand-alone strategy on combating the illicit tobacco trade covering the period 2011 to 2013. A follow-on stand-alone strategy was not produced. However, Revenue is finalising a national action plan to combat illicit tobacco, with a focus on increased international co-operation.

Chapter 18 outlines Revenue's approach to monitoring and managing the tax affairs of high wealth individuals. These are managed by a dedicated unit within Revenue's large cases division. A specific case manager is assigned to each individual. As at June 2018, the unit was managing approximately 480 individuals. The unit was also dealing with around 140 trusts, partnerships and other legal entities related to these individuals. Revenue's criterion for someone to be considered a high wealth individual is that the person is known or believed to have net assets of more than €50 million. This is a high threshold compared with other jurisdictions.

High wealth individuals tend to operate in multiple business sectors. Revenue's practice in that regard is to assign a sectoral code to each high wealth individual that reflects his or her primary activity. On that basis, around one third of high wealth individuals operate primarily in the real estate sector. High wealth individuals' tax liabilities cover a range of tax categories. At the time of the examination, the most recent data provided by Revenue on tax liabilities for high wealth individuals were for 2015. In that year, high wealth individuals accounted for 3.4% of all net income tax due, 9.3% of capital gains tax receipts and 2% of all capital acquisitions tax receipts.

High wealth individuals filed 334 income tax returns in 2015. The number of returns filed is lower than the number of individuals managed in the unit for a number of reasons. For example, a jointly assessed couple, both classed as high wealth individuals, would count as one taxpayer unit and file one income tax return. The unit also monitors individuals known to have substantial economic interests in Ireland but who may not have a requirement to file an income tax return in Ireland.

The income tax due from high wealth individuals who made income tax returns in 2015 was highly concentrated, with very significant variations between the 334 returns. Some 85% of the total income tax liability was due from just ten taxpayers. Across the group, the average effective tax rate was 39.2%, more than double the average rate of 16.3% for all income taxpayers. However, 90 high wealth individuals had an effective income tax rate less than the national average rate.

The examination reviewed a sample of 30 compliance interventions undertaken by Revenue which resulted in additional tax being collected from high wealth individuals. Of these, 14 had availed of a qualifying avoidance disclosure programme, QAD, to settle their tax affairs. A QAD allows a taxpayer who entered into a tax avoidance transaction to settle with Revenue by paying the full tax and interest due at the time of the disclosure. Incentives for the taxpayer in such QAD cases are a 20% reduction in the amount of interest otherwise due and the avoidance of penalties and publication as defaulters.

For one of the intervention cases reviewed, Revenue had agreed to a phased payment arrangement on the basis of limited documentation. Another 26 taxpayers involved in the same tax avoidance scheme were granted the same settlement arrangements without the specified evidence. Revenue guidelines set out the evidence required but also state that some cases may fall outside the guidelines. However, the guidelines do not explicitly state in what circumstances such an exception should be made.

Chapter 19 reviews recent trends in corporation tax losses and follows on from a report I presented last year on corporation tax. Companies are liable for corporation tax in respect of all profits arising from income or gains. Where a company reports a trading loss, that loss can be used to obtain relief from the payment of corporation tax. Losses carried forward by companies can be made up of a combination of unused capital allowances and trading losses. However, Revenue's systems do not identify unused capital allowances carried forward separately from the overall losses carried forward. There is a high degree of concentration in companies that have accumulated losses. In 2016, a total of €231 billion of losses and unused capital allowances was available for offset against profits. Those available losses and allowances could potentially result in the lowering, over a number of future years, of corporation tax receipts by the order of €29 billion. This overhang of losses is, consequently, a key variable in the outturn of corporation tax receipts.

As has been noted previously, corporation tax receipts have consistently outperformed forecasts in recent years, particularly since 2015. Based on prior year trends, Revenue forecasts receipts on a net basis, that is, after the impact of losses. Separate forecasting of gross receipts and of the usage of losses may offer some potential for improved forecasting accuracy.

Chairman: I thank Mr. McCarthy. I now ask Mr. Cody to make his opening statement.

Mr. Niall Cody: I thank the Chairman for this opportunity to make my opening statement. Today's meeting is to focus on the Revenue Vote and three chapters of the 2017 Report of the Comptroller and Auditor General published in September. These are chapter 17 - Tackling Tobacco Smuggling, chapter 18 - Management of High Wealth Individuals' Tax Liabilities and chapter 19 - Corporation Tax Losses. In welcoming this opportunity to address the findings of the report, I draw the committee's attention to section 851A of the Taxes Consolidation Act 1997 and my obligation to uphold taxpayer confidentiality.

Revenue's role is to serve the community by fairly and efficiently collecting taxes and duties and implementing customs controls. Our aim is to protect Exchequer funds and ensure that everyone meets their tax and duty obligations in accordance with the law. Our strategy is consistent across all taxpayer segments. We provide the service to make it as easy as possible for taxpayers to understand and meet their tax and duty obligations and we prioritise the protection of Exchequer funds and support compliant taxpayers by identifying, targeting, and tackling non-compliance on a risk basis.

Revenue's response to non-compliance in all its forms, from the more straightforward non-filing of tax returns to complex tax avoidance schemes and criminal tax and excise fraud, is risk based, proportionate and responsive to taxpayer behaviour.

In chapter 17, the Comptroller and Auditor General reviews Revenue's progress in tackling tobacco smuggling and acknowledges that this is a global problem. The European Anti-Fraud Office, OLAF, estimates that cigarette smuggling costs national and EU budgets more than €10 billion annually. The illicit tobacco trade is known to be dominated by internationally organ-

ised criminal groups who are often also involved in other crime such as drug smuggling, money laundering and people trafficking.

In Ireland, tobacco taxation is a key policy instrument in reducing tobacco consumption. In keeping with the Government's public health objectives, we have one of the highest rates of tobacco tax in Europe. In the most popular price category of cigarettes, total tax, excise and VAT, now represents just over 79% of the retail price per pack in Ireland. Tobacco tax is a significant source of revenue and generated €1.4 billion in tax receipts in 2017. While the high tax policy has resulted in progress in reducing tobacco consumption, the trade-off is that it incentivises illicit trade. Tackling this is a key priority for Revenue.

Measurement of the illicit tobacco trade is known to be challenging. In a report in 2014, the World Health Organization, WHO, Framework Convention on Tobacco Control, FCTC, recognised that all methods to estimate illicit tobacco trade have their limitations. That report indicated the very wide variations between countries in the percentage of the national cigarette market constituted by illicit cigarettes, for example, Latvia at 41%, Sweden at 20%, and Italy at 3.5%, and estimated the market share for illicit cigarettes within the EU at 10.4%.

Revenue's best estimate of the scale of the illicit tobacco market in Ireland is provided by an annual survey conducted by Ipsos MRBI on behalf of Revenue and the national tobacco control office of the HSE. The primary usefulness of this measure is to track the trend over time. The 2017 survey found 13% of packs to be illegal, up from 10% in 2016 and 12% in 2015. This follows the recognised trend Europe wide. For comparative purposes, in the UK, where a high tobacco tax policy similarly applies, in 2016-2017 the illicit cigarette market was 15%, up from 13% in 2015-2016 and 8% in 2014-2015. Based on 2017 survey results, the nominal loss to the Exchequer in 2017 is approximately €229 million in excise and VAT. While this provides an indication of the financial significance of the problem, it is based on the improbable assumption that if there were no illicit cheap cigarettes, those smokers would buy the same number of more expensive, taxed cigarettes using money they are currently not spending on any form of taxable consumption. That aside, we know that the illicit tobacco trade represents a significant threat to Government health policy, Exchequer funds, legitimate trade and Revenue's strategy to maximise voluntary compliance. We also know that it funds international organised crime. Revenue devotes considerable resources to challenging all stages in the supply chain for illicit tobacco products. We work to identify and target those involved in smuggling, supplying or selling illicit tobacco products, with a view to disrupting supply, seizing the illicit products and maximising our impact by prosecuting those involved, wherever possible.

In 2017 we seized more than 34.24 million cigarettes and 1,768 kg of tobacco with a combined retail value of €20.34 million. The comparative figures to the end of October this year are 58.9 million cigarettes and 1,685 kg of tobacco with a total retail value of €36.5 million. This includes tobacco products seized in March 2018, when a Revenue-led operation resulted in the discovery and closure of a counterfeit cigarette factory in County Louth, the first of its kind to be discovered in the State. Up to the end of October this year, our prosecution cases for tobacco smuggling or selling offences have resulted in 60 summary convictions, five indictable convictions, fines totalling €140,250, nine suspended sentences and one custodial sentence of six months' imprisonment. Alongside this, Revenue has worked with the Department of Health over the past two years on a new "track and trace" system to regulate the legitimate tobacco supply chain across Europe. Revenue was recently designated by the Government as the competent authority in Ireland for this new system, which is due to be introduced during 2019.

To summarise, we aim to contain and diminish the illicit tobacco market to the greatest ex-

tent possible. Our performance is probably most appropriately measured by the outcomes of our efforts and changes in the size of the illicit tobacco market here relative to other countries with similar tobacco tax policies. I assure the committee that tackling the illicit tobacco trade will continue to be a key Revenue priority as, in tandem with facilitating the free flow of legitimate trade, we work to identify, target and confront a diverse and agile smuggling trade operated at global level with significant involvement of both national and international organised crime groups. We meet these challenges by prioritising national and international co-operation, investment in technology, and intelligence development. We work closely with An Garda Síochána, the Criminal Assets Bureau, Her Majesty's Revenue and Customs, the Police Service of Northern Ireland, the European Anti-Fraud Office, Europol and fellow customs administrations in the EU and beyond. In the context of our structural realignment, our actions will be coordinated in a national operational plan to maximise our impact on those involved at every stage of the illegal supply chain and deliver the best possible outcome in protecting Exchequer funds.

Turning to chapter 18 on the management of high-wealth individuals' tax liabilities, the Comptroller and Auditor General reports that in 2015, 334 high-worth individuals, HWIs, paid a total €545 million in income tax, capital gains tax and capital acquisitions tax. In line with best international practice, and since 2003, Revenue has dealt with large corporates and HWIs in a dedicated large cases division. In a further refinement to this model this year, we have divided the large cases division, LCD, into two: one division focuses on large corporates, and the other on HWIs, including family members and related entities. A significant feature of the HWI segment is that HWIs' income derives largely from capital rather than earnings. The IMF notes that globally, HWIs maintain more than half of their wealth portfolio in cash and equities, the balance in property and investments - for example, funds, derivatives, currency, and commodities. A stock of wealth may be held personally, in trusts, and in legal entities effectively controlled by an individual or family group. Flows of income may fluctuate and may be planned and managed. From our experience, we also know that individuals who have a high level of accumulated net wealth are likely to be actively engaged in wealth management and personal tax planning and subject to taxation in multiple jurisdictions and, in the context of wealth preservation, pay attention to global and local tax policy and legislation.

There is no evidence, and Revenue does not assume, that wealthy individuals are more likely to be tax non-compliant. As a result of the financial complexities and potential tax yield in the HWI segment, Revenue applies close individual attention, and considerable skill and expertise, to managing tax compliance across the sector. Revenue case managers use their detailed case knowledge, together with our data analytics capabilities and the extensive available range of Revenue, third party and internationally exchanged information, to manage compliance, profile risk and identify cases for intervention. In 2017, the total yield in tax, interest and penalties from our HWI compliance interventions was €15.3 million.

This chapter also refers to tax avoidance, which occurs where transactions are undertaken primarily to give rise to a tax advantage. The focus of Revenue anti-avoidance teams encompasses the entire case base because use of legislation other than as intended can present real risks to the tax base and the perceived fairness of the tax system. Also, and in line with international best practice, our HWI and anti-avoidance units work closely together. We identify and investigate schemes and oversee legal challenges up to the High Court, Court of Appeal or Supreme Court, as may be required, or negotiate a tax settlement, including interest and penalties, as appropriate. We make any necessary recommendations for legislative amendments to prevent tax leakage.

The Comptroller and Auditor General goes on in chapter 19 to consider corporation tax trading losses, capital allowances and losses carried forward. There are no recommendations for Revenue in this chapter. Last month I wrote to the committee, as requested, setting out Revenue's work on the estimation of corporation tax receipts, operating as we do in a supporting role to the Department of Finance, which compiles and publishes forecasts of all taxes, including corporation tax.

In summary, the Comptroller and Auditor General makes five recommendations on tackling tobacco smuggling and three on the management of HWIs' tax liabilities, all of which are agreed. Consistent with Revenue's focus on continuous improvement to achieve the best possible return on resources, our new national structure deploys staff across a broad geographical spread, our national operational plan will co-ordinate and integrate our anti-smuggling actions and we are engaged in a significant risk-based shift of resources towards our medium enterprise, HWI and large corporates divisions. I have provided a separate note to the committee on our structural realignment under way. The purpose of our realignment is to provide a greater match of resources to risk, to reflect the changes in the economic environment in which we operate and to maximise the use of our resources across the country. Among the levers that make this possible are the digital dividends and efficiencies created by our ongoing investment in data analytics, our extended range of online services, and key projects such as PAYE modernisation. Finally, and given the focus of chapter 18 on a very small, distinct group of taxpayers, I again draw the committee's attention to section 851A of the Taxes Consolidation Act 1997 and my obligation to uphold taxpayer confidentiality. Subject to this constraint, I am happy to answer any questions from the committee.

Chairman: I thank Mr. Cody. We have a number of chapters to discuss. Today's first speaker is Deputy Cassells, who has 20 minutes. He will be followed by Deputy Cullinane, who will have 15 minutes, and Deputies Jonathan O'Brien, Catherine Connolly and Catherine Murphy.

Deputy Shane Cassells: I welcome Mr. Cody and thank him and all his team for the work they do. There is only one game in town today. The news broke as we came in here this morning that Dominic Raab had resigned from the UK Cabinet, and by the time we were coming down the stairs the Secretary of State for Work and Pensions, Esther McVey, had followed him out the door. These resignations have sent reverberations across the political world, especially in Europe. The reality is that Theresa May probably expected someone to go overboard but, obviously, her Brexit Secretary is a significant loss. To lose one Brexit Secretary is unfortunate but she has lost two. We could be calling on Oscar Wilde to pen Mrs. May's obituary by the end of the day. It brings the reality of a hard crash into sharper focus. While one would not want to talk it up, it must be discussed.

