

## 18 Management of high wealth individuals' tax liabilities

- 18.1** High wealth individuals (HWIs) are individuals at the top of the wealth or income scale. While criteria vary from country to country, a HWI is generally considered to have assets of between \$1 million and \$50 million, while an ultra-high net worth individual has assets worth over \$50 million.<sup>1</sup>
- 18.2** Revenue manages HWIs separately within a dedicated unit in its Large Cases Division (LCD).<sup>2</sup> The Division's principal roles are to carry out customer service and compliance functions in respect of the State's largest corporate businesses and HWIs.
- 18.3** As at June 2018, approximately 480 HWIs were being managed within the Division, along with approximately 140 trusts, partnerships, certain companies and other legal entities. Non-residents with substantial economic interests in Ireland are also dealt with in the Division.
- 18.4** Companies which a designated HWI owns, part-owns, has a shareholding in or is a director of, are managed within the relevant geographical Revenue district or LCD corporate district, as appropriate. Family members of a HWI with lower incomes may also be monitored by the HWI Unit and trust and partnerships related to the individuals managed within the districts. A number of estates of deceased HWIs and a number of bankruptcy/liquidation cases are also managed in the Unit. Almost all relevant taxes and duties are managed within the Unit. Local Property Tax is the exception (although LPT liability may be included in an audit if relevant).
- 18.5** This examination reviews
- the tax risks posed by HWIs
  - the framework used by Revenue to manage HWIs
  - the types of credits and reliefs utilised by HWIs and their resulting tax liabilities
  - how Revenue organises and manages its anti-avoidance work and interventions vis-a-vis HWIs
  - how Revenue measures performance.

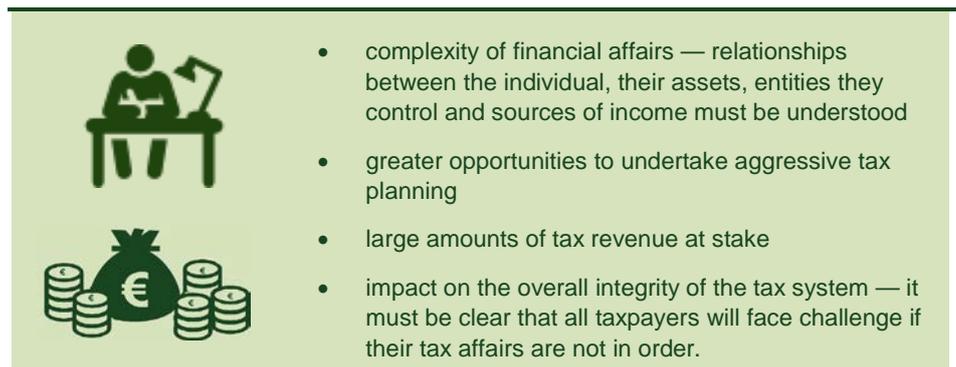
<sup>1</sup> *Global Wealth Report 2017*, Credit Suisse Research Institute (November 2017).

<sup>2</sup> The Large Cases Division was established within Revenue in 2003, following a review by a steering group appointed by the Minister for Finance. The steering group recommended the establishment of a large customers division to manage Revenue's largest corporate and individual taxpayers more effectively.

## The tax risks posed by high wealth individuals

- 18.6** While HWIs may have many business interests, a key difference between large businesses and HWIs for tax purposes is the limitation in publicly available information. Tax is generally assessed on income rather than wealth and information relating to assets is not required for income tax returns. This makes identifying HWIs and assessing associated risks challenging for revenue bodies. Figure 18.1 presents the common issues associated with HWIs which may warrant additional focus by revenue bodies.

**Figure 18.1 Features of assessment of HWIs' tax liabilities**



Source: *Engaging with High Net Worth Individuals on Tax Compliance*, OECD, 2009

- 18.7** Significant risks relating to HWIs are

- Almost all HWIs use professional tax advisers and may be more likely to have opportunities to engage in the use of bespoke tax avoidance schemes.
- HWIs typically have a higher international mobility than other taxpayers. HWIs are more likely to have economic interests and assets in more than one jurisdiction, which may make compliance more difficult.
- HWIs often pay a high ratio of Capital Gains Tax (CGT) relative to the other taxes they pay. CGT relates to a wide range of asset transactions, which pose risks such as incorrect deductions. Artificial capital losses are a prominent feature in many tax avoidance schemes.

