

Minute of the Minister for Finance
on the Second Interim Report for 2002 of the Committee of Public Accounts
on the Dept. of Finance, the Revenue Commissioners
& the National Treasury Management Agency

The Minister for Finance, having consulted the Office of the Revenue Commissioners and the National Treasury Management Agency (NTMA), makes the following response to the recommendations contained in the Second Interim Report of the Committee on the Department of Finance, the Revenue Commissioners & the NTMA.

1. Office of the Revenue Commissioners – Vote 9
Chapters: 2.1 – 2.6 & 2.10

- *The level of tax debt and the extent of debt collected should be managed against performance targets.*

The Minister for Finance would point out that the level of tax debt and the extent of debt collected are indeed managed against performance targets, as illustrated by a commitment in the Revenue Statement of Strategy 2003-2005 (Strategy 1.1 – Maximise Collection Compliance). It is also a Revenue key corporate priority for 2005 and a key strategy under the Commissioners' Statement of Strategy 2005 – 2007.

- *Revenue should continue its investigations arising from the DIRT investigation and disclosures at tribunals. The Committee would like to be kept informed of progress in these investigations.*

The Minister understands that the Revenue Commissioners provide a continuous update at all meetings of the Committee at which they attend. A summary table on yields from Revenue Special Investigation to 30 September 2005 is set out below.

Investigation/ Initiative	Total Yields	Tax paid	Interest & Penalties	Numbers of cases	
	(A+B)	(A)	(B)		
	€m	€m	€m		
Bogus Non-Resident Accounts [(i)+(ii)+(iii)]	820.2	325.7	494.5	12,200	(to date)
(i) Bank look-back audits (1998-2000)	225.0	91.5	133.5	25	
(ii) Voluntary Disclosures 2001 (customers)	227.2	116.2	111.0	3,675	
(iii) Post-November 2001 investigations	368	118	250	8,500	(to date)
Offshore Assets*	762.2	348.2	414	13,473	(to date)
Single Premium Policies*	366	117	249	5,000	
Ansbacher*	53	31.2	21.8	100	
NIB/Clerical Medical*	55.5	28.1	27.4	302	
Tribunals	34.8	21.4	13.3	16	
TOTAL	2,091.6	871.6	1,220.1	31,091	

Note: Any apparent discrepancies in totals are due to rounding of constituent figures.

The tax paid at (A) above includes Income Tax, PAYE, VAT, Corporation Tax, CAT, CGT, Income Levy, PRSI and Health Levy.

*Breakdown figures of tax and interest/penalties shown in these rows are especially tentative.

- ***Future Revenue audits of financial and insurance institutions should be undertaken in a manner that minimises the risk that latent tax liabilities will not be discovered.***

The Minister understands that the Revenue Commissioners have revised and updated for audit purposes the risk ratings of the financial and insurance institutions. The revised risk ratings will ensure that a more detailed audit methodology will be applied to financial and insurance institutions. This position will be carried through in relation to any follow-up audits which may arise from other Revenue investigations. The Restructuring Programme carried out in Revenue will also contribute to the greater effectiveness of audits and investigations.

Revenue are conducting an investigation into taxpayers who invested undeclared and undisclosed funds **in life assurance investment products**. The investigation is being conducted in two stages. In the first stage, taxpayers were given until 23 May 2005 to advise Revenue if they had a tax issue in this connection. The disclosure stage has been successfully completed and 10,000 persons have notified Revenue that they may have a tax issue. A further 2,000 persons have written to Revenue to say that they have no outstanding tax issues. Taxpayers who have tax issues and who decided to elect for this option had until 22 July 2005 to pay their outstanding liabilities. To 30 September 2005, payments of €366 million had been made to Revenue by taxpayers who used life assurance products to evade tax. Investigation work is in train to identify the taxpayers who should have availed of this disclosure scheme but who opted not to.

A Large Case Division is now fully established in Revenue and has a specific focus on large companies, including financial and insurance institutions and high net worth individuals, with a target to ensure that all such entities are fully tax compliant. An Investigations and Prosecutions Division is also now fully established and focuses on identifying and pursuing taxpayers who engaged in tax evasion as well as on prosecution of persons involved in serious tax evasion.