I remember on budget day this year, as the officials from the Department of Finance filed into the Chamber and sat to the right of the Minister, Deputy Donohoe, in the area reserved for them, Mr. Cody was in their midst. In his Budget Statement, the Minister made fleeting reference to the Revenue Commissioners and the potential Border posts, but it was our finance spokesperson, Deputy Michael McGrath, who in his speech pressed the Minister on this and on the Government's plans to hire just 200 Brexit customs officials by the deadline next spring, even though it was reported in the press that Revenue estimated an extra 600 members of staff were needed for the transition period and the future EU-UK trade deal. Will Mr. Cody confirm that just 200 officials will be trained and in place by 29 March next year? Does Revenue need the 600 officials, as reported in the media on the day of the budget? Was the contingency plan

in the safe in Revenue headquarters adjusted down this morning before Mr. Cody came in here?

Mr. Niall Cody: I find this to be an interesting position to be in. The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach has invited me in to talk about Brexit next Tuesday. I replied yesterday suggesting it might be more opportune to have the discussion some time later, given we are now in the midst of what is very much a political process.

In regard to the commentary about our requirement for Brexit, Government decisions that took place in July and September relating to the recruitment of additional staff and the case we have made, the Minister set out in an answer to a recent parliamentary question from Fianna Fáil's finance spokesman that in September the Government approved our case for additional resources from now until January 2021. The agreement was that we would require approximately 600 additional members of staff for the end of the transition period. In the decision in September, which was picked up and analysed by the media, we set out a planned recruitment campaign, which has started, and approximately 40 people in this quarter will enter a dedicated training programme for customs. In the first quarter of next year, we will hire an additional 230 officials, resulting in 270 being in place for 29 March to facilitate the ongoing engagement with industry on Brexit-related issues and the implications for customs because it tends to be the larger corporations that are engaged in importing and exporting outside the community. We agreed that over the remainder of 2019 and through the start of 2020 we will continue our recruitment process to have the 600 officials in place by the end of the transition period.

That was as it was set out at the time but when people hear the figures it is all added up together and they wonder where the new staff are, but that was the planned process. In the event of no deal, we agreed, as the Minister stated in his reply to the parliamentary question, we would have to consider how we could speed up the process of recruitment. We will not have everyone in place by April, but we will be able to speed up recruitment. We did a recent recruitment process for staff for trade facilitation. Advertisements closed in September and in excess of 3,000 people applied for the jobs. We started the interview process and the top 40 will be hired from the panel. We will continue the process of assessing, interviewing and hiring the new staff through the normal recruitment process.

In the event of a change of plan, we would have to think about how more could be brought in more quickly, but we also have other resources. One of the things we do in our organisation is redeploy, and we pride ourselves on having the flexibility to respond to events. The key issue for our planning for whatever outcome of Brexit is to ensure the information and communications technology, ICT, infrastructure is in place to cope with multiples of customs entries if the UK becomes a third country.

In budget 2017, following the Brexit referendum in June 2016, the then Minister for Finance, Deputy Noonan, provided for an additional €2 million to improve our ICT development and have it in place because it is the key. We used that money well and we are satisfied that we have scaled up our ICT infrastructure. It will be able to cope with significant multiples of what it could cope with in March this year.

Deputy Shane Cassells: Mr. Cody noted that Deputy Michael McGrath had made a point on budget day about there being 3,031 applicants for these jobs, as confirmed by the Public Appointments Service. Deputy Michael McGrath contended that Government and Revenue should have taken the opportunity afforded by the high number of applications to recruit the number that Revenue needs, although I appreciate Mr. Cody's point that the media put a spin on the figures. I know everyone uses soft language in the Dáil Chamber, conscious of the need to

“de-dramatise”, to use that popular word, but if one turns on the television, one will see Theresa May going through Cabinet members like Brian Cody goes through hurls on a training night in Kilkenny. She is going down. That is happening. I would appreciate if Mr. Cody could be candid and tell us and, more important, the public the truth. If this thing spirals out of control, will Revenue be able to react? He said Revenue was asked about the possibility of speeding up the process, and that will probably be required. I appreciate his point about investment in ICT infrastructure, but will Revenue have enough trained officials by March 2019 to deal with the doomsday scenario, or will a “Dad’s Army” scenario be required?

Mr. Niall Cody: On customs and how it operates, it is an ICT-driven supply chain management process, in which we have a range of options under the Union Customs Code, UCC. I spoke here and in other committees about the UCC as adopted in 2015, which is to be implemented between 2015 and 2025 by EU member states. There is a range of options contained in it and, in that context, we are accelerating the implementation of the provisions that can allow greater simplifications for trade. I am satisfied that Revenue will be in a position to support trade in April next year.

Deputy Shane Cassells: Is Mr. Cody making that assumption based on an orderly exit?

Mr. Niall Cody: If it is April, the UK will have left by then. I cannot stress enough that the key issue is that if someone makes a customs declaration, our system will be able to cope with it immediately. Not coping with it immediately is what clogs up ports and airports. We are working on the basis, and the Government has worked on the basis, of this central case scenario, which involves an orderly agreement and a transition period. The type of organisation we are, however, means we always have to have regard to what can happen. That is why we identified issues with Brexit early and had done some contingency work on it. If everybody remembers, we had done some of it before the referendum.

The key issue is to ensure the ICT framework. We are also identifying the companies that will be engaged in import-export processes. We are starting a process of one-to-one engagement with companies. I refer to outreach looking at how we identify companies that should take advantage of the various different simplifications. If there is a no deal Brexit, then physical infrastructure will not be in place. We would then have to look at how we would operate our systems. One of the advantages in customs is that the transaction takes place and the goods are then brought into the country or leave the country. The company has books and records and some of the clearance work we do is post-clearance checks.

I have spoken previously about how 92% of imports are green routed so that there is no check at entry. Of the 8% that have some level of checking, 6% are orange routed. That is a documentary check. Then 2% are red routed which means that there is a check of the physical goods. What happens, but what will have to happen to a greater degree in the future, is checks at approved premises. The goods can be brought to the logistics company’s warehouse and the check takes place away from the physical border. Some companies will be approved customs operators so we will do checks away from the border. I do not want people to go away saying that everything will be all right. If it happens, there will be big challenges and there will be much work involved. That is, however, what we will have to deal with.

Deputy Shane Cassells: I will move on to the other chapters. I appreciate Mr. Cody answering those questions given the significance of the resignation of Mr. Dominic Raab. One of the chapters the Comptroller and Auditor General has examined in-depth is that of tobacco smuggling and the impact it has on the revenues of the State. If a hard border is in place, then

the smuggling of fuel, tobacco and drink will become even more lucrative. I recall being at an awards ceremony once and the former Armagh football captain joked in his speech that any decent smuggler in south Armagh would have had a couple of tankers of laundered fuel on the road before breakfast.

My party and Deputy Breathnach introduced a Private Members' Bill, the Sale of Illicit Goods Bill 2017, a few weeks ago in the Dáil. During that debate, the Government contested the figures being quoted for the revenue lost to the State. It stated that it could not be quantified. Will Mr. Cody hazard a guess as to the figure? He has spoken of the 13% loss but the Comptroller and Auditor General has said it is a significant risk to tax receipts. I presume Mr. Cody would agree with that? What does he believe is the loss to the State?

Mr. Niall Cody: Tobacco is one of the areas where since 2008 we have been publishing the estimate of illicit cigarettes. We publish the estimate and we refer this time to 13%. The Comptroller and Auditor General would like us to publish more tax gap analyses of various different products. Tobacco is a controlled product, however, and it is a single line. We know what is legitimately produced every year. It all goes through the tax stamps and we have been doing this series of surveys. Ipsos MRBI has carried out this survey for us and the Office of Tobacco Control since 2008 and we publish the results every year. We also estimate a figure that would result if everybody stopped buying the 13% illicit cigarettes, and instead bought legal cigarettes. That is unlikely. People are surely spending some of that money but they would not be able to afford to spend all of it. The figure comes out, however, at €229 million. We publish such a figure every year. It is, however, difficult to measure any illegal activity and the scale of it. That applies to drugs-----

Deputy Shane Cassells: Will there be a reassessment of the scale? According to the Comptroller and Auditor General's report, 4.3 billion cigarettes are consumed in this country every year. In itself, that is a staggering. I refer to-----

Mr. Niall Cody: Those are the legal ones.

Deputy Shane Cassells: Yes. I refer to reassessing the scale of the illegal trade because there was a major success in Jenkinstown, County Louth in March 2018 with the seizure of 23.5 million counterfeit cigarettes. A value of €47.8 million was put on those, so there was a loss to the Exchequer of €37 million. When there are major hauls like that - and it involved much work - is there a reassessment of what is the loss to the State?

Mr. Niall Cody: The issue around-----

Deputy Shane Cassells: Was that seizure in Jenkinstown this year a one-off or was that the tip of the iceberg?

Mr. Niall Cody: The seizure in Jenkinstown was the first time we discovered an illegal tobacco factory. We sent a series of photographs to the committee because people do not realise what is involved in these operations. We sent the photographs to the committee to show what the factory looked like. It was a shed in a farmyard. The committee can see those photographs now.

Chairman: They are up on the screen.

Mr. Niall Cody: This was a mix. It was a sophisticated operation and on another level it looked like something else. When I come here, I generally do all of the talking for my team

but I specifically wanted to bring Mr. Gilligan with me today. He has led the work on criminal operations and he led the operation on the tobacco factory in County Louth. He also leads our liaison with international bodies. I thought, if the committee was interested, that Mr. Gilligan could outline some of the facts, bearing in mind that there are court cases under way in respect of the seizure at Jenkinstown.

Mr. Michael Gilligan: I thank the committee. First, in the context of illicit cigarette production and smuggling, the idea that Ireland is a discrete or isolated location, within which the availability of smuggled or illicit tobacco is a result of local criminal activity, is not the reality. The production and smuggling of illicit tobacco is transnational. It is a significant area of organised crime. It involves a range of activities coming together in the sense that it is complex, organised, multi-layered and is undertaken by professional criminal enterprises. It is also definitely linked, directly or indirectly, to other criminal activities.

In this case, we had three internationally-organised crime gangs involved from Bulgaria, Lithuania and Ireland. They had come together to put a factory in place. It was a full end-to-end professional factory in Jenkinstown and was unusual in that, under normal circumstances in Europe, the experience has been that we do not get a fully commercial end-to-end illicit factory in one place. It is normally sectioned and kept in different locations, primarily because if law enforcement came across it, they would only lose one piece at a time. The volume of tobacco on-site was 77 tonnes and the number of cigarettes produced was 22 million or 23 million. This gives an indication of the size of the operation that was undertaken. Not only is there the production of cigarettes and their distribution, all the precursors, as we call them - the tobacco, paper, filters, glue, cardboard, cellophane and all the aspects which have to come together to produce the final product - had to be transported to this location. There were 11 people on-site 24 hours a day for the period involved, which we believe was for periods of up to two weeks, and they had the operation running 24-7. They had shower facilities, kitchen facilities and accommodation facilities on-site in what, when one looks at it, appears to be a normal farm shed. However, behind bales of hay, it was a professional and commercial factory. Some of the international cigarette manufacturers who came to the site to have a look at it were surprised at how sophisticated the operation was.

Deputy Shane Cassells: I again congratulate the Revenue Commissioners because it was a significant operation. I will move on to another seizure within the chapter, namely, the case study by the Comptroller and Auditor General on the ship, *MV Shingle*, which may be appropriately named. It was in Drogheda Port - also in County Louth - having travelled from Slovenia with 32 million illegal cigarettes on board. What has been flagged is the fact costs incurred by Revenue up to the end of August this year of approximately €410,000 are related to the continued holding of this vessel and the lay-up cost charged by Dublin Port Company. What is the up-to-date position on the disposal of this ship and the costs incurred, which are significant if they are running at almost €500,000 at this stage?

Mr. Niall Cody: The costs are significant. We have a ship that is not legally seaworthy, and it was not legally seaworthy when it managed to smuggle 30 million cigarettes into Drogheda Port. Organised criminal gangs do not seem to have the same regard for health and safety that we have to have. Ultimately, our powers allow us to seize conveyance. We seize fuel, fuel tanks, lorries, cars and other vehicles, and ships. We usually manage to dispose of everything we seize in a reasonably timely way. It is not a money-making operation; it is to disrupt the criminal gangs that are involved in the operations. Unfortunately, when we seized the *MV Shingle*, there was a three-year gap because it had to be retained for evidence until court proceedings

were finished. That is a standard process for much of the stuff we seize.

Deputy Shane Cassells: Will this have to be sent to the breaker's yard? Who will pick up the cost?

Mr. Niall Cody: Obviously, we are going to have to pick up the cost.

Deputy Shane Cassells: Is there an estimated cost?

Mr. Niall Cody: The chances are it is going to be hundreds of thousands of euro. It depends on-----

Deputy Shane Cassells: Therefore, the destruction of this is possibly going to cost close to €1 million.

Mr. Niall Cody: Possibly. It was involved in the seizure of €13 million worth of cigarettes. It would have been better if-----

Deputy Shane Cassells: If it had sunk.

Mr. Niall Cody: It would have been better if it did not have significant asbestos. It would not be good if an asbestos hulk was sunk by mistake by somebody. What is important is that the registered owners of this ship wanted it back and there was a court action about it. I would be more worried if I was coming before the committee to say we had given it back and it then featured in a cigarette smuggling or drug smuggling operation here or in any other country. We would then be legitimately asked, "Why did you?" I was chatting to Mr. Gilligan about this. We often find the containers and tankers that illicit fuel goes around in are not fit to be on the road, yet we end up seizing them when we know we would be better off without them. The criminal entities tend not to use high quality product that costs a lot of money because they know the danger is that if we come across it, we will seize it.

Deputy Shane Cassells: On the broader issue in this chapter, because it is, as Mr. Gilligan rightly said, an internationally-backed scenario, as can be seen from where this ship was registered, Mr. Cody said in his opening statement that tobacco taxation is a key policy instrument. When he looks at the map in figure 17.1, which deals with the cost of cigarettes throughout the continent, it is €5 a pack in Spain, €3 in Turkey, €5 in Austria and €2 in Albania and Russia, whereas it is €12 in Ireland. Although he said it is a key policy instrument, the question is whether the high price is fuelling the illegal tobacco trade in Ireland to such an extent that the battle is being lost. Does he believe the Revenue Commissioners are fighting a losing battle and, as he said, just trying to disrupt this trade? How much is slipping through without being detected?