### OECD framework

- 18.8** In 2008 and 2009, the Organisation for Economic Co-operation and Development (OECD) examined the management of HWIs and recommended that firm action combined with good compliance activity and good service can significantly improve compliance. The OECD's recommendations to tax administrations included<sup>1</sup>

- gaining a greater understanding of the risks posed by the HWI segment by looking at aggressive tax planning schemes
- building an effective capacity to manage tax risks — this should be done by establishing appropriate structures and focusing resources into dedicated units which are adequately staffed by experienced officials
- exploring how the concept of co-operative compliance could be applied to the HWI segment — dedicated points of contact for taxpayers are needed as well as emphasis on transparency and disclosure that goes beyond what is statutorily required.

<sup>1</sup> *Engaging with High Net Worth Individuals on Tax Compliance*, OECD (2009).

**18.9** One-third of tax administrations surveyed by the OECD in relation to 2015 reported having units or programmes dedicated to the management of the tax affairs of HWIs. While most such units are generally focused on audit of HWIs affairs, two-thirds also include a taxpayer service component. For example, the Netherlands has adapted a range of principles from the co-operative compliance approach taken in the management of large businesses.<sup>1</sup> The tax authority in the UK has also taken a co-operative approach to the management of HWIs.

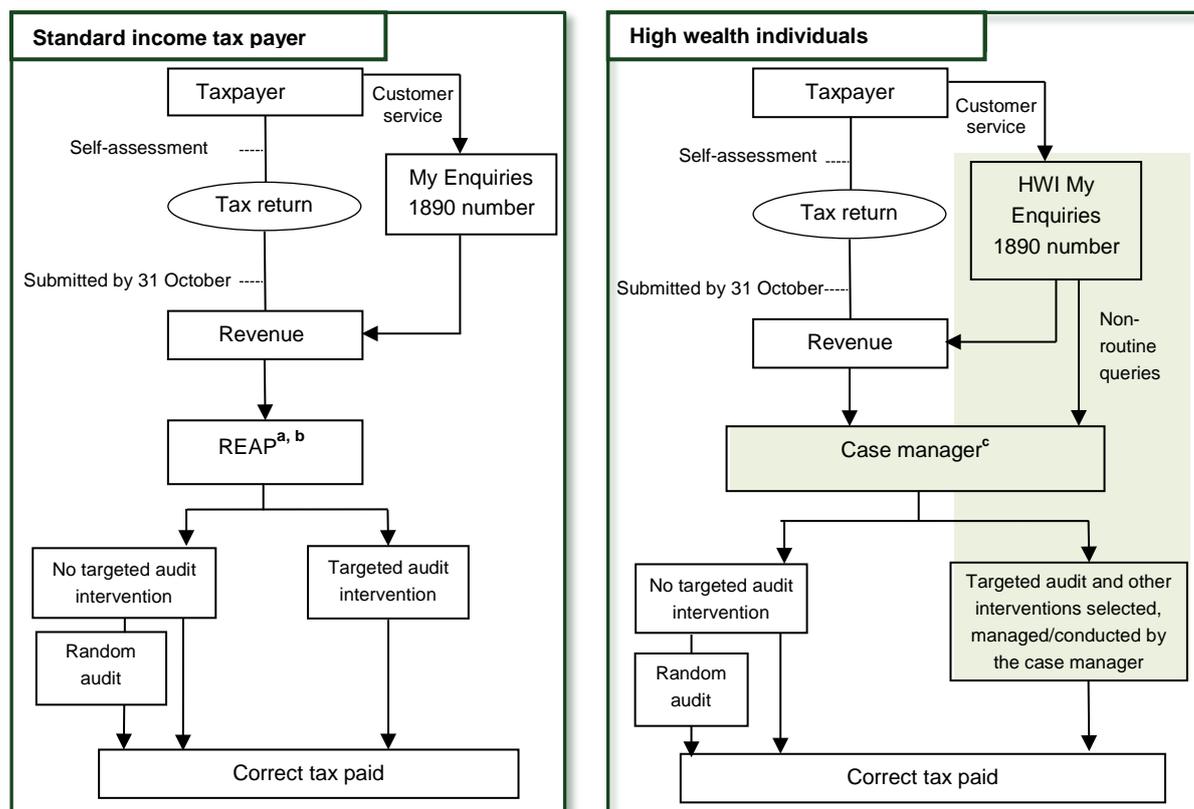
1 *Tax Administration 2017: Comparative information on OECD and other advanced and emerging economies*, OECD (2017).