- ***Revenue should apply more systematic checks on compliance with conditions for wealthy persons claiming non-resident tax status and publish information on the numbers availing of this tax status and an estimate of the tax forgone.***

The Minister is informed that the first part of this recommendation is being implemented, but that for the reasons set out below, it is not possible to implement the second part in full.

Revenue have intensified the application of more systematic checks on compliance with conditions for wealthy persons claiming non-resident tax status. From 2004, income tax returns are requesting data from taxpayers in relation to their residence and domicile status. However, this is not being captured electronically at present,

which means that it is not practicable to compile overall statistics at this stage in relation to claims to non-residence/domicile status.

As regards the tax forgone, presumably this refers to income anywhere in the world which would have become liable to Irish tax had the Irish-domiciled person also been resident in Ireland. The Minister is informed by the Revenue Commissioners that it is not possible to provide an estimate of the tax forgone unless Irish-domiciled non-residents are required to file details of income arising outside Ireland on their Irish tax returns. Since such income is not subject to Irish tax, it is not clear that this information could reasonably be requested on an Irish tax return.

2. Office of the Revenue Commissioners – Vote 9
Chapter: 2.9
Revenue Random Audits

- *Random audits should be factored into the Revenue audit strategy. The Committee supports the decision to revert to a purely random basis for that element of the audit programme for 2004.*

The Minister is informed that the Committee's recommendations on Revenue's Random Audit Programme have been accepted by the Revenue Commissioners and have been implemented.

Purely random audits have been factored into Revenue's National Audit Programme strategy for 2005 and onwards. Revenue, in recognition of the benefits of purely random audit selection, replaced the traditional random audit programme with a new Taxpayer Compliance Testing Programme.

Revenue recognise that random audit type interventions are beneficial in improving risk identification and for the provision of a statistically-valid compliance measure and to ensure that no taxpayer is exempt from the possibility of having their compliance position checked.

The development of a new Taxpayer Compliance Testing Programme incorporates pure random case selection and tests compliance on three fronts - payment compliance, filing compliance and reporting compliance. The purpose of the exercise is to establish the liability which has been paid for a relevant period and compare this to the liability which should have been paid. Not only will this programme act as a deterrent measure, it will also validate and support the risk criteria used to select cases for future audit using the computerised ESKORT risk scoring system recently introduced.

- *An overall estimate of the scale of undeclared tax liabilities should be derived from the results of a representative sample of random audits.*

This recommendation has been accepted in principle by the Revenue Commissioners. The results of the sample from the new Taxpayer Compliance Testing Programme will not be available until the programme evaluation is finalised. This is targeted for end-2005. It is planned to carry out this programme at regular intervals. Over time, these results will begin to give some indication of the scale of undeclared liabilities.

3. Office of the Revenue Commissioners – Vote 9
Chapters: 2.7 & 2.8
Prosecution of Tax Evaders and Non-Filers of Income Tax Returns

- ***Revenue needs to increase the number of cases brought forward for prosecution of serious tax offences in order to demonstrate its determination to deal with the tax evasion problem.***

This recommendation has been accepted by the Revenue Commissioners. Part of the Restructuring Programme carried out in Revenue has provided for the establishment of a specialised Investigations & Prosecutions Division. One of the primary objectives of this new Division is to increase the number of prosecutions for serious tax offences.

- ***The Revenue prosecution strategy in relation to non filers needs to continue to be actively managed to improve the effectiveness of its contribution to the overall compliance strategy.***

Revenue accept this recommendation and continues to actively manage its strategy in relation to the pursuit of non-filers and to the prosecution of cases where deemed necessary. The ability to deal specifically with non-filers was greatly enhanced in 2004 by the introduction of a new module into its case management (Active Intervention Management AIM) system. This system supports case working electronically from the district right through to the Revenue Solicitor's Office.

Revenue also have a new Risk Analysis System running on a pilot basis in four districts. This facilitates the identification of cases, including non-filers, where revenue is most at risk by analysing taxpayer behaviour/performance across taxheads for which the taxpayer is registered.

Following the successful conclusion of the pilot period, this system will be rolled out to all districts and will enable caseworkers to focus on the taxpayer from an overall compliance perspective, thereby enabling Revenue to deliver on Item 1.2, Output 3 of its Statement of Strategy 2005-2007, i.e., “timely and robust action against taxpayers who fail to file returns”.