Mr. Niall Cody: I have been at this committee previously talking about the rates of excise duty, VAT and the tax element of a packet of cigarettes, and there are important health drivers. Every year, in the context of the budget, the Minister has to weigh both those issues and every year the various NGOs, such as the Irish Heart Foundation and the Irish Cancer Society, will strongly recommend a significant increase in excise duty on cigarettes. I am sure committee members hear the same views. On the opposite side, as I said, the industry wrote to give out to me because the various retail interests and tobacco manufacturers keep emphasising the challenge of smuggling.

The standard increase in recent years has been 50 cent per pack of 20 in excise duty, which

puts us at the highest end of the price. In the tax ready reckoner that we publish, it is the only area where we build in an elasticity and we give a range of possibilities, along the lines, “It could lead to...” In recent years, the budget figures have been achieved but they have been achieved in a strange way in that there have been significant fluctuations in releases of legitimate tobacco because of various health packaging arrangements. This year we are well below the tobacco tax figures compared to forecast. Because Ireland is a relatively small market, none of the cigarettes is manufactured in Ireland and it is not like it used to be. The production of legitimate cigarettes for Ireland can be done in some of the factories in a couple of weeks in a quantity that will last months, and the releases then follow. However, over a four or five-year period, the tax receipts come in on target. Obviously, it is a policy issue and a health issue, and there is a balance to be struck. During the few years in which the duty was not increased the tobacco companies increased their prices.

Deputy Shane Cassells: Mr. Cody said there had been much commentary in the media on a reference in the Comptroller and Auditor General’s report to the 83 high wealth individuals with a taxable income less than the average wage in 2015. In his opening remarks he also spoke about how people could plan their wages and so forth. In the case of the 83 high wealth individuals with a taxable income less than the average wage in 2015, were there reasons for this in terms of planning to be evasive, etc?

Mr. Niall Cody: In the paper we sent to the committee last week we set out an analysis of the 83 individuals-----

Deputy Shane Cassells: I saw it. It was indicated that they did not have a high enough income in their own right, but does Mr. Cody believe there was a motivation behind this?

Mr. Niall Cody: One of the issues is that in certain cases family members of high wealth individuals are brought in. Sometimes the only reason they are brought in is, essentially, there is a liability for capital acquisitions or capital gains tax. They do not have an income in their own right, but they may be the beneficiary of a gift. A total of 25 of the 83 individuals were family members who did not have an income but were included in the case base because they were part of the family group. A total of 21 individuals were non-resident and non-domiciled; therefore, they were only subject to income tax on Irish sourced income or income remitted in Ireland. They were included because they had significant links with Ireland, but they were not generating an income in Ireland. A total of 22 high wealth individuals in taxpayer specific circumstances were impacted on significantly by the downturn. This category would not have been significant if the crash had not happened in 2009 and 2010. Some of them have ended up bankrupt and are no longer high wealth individuals. However, some of them will recover. A total of 15 high wealth individuals had a significant release of capital allowances or losses. In the material we sent to the committee we included a copy of a recent report on the high income earner restriction. There are reliefs that are restricted if an individual’s income is in excess of €400,000 and he or she must at least pay at a 30% effective rate. If relief is restricted in one year, he or she can carry forward the part that is unused; therefore, it is pent up. It is like the lost relief discussions we had on corporation tax. People carry forward certain losses and reliefs which impacts on their income in the year in question. The 83 individuals have valid reasons. They are set out in the Comptroller and Auditor General’s report, but, again, in some way it becomes a much better headline.

Chairman: I allowed a few extra minutes for the slideshow on the factory in County Louth. As I had hoped it would be picked it up, I gave the first speaker a little extra time.

Deputy David Cullinane: I think we might all take liberties in asking questions about Brexit given where we are. I have one or two questions for Mr. Cody about that issue that will not take more than five minutes. I will then move on to the particular chapter of the Comptroller and Auditor General's report with which we are dealing.

I assume that if Mr. Cody has not read the draft withdrawal agreement, he has been briefed on it. All of this will matter post-2020 at the end of the implementation period and after something else replaces it. In terms of what has been agreed, it seems that there will be a single EU-UK customs territory. That will deal with the customs side of things, but there are deeper provisions for Northern Ireland and the Republic of Ireland in the context of the Single Market. That seems to suggest there will be unrestricted movement of goods north and south to Great Britain and the rest of Europe, but this does not apply to goods coming from Great Britain into Northern Ireland and the Republic of Ireland. The draft withdrawal agreement talks about the necessity for additional checks but states they will be made in the least intrusive way possible. What does that mean for the Revenue Commissioners and the Republic of Ireland? Obviously, it will be an issue in Northern Ireland, but it will also be an issue in the Republic of Ireland. When it is stated these checks must happen, that there will be additional checks, especially if there is any variation in standards, and that the rules of the Single Market must be protected, at least from the European Union's perspective, what is the responsibility of the Revenue Commissioners? Have they examined what the increased checks will be and what would be the least intrusive options?

Mr. Niall Cody: I was conscious that I was coming here on the day all of this would happen. Obviously, there is a lot of detail in the agreement, but there will also be a lot of detail in giving effect to the agreement as is common in EU processes. Deputy Cullinane is right - the customs union deals with certain parts of it. Before the Single Market was introduced in 1992, there were border controls between all of the countries of the European Union. It was the Single Market that allowed the free movement of goods. I remember it well because I was involved in many of the discussions that took place at the time on VAT; therefore, I am being brought back to a previous time in my career. I spoke about simplification in the context of the Single Market and the customs process. The question will be about regulatory alignment. It may well not be about the customs process and procedures, depending on what the agreement is. We have the lead role for all of the agencies involved in regulatory control; therefore, our IT systems are used to support them, be it the Department of Agriculture, Food and the Marine or the HSE. That infrastructure about which I spoke will provide the basis for the management of the process.

Deputy David Cullinane: Let me put to Mr. Cody what the European Commission is stating? I accept what he is saying, but the Commission is stating that in making the additional checks, there will be a need for some compliance checks with EU standards consistent with the level of risk to protect consumers, economic traders and businesses in the Single Market. The Commission is talking about additional checks and stating we can try to mitigate them but there will be additional compliance checks. Have the Revenue Commissioners looked at what the additional compliance checks will be in practice?

Mr. Niall Cody: It depends on the level of non-alignment and how the level of regulatory alignment changes; therefore, there may not be Revenue-related checks.

Deputy David Cullinane: I have that.

Mr. Niall Cody: I talk about the European Union's customs code and simplification. The

European Union has all sorts of rules and regulations for how checks are carried out through traders' records and a market-based research process. The process of working out the detail will take the full length of time before we will be able to see what is involved.

Deputy David Cullinane: My final question about Brexit might be more difficult to answer. Nonetheless, it is pertinent and the question everybody will be asking. Mr. Cody is in a good position to answer it. He has said that as this is in the political sphere, we do not know what will happen. There is a draft agreement. Obviously, the majority want it to be implemented. In the event that it is not implemented and there is a hard crash, what will be the immediate revenue consequences in this state? We are hearing that World Trade Organization rules will apply automatically in the event that no political or legal arrangements are put in place between Britain and the European Union. Let us suppose there is no deal and World Trade Organization rules apply. No one wants to be in that situation, but let us suppose we are in that situation. Are there automatic responses that will have to come into play or would something else evolve over time? Will there be immediate obligations on this state and Revenue in the event that there is no deal and World Trade Organization rules apply?

Mr. Niall Cody: By the time it becomes clear that there is no deal, we would have to look at the detail of what we could do.

Deputy David Cullinane: Obviously, the Revenue Commissioners have already looked at that issue. Is that the case?

Mr. Niall Cody: I will go back to what I said to Deputy Cassells. We have tried to ensure information technology infrastructure is in place that will allow the free flow of goods to the greatest extent possible.

Deputy David Cullinane: The question I am asking is more technical. World Trade Organization rules are the ones to which we have signed up. Obviously, certain obligations follow from them. If these rules kick in, what actual practical obligations, if any, will be placed on the State, Revenue and the Customs service on this side of the Border?

Mr. Niall Cody: It is probably not helpful to speculate on what would have to happen. There would be policy implications. In its totality Revenue does not operate independently of Government policy. It is better that we try not to get into a debate on the policy aspects because the Government will have to decide. I cannot decide to impose-----

Deputy David Cullinane: That is the response and it answers the question. I am saying there are no automatic legal procedural responses which would have to kick in. There will be political responses in deciding what will happen. Is that accurate?

Mr. Niall Cody: Obviously, the political decision will have to be played. One thing that is really noticeable in the entire process is how the European Union has put Ireland's interests first. I cannot imagine that on 29 March next it will state to Ireland that a given position is completely unacceptable. I have listened to a good deal of the discussion and debate in the media on how, ultimately, when it comes to it, Ireland will be left swinging. What has happened in recent days has been singularly important for Ireland. I really hope things will follow through.

At the start the Chairman talked about how officials would not become involved in the area of policy. I reckon I am probably in the biggest policy area for the country. Last June I was before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach talking about various aspects of Brexit. I have been quoted and name-checked by various Members of

Parliament in the United Kingdom. A friend sent me a text message. He was watching “The Late Late Show” when Brexit was being discussed and told me that I had been name-checked based on partial stuff I had said. I do not think it would be helpful. Seeing that I am a sad individual, I find myself watching the House of Commons public accounts committee where I am also mentioned. That committee would like to have me over to talk to it about all of these things, but it would be better all round to let the process take its course in the context of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. I can understand perfectly each time I am attending anything the reason people want to know what will happen, but I think we would all be better off in letting the policy take its course. I am willing to come back at any time to talk about it when we are in a better position to talk about it.

Chairman: We respect that.

Deputy David Cullinane: Mr. Cody could take a leaf out of the book of the Comptroller and Auditor General who does not watch any of these proceedings because he does not have a television. I can recommend that course of action to Mr. Cody.

Mr. Niall Cody: I have an idea that some of Mr. McCarthy’s colleagues might say to him people were talking about something that had happened at the House of Commons Public Accounts Committee and that it might be a good idea to have a look at the same thing here.

Deputy David Cullinane: Let us get to the reason we are here - the report of the Comptroller and Auditor General, page 222 of which relates to high wealth individuals. The report states, “...information relating to assets is not required for income tax returns. This makes identifying HWIs and assessing associated risks challenging for revenue bodies”. Will Mr. McCarthy expand on what exactly that means?

Mr. Seamus McCarthy: Effectively, Revenue does not require any taxpayer to provide a regular statement of assets.

Deputy David Cullinane: Is it just a statement of fact? Is Mr. McCarthy saying that might be a problem?

Mr. Seamus McCarthy: No; it is a statement of fact. Without that level of information, the Revenue Commissioners perhaps have to use other sources. There are obligations at certain points when declarations of assets have to be made, but they do not apply in the same way as when income returns are being made on a yearly basis.

Deputy David Cullinane: I wish to raise a point with Mr. Cody. Is there any benefit in looking at that? I have no wish to stray into policy or the political sphere, but in recent times there has been debate about whether we should have a wealth tax. One reason it is difficult to have that debate is we cannot get an answer to the question of how much could be generated from such a tax. That is because we do not collect data for wealth. Is this something at which Revenue has looked to try to find better ways to accumulate data and information on people’s wealth, especially that of high wealth individuals?

Mr. Niall Cody: We constantly look at data sources to see if we can improve the richness of our data. In recent years there have been many helpful developments. We obtain extensive third party information. We receive various data from financial institutions. Significant purchases of property are relevant because there are stamp duty implications and reporting requirements. As there are requirements related to probate and inheritance, we have a picture of assets on inheritance. One thing that has been changing considerably in recent years and that

will continue to change is the level of information on international wealth and the international exchange of information. The Foreign Account Tax Compliance Act governs this aspect of the US financial reporting system. With the common reporting standard of the OECD, it allows for the exchange of financial information held by financial institutions abroad for in the region of 120 countries and tax administrations. It also adds to the process.

Deputy David Cullinane: Let us suppose the State was to take a decision to introduce a wealth tax on assets over a certain amount. Would Revenue be in a position at this stage to forecast how much tax such a measure would generate? Could such forecasts be based on knowledge of what assets are owned by people?

Mr. Niall Cody: Deputy Pearse Doherty has probably asked that question in recent years because I remember some of these questions being asked. It would be difficult to forecast with the accuracy we would like. It would really depend on how a wealth tax was designed and what it involved. The CSO and the Central Bank produce a wealth survey that gives some basis for figures. The ESRI and the Department of Finance compiled a report on how to model a wealth tax. On a macro basis, it would be possible to approximate a figure.

On statements of assets, in certain circumstances we can look for a statement of affairs in individual cases but we have to have cause and a reason. It is a bit like some of the discussion regarding corporation tax losses. It would be helpful if Revenue had a breakdown of certain figures but there are requirements. We can only have a breakdown of certain figures if we have the law in place to require the reporting of those figures. That is this type of area.

Deputy David Cullinane: I thank Mr. Cody. On page 222, it is also stated that artificial capital losses are a prominent feature in many tax avoidance schemes. I imagine that when the Comptroller and Auditor General spoke about artificial capital losses, he was referring to spurious losses that are not real.

Mr. Seamus McCarthy: Yes, for tax purposes.

Deputy David Cullinane: Can Mr. McCarthy provide examples of how that works or in what types of areas it happens?

Mr. Seamus McCarthy: I am afraid I do not have any specific examples. This is a kind of general risk analysis piece relating to setting up the chapter.

Deputy David Cullinane: Could Mr. Cody provide examples?

Mr. Niall Cody: In our annual report, we set out some of the avoidance schemes that we have had to deal with. Generally-----

Deputy David Cullinane: Are there examples of successful cases that have been brought in the context of artificial capital losses as tax avoidance?