2 There is a dedicated HWI customer service unit. Its functions include the delivery of customer service in respect of the HWI Unit. This includes the management and processing of work items generated as a result of the annual filing of returns by HWIs as well as the identification of instances of non-filing.

### Revenue's management of high wealth individuals

**18.10** HWIs have been managed by a dedicated unit within LCD since its establishment in 2003. While Revenue has not adopted a co-operative approach in relation to HWIs, a case manager is assigned to each HWI within the Unit. The case manager is responsible for profiling, risk assessment and compliance activities for HWIs within their case base. While customer service queries in some cases may ultimately be dealt with by the case manager, the case manager is not a first 'point of contact'.<sup>2</sup> HWIs or their agents may not be aware that a case manager is assigned to them or who they are. Revenue's Anti-Avoidance Unit operates within the HWI Unit, allowing for the specialised focus highlighted by the OECD. Figure 18.2 sets out Revenue's relationship with a standard taxpayer compared to a HWI.

**Figure 18.2 Revenue's management of a standard taxpayer compared to a high wealth individual**



Source: Revenue Commissioners

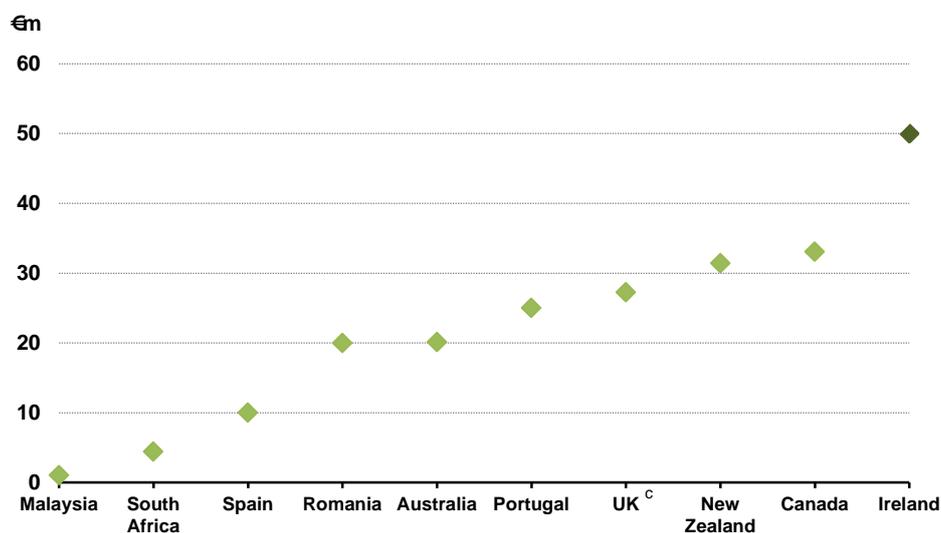
- Notes:
- a REAP is a computerised risk profiling system in use since 2008. It rates taxpayers, relative to one another, using Revenue's other systems as well as information from third parties such as the Health Service Executive, the Department of Housing, Planning, Community and Local Government and the Taxi Regulator.
  - b Revenue's national imperatives also feed into the selection of taxpayers for audit. National imperatives are national compliance projects, focusing on specific sectors such as medical consultants and contractors.
  - c Case manager assigned to each HWI who conducts profiling and risk assessment. REAP rules are used by HWI case managers to assist in the risk assessment process.

### Revenue's high wealth individual criteria

- 18.11** Thresholds for identifying HWIs are important to ensure that appropriate focus is placed on taxpayers who pose the greatest risk. It is equally important that taxpayers don't avoid required specialised focus because the relevant thresholds are too high.
- 18.12** Tax administrations generally use assets and/or wealth as their main criteria for determining a HWI, while some also include income criteria. Revenue's criterion to be considered a HWI and come within the management of the HWI Unit is individuals with net assets of over €50 million. This is a high threshold compared to other jurisdictions (see Figure 18.3). Since the establishment of the HWI Unit within LCD in 2003, the criterion was reviewed in both 2007 and 2015, resulting in no change.<sup>1</sup>

**Figure 18.3 High wealth individuals thresholds — OECD survey for the year 2013<sup>a,b</sup>**

*The HWI threshold in Ireland is significantly higher than in other countries....*



Source: *Tax Administrations 2015: Comparative information on OECD and other advanced and emerging economies*, OECD, 2015

- Notes:
- a Thresholds converted into euro using the European Central Bank conversion rate as at 31 December 2015.
  - b Further information on each country's criteria is contained at Annex 18A.
  - c The threshold at which HMRC in the UK considers someone a high net worth individual was lowered during 2016–2017 to a net worth of more than €10 million.