- ***There should be more effective co-ordination between Revenue, the Courts Service and the Garda Síochána in the collection of fines imposed for tax offences.***

Revenue have accepted this recommendation. As part of Revenue's Restructuring Programme, responsibility for ensuring that the matter of collection of fines by the Court Services/Gardaí is given to a specific Officer in each Revenue District. This Officer liaises with the Courts, the Gardaí, and State Solicitors. Liaison is taking place with the Courts Service to make the process more effective and efficient.

- ***The Committee requests Revenue to bring forward a more effective method of fine collection.***

Collection of fines imposed by the Courts for criminal prosecutions is the responsibility of the Department of Justice, Equality and Law Reform and of An

Garda Síochána and the Minister has drawn that Department's attention to the Committee's recommendation.

4. Office of the Revenue Commissioners – Vote 9 Revenue Investigation into Offshore Accounts

- *The Revenue Commissioners' initiative in meeting the relevant financial institutions should be continued. The Committee would like to be kept updated on the discussions and the likely tax gain which may arise.*

The Revenue Commissioners accept this recommendation. The Minister understands that the Chairman of the Revenue Commissioners has had individual meetings with the chief executives of ten financial institutions which had or have offshore affiliates and each financial institution undertook to co-operate with the investigation into offshore accounts. Each offshore affiliate wrote to their customers in the State advising them of the imminent investigation and advising them of the benefits of a voluntary disclosure. This co-operation resulted in more than 15,000 individuals making voluntary disclosures and the total amount collected from such voluntary disclosures at 30 September 2005 was €762.5m.

- *Revenue should use the new powers conferred by the Finance Act 2005 to pursue aiding and abetting prosecutions.*

The Revenue Commissioners accept this recommendation and have assured the Minister that where the circumstances allow, offences under this section will be investigated with a view to prosecution from now on. (Under the Constitution, the new section cannot have any retrospective effect.)

5. Department of Finance – Vote 6
Chapter 1.1
Tax Reliefs

- *A tax incentive scheme should not be introduced without both a proper analysis of its potential benefits and its effect on tax revenues. Adequate provision should be made for data collection to monitor the extent of take-up and impact.*

The Minister has indicated in Budget 2006 that he intends to follow this practice as appropriate for the future.

Finalisation of the reviews of the various tax incentives, commissioned by the Department of Finance, should be prioritised to facilitate early detailed consideration of proposals by the Oireachtas.

Work on the reviews has been finalised and in Budget 2006 the Minister announced the relevant proposals arising from the reviews: these will be included in the Finance Bill. The debate on the Finance Bill will afford an opportunity for consideration of these proposals by the Oireachtas.

6. Department of Finance – Votes 1, 6, 7, 12

- ***Efforts to control the costs of tribunals should be pursued by the Department of Finance. The Committee would like to be kept informed of these efforts.***

The Minister shares the Committee's concern that the cost of tribunals should be held to the lowest level consistent with the establishment of the facts surrounding the issues under investigation. However, once a tribunal has been established under statute, the capacity of the Minister on whose vote the costs are met or the Minister for Finance to control its costs is quite constrained. Public inquiries are inherently an expensive mechanism for investigating an issue: third-party legal fees are the principal element (representing 68% of the total costs of fully-completed Tribunals) and it has been confirmed by the Supreme Court in the case of *In re Haughey* in 1971, that "where a party to the proceedings is at risk of having his good name, or his person or property, or any of his personal rights jeopardised", he or she has an entitlement to representation under Article 40.3 of the Constitution. The principle of the independence of the Chairperson in the conduct of a tribunal has also been upheld by the Supreme Court (*Flood v Lawlor* in 2000) which ruled that a Tribunal must have "a significant measure of discretion ... as to the way in which it conducts [its] proceedings".

For the information of the Committee, the Minister would point out that he and his predecessor have been closely involved in a number of initiatives seeking to control costs:

- In July 2004, Government approval was secured on the initiative of the then Minister for Finance for the payment of reduced fees, payable for the entirety of the Tribunal, for all legal representation - including that of Third Parties - at Tribunals or Inquiries established from 1 September 2004. The new fee structure is being applied to existing Tribunals and Inquiries with effect from various dates set in the light of consultations between the Attorney General and the Chairpersons of each Tribunal/Inquiry. The revised fee to be paid to a Senior Counsel is based on the current annual salary of a High Court Judge with related payments being made to other legal personnel. It is not possible to quantify the extent of the savings flowing from this initiative as that will depend on the legal representation employed by the new Tribunals/Inquiries and the level of third-party costs, but the new rates represent less than 45 per cent of the maximum rates previously payable to Tribunal/Inquiry counsel.
- The Minister for Justice, Equality and Law Reform has developed, in consultation with the Attorney General and the Minister for Finance, draft legislation to provide a statutory basis for the regulation of both Tribunal and Third-Party legal costs payable by the State and to improve the operational efficiency of the Tribunals. These measures largely derive from the Government decision of July 2004, and it had originally been intended to incorporate them in a short Bill. However as that Bill would have represented the sixth amendment to tribunals

legislation in the past seven years and as the Law Reform Commission report on “*Public Inquiries including Tribunals of Inquiry*” became available during the Summer of 2005, it was decided to consolidate and reform the existing tribunals legislation, incorporating the measures originally intended for the short Bill. The Minister for Justice Equality and Law Reform published these proposals as the *Tribunals of Inquiry Bill 2005* on 25 November 2005. Among the measures included in the Bill are:

- A revised process for setting and amending terms of reference of a tribunal;
- Specific monitoring of estimated costs and duration;
- Provision in certain circumstances for the suspension or dissolution of a tribunal;
- Provisions governing the taking of evidence;
- Provisions regarding "reading in" of evidence already available in written form which is not disputed;
- Clarification on the granting of legal representation before a tribunal;
- Provision for publication of interim reports and for the admissibility of tribunal reports in civil cases;
- Clarification in relation to the award of costs by a tribunal - cooperation remains the key determinant for an award of costs;
- Regulations, to be made with the consent of the Minister for Finance, will set out the maximum levels of legal costs recoverable.

- [The Commissions of Investigation Act 2004](#) offers an alternative to Tribunals (or, in some cases, will provide a focussed context for a follow-up Tribunal). [The main difference between a Commission of Investigation and a Tribunal of Inquiry](#) is that the Commission model [facilitates voluntary co-operation, while having compellability powers in reserve](#). [The taking of evidence in private](#) should also expedite the investigative process. The Department of Finance has cooperated with the Department of the Taoiseach in establishing the statutory guidelines on legal costs and witness expenses to the *Commission of Investigation into aspects of the Dublin and Monaghan Bombings* (the McEntee Commission), which was the first investigation to be set up under this legislation, and with the Department of Justice, Equality and Law Reform in relation to the Commissions of Investigation into the *Dean Lyons case* and *Complaints of Clerical Child Abuse*. The legal teams acting for these Commissions are being remunerated at the levels provided for in the Government Decision of July 2004.
- At the invitation of the Mahon (Planning) Tribunal, the then Minister for Finance made a substantial submission in 2004 on the liability of the Exchequer for Third Party legal costs. The submission followed liaison with the Attorney General and the Minister for Justice, Equality and Law Reform and put forward a number of proposals aimed at reducing costs, with particular emphasis on the principles the Minister felt should be considered in determining applications for costs by

persons against whom findings of corruption were made or who failed to cooperate with or provide assistance to the Tribunal. These principles were reflected in the determinations by the Morris Tribunal, as well as those by the Mahon Tribunal, that certain parties would be refused costs, and that some others would recoup only a proportion of the costs they incurred.

- Further legal submissions were made on behalf of the Minister for Finance to the Mahon Tribunal in May 2005, in relation to the recoupment of costs to unrepresented parties.
 - Bills of Costs presented by the legal representatives of persons appearing before Tribunals are reviewed and, as appropriate, submissions seeking reductions in the costs payable are made to the Taxing Master. While this is primarily a matter for the Accounting Officers of the Departments whose Votes bear the costs of the individual Tribunals, the Department of Finance supports and sanctions the engagement of Legal Cost Accountants to ensure that the necessary technical expertise is available to the State side in this process.
- ***Future tribunals should be required to furnish an annual report of activities and costs to the Oireachtas.***

The *Tribunals of Inquiry Bill 2005* proposes to implement the Law Reform Commission's recommendation that the responsible Minister should have the power to request an interim report on the general progress of the inquiry of a tribunal or on a particular aspect of the inquiry.