Mr. Niall Cody: In the context of the chapter, a lot of the avoidance cases are not actually perpetrated by the HWIs who are dealt with in that category. Some of them come in under that threshold. A common feature of an artificial loss is when someone has a significant gain of €10 million, for example, and he or she would be liable to pay capital gains tax of 33% on that in the normal course of events. Some people try to create a loss to shelter the gain and a series of very sophisticated financial transactions would take place over a small number of days. This would create a significant loss. It would create another gain that was not legally taxable under a

particular provision. The person would shelter the real gain by means of the artificial loss. The artificial loss and the artificial gain would cancel each other out and the individual would end up with exactly the same amount of money but would try to get it tax free. We have challenged this and are now before the courts with some of the cases. I cannot talk about individual cases but it is on public record that we identified 28 cases where the amount of tax at risk was €110 million. We were successful in the High Court but our approach was judicially reviewed. It was appealed to the Supreme Court as a result of the judicial review. A lot of the detail was put on the record of the court. We have been successful in the Supreme Court, but that was dealing with the judicial review. A number of the people involved have gone to the High Court to challenge the constitutionality of the section on general anti-avoidance provision. Those cases still have to go through the tax appeal process, but some have settled. This was seven cases settled with a yield of €27 million. This is what we do and this is what the anti-avoidance teams do.

I am aware that the Chairman is very interested in the tax appeals process. When we identify a tax avoidance scheme it could be ten years before the case is brought to fruition. We might say it is tax avoidance but these people are very well resourced and very well advised. They are quite happy to go through the courts process. The prolonging of the payment may well be enough of an advantage for them.

Deputy David Cullinane: I have two more questions. I appreciate that the witnesses responses are lengthy because of the questions being put but perhaps this one is a bit more distinct. If I am reading it right Mr. McCarthy raised the issue, or concern, about how high wealth individuals are classified in the State, which starts at €50 million. Is Mr. McCarthy saying this is outside the European norms and that €50 million is perhaps too high?

Mr. Seamus McCarthy: Yes. We have included a diagram in the chapter, which is figure 18.3.

Deputy David Cullinane: What is the average in Europe?

Mr. Seamus McCarthy: If the Deputy looks at the diagram, he can see that Ireland is on the extreme right, with the highest of any of the other figures-----

Deputy David Cullinane: We do not want to be on the extreme right when it comes to HWIs. Will Mr. Cody explain why we are in that space?

Mr. Niall Cody: When I come before the committee, members ask me to be quick in my responses but we are dealing with complex issues. It would be useful to go back a little on the history. We were one of the first administrations to have a HWI large cases division, LCD. We were leaders in that regard. We reviewed it in 2007 and in 2015. We are now in the process of reviewing and realigning our structure. I want to emphasise the fact that just because a person is dealt with in the HWI unit, or not, does not mean that the same rules and legal basis do not apply. I spoke about the anti-avoidance process. The anti-avoidance teams in the HWI LCD take in the cases that engage in the avoidance process that we have identified, to tackle that process. We have some 1,240 cases of taxpayers who are involved in avoidance schemes that we are challenging. The vast majority of those people are not HWIs at all, but they are being dealt with for the transaction by the anti-avoidance teams in the LCD.

I referred earlier to the Revenue's realignment process that is currently under way. We are trying to do a serious realignment of resources with risk. We have now divided LCD into LCD corporates and LCD HWI. We have also set up a medium enterprise division that deals

with the cases under the HWI threshold. This division deals with 15,000 individuals and their tax affairs. I have asked the two assistant secretaries who lead the HWI unit and the medium enterprise divisions that once we have settled down a bit of our resources in this quarter that by the end of the first quarter of next year they would bring forward a proposal to the board on the threshold for the HWIs. I am absolutely confident that we will be reducing that threshold. I want to put more resources into that area. Identifying the resources and freeing up the resources from what they are currently doing is a process. We are going through our structural realignment, motivated by ourselves, which involves a significant change in the structure of the organisation. This will take time to bed in. We are revisiting the threshold. We want to see what will be the implications of, for example, a €20 million threshold and how many cases this would involve. All of those cases are being dealt with by the medium enterprise division. It is a question of how we balance those two.

Deputy David Cullinane: I have a final question. It relates to what is stated on page 237 in the context of tax collection. Basically, it breaks down as tax paid by HWIs, 57 of whom had taxable incomes of €36,000 to €125,000 and 88 of whom had taxable incomes of less than €36,000. There were 83 who had taxable incomes of less than the average industrial wage. It is interesting that Mr. McCarthy made recommendations in his report in respect of various matters and then there are responses. On the tax collection side, however, there is no recommendation that I can see. Is that because the Comptroller and Auditor General is just reporting as fact that this is how it is and he does not see any difficulty with it?

Mr. Seamus McCarthy: I am not drawing any conclusion that anybody is under-paying tax that they should be paying. I did not have a recommendation in that space.

Deputy David Cullinane: Could Mr. McCarthy expand on that? When people see the headline figure for people who have assets of that value but are paying taxes that seem to be so low, what is the reason? Can Mr. Cody unpack that and explain it to us?

Mr. Niall Cody: In my earlier comments to Deputy Cassells I talked about the breakdown of the 83 individuals. Some 25 are family members who do not have an income. They are in our HWI class because they may well be recipients of significant gifts and they are liable for capital acquisitions tax on gifts. As the Deputy can imagine, with HWIs there are family groups so we look at the family group together. They may not have an income.

Deputy David Cullinane: In a nutshell, are some of these instances of people who are asset rich but may be income, not poor, but certainly-----

Mr. Niall Cody: They are not even income poor.

Deputy David Cullinane: The income does not reflect the assets.

Mr. Niall Cody: Their income is generated from capital so it is not subject to income tax but it could be subject to capital gains tax. However, some of them may not have income or capital in a year. One - although neither of us - could get an inheritance and live off it for years. The taxable event might happen this year and the person might have no tax for the next few years. Some 25 were family members who were in that position, while 21 were non-residents or non-domiciled individuals. Mostly their tax liability or tax position - maybe tax liability is the wrong word - their centre of tax is not Ireland. A further 15 of them had specific reliefs and claims under legislation, capital allowances and losses that applied to their gross income to reduce their net income, and they were legitimate schemes provided by the Oireachtas. Then 22

of them had various circumstances. These are people who would have gone through the worst of the downturn and are no longer included in our HWIs. Some of them may have ended up in bankruptcy or wherever.

When the Comptroller and Auditor General is doing his reports with us and we are going over and back with our comments, we probably all end up saying to ourselves that this is tax stuff and stats and everything is fine. Then when 30 September or whenever the report is published comes up, and journalists see a heading, we say, oh, Lord, we should have written more when we wrote back to the Comptroller and Auditor General.

Deputy David Cullinane: Mr. Cody is watching too much House of Commons.

Mr. Niall Cody: Absolutely. One of the most interesting things around the HWIs, as I said in my opening remarks, is that we do not assume that any of them does not pay their right share. In fact, as I noted in preparation for today, the number of HWIs who are resident in Ireland and who pay effective rates when we include PRSI and USC of 50% is actually quite striking and reassuring.

Chairman: Deputy O'Brien has indicated.

Deputy Jonathan O'Brien: Mr. Cody will be glad to know I am not going to speak about Brexit. On the last point in respect of the 83 individuals, 15 of them had legitimate claims to a significant level of reliefs, primarily losses. Could we have an example of the types of reliefs that would enable somebody to pay less than the average industrial wage on their income? I am not asking for any specifics on any individual but just the types of relief that would be availed of.

Mr. Niall Cody: If the Deputy can give me a minute-----

Deputy Jonathan O'Brien: Yes.

Mr. Niall Cody: The list of the reliefs is here. There are 14 - trading losses greater than €100,000 - that is where someone has carried forward trading losses and can set that against total income. Nearly half the number involved had trading losses in excess of €100,000 carried forward. Their income in the year would be in excess of €100,000 or €120,000 or whatever but they would have the €100,000 set against it. As for the rest of the reliefs, individuals had capital allowances, trading losses less than €100,000, and participation in the employment incentive investment, EII, scheme, where a person invests in some small company and can get the relief on that. There is a lot less, though, than we would have seen ten years ago because a lot of the reliefs have been abolished. There were a lot of property based reliefs which are now abolished. Then the issue of the high income earners restriction comes into play. That brings back in, for last year, I think, €32 million in liability in that some of the reliefs-----

Deputy Jonathan O'Brien: So we are talking about a small number of reliefs.

Mr. Niall Cody: Yes. The Irish tax system now has a lot fewer reliefs than it used to have. There was a whole scheme of property-based reliefs that were brought in throughout the early 2000s, and from 2010 to 2012 a lot of them were withdrawn.

Deputy Jonathan O'Brien: The majority would have been losses.

Mr. Niall Cody: Yes, the majority are trading losses, and capital allowances. They all get mixed together.

Mr. Seamus McCarthy: They would be the two big ones in the cohort that we looked at for 2015.

Deputy Jonathan O'Brien: Could I have an example of a capital allowance? When people think of capital allowances they automatically think of companies not individuals. Could Mr. Cody explain how an individual as opposed to a company could claim a capital allowance?

Mr. Niall Cody: Most capital allowances end up being claimed in corporation tax. I have a note and it might better if I read it out instead of talking off the top of my head. Capital allowances are a form of depreciation. That is essentially what they are for tax purposes. They may be deducted from an individual's case 1 or case 2 tax adjusted profit in calculating the taxable profits of a trade or profession. A profession would be a good example of somebody who might have capital allowances.

Mr. Seamus McCarthy: There might be rental income.

Mr. Niall Cody: Yes. There are two principal forms of capital allowances paid by taxpayers against their trade profits, namely wear and tear allowances on the cost of acquiring plant and machinery, which would be mostly in corporation tax, and then some industrial buildings allowances where somebody has bought an industrial building and would be entitled to claim that amount over a period of depreciation. Then they can claim case 5, which is rental capital allowances on the cost incurred on furniture and fittings for their rental properties. As is highlighted in the chapter, a lot of the people in the HWI category have significant rental-----

Deputy Jonathan O'Brien: Retail

Mr. Niall Cody: Retail kind of stuff. They would be able to claim capital allowances on the fixtures and fittings of their rental properties.

Deputy Jonathan O'Brien: It is not just an individual who is self-employed. It might be somebody who is a director of a company - can people like that claim capital allowances?

Mr. Niall Cody: If they had their own rental. A lot of HWIs would have a significant rental portfolio personally.

Deputy Jonathan O'Brien: Personally, yes. The next question is in respect of the type of compliance interventions that are made. There are four of them, starting off with the aspect query and escalating to the profile interview, to the audit and finally to the investigation. Do we have any figures? I do not want to put Mr. Cody on the spot so if he does not have the information to hand he might be able to provide it to the committee. Do we have any figures on how many aspect queries are made in a typical year, and on the number of profile interviews, audits and investigations?

Mr. Niall Cody: Our total in the context specifically of the HWIs-----

Deputy Jonathan O'Brien: Yes.

Mr. Niall Cody: I do not have that. I might have it by the end of the meeting. Increasingly, in the context of HWIs, we probably look at profile interview type process. They tend to be technical. They tend not to be investigations because with investigations one has to have significant evidence of tax evasion. It is certainly not a feature of HWIs. They may engage in tax planning and tax management but tax evasion is not something that is in that sphere. I have those figures now. In 2017, there were five investigations, 17 audits and 13 profile interviews.

The target was 105 aspect queries but we closed 1,300 where we would look at some aspect of it such as their capital allowances. We would have carried out 1,158 appraisals. Appraisals are when we appraise the case but we do not make contact with the taxpayer or their agent.

Deputy Jonathan O'Brien: Is that figure 1,158?

Mr. Niall Cody: Yes, 1158. I have those figures for 2016, 2017 and 2018. So far in 2018, and this surprises me, we have 15 investigations, 17 audits, 17 profile interviews, 105 aspect queries, and 150 appraisals. We are doing a re-aligning of how we do some of our work in the area because of maximising the use of data analytics.

Deputy Jonathan O'Brien: In terms of the investigations, was 15 the figure for this year?

Mr. Niall Cody: Yes, 15, with a yield of just under €1.9 million.

Deputy Jonathan O'Brien: In terms of the investigations, annex 18 D states that an investigation takes place from an examination of the information available that serious tax or duty evasion may have occurred. Mr. Cody said previously that, generally, high wealth individuals would not be involved in tax evasion.

Mr. Niall Cody: We will find that these cases are avoidance cases that actually cross the line and have fallen down. They tend to be the avoidance cases that are not the HWIs but are dealt with in our HWI unit. In terms of some of the legislation around avoidance, I know the qualifying avoidance disclosure features in the chapter as well, which was a legislative provision to allow settlements to be made for avoidance before the changes. We made some significant proposals to the Department for changes in our anti-avoidance provisions because some of the avoidance practices were so off the radar that they would certainly move across the line. I was here last year talking about some of the medical consultants project. The Comptroller and Auditor General did a chapter on the medical consultants, which ended up with approximately 28 of those settlements being published, which means they are in that space to which I referred. Unfortunately, what happens in certain cases is that some practitioner comes up with a scheme and people sign up for it. We always say that if it is too good to be true, it is too good to be true. There is a load of litigation going on in that sphere, not involving the Revenue, where people have signed up for schemes that are just not right.

Deputy Jonathan O'Brien: Have there been any criminal convictions for high wealth individuals?

Mr. Niall Cody: No.

Deputy Jonathan O'Brien: I refer to correspondence 1706, which was given by the Tax Appeals Commission. It is the update on the 17 high value appeals as of 6 November 2018. Mr. Cody gave us some information relating to that. There are two I want to query.

Mr. Niall Cody: I have not seen that correspondence.

Deputy Jonathan O'Brien: Mr. Cody has not seen it.

Mr. Niall Cody: I know the committee is getting correspondence-----

Chairman: We got the figure for the 17 high value appeals before the Tax Appeals Commission. They went through Mr. Cody's office before they went to it, so he should know about the cases. Three of them-----

Deputy Jonathan O'Brien: We have them on the screen anyway.

Chairman: -----were over €100 million each. Deputy O'Brien has the schedule.

Deputy Jonathan O'Brien: It is the page on the screen. The first of the two I want to query is the customs and excise one. It states:

The appeal relates [I know Mr. Cody cannot give any indication of who it may be] to excise duty. It concerns the applicability of Irish legislative provisions in light of case law of the ECJ and the European Court of Human Rights.