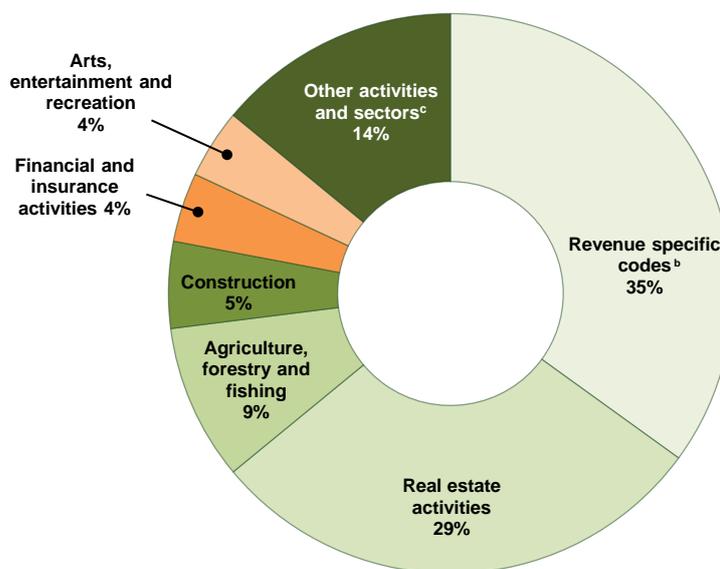
<sup>1</sup> During the 2015 review, seven '2nd tier districts' were established, which operate in the four Revenue operational regions, managing a set of taxpayers who have complex tax affairs but which do not meet HWI or LCD criteria.

**Sectoral analysis of high wealth individuals**

**18.13** HWIs are typically characterised by the complexity of their affairs so it is not surprising that individuals with high wealth tend to operate within a number of economic sectors. Where a taxpayer carried out multiple trades or operates in multiple sectors, Revenue assigns a sectoral code that reflects the primary or most significant activity conducted. The current sectoral code recorded by Revenue for each HWI is reflected in Figure 18.4.<sup>1</sup>

**Figure 18.4 Sectoral analysis of high wealth individuals as at June 2018<sup>a</sup>**

***A third of HWIs' activities fall within the real estate sector....***



Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

- Notes:
- a Analysis conducted on HWIs. Associated companies, trusts, partnerships ect. are not included.
  - b 'Revenue specific codes' generally apply to the following: one-off events such as disposals; spouses and children of the HWI who are in receipt of employment income; proceeds from a disposal or a gift; and HWIs with PAYE or Schedule E directors income.
  - c Other activities and sectors comprises accommodation and food service activities; activities of households as employers; administrative and support service activities; human health and social work activities; professional, scientific and technical activities; transportation and storage; wholesale and retail trade, repair of motor vehicles and motorcycles; information and communication; manufacturing; and other services activities.

<sup>1</sup> Sectoral codes used by Revenue are NACE codes. NACE is a statistical classification of economic activities developed in the EU.

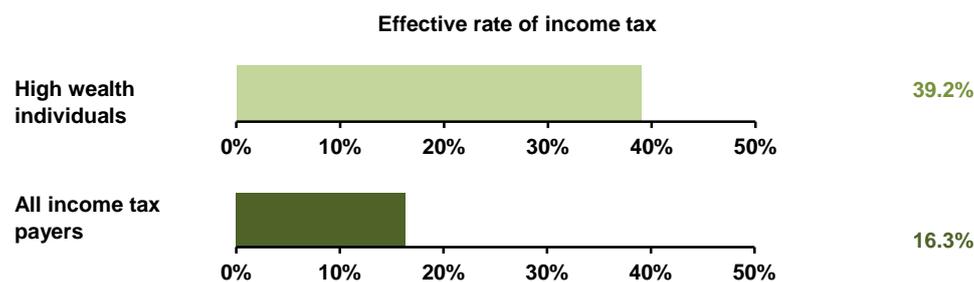
**Income tax — 2015**

**18.14** In 2015, total net tax of €13.8 billion was due in relation to all income tax payers, of which €473 million (3.4%) was due in relation to 334 HWIs.<sup>1, 2</sup> This excludes Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT). In 2015, HWIs paid 9.3% of all CGT receipts, accounting for approximately €64.4 million and 2% of all CAT paid, accounting for approximately €8 million. HWIs' tax liabilities cover a range of tax categories. Figure 18.5 presents the average effective rate paid by all income tax taxpayers and that paid by HWIs as well as the average amount of tax due for each group.