- ***The Department of Finance should prepare annually estimates of the contingent liabilities in respect of each tribunal. The level of uncertainty attached to the awarding of costs necessarily means that estimates will have to cover a range of scenarios.***

The Minister fully shares the Committee's concern about the very significant costs now accruing at tribunals and expects that the forthcoming legislation will reflect that underlying concern. However, asking the Accounting Officers for the Votes concerned to prepare such estimates would involve major difficulties. The difficulty and expense of monitoring the nature and extent of the exposure for each witness and every search for discovery should not be underestimated. Even if the exercise were to be done by the Tribunals themselves, the outcome of claims for payment of legal costs that may be refused in whole or in part, and which may subsequently go to the Taxing Master for adjudication, suggests that the outcome would necessarily be speculative.

The Law Reform Commission has recommended the inclusion of a provision in legislation that within a short period of its establishment, a tribunal would be required to prepare a statement of estimated costs likely to be incurred on foot of its investigations, together with an estimated timeframe for submission of its report. Provision would be made for amending this statement should the terms of reference of

the tribunal be amended or where it becomes apparent that the elements of the original statement are no longer appropriate. The original and any supplementary statements of this nature would be presented to the Dáil. Again, this recommendation is being implemented in the *Tribunals of Inquiry Bill 2005*.

More generally the Minister for Finance will draw the Committee's remarks, and his comments above, to the attention of those Accounting Officers from whose Votes Tribunal costs are met.

**7. National Treasury Management Agency: Financial Statements 2002;
National Development Finance Agency; State Claims Agency
Chapter 13.1**

- *PPPs should only be used where there is a demonstrable economic benefit in doing so. The balance sheet treatment of the PPP should never be the deciding factor.*

The Minister would point out that the Guidelines for PPP procurement stress that value for money must be tested at various stages in the procurement. All capital investment proposals, including PPPs, are subject to the Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector, the recent revision of which was issued by the Department of Finance in February 2005. Under these Guidelines, Departments are required to assess the benefits of a project before moving to the procurement stage and this applies equally to PPP projects.

The Minister would stress that the procedures and guidance in place are focussed on the potential for achieving value for money as the key criterion; the balance sheet treatment of a PPP under EU rules in the National Accounts is not a consideration. The Minister would point out that all public investment, whether Exchequer financed or financed through a PPP arrangement involving a deferred payment mechanism, is approved within an overall capital investment framework. Where Ministers decide that a project will go ahead on a PPP basis their Departments and agencies can avail of the services of the NDFA to identify the optimal means of financing.

- *The NPRF should be more proactive in exploring innovative ways of using its funds in PPPs.*

The Minister would point out that the National Pensions Reserve Fund (NPRF) is controlled and managed by the National Pensions Reserve Fund Commission. Under the terms of the National Pensions Reserve Fund Act 2000 (No. 33 of 2000) which established the Fund, the Commission is independent of Government in the exercise of its functions, including the determination and implementation of the Fund's investment strategy in accordance with its statutory investment mandate. This mandate requires that the Fund operate on a commercial basis so as to secure the best possible financial return, subject to prudent risk management. The Minister is not, therefore, in a position to implement the Committee's recommendation because the Commission is statutorily independent.

The Minister has, however, been informed by the Commission that it has made €200m available for investment in PPP projects in Ireland since 2003 and that it will add to this should suitable opportunities arise. In 2004, the Fund joined a consortium tendering for the M50 motorway upgrade. In its Annual Report & Financial Statements 2004, published in July 2005, the Commission stated that in future, rather than joining particular consortia in tendering for projects, it will make equity and/or debt finance available to the winning bidder provided it is satisfied with the prospective rates of return.

The Commission has in addition informed the Minister that the moneys it has made available for PPPs, and any moneys it will make available in the future, must be made available to the market on commercial terms if the Fund is to comply with its mandate to secure the best possible financial return.

The Minister notes that, as with PPPs generally, the involvement of the NPRF with those who have successfully tendered for PPP projects would of course be subject to the relevant EU and national public procurement rules.

- ***Monthly reports of savings achieved in servicing the national debt should be provided by the NTMA as an input to the Department of Finance's monthly statements on the state of the public finances.***

The Minister will from 2006 onwards publish a profile for debt service expenditure for the year, along with the profiles for expected voted expenditure and expected tax revenues which are currently published at end-January each year.

Given under the Official Seal of
the Minister for Finance this
20th day of December, 2005

L.S.

Thomas Considine
Secretary General
Department of Finance