Can Mr. Cody give us any background to that without identifying individuals?

Mr. Niall Cody: I know that Revenue and the Tax Appeals Commission would be exchanging information on some of the cases for submission to the committee, but I have not seen the individual cases. I have been watching with interest some of the exchange of information and I am very conscious of taxpayer confidentiality, but I am also very conscious that taxpayers have the right to have their appeals heard in camera. The appeals commissioners publish their determination and ensure that details of what taxpayers earn are made clear.

Deputy Jonathan O'Brien: The point I am trying to make is that they are testing the constitutionality of a charging provision in excise law. Do we know what-----

Mr. Niall Cody: I will revert to the Deputy on that point. The testing of the constitutionality of charging provisions in excise law would not be unusual. It goes back to some of the processes Mr. Gilligan would have spoken about earlier. Some of our excise provisions will have to do with mineral oil, tobacco and alcohol and sometimes we seek to charge tax on people who have no wish to pay tax.

Deputy Jonathan O'Brien: The next one is the more interesting one for me. It is under Total Quantum per Tax Type, income tax. The tax quantum per tax type is just in excess of €19 million. It states:

This appeal relates to the taxation of certain monies found at the Appellant's dwelling during the course of an audit which the Respondent contends relates to untaxed self-employment income. The Appellant submits the monies represent accumulated savings which are not taxable.

My reading of that is that some man or woman has tens of millions in cash in their attic. The tax liability on that, including penalties or whatever, is now €19 million. To get to a point where the tax liability is €19 million, what type of money would one be keeping in one's house to reach a tax liability of that amount? It refers to certain moneys. It does not refer to anything else so I presume it is cash, and it was found in the appellant's dwelling.

Mr. Seamus McCarthy: My house is not that big.

Deputy Jonathan O'Brien: The Central Bank would probably not be that big.

Mr. Niall Cody: My obligation around taxpayer confidentiality covers issues like this. We do not talk about cases other than in groups of a minimum of ten because people can identify-----

Deputy Jonathan O'Brien: I do not want to put Mr. Cody in an awkward spot so I will try to make it easier for him to answer, but I am only going on the information provided to the

committee. To have a tax liability in the region of €19 million, how much cash would have to be found in someone's home? I am not asking about any individuals. I am just wondering.

Mr. Niall Cody: Some of the figures in the report relate to effective rates. If a rate is 30%, one has to divide by three and multiply by ten to get a tax figure.

Deputy Jonathan O'Brien: My other question relates to that but does not concern a specific appeal. When a hearing is scheduled, there is an expectation that some cases will be determined before the end of the day. What percentage are settled in this way? How many go to court? Are arrangements made between the parties? How many go all the way to a determination being made against somebody?

Mr. Niall Cody: If we do an audit of a taxpayer's records we engage with the taxpayer and their agent and if there is an issue around the interpretation of law, that is, as to whether something is taxable, there will be legal advice but it will be more likely to go through the courts process. In other audits we identify what we see as undeclared income and we would seek to assess the tax liability. If our evidence was good enough it may end up in a settlement process and tax, interest and penalties will be paid as part of the settlement. Some go to appeal and there are various stages of the appeals process. Some avoidance cases have gone through a process of judicial review in the High Court and the Supreme Court and then the appeal itself has to start. That will involve the Tax Appeals Commission and then it may go to the High Court. It could, potentially, go to the Supreme Court again and may even go to the ECJ. Most of our cases are settled, however, and do not end up being appealed. We publish our figures on this and we collect in the region of €500 million in tax settlements.

Deputy Jonathan O'Brien: Once an appeal begins, do the penalties cease to accumulate or do they continue to accumulate throughout the appeal?

Mr. Niall Cody: Penalties are fixed but interest will accrue. In some cases the taxpayer pays the money to stop the interest clock and, if they win, we repay them. I know that the Chairman is concerned that a delay can lead to an interest charge.

Deputy Jonathan O'Brien: The interest keeps going.

Mr. Niall Cody: Interest is based on time.

Deputy Jonathan O'Brien: Can Mr. Cody give us some information about the medium enterprise division that has been established? Is there any substantive difference between this division and the LCD? I understand that the medium enterprise division deals with cases between €10 million and €50 million.

Mr. Niall Cody: Yes.

Deputy Jonathan O'Brien: Do the Revenue Commissioners use the same criteria to identify HWIs with assets in that range?

Mr. Niall Cody: The medium enterprise division is similar but it covers both corporates and individuals. It deals with businesses with a turnover in excess of €3 million, businesses between €1 million and €3 million with over 100 employees or businesses, primarily in the construction industry, with relevant contracts tax where the contract values are in excess of €3 million. Partners of accountancy and legal partnerships whose turnover is greater than €3 million are also in this category, as are proprietary directors associated with any of the above

businesses, which brings in a lot of individuals. The medium enterprise HWI unit brings in 622 individuals in addition to the proprietary directors of all those companies who have a total income in excess of €500,000 and an effective tax rate of less than 30%. It also brings in people whose total consideration from capital taxes exceeds €700,000 or where total capital losses exceeds €500,000, and those who have multiple property transactions over a three-year period exceeding €3 million.

Deputy Jonathan O'Brien: The Revenue Commissioners are in a process of structural change.

Mr. Niall Cody: Yes. The process did not start at any one point because we are constantly looking at our structure. In 2015, we were worried about the cases below the LCD threshold. We were not worried about controlling them but about the fact that, depending on what part of the country a person was in, he or she might get different treatment on account of the resources available. For example, resources in Kilkenny might be different from those in Galway. We were keen to have a view of the national case base so we started a project on what we called the second-tier case base. We set up seven second-tier branches within the regional structure and, last November, we looked at moving towards a process for five national divisions rather than the regional structure. The staff are spread around these five national divisions.

Deputy Jonathan O'Brien: This new division has a staffing level of 380. It is well resourced.

Mr. Niall Cody: We have tried to increase the resources in LCD, corporate division, HWI and the second tier from about 400 to some 700. It is an ongoing process and we have a lot of work to do on it. We changed the case base over the October bank holiday weekend and we are now engaged in a massive communication exercise with staff across the organisation. There has been a great level of co-operation from staff and I cannot get over how Revenue staff respond so positively and proactively at such times. The trade unions come in to me to talk about what is happening and they want certainty because change can be a big challenge for people. We have a lot of really good people based around the country and our case base is not in the same places. We have set up an LCD corporate branch in Galway and we always had a bit of LCD in Cork and Limerick. We have a HWI team outside Dublin and I would like at least one third of the resources for LCD, corporate and HWI to be outside Dublin.

Deputy Jonathan O'Brien: The medium enterprise division could be the first step in lowering the definition of high-wealth individuals to below €50 million.

Mr. Niall Cody: It has already been so. There are 15,000 individual taxpayers who are dealt with in the medium enterprise division. Early next year, we will have a realignment of resources as between the medium enterprise division and the HWI unit.

Deputy Jonathan O'Brien: The report of the Comptroller and Auditor General identified the HWIs who held their wealth through Revenue-specific codes, rather than the retail estate sector, as the biggest group at 35%. Can Mr. Cody tell me what that means? Are we talking about individuals who inherit wealth or the children of billionaires and multi-millionaires?

Mr. Niall Cody: This became one of the areas our offices corresponded about. We use a Revenue-specific code for recording purposes, but they are broken down and we now have it down to 21.8%.

Deputy Jonathan O'Brien: Can Mr. Cody direct me to those codes so that I can find out

what they are?

Mr. Seamus McCarthy: We have listed them in the footnote to figure 18.4-----

Deputy Jonathan O'Brien: I saw that. Some of them where-----

Mr. Seamus McCarthy: -----which is a listing.

Deputy Jonathan O'Brien: One of them concerned garden relief.

Mr. Seamus McCarthy: The Deputy is referring to "house and gardens". I believe that is in the body of the report.

Deputy Jonathan O'Brien: We are talking about those codes.

Mr. Niall Cody: We are talking about heritage reliefs. House and garden is not-----

Deputy Jonathan O'Brien: I appreciate that.

Mr. Niall Cody: Some of the codes cover areas where people are only liable to a capital acquisitions tax process. We provide a code to say that one is not in a trade, for example.

Deputy Catherine Connolly: Míle buíochas agus fáilte. Gabhaim buíochas as ucht na gcáipéisí uilig. Tá siad thar a bheith cabhrach dom agus tá siad léite agam. The witnesses are welcome. It is good to see gender representation; I applaud that. I believe it might be the first time that-----

Mr. Niall Cody: The Deputy has said that previously.

Deputy Catherine Connolly: That is my second time so.

Chairman: We had a former chairperson who was female.

Deputy Catherine Connolly: I presume we will again.

Chairman: No timescale need be mentioned.

Deputy Catherine Connolly: It is good to get and to read all of the documentation. The Comptroller and Auditor General's chapters are clear and helpful. That does not mean that one is not driven to smoking and drinking - legally, of course - after reading all of this stuff. At the core of this is the integrity of the tax system. It is important that people trust in the Revenue Commissioners and that they believe that everybody is being taxed fairly. That is what this is about.

We have looked at the HWIs. I had to run out, so I am sorry if we are repeating matters that have been clarified. The threshold for HWIs is high at €50 million. Mr. Cody started talking about this and said that he reviewed it on different dates in the past. He has confirmed that he will review it now with the intent of bringing the threshold down. He mentioned the word "resources". Is that the reason this has not been reviewed sooner?

Mr. Niall Cody: No. We have spoken on several occasions about resources and how we deal with them.

Deputy Catherine Connolly: I am an ordinary person, and a TD. For myself and for people listening to this, assessing someone with assets of €50 million as a HWI seems like an

extremely high threshold. When will the threshold be reduced, and what has led the witness to deciding to reduce it?

Mr. Niall Cody: I said earlier that the threshold is a purely administrative arrangement used by the Revenue Commissioners. The same legislation applies to a person with a wealth of €30 million as it does to a person with €70 million.

Deputy Catherine Connolly: Presumably if a person is assessed as being worth over €50 million different resources and a different approach are required.

Mr. Niall Cody: That is the process. I said that I have asked the heads of the medium enterprise division and the HWI to bring forward proposals based on analysis of the figures by the end of the first quarter of next year. I want the medium enterprise and the new HWI division to bed down and to look at the overall case base, because I believe the HWI division itself is too small now that large corporates have been taken out.

Deputy Catherine Connolly: When will that decision be made?

Mr. Niall Cody: There will be a proposal to the board by the end of the first quarter and it will be implemented immediately, as is the case with all of the decisions we make.

Deputy Catherine Connolly: Does Mr. Cody have any idea what the threshold will be reduced to? What is his opinion?

Mr. Niall Cody: We have started to consider the implications for the number of cases at a value of €20 million.

Deputy Catherine Connolly: What does Mr. Cody mean?

Mr. Niall Cody: I mean that we are considering how many cases there are of HWIs worth €20 million. If there are 480 such cases at the moment will that become 830 or 850? If we are to appraise the cases on an annual basis there has to be capacity in place for that. We are trying to use our analytics process to carry out the overall appraisal, and then have a highly trained officer look at the outliers from that process. That is what we do.

Deputy Catherine Connolly: Does Mr. Cody look at the return achieved in terms of tax?

Mr. Niall Cody: That is the starting point. The HWI base currently pays a lot of money. It is also the case that the top 1% of income earners have 10% of the income while paying 21% of the income tax. The top 10% have 35% of the income and pay 59% of total income tax and 58% of income tax and USC combined. That is the cohort involved. They are pay an awful lot of money.

Deputy Catherine Connolly: They may well pay an awful lot of money, but the difficulty for me is the context. Wealth is not assessed, but income is. While Mr. Cody might say that group has a very high income tax level, there is significant variation. On top of that there is the question of wealth and assets that are not included in the income measurement unless the owners derive income from that wealth.

Mr. Niall Cody: Yes, that is the case. There is capital gains tax and capital acquisition tax.

Deputy Catherine Connolly: I have seen those facts and the percentages relating to them. If one is going to make a statement that a certain group of people pay high taxes compared with

the ordinary industrial wage or a TD, one does not give the whole picture because the wealth of those individuals is being left out of it.

Mr. Niall Cody: I can only deal with the legislation.

Deputy Catherine Connolly: I understand what Mr. Cody can deal with, but when he goes further and says that they are paying very high taxes, I then have to put context on that.

Mr. Niall Cody: I am giving the facts. We have produced significant volumes of information, particularly over the past three years, to facilitate debate on tax paid. We do not make value judgements on high or low wealth, but merely implement the law as it is provided to us. The Deputy's opening comments about fairness and the perception of fairness are important.

Deputy Catherine Connolly: I want to ask some specific questions about mandatory disclosure in a minute, depending on the time I have left. I refer to the chapter on corporate taxation. In Mr. Cody's opening contribute, he said that the Comptroller and Auditor General made no recommendations, and he is correct. However, the Comptroller and Auditor General highlighted a number of issues, as did the Chairman. We made recommendations in one of our reports that a distinction between losses carried over and the non-use of capital allowances be made. Is Mr. Cody picking up on that recommendation? He has clarified that Revenue is obliged to act under the tax legislation. To put it in plain English, companies can benefit from capital allowances they have not used and can benefit from trading losses that are carried over. Revenue does not distinguish between that and is not able to give us the year by year breakdown. We made a recommendation. I am sure the Chairman was going to mention this as well. Can Mr. Cody clarify what he thinks about that recommendation and what Revenue is doing about it?

Mr. Niall Cody: We talked about corporation tax and losses a number of times and we talked about it in the context of the current chapter. Essentially, the challenge is that an unused capital allowance contributes to the calculation of the loss. Two computations are not made. The figure ends up as a total figure when it is carried forward..

Deputy Catherine Connolly: I understand that.

Mr. Niall Cody: It is not that we do not want to do it; it is that there is no basis for us to do it. If the Oireachtas determined there had to be a separate calculation, then we would have to capture it but we do not have a basis. With regard to the age process, there is no rule to say oldest losses first. There is a rule that losses are used against the first profit that comes up.

Deputy Catherine Connolly: I understand that.

Mr. Niall Cody: It is important because I do not want to-----

Deputy Catherine Connolly: Listen to me, I-----

Mr. Niall Cody: I do not want to not implement the Deputy's recommendations.