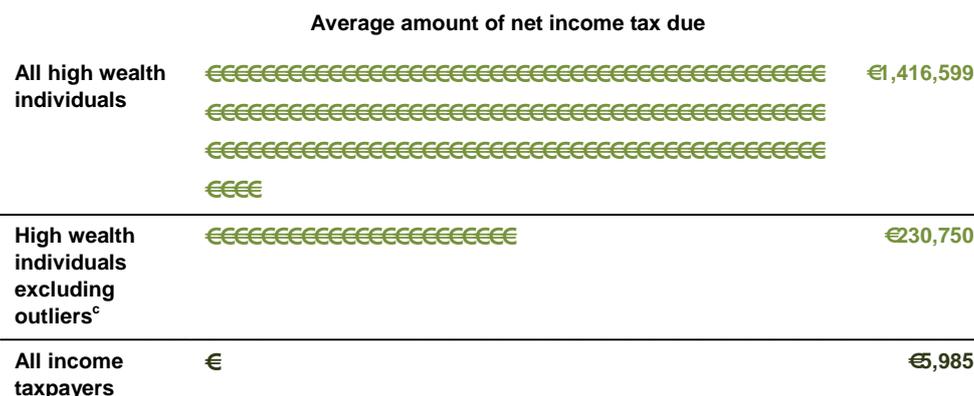
**18.15** The number of taxpayers who file income tax returns (334 for 2015) is lower than the numbers managed in the Unit for a number of reasons. Some bankruptcy and estate cases are managed within the Unit; and some HWIs are only managed in respect of CGT or CAT. Also, the number of taxpayers includes jointly assessed couples that count as one taxpayer unit. In addition, some HWIs may have substantial economic interests (such as holiday homes) in the State but may not have a requirement to file an income tax return.

**Figure 18.5 Average amounts and effective rates of net income tax, 2015<sup>a, b</sup>**

**The effective tax rate for HWIs is more than double the rate for all income tax taxpayers....**



**The average income tax due from HWIs is many multiples higher....**



€ = €10,000 (rounded)

1 The most recent data provided by Revenue as at 28 June 2018 relates to 2015.

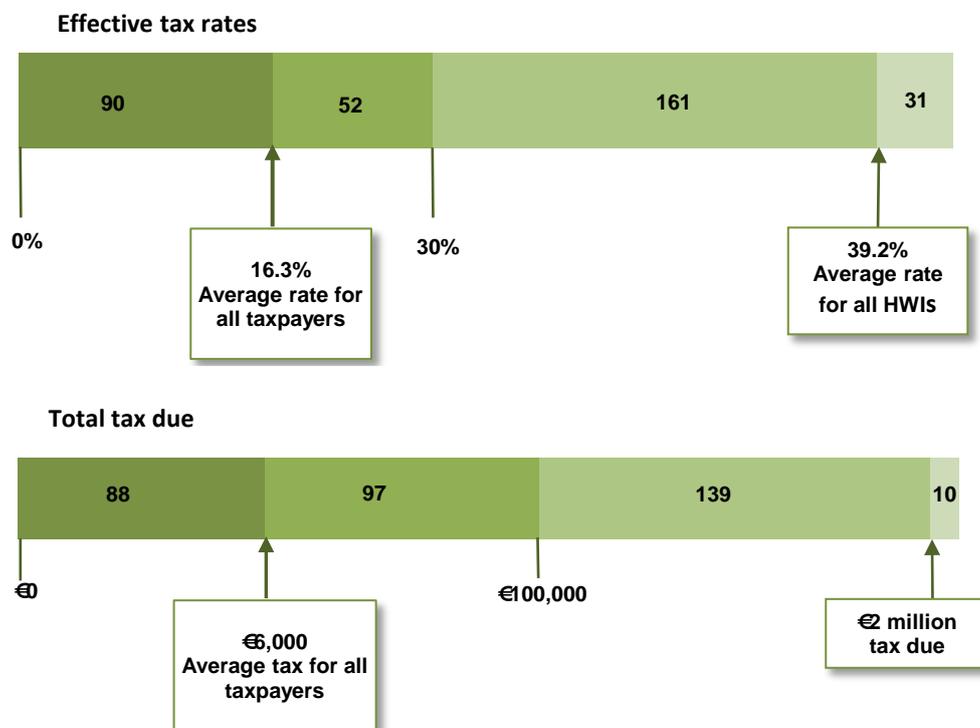
2 This included a number of HWIs who paid no tax but in some cases, paid either PRSI, USC, domicile levy or a combination of these.

Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

Notes: a HWIs accounted for 1.4% of the total gross income of income tax payers in 2015 but accounted for 3.4% of the net tax due.  
 b Taxpayers include jointly assessed couples as one taxpayer unit.  
 c The top 9 HWIs have been removed as they are outliers. 17 other HWIs have been removed as they paid no tax due to being non-resident in Ireland. 7 of these 17 HWIs had no discernible activity in Ireland in 2015.

**18.16** The averages shown in Figure 18.5 mask significant variations between HWIs. The distribution of the effective rate of tax and the total net tax due for the 334 HWIs as shown in Figure 18.6 below.

**Figure 18.6 Distribution of effective tax rates and total net tax due<sup>a</sup>**



Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

Note: a A total of €129.8 million was paid in relation to USC and a total of €23.8 million in relation to PRSI, along with the €473 million in income tax.

1 The income threshold specified in the high income earners restriction is €125,000 (see paragraphs 18.24 and 18.25).

2 Average weekly industrial earnings in 2015 were €686. Source: CSO

**18.17** The relatively low amounts of tax due by a large number of HWIs is a reflection of the amount of taxable income and the use of credits and reliefs. Total income tax due from HWIs in 2015 was highly concentrated in a small number of taxpayers with 85% of the income tax due from just ten taxpayers.

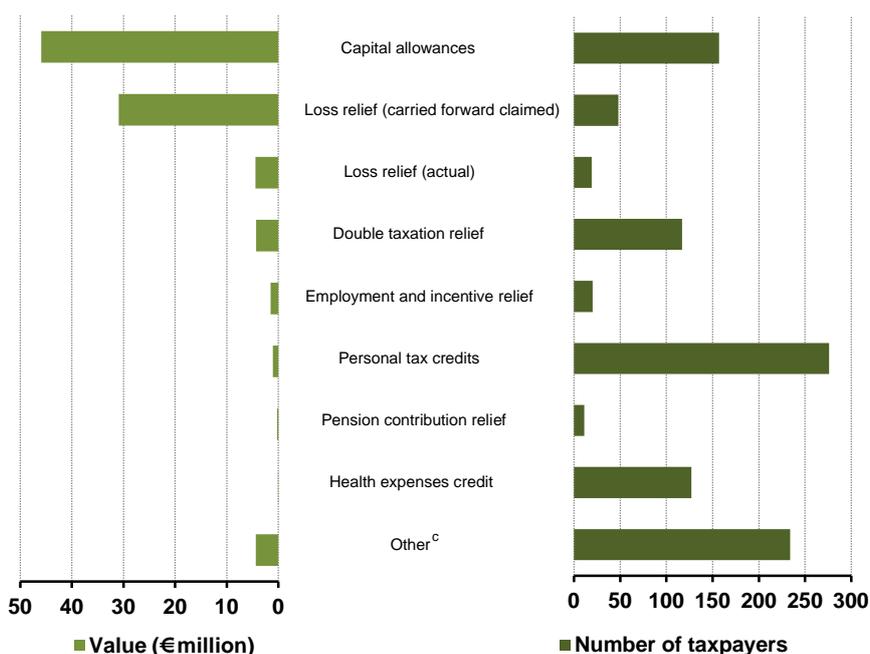
**18.18** Looking at taxable income, 140 HWIs (42%) had taxable income of less than €125,000.<sup>1</sup> Of these, 83 (25%) had taxable income of less than the average industrial wage.<sup>2</sup>

### Credits and reliefs

- 18.19** The tax code includes a number of tax expenditures in the form of tax reliefs and tax credits which, if applicable, have the effect of reducing the tax liability of an individual. In 2015, a total of €93 million was claimed in tax credits and reliefs by HWIs. Figure 18.7 shows further details.
- 18.20** The 'other' category in Figure 18.7 includes a number of allowances and reliefs used by less than ten HWIs, that resulted in benefits to taxpayers averaging €167,000.<sup>1</sup>
- 18.21** While in many cases high earners are well placed to utilise a wide variety of credits and reliefs, they may also be liable to pay additional tax by virtue of their high income in the form of the domicile levy and high income earners restriction.

