



The Roundtable June 2022

The Tax Appeals Commission's year

The Tax Appeals Commission recently published its Annual Report for 2021. Can you please comment on notable cases at the TAC in 2021?

Sonia Howard, Tax Director, BDO: In 2021 the Commission closed 1,793 appeals, the highest in any year since its formation in 2016. During 2021, Income Tax remained the tax most frequently appealed, 48% of appeals closed.

Corporation Tax accounted for 6%, but a total quantum of €2.9bn. The majority of this relating to the most notable case of that year – that of the over-the-counter drugs company Perrigo.

In 2018, Revenue said Perrigo owed a €1.64bn tax claim from its acquisition of Irish pharma firm Elan. This related to the sale by Elan of its IP interests in multiple sclerosis drug Tysabri for an up-front payment of \$3.25bn and a share of future royalties. That sale occurred months before Perrigo bought what was left of Elan. The proceeds were counted by Elan as trading income, at the 12.5%



Sonia Howard

Corporation Tax rate. But Revenue argued it should be treated as capital gains, taxable at 33%.

Perrigo went to the High Court to overturn the assessment on the basis of legitimate expectation (i.e. they had treated similar disposals previously as trading, Revenue hadn't disputed these therefore they should have a legitimate expectation this disposal should also be considered trading). Perrigo was unsuccessful. The matter was back with

the TAC for the technical argument of trading versus capital. However, the case was settled without a full hearing or determination by the TAC.

Another case to note is that of Listowel Race Company Limited (Listowel). Although held in 2020, the determination was published in 2021. That determination refused the sporting exemption under section 235 of the Taxes Consolidated Act 1997 ("TCA 1997") on the basis that the company wasn't established for the sole purpose of promoting athletic or amateur games or sports. Much consideration was given to the phrasing in the legislation of "promoting athletic or amateur games or sports", whether athletic or amateur games or sports could be read as one or was the meaning intended to be separate activities, i.e. is "amateur games" separate from "sports" where the "or" separates two activities.

In 2021, Listowel appealed this in the High Court and won. Ms Justice Baker ruled the Appeal Commissioner wasn't correct in determining Listowel didn't exist for the sole purpose of promoting athletic games or sports and that the "sporting exemption" provision of the TCA 1997 was not confined to amateur sports only, to the exclusion of professional sports.

Revenue Commissioners annual report

The Annual Report of the Revenue Commissioners was published in May. Can you comment on its review of the year?

Philip Nolan, VAT Partner, BDO: Revenue announced net tax receipts of €67.5 billion in its 2021 Annual Report, an increase of almost 20% on 2020. This is a remarkable performance given the backdrop of the challenges and uncertainty caused by Covid-19 and Brexit.

The tax receipts were predominantly driven by:

- An increase in Income Tax receipts of c.17% on 2020 reflecting the strong recovery in the labour market coupled with the strength of wages in sectors less affected by the pandemic;
- The recovery in consumer spending

with VAT receipts up c.24% on 2020; and,

- A c.30% increase in Corporation Tax receipts predominantly driven by significant export sales and the performance of the life sciences/pharma and ICT sectors

The remarkable performance has continued into 2022 but we need to be conscious that we are likely to see the full impact of the war in Ukraine and inflationary pressures on the domestic economy in the second half of the year.

Another key takeaway from Revenue's Annual Report is that Revenue has released a revised "Code of Practice for Revenue Compliance Interventions" which came into effect on 1 May 2022 and will apply to all Revenue interventions notified on or after 1 May 2022. The new Code represents a significant change in approach from the previous code with considerable changes to compliance interventions and disclosure opportunities resulting in a heightened risk of substantially increased



Philip Nolan

penalties arising. With this in mind, it is more important than ever for taxpayers to periodically self-review their tax affairs to identify any errors in order to minimise any potential penalties and reputational risk as a result of same.