Deputy Catherine Connolly: We gave this a lot of time and we have done a report under the guidance of the Chairman. I understand Mr. Cody's position; there is not a legislative basis and it does not have to be done but would common sense not indicate it should be looked at to tease out the information so we have maximum information? Rather than putting everything under losses, it could be split up into what the losses are and what is unused under the capital allowances. When we have that information, we would get a better idea. It also leads to a better

ability to predict what might be lost or what tax is due or lost.

Mr. Niall Cody: It is not that we are not doing it. The figure becomes-----

Deputy Catherine Connolly: It is an all-encompassing figure.

Mr. Niall Cody: It is an all-encompassing figure under legislation.

Deputy Catherine Connolly: I understand. We are-----

Mr. Niall Cody: I have no basis to get it off anybody.

Deputy Catherine Connolly: We have said that. I am asking Mr. Cody whether, on a common sense basis, I am being ridiculous in saying we should look at this practically-----

Chairman: What is preventing the Revenue Commissioners from doing it? They are not obliged to do it but what is preventing them from doing it? Could it be done without legislation?

Mr. Niall Cody: There has to be a rule. When the loss is calculated, how is it determined that the loss was a result of the capital allowance as opposed to anything else?

Chairman: The companies give the Revenue that information.

Mr. Niall Cody: In the calculation of the figure, there will be a final figure but we cannot say at the end of it that a certain part of the figure carried forward is a capital allowance unless the only reason a company had a loss was because it had capital allowances.

Chairman: We understand the Revenue does not have the legal basis to do it now but maybe there should be a legal basis. I am sorry for butting in but I envisage that down the road, the Oireachtas could take a different view on a sunset clause on trading losses brought forward versus capital investment. They might take a different view of a different sunset clause period if they were minded to do that but they could not do it without the information.

Mr. Niall Cody: If the Oireachtas determined it wanted to bring in a sunset clause or a claw back such as exists for capital allowances on intellectual property, it could. That can only be used against intellectual property.

Chairman: The Oireachtas would have to pass legislation on the blind with no basis for knowing what will happen when it passes and see what it throws up.

Mr. Niall Cody: The Oireachtas would have to provide that the tax be calculated and that there would be a different impact. It would not be on the blind because regarding anything that will happen in that area, one could say it is carried forward and useable and that a certain thing can only be carried forward for a certain period. The impact would then happen. The problem if one was going to have a sunset clause is how to determine the age of the current losses because there has not been a rule to determine that.

Chairman: A rule would have to be introduced-----

Mr. Niall Cody: A rule would have to be introduced.

Chairman: -----based on the previous losses first.

Mr. Niall Cody: Every year we deal with new rules introduced, we adjust our IT systems

to give effect to them.

Chairman: Is Mr. Cody saying our recommendation is a legislative one?

Mr. Niall Cody: It is a policy area.

Chairman: Okay. I take his point.

Deputy Catherine Connolly: Paragraph 19.18 of the Comptroller and Auditor General's report refers to eight companies and states, "Although some of those companies are not generating trading losses, their level of capital allowances available against profit means they feature in the top 24 companies using loss relief". They are not making a loss but they are down as making a loss because of this approach. In the conclusions, the report states:

Significant amounts of accumulated losses have built up since 2008. The current level of €231 billion represents possible future tax receipts reductions of €29 billion.

There is a lot of money at play here and it also affects the ability to forecast losses. It would make sense but I am no financial expert. Mr. Cody is saying the law has to be changed but I am getting the message from him that there is no need to change the law.

Mr. Niall Cody: There is a good graph on page 247 of the Comptroller and Auditor General's report, which is the page before the one Deputy Connolly read from which. It lists the 26 companies, the 163 companies, the 5,127 companies and the 48,000 companies. With regard to the 26 companies, the people in our large cases corporate division know exactly the profile of each of those cases. We have their accounts for every year.

To return to the Chairman's question, if the Oireachtas was determining something, we would have very detailed, drilled-down information on all those cases. We would have detailed provisions on the 26 companies, the 163 companies and a significant proportion of the 5,127 companies. I spoke to Mr. Walsh around the time this report was going on and we looked at the sectors where it can be identified that it is all capital allowances. They are pharmaceutical or manufacturing companies. There are sectors that can be identified-----

Chairman: They are all loss-making businesses.

Mr. Niall Cody: -----where they are all losses because they are in the financial services and construction sector and are a result of the downturn. The Comptroller and Auditor General also has access to all of those records. The two of us could probably name individuals but we will not. I assure the committee on that detail.

Deputy Catherine Connolly: The Revenue Commissioners has the breakdown.

Mr. Niall Cody: Absolutely.

Deputy Catherine Connolly: The figures on tackling tobacco smuggling are fascinating. There is a 7% detection rate. The most significant figure is the amount going back to the Government. It is 79% of each packet of cigarettes. Total excise and VAT now represents just over 79% of the retail price per pack in Ireland. So 79% of the cost of every packet of cigarettes is going back to the Government. There is a serious question there about health issues - it is for another day - if that much revenue is going back for every packet of cigarette consumed. The detection rate is 7%. How does it compare internationally? In terms of scanning illegal products coming through, I understand that up to now Revenue could not distinguish. Will Mr.

Cody clarify that?

Mr. Niall Cody: The detection rate of 7% is a calculation in a particular year. This year we have 52 million cigarettes compared with the previous year.

Mr. Seamus McCarthy: It will jump significantly because of----

Mr. Niall Cody: This year, it could be 15% or 20%. The reality of the factory is that a significant proportion of those cigarettes were bound for the British market. They would not be all released in Ireland. The system would not be able to cope. The market is very interlinked. We are embedded in OLAF and international co-operation. In 2017, Poland seized 544 million cigarettes. We seized 34 million. It has a population approximately ten times our own. In 2013, the UK had seizures of 378 million and we had seizures of 41 million. In another year the UK had seizures of 508 million and we had seizures of 53 million. I usually use the idea of dividing the number by ten. We are proportionate but the figures jump around. The level of tobacco tax we get is fairly static over the years, even allowing for the increase in excise duty. That is from a significant reduction in people smoking. Health motivation is an important aspect. The Deputy is practically correct on the 80% figure, as the illicit trade in tobacco is like smuggling tax. When somebody is buying 20 cigarettes, they are paying a lot of tax.

Deputy Catherine Connolly: It seems 13% of cigarettes consumed are illegal.

Mr. Niall Cody: The survey run by Ipsos MRBI for ourselves and the Office of Tobacco Control, which is our best measure, has 13% as the figure for last year.

Deputy Catherine Connolly: The chapter from the Comptroller and Auditor General looked at the robustness of relying on one survey per year.

Mr. Seamus McCarthy: It was more about relying on one methodology where there is a number of potential methodologies. It has been pointed that other reference points are taken as well.

Deputy Catherine Connolly: Has it been dealt with already?

Mr. Niall Cody: The report mentions five different methodologies. Our major one is the survey.

Chairman: How is the survey done? Do those taking the survey walk the street, make phone calls or go to shops?

Mr. Niall Cody: There is a random selection of smokers and Ipsos MRBI interviews them for the survey.

Chairman: Of those, 13% own up to Ipsos MRBI.

Mr. Niall Cody: No, they produce their cigarettes. Ipsos MRBI take the cigarettes and give them to our people, who are the experts in identifying the source.

Chairman: They get a pack back to keep those people happy.

Mr. Niall Cody: We do not give them back.

Deputy Catherine Connolly: We will all be smoking before the end of the day.

Mr. Niall Cody: One of the recommendations is that we would publish a bit more. We publish the results and we have undertaken to give a bit more colour. I read the recent report and it is really interesting as one of the key cohorts of smokers in this country is people from eastern Europe. They have a higher incidence of smoking and they also come from a part of Europe with much lower cigarette prices.

Deputy Catherine Connolly: Is that the kernel of the issue? Aside from most of the money going back to the Government, prices elsewhere are much lower.

Mr. Niall Cody: Absolutely. It is really interesting and I mentioned this in the report. Lithuania has a price of €3 for 20 cigarettes but its smuggling problem can be put at 41% because from Belarus a person can get cigarettes for €1.20. One can get illicit cigarettes for 20 cent.

Deputy Catherine Connolly: I will let the witness take up the details for Lithuania and problems arising therefrom on the Chairman's time. I want to get to the high net worth individuals in a moment. I understand there was a stand-alone strategy in 2011 for tobacco and I presume that was effective. It has not been followed up and there has not been a stand-alone strategy since.

Mr. Niall Cody: We produced what is called a stand-alone strategy following the previous report on tobacco.

Deputy Catherine Connolly: That was 2009.

Mr. Niall Cody: I remember being involved with a group looking at the strategy and the one mistake we made was putting a date on it. The strategy is still exactly the same process around using technology. We continue to implement the strategy.

Deputy Catherine Connolly: The Revenue Commissioners are in the process of a national action plan.

Mr. Niall Cody: The national operation plan is lower. It implements the strategy and we are looking at how we deploy our resources, including dog teams and our scanner. We will get a new scanner this year. It is not a big mobile scanner rather a backscatter van. We will be supported by the European Anti-Fraud Office, OLAF, as it costs approximately €750,000, and it will increase our scanning capability in the ports.

Deputy Catherine Connolly: I originally asked about the scanning capability. There was a pilot project.

Mr. Niall Cody: One of the issues that came out of the last report is the detection rate as a result of scanning and the idea of looking at what other member states and countries did. It was interesting as-----

Deputy Catherine Connolly: Is the pilot project over?

Mr. Niall Cody: It is ongoing.

Deputy Catherine Connolly: When will it be over? It is a pilot project so I presume it is being done to improve the service.

Mr. Niall Cody: No. It involves the recording of the results of the individual scans to see if we can get any information on that.

Deputy Catherine Connolly: The Revenue Commissioners will be able to specify the amount of illegal cigarettes confiscated as a result of this procedure.

Mr. Niall Cody: Yes. When we went to speak to people in other countries, they would not give us the results from scanning. Mostly, the detection of illegal cigarettes or anything illegal comes from a number of processes, including intelligence, scanning, use of dogs etc. Rarely is it a result of one aspect. One country told us it would never publish such information as some of the issues around customs work include prevention. The fear of being caught is part of the process.

Deputy Catherine Connolly: I will get back to the high wealth individuals and mandatory disclosure. It is chapter 18. That process was introduced in 2011.

Mr. Niall Cody: It was the Finance Act 2010.

Deputy Catherine Connolly: It came into operation in 2011. The most disclosures were in 2011, immediately following the introduction.

Mr. Niall Cody: Yes.

Deputy Catherine Connolly: Figures for the total disclosures to date are very low. Will Mr. Cody just put some context on that for me? It concerns 11 mandatory disclosures in respect of 494 clients, seven of which were received in 2011.

Mr. Niall Cody: The main motivation of having a mandatory disclosure regime is to stop people using schemes. The key to avoidance is having us not knowing the individual is involved with an avoidance scheme. One of the key motivators in proposing the introduction of a mandatory disclosure is to change behaviour.

Deputy Catherine Connolly: The office wants people to come forward.

Mr. Niall Cody: Yes, although we would prefer if people did not engage in avoidance. If they engage in avoidance, we would like them to tell us. If people are engaging in avoidance, the last thing they want to do is tell us. We are not the people one likes to tell. This has a behavioural impact. Now the European Union is introducing a mandatory disclosure regime to deal with international practice. We were one of only three countries with a mandatory disclosure regime so it spoke to us about our system and how it worked.

Deputy Catherine Connolly: It is interesting as there have been 11 disclosures, most of which were in 2011. The chapter indicates that the Revenue Commissioners have not, to date, identified any schemes through its tax avoidance work which it considers should have been disclosed. Is it working very effectively from the analysis done by the Revenue Commissioners? Put the low level of mandatory disclosures in context for me.

Mr. Niall Cody: There are specific types of schemes that must be disclosed.

Deputy Catherine Connolly: Should we expect more people to come forward or is Mr. Cody happy with that level of mandatory disclosure?

Mr. Niall Cody: We have come across no evidence of schemes that should have been disclosed and were not, which is good.

Deputy Catherine Connolly: Yes.

Mr. Niall Cody: That is a good assurance on the process. We continue-----

Deputy Catherine Connolly: That is good. We are dependent on the revenue's analysis. Does it carry out spot checks? What does it do?

Mr. Niall Cody: We have a risk analysis system. Every tax return is processed. Last night a hell of a lot of them were processed because it was the pay-and-file deadline. The returns all go into our risk evaluation analysis and profiling, REAP, system, which analyses them. There is also an anti-avoidance network in which teams of people across the organisation look at things like effective tax rates, losses, artificial losses, schemes where people are not-----

Deputy Catherine Connolly: The revenue examines a range of criteria or schemes, and Mr. Cody feels reassured that this level of disclosure-----

Mr. Niall Cody: We feel reassured, but I would be very reluctant to say that there are no schemes that should have been disclosed and were not. I would never come here and say that. However, part of our realignment process increases resources directed at areas of risk. That is what we do. In fairness, every year when we are in here we pay very close attention to all the chapters. If there are things we can learn from them, they influence what we do.

Deputy Catherine Connolly: I wish to make one last comment. It is not a question. I will not take any more time. Real estate is the biggest sector for high-worth individuals. The chart on page 225 shows that real estate activities account for 29% of their activities. Revenue-specific codes are 35%, but the witnesses have said that has fallen to 21% and it is different.

Mr. Niall Cody: That is different.

Deputy Catherine Connolly: As such, the biggest sector for high-wealth individuals is real estate.

Mr. Niall Cody: One will find that in any country, particularly-----

Deputy Catherine Connolly: One may find it in any country, but-----

Mr. Niall Cody: People with money buy property.

Deputy Catherine Connolly: In a country where we cannot provide homes it is a shocking indictment. I will leave it at that.

Chairman: I will put some questions myself and then conclude. If the bells ring, I will just get through my questions with a view to finishing the meeting. If another member arrives that will be that.

Not being a smoker myself, I do not normally concentrate on this end of things. According to the figures the witnesses say are based on the 2017 survey, the nominal loss to the Exchequer in 2017 was €229 million. I am reading from Mr. Cody's opening statement. In regard to following these matters up, two paragraphs later Mr. Cody writes that prosecutions have resulted in fines totalling €140,250. It must be the most profitable business in Ireland. I will talk about the detection rates in a moment. I have worked out that for every euro a person has paid in a fine, on average he or she has been involved in €1,632 worth of illicit tobacco. That is like winning the lottery every morning. For the risk of being fined €1 one can make €1,632. I find that a phenomenally low figure relative to the money that can be made. Mr. Cody can see where I get these figures.

Somebody got a sentence of six months, I am sure with probation attached, a reduction in time or whatever. Revenue cannot set the terms. That is up to us. As far as I can see, however, there is zero deterrent. Someone can sell €1,632 worth of illicit tobacco, and if he or she is one of those caught he or she will pay an average of €1 in fines. One person involved in that €229 million worth of business got a short prison sentence. I know about the price differential, the tax and how cheap they are in Europe, but this also has something to do with the extent of smuggling. Is there anything more Revenue can do, or does it need more power? It might require legislation. That disparity speaks volumes. Looking at the facts, I have never seen anything as profitable as smuggling cigarettes.

Mr. Niall Cody: In some of the big tobacco seizures we do not have a person but a container. Where we do catch someone for selling it or whatever, we put the case together and it processes through the courts.

Chairman: Who is the prosecution? Does Revenue or the Director of Public Prosecutions, DPP, carry it out?

Mr. Niall Cody: The DPP does, but we prepare the case. The offences and court penalties have increased significantly over the past several years. A person convicted summarily of tobacco smuggling or illegal sale of unstamped tobacco products can be fined €5,000, be imprisoned for a term not exceeding 12 months or receive-----

Chairman: What is the biggest single fine that has been levied by the courts as a result of Revenue's prosecutions?

Mr. Niall Cody: Cigarette smuggling-----

Chairman: Mr. Cody can send a note with this information to the committee.

Mr. Seamus McCarthy: In 2016 we had three convictions on indictment, which resulted in two prison sentences and one suspended sentence. We had 30 summary convictions, which resulted in six suspended prison sentences and fines amounting to €57,500. In 2017, we had 26 summary and five indictable convictions, fines amounting to €54,000 and one custodial and nine suspended sentences. At the end of October, there had been 12 summary convictions and three indictable convictions, fines amounting to €30,000, four suspended sentences and one custodial sentence.

Chairman: The witnesses have said organised crime elements are involved in this. Out of all the activities that make money through organised crime, a culprit's chances of going to prison are probably the lowest for this one. As has been said, serious criminals are involved in this. They would laugh out loud at suspended sentences like that.

Mr. Niall Cody: We can bring people through the process and then it is a matter for the courts. The average fine for cigarette smuggling has risen from €474 in 2009 to €2,727 in 2018.

Chairman: A guy caught with a bit of green diesel in the tank of his tractor or car gets a bigger fine than that. Those guys are charged €5,000 or €2,500. That is wrong too. I am not condoning it. I am just saying that the proportional difference between the fines and the gains here is extraordinary. Revenue probably cannot change that, but I find the figures extraordinary.

Mr. Niall Cody: The reality is that a lot of the cases are summary prosecutions for bringing 10,000 cigarettes through the airport or whatever. The cases are brought, summary prosecu-

tion-----

Chairman: They are not the real problem.

Mr. Niall Cody: No they are not. Generally we do not catch the organisers in any-----

Chairman: However, Revenue does catch the guys that come in white vans loaded to the gills from Lithuania and other countries.

Mr. Niall Cody: They go to court and the courts impose a penalty-----

Chairman: Somebody is not taking it very seriously. I am not saying that about Revenue. Maybe it is only money.

Mr. Niall Cody: The reality is that imposing penalties is a matter for the courts. The penalties have been significantly increased by the Oireachtas over the last several years. Eventually we end up with a prosecution of somebody for selling cigarettes. There will generally be difficult circumstances, and the court will look at that differently. In a way it is part of the process. I sympathise with the motivation behind Deputy Breathnach's Private Members' Bill but I am not 100% certain that if we were prosecuting someone for buying 20 cigarettes-----

Chairman: There is minimal deterrent for being involved in this trade, though Revenue may get a couple of big people in some cases. When drugs or tobacco are seized in customs operations at Portlaoise mail centre, how do the Revenue Commissioners dispose of them? Are they incinerated?

Mr. Michael Gilligan: There is a procedure when drugs are identified at a postal hub.

Chairman: There is a vote so if members want to leave for it, that is okay. I will finish this out.

Mr. Michael Gilligan: We and the Garda Síochána try to maximise our efforts together by undertaking a controlled delivery. We try to prosecute and we hold the drugs as evidence. After the prosecution the drugs can be destroyed.

Chairman: How is that done?

Mr. Michael Gilligan: It is normally done through incineration.

Chairman: Somebody in Ireland is licensed to do that.

Mr. Michael Gilligan: Yes.

Chairman: Do the cigarettes go there as well?

Mr. Michael Gilligan: Yes. They are destroyed as well.

Chairman: It makes good electricity somewhere. Have the cigarettes that were taken off the ship at the port been incinerated?

Mr. Michael Gilligan: They were taken off immediately.

Chairman: They are being held in evidence.

Mr. Michael Gilligan: Yes.

Chairman: It has been well reported that the nicotine and tar content of the illicit cigarettes that come in is much higher and they are a greater health hazard for the 13% who use them. Does the Revenue pass them on to the HSE? The HSE could undertake some promotion on this issue because a high number of people from eastern Europe are very heavy smokers and we will be paying for the hospital bills at the end of the day. Is there any linkage between Revenue and the HSE on this issue?

Mr. Niall CODY: We work very closely with the office of tobacco control and the Department of Health and we are engaged in the introduction of the new track and trace system for the legitimate trade across Europe. We are the competent authority to oversee it. We are the high-tax country in this equation so there is no particular risk of the diversion of legitimate trade here. Of course, they are all bad for you.

Chairman: The witnesses gave us a document with an analysis of the restrictions on high-income individuals for 2016. I understand that if people have an income of over €400,000 there is a restriction in regard to the reliefs they can claim, meaning an effective rate of at least 30%. Is that the case?

Mr. Niall CODY: Yes.

Chairman: For those with income of between €125,000 and €400,000 there is a graduated level to bring them up to 30%. The restriction on people with income over €400,000 resulted in additional income tax of €26 million and the restriction on those with adjusted income below that figure, but over €125,000, resulted in an additional €13 million. There were 521 such people in total and the total extra tax was €39 million. Is the schedule of the different reliefs that can be claimed connected with this point?

Mr. Niall CODY: Yes.

Chairman: The number of cases total 665 and the amount of relief used by those affected by the restriction in 2016 was €149 million. By far the biggest element was the carry forward of excess relief, with 346 people availing of it giving a total of €98 million, an average of €283,000 per individual. Is the excess carry forward related to the high-income individual's restriction?

Mr. Niall CODY: Yes.

Chairman: If a person has a restriction this year because he or she has an income of €500,000 and pays extra tax because of that restriction, he or she can carry it forward.

Mr. Niall CODY: The person can carry the relief forward.

Chairman: The person can carry the relief forward, not the tax.

Mr. Niall CODY: Yes.

Chairman: The amount of the relief claimed was €98 million at 30%. The people affected can carry it forward to a following year when they may have a lower income and can reduce their tax bill accordingly.

Mr. Niall CODY: They could also do it where they had other, lower reliefs. If they had no reliefs in the following year they would be able to use the carry forward.

Chairman: I thought this was a mechanism whereby people with high incomes paid more

tax but that is not the case. They might pay it now but they can get the value of it later.

Mr. Niall Cody: It is a deferral.

Chairman: It is only a deferral. It is just a cashflow issue. Most people's general understanding was that this would ensure that people with an income of over €400,000 would pay a minimum effective rate of tax of 30% but that is only half the sentence. The other half is that the relief they utilised in one year can be carried forward if they have reduced income, or lower other reliefs, in the following year. At the end of the day, the Exchequer has not got one extra bob out of this. There will be a lot of public disappointment when it is realised that the Oireachtas allowed the relief to be carried forward to reduce tax in later years. I blame myself, as a Member of the Oireachtas, but we coddled the people on that one. I do not believe that is what the public expected this measure to be.

Mr. Niall Cody: As with all these restrictions on relief in a particular year, if people stay over the threshold they will continue to have an effective rate of 30%.

Chairman: It is like losses carried forward.

Mr. Niall Cody: People do not lose the relief but do not get the value of it in a particular year. It is carried forward for a number of years if their income stays above the threshold.

Chairman: Do you have information on the amount carried forward cumulatively and for which years?

Mr. Niall Cody: We published this report and this is the latest.

Chairman: Are you able to do a summary for us year by year and send it on to us?

Mr. Niall Cody: Absolutely. I can send the Chairman the link to where all the reports are.

Chairman: No, I am asking you to do the work and put the schedule together. You will be better able to do it than we.

Mr. Niall Cody: We will do that. I reiterate the point that the public will be disappointed those wealthy income earners effectively get a clawback down the road if they do not have that high income. I want to put that on the record. We are here to scrutinise tax receipts as well as expenditure.

I will go through the schedule in the Revenue Commissioners' report. It is all well and good publishing the report but in regard to the reliefs claimed, by far the biggest one is the €98 million for the reliefs carried forward, which we have discussed. In regard to the other big reliefs being utilised, 27 people claimed relief on hotels, holiday camps and cottages of €7.6 million, which was an average of €280,000 relief per person. In regard to the urban renewal scheme and capital allowances for commercial buildings, 14 people claimed reliefs of €1.6 million, which is an average of €115,000 per individual. In regard section 344 and multi-storey carpark allowances, this is a very lucrative allowance for some people. Fewer than ten people claimed reliefs of €3.6 million. If there were ten of them, it would have been relief of €360,000 per person. If it was five, it would have been double that. We do not have the figure but it is at least €360,000 per individual. In regard to section 372, qualifying urban relief and capital allowances for certain commercial buildings, 15 people claimed reliefs of €2.15 million, which is an average relief of €143,000 per person. I am only listing those over €100,000 because people ought to hear about reliefs. I want to put what we are talking about on the record. Section 372

relief applies for lessors of residential properties - it is a section 23-type relief - and 54 people claimed €11.5 million in reliefs, which is an average of €214,000 per individual. Section 338 is relief arising under terminal losses of a business totalling €7.1 million, which is an average of €160,000 relief per individual.

I have mentioned the big one already, namely, losses forward. Some 346 people claimed relief for losses forward of €98 million, which is an average of €383,000 relief per individual. Are all those, not just the first one, carried forward year in, year out if a person claims a relief? Is it just that big one, the carry forward excess relief? Can all the others can be carried forward as losses forward if a person's incomes drop?

Mr. Niall Cody: If some of them are left next year, they may become part of next year's excess relief - the individuals or in the actual year. All those reliefs are brought in as part of a tax policy to incentivise-----

Chairman: It is a good incentive. All those schemes, including the urban renewal scheme and the carparks in hospitals scheme, might not have happened without these reliefs.

Mr. Niall Cody: The people who are in a position to invest in those are generally people with income. It is policy-----

Chairman: It is a policy issue to encourage investment and was deemed necessary at the time.

Mr. Niall Cody: -----to encourage a particular scheme.

Chairman: I understand that. The other matter I want to discuss with Mr. Cody are his predictions in regard to the corporation tax receipts for this year and last year. The letter he sent us dated 24 October is specifically on this issue. I know he said it is up to the Department of Finance but he has a big input into the information the Department of Finance has. We asked for a note because when it emerged during the summer that corporation tax receipts were surging ahead, it was said that this was due to a change in the accounting rules. I took the view that those types of rules were predictable and did not happen overnight. Mr. Cody said in his correspondence that there was a significant change for the telecommunications and software sectors, where long-term contracts are complex and arrangements are prevalent as to when they record their income. He took the view that there is a transition period to record this but a number of these companies put it all into year one. The Revenue Commissioners could not predict that which led to the €350 million of extra receipts.

Mr. Niall Cody: We need go back to what we do. In terms of our contribution to the forecast, the Department has its figure for the growth rate and all of that. We do our survey of our large companies. They feed us information in October about next year. At the time they had not identified what they were going to do.

Chairman: Would they tell the Revenue Commissioners in advance and would it have an indication from its surveys?

Mr. Niall Cody: In the survey we try to get-----

Chairman: Is it voluntary?

Mr. Niall Cody: Yes, it is voluntary. There is great co-operation but the reality is that one can see when a company is doing its quarterly or six monthly report, and it misses its own fore-

cast targets. There is volatility in corporation tax receipts with the small number of companies that have such an influence, and we have discussed this at length. A company can be significantly out and this can have an impact if it is one of the big companies.

Chairman: It is its call to bring forward some of this in year one and to pay the tax and move on. For people watching with an interest in this area, the reference for this correspondence is 32R001683-PAC. It makes interesting reading. People were mystified as to how this extra amount of money appeared.

Mr. Cody's letter stated that towards the end of the year, the figure was €350 million but he is now expecting a figure of €1.5 billion in excess compared to the original budget predictions.

Mr. Niall Cody: It is €1.1 billion.

Chairman: I am sorry; I meant to say €1.1 billion. Mr. Cody stated that Revenue's assessment is that of the €1.1 billion expected surplus this year, between €700 million and €800 million of this increase may be due to once-off issues in 2018. This €350 million is due to the International Accounting Standards, IAS, rule 15 change, that we spoke about. That means there is another €415 million unexplained in Mr. Cody's letter. How did that other €415 million come about? Mr. Cody has gone some way to explaining the €350 million. What is the make up of the other €415 million?

Mr. Niall Cody: The remainder relates largely to higher sales levels for some companies that they do not expect to repeat next year.

Chairman: Okay.

Mr. Niall Cody: We would have highlighted the €350 million to the Department back in June. In the context of the October figures, I remember when Mr. Walsh told me. We reported that based on the indications from our interaction with the large companies. It then became part of the budget arithmetic. I was very conscious of the fact that we had given a figure of €1.1 billion. Much of the commentary was that we had found €1.1 billion. We had not. We did not have that at the time we wrote this letter. A small number of companies paid a significant amount more than they expected-----

Chairman: Themselves.

Mr. Niall Cody: -----themselves at October last year. Their indication is that they do not expect that to happen to the same extent next year.

Chairman: Mr. Cody is saying that he expects the corporation tax receipts in 2018 to be €9.6 billion, as stated in his letter, and that next year he expects it to be approximately €9.5 billion, which is a fraction less, but close enough. What figure did the Minister announce on budget day for corporation tax?

Mr. Niall Cody: He announced those figures.

Chairman: The €9.5 billion. He has that figure since the beginning of October.

Mr. Niall Cody: He said that he was going to take a prudent approach. He was not going to take the €9.6 billion and add on to the 5%-----

Chairman: Even though there is growth in the economy and usually the Department of

Finance would have a-----

Mr. Niall Cody: We are taking the €700 million to €800 million back out of the €9.5 billion, adding the percentage-----

Chairman: Add in the growth.

Mr. Niall Cody: -----one gets back to the same figure.

Chairman: I understand and I hope everybody watching understands this also. This leads on to the last question. Last night, as Mr. Cody said, was the pay and file date. Has he any idea of what landed in his bank account last night or would he know that yet? What was he expecting?

Mr. Niall Cody: Last night-----

Chairman: What was it on 14 November?

Mr. Niall Cody: By midnight on 14 November, we had the highest number of pay and file returns under ROS. For the first time we had over 500-----

Chairman: I will give Mr. Cody an opportunity to say that.

Mr. Niall Cody: We have 505,000-----

Chairman: Some 505,000-----

Mr. Niall Cody: A total of 505,000 returns were filed under ROS by midnight last night.

Chairman: What was last year's figure?

Mr. Niall Cody: That is the first time it has gone over 500,000.

Chairman: So Revenue is well over 500,000.

Mr. Niall Cody: The figure is 505,000. Those are returns filed-----

Chairman: Prior to last night.

Mr. Niall Cody: Prior to midnight last night.

Chairman: Does Revenue have the figure for pay and file?

Mr. Niall Cody: We do not yet have that figure. That figure must go through a process but it will appear in the November Exchequer returns.

Chairman: That is good. That is the predictions issue. We now turn to the Revenue letter regarding corporation tax. I have a few points. Has Revenue got all the Apple money in the escrow account? Could Mr. Cody tell us what is in that?

Mr. Niall Cody: We are not responsible for-----

Chairman: Is the Department of Finance responsible for it?

Mr. Seamus McCarthy: It is the NTMA.

Mr. Niall Cody: The Minister and Department have confirmed that all the money is in escrow.

Chairman: It is all collected at this stage?

Mr. Niall Cody: It is in escrow.

Chairman: There are some other small items. In respect of the role of the Criminal Assets Bureau in terms of collecting tax, if it takes over an individual case, is it responsible for collecting the tax? Does Revenue step out of those cases once the Criminal Assets Bureau goes in? What is the protocol? Does the Criminal Assets Bureau collect much tax? Where does this tax go? Does it go into Revenue's account or into another account?

Mr. Niall Cody: The Criminal Assets Bureau is made up of members of An Garda Síochána, Revenue and the Department of Employment Affairs and Social Protection. We have 17 officials seconded to the Criminal Assets Bureau and they act as inspectors of taxes and officers of customs and excise for tax-related work for the Criminal Assets Bureau, raise assessments and handle appeals for criminal assets cases. Part of the success of the Criminal Assets Bureau is down to multi-agency work but members of these agencies become members of the bureau while they are assigned to it and they use the full powers involved in the tax Acts.

Chairman: Where is the money lodged? Is it a Criminal Assets Bureau account or a Revenue account? Does the Comptroller and Auditor General know?

Mr. Niall Cody: The Criminal Assets Bureau is the-----

Mr. Seamus McCarthy: It is a separate account.

Chairman: When does it get transferred? Where does it get transferred to?

Mr. Seamus McCarthy: I would have to look back.

Chairman: The Comptroller and Auditor General will come back to us. Somebody knows.

Mr. Niall Cody: Mr. Gilligan will know.

Mr. Michael Gilligan: My understanding is that on the customs and tax side, these are Revenue officials working using all the Revenue powers under the coat of the Criminal Assets Bureau along with officers of the bureau. When they raise the assessments, they also undertake all the collection. It initially goes into a Criminal Assets Bureau account and then moves into a Revenue account.

Chairman: So it is ultimately transferred to Revenue.

Mr. Seamus McCarthy: There would be long delays, particularly in the case of seizures, with the Criminal Assets Bureau. It can take up to six or seven years-----

Chairman: For some of the cases.

Mr. Seamus McCarthy: For things to be passed on.

Chairman: I hope they are collecting the interest as well.

Mr. Niall Cody: They will certainly seek to.

Mr. Seamus McCarthy: Nobody is paying interest at this stage. Once they have the money in their hands, they are probably not gaining much interest.

Chairman: I might have asked my next question about the exchange of information between Revenue and the Department of Employment Affairs and Social Protection previously. It concerns people who have a lot of deposit interest retention tax, DIRT. We often hear about constituents who have been notified by Revenue that they had “X” amount. What is the protocol or procedure? Are there many such notifications?

Mr. Niall Cody: I do not know how many notifications there are. We have a very well-developed exchange of information regime both ways with the Department of Employment Affairs and Social Protection that is bound in law and subject to the GDPR.

Chairman: It is working.

Mr. Niall Cody: It is working. We work closely.

Chairman: It also includes bank accounts in other jurisdictions. We have often heard people with bank accounts in England being caught under this.

Mr. Niall Cody: It involves us having information that is of use to the Department that relates to specific matters. It is not a trawl. In some cases, there are many people who are customers of both organisations but there is a clear category of people who are customers of Revenue only or the Department only. Of those who are customers of the Department only who are in receipt of means-tested payments, if they appear on our side, it may be of interest to the Department.

Chairman: So the IT system has a way of matching those things. If it sees somebody cropping up on a DIRT return who is in receipt of a mean-tested payment, the person will get the letter.

Mr. Niall Cody: Hopefully.

Mr. Seamus McCarthy: The Department would be very reliant on commencement of employment information.

Chairman: To inform the public as much as anything, could Mr. Cody tell the public about the PAYE modernisation on 1 January? What is happening here?

Mr. Niall Cody: From 1 January 2019, we are moving to an integrated payroll reporting system under which employers will provide pay and tax details to us as they do their salary run. That will be integrated into our system. It will lead to the abolition of all the “P” forms such as the P45, the P60, the P30 and the P35. The 2018 P35 will be the last such form. It will be due in February. We will then populate individual employees’ tax and credit data on an ongoing basis to ensure that employees get the right reliefs and credits as they are paid. When it comes to January 2020 when we have the first full year, we will be able to carry out automatic reviews. Most people under PAYE have one salary. Everything should work reasonably well but many people have multiple wages. Some employers have not been operating the proper tax credit system but we will be able to integrate and adjust it throughout the year. It is a massive change. We have been involved in significant engagement with employer groups all over the country. It will be the most significant change in the tax administration system since the introduction of self-assessment. In some ways, it will be bigger than that because it will affect 2.7 million

people.

Chairman: Could Mr. Cody explain it to people who use a P60 for a means-tested social welfare payment or a medical card application or who are asked to supply their income details when they apply for a third level grant? They will not have the traditional piece of paper from next year onwards so what will they do?

Mr. Niall Cody: In our system, they will have access to their record in our system, which will give them the up-to-date pay and tax details during the year and at year end. They will be able to print off this information or get it from us if they do not have the facility to print it. One of the things we are really interested in doing is providing other bodies with once-off access to these records to streamline that process with local authorities, SUSI or-----

Chairman: What does Mr. Cody mean by “once-off”?

Mr. Niall Cody: The other body would be able to go online and check my pay and tax details through my giving them a number it could look up.

Chairman: Authorisation.

Mr. Niall Cody: Yes, but it would be once-off. The body could not keep looking up-----

Chairman: For each event?

Mr. Niall Cody: For each event.

Chairman: If a SUSI grant comes up next year, the body must come back again to get once-off authorisation next year. It does not apply forever.

Mr. Niall Cody: With SUSI, we do an exchange.

Chairman: Could Mr. Cody talk us through that? It is a broader issue relating to the practical working out of Revenue’s changes to its system. People often talked about a common means test across Government Departments. This may facilitate that in the long term.

Mr. Niall Cody: This will provide a platform for other agencies to do things differently and will also give real-time information. Part of the problem with means testing is that it is historical information. It often relates to income from two years ago. One of the things we are really interested in exploring is the idea that if a person is going for mortgage approval, he or she would be able to give the bank access to up-to-date data there and then.

Chairman: Half way through the year.

Mr. Niall Cody: Yes.

Chairman: The individual will be able to get it.

Mr. Niall Cody: Yes.

Chairman: Everybody will have a pin number to log in.

Mr. Niall Cody: Probably from the end of May the individual employee will be able to. Obviously we must have the IT systems. The key now is to have the employer phasing, but we are aiming for May to have the facility whereby every employee will be able to see what is reported to us in respect of his or her pay and tax.

Chairman: They will be able to make sure it has gone in.

Mr. Niall Cody: They will not be able to check whether the employer has paid.

Chairman: Not gone in but they will see it is recorded.

Mr. Niall Cody: It is really important. Every so often companies go into liquidation and they end up owing PAYE and PRSI on behalf of their employees. Their employees have no idea that it was not paid. At least it will be reported, we will know how much is involved and we will be able to move quickly. It has significant positive benefits for employees and it will have significant benefits for compliant employers. At present they must complete a P35 for us. It will have significant benefits for us in that we will be able to review everybody's tax at the start of the year without them doing anything. We will probably be back here talking about PAYE modernisation in a couple of years.

Chairman: It is probably awkward for the small employer who may have one or two employees.

Mr. Niall Cody: We have engaged with all the software providers. It is interesting that a number of them are providing free software for one or two employees. It is on the basis of getting them in at the start. For those who do not use payroll software we are providing a facility on ROS, the Revenue online service, to enter a simplified procedure. We have been conducting seminars throughout the country and somebody told one of our crew that he had got the software because of this. The person could not get over why he had not got it years ago because it is much cheaper and it did the wages.

Chairman: Yes.

Mr. Niall Cody: One of the concerns certain people talk about is that they will have to do all these wages and all this reporting to us, but under employment law the employer is supposed to do all those things anyway.

Chairman: People are entitled to a payslip.

Mr. Niall Cody: Yes. This will provide a facility and it will take all the paper out of the system.

Chairman: Okay. A couple of members asked me to make a final comment to the Comptroller and Auditor General. When his report came out at the end of September the chapter about the number of high worth individuals paying less income tax than many people on the average industrial wage created an impression among the public. I got the same impression and I had to telephone him about it that day. It created the impression that there were many wealthy people in Ireland. It transpired very quickly that some of them might not be in Ireland at all and might just have a property in Ireland. Many of us probably did not read the detail of the chapter, which is the first thing that must be said. People looked at the headline, myself included. I believe I got it right by 6 p.m. but I might have got it wrong earlier. I hope somebody does not produce a transcript of something I said. I was on the "Six One News" trying to explain it to the news reporter as best as I could. It was a little technical but the Mr. McCarthy might just-----

Mr. Seamus McCarthy: Yes, we had discussed it before then.

Chairman: -----give a comment on it. I realise that if we had read the detail there was no issue but on the day people reacted quickly and they probably did not get the details beforehand.

Many people jumped the gun and there were many articles about it. This is not about the accuracy of the report.

Mr. Seamus McCarthy: There is a great deal of detail, particularly on the Revenue Commissioners side. They are very complex chapters and they need careful reading. We will try to examine summarisation. We do not generally provide a summary of the report but we might examine it there.

Chairman: Mr. McCarthy issued a small comment with a couple of pages on the key chapters. Perhaps you could flesh them up a little. I am not asking him to produce two documents and a full summary but perhaps he could flesh it up a little. We were all probably somewhat guilty of this as well.

Mr. Seamus McCarthy: We do not mount-----

Chairman: I notice Mr. Cody is smiling broadly at all this.

Mr. Seamus McCarthy: We do not mount a PR campaign.

Mr. Niall Cody: I was trying to find the press release but I am told it is not here. It was not issued by the Comptroller and Auditor General.

Mr. Seamus McCarthy: We do not issue a press release on the report.

Chairman: It could have been by me. I am being upfront. It was in the first few hours. I telephoned Mr. McCarthy in the afternoon after a couple of hours-----

Mr. Seamus McCarthy: Yes.

Chairman: -----and then I tried to calm it. I am just saying that if I got the wrong impression others could have done so. Perhaps in that summary document-----

Mr. Seamus McCarthy: The summary that is prepared is exclusively for the members of the committee.

Chairman: It is for our benefit.

Mr. Seamus McCarthy: We do not issue a summary document to the public. I hope that what was contained in the summary document was correct.

Chairman: I am sure it was.

Mr. Seamus McCarthy: I hope it was. We will certainly look at it again in case there was anything misleading.

Chairman: Yes, but some people can read something and not spot a subtlety in the detail.

Mr. Niall Cody: As I said earlier, a lot of this is complex. There is a great deal of data involved.

Chairman: We have probably lost our audience at this stage.

Mr. Niall Cody: We exchange that information between ourselves and we are probably all stuck in the stuff-----

Mr. Seamus McCarthy: In addition, as we are familiar with the detail we might see the nuance where others will not.

Mr. Niall Cody: We could get the Comptroller and Auditor General to put on the Revenue chapters, “Nothing to see here”-----

Mr. Seamus McCarthy: Which is usually the case.

Mr. Niall Cody: -----but I am not sure whether-----

Chairman: What would we do then?

We have completed the discussion on this as I let the other members speak before me. I thank the witnesses from the Revenue Commissioners and the Department of Finance and the Comptroller and Auditor General and his staff for attending the meeting. We have completed the public part of today’s meeting and the next meeting is scheduled for next Thursday, 22 November, when we will meet representatives from the Department of Health and the HSE on matters related to Chapter 15 of the Comptroller and Auditor General’s report on hepatitis C treatment in Ireland. We will also cover matters relating to the general management of medical negligence.

We will meet in private session at 2.30 p.m. on matters raised by an individual related to the systems and procedures to handle protected disclosures in the Prison Service.

The witnesses withdrew.

Sitting suspended at 1.37 p.m. and resumed in private session at 2.30 p.m. until 5 p.m.

The committee adjourned at 5 p.m. until 9 a.m. on Thursday, 22 November 2018.