**Figure 18.7 Tax credits and reliefs most widely used by high wealth individuals by cost and number, 2015<sup>a, b</sup>**

**Capital allowances together with loss reliefs account for 87% of the cost of tax credits and reliefs....**



Source: Revenue Commissioners

- Notes:
- a Taxpayer can have claims in more than one category. Taxpayers include jointly assessed couples as one taxpayer unit.
  - b Personal tax credits includes age and PAYE tax credits. A number of taxpayers had claims in a more than one of these categories.
  - c 'Other' includes approximately €1.5 million in respect of 108 taxpayers in receipt of a credit for interest which had previously been deducted at source by financial institutions under the Deposit Interest Retention Tax scheme.

<sup>1</sup> These are maintenance allowance; significant buildings and garden relief; venture capital relief; and transborder relief.

### **Domicile levy**

- 18.22** A levy of €200,000 per annum applies to individuals who are Irish domiciled and whose Irish income tax in a year is less than €200,000 but who have worldwide income in excess of €1 million and Irish property greater in value than €5 million. Irish income tax paid can be offset against the levy.<sup>1</sup> Domicile levy was managed nationally within LCD until 2016. It is now managed within Revenue's regional districts.
- 18.23** In practice, the levy has applied to very few individuals, and the amount collected has been offset to varying degrees by other tax payments (see Figure 18.8).

**Figure 18.8 Domicile levy, 2012 to 2016<sup>a</sup>**



Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

Note: a Over the period 2010 to 2014, an average of 47% of domicile levy returns were on foot of a Revenue intervention.

<sup>1</sup> The domicile levy was introduced by the Finance Act 2010 to be paid by individuals who were domiciled in and citizens of Ireland. This was changed in 2012 to no longer require citizenship.

### High income earner restriction (HIER)

- 18.24** The HIER restricts the use of tax reliefs and exemptions in the case of taxpayers whose adjusted income is equal to or greater than €125,000.<sup>1</sup> This applies where total reliefs claimed are more than €80,000 and the aggregate of specified reliefs used are greater than 20% of adjusted income.<sup>2</sup>
- 18.25** Over the period 2012 to 2015, the average amount of additional tax collected as a result the HIER has been increasing, but the number of earners paying has decreased (see Figure 18.9). HWIs accounted for an average 6% of the total number of taxpayers to whom HIER applied, but paid 21% of the total amount of additional income tax collected.

**Figure 18.9 High income earners restriction - HWIs, 2012 to 2015<sup>a, b</sup>**



Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

- Notes: a Specified reliefs include sectoral and area based property tax reliefs, certain exemptions relating to artist income and patent royalties, certain investment incentive reliefs and relief on interest paid on loans used to acquire an interest in a company or partnership.
- b 2016 data will not be available until late 2018.

1 Adjusted income for a tax year is the sum of an individual's taxable income, before the restriction is applied, plus the aggregate amount of specified tax reliefs used in the year, less ring-fenced income (that is, income which is normally liable to tax at specific rates regardless of the amounts involved or the individual's marginal rate of tax, e.g. interest from which DIRT is deducted).

2 The HIER came into effect from 1 January 2007.

3 REAP is a computerised risk profiling system in use since 2008. It rates taxpayers, relative to one another, using Revenue's other systems as well as information from third parties.

### Risk assessment

- 18.26** Traditionally, risk assessment in relation to HWIs consisted of screening all HWIs' tax returns manually to identify significant or unusual items. This generated a large volume of work resulting in delays in conducting screenings, and dealing with follow-on queries. In 2016, Revenue introduced a pilot risk assessment programme to help identify taxpayers that require intervention. The pilot programme started with risk assessments for 2012 and 2013. This approach utilises risk assessment tools such as REAP, along with case manager expertise and third party information, rather than manually screening returns.<sup>3</sup> The results of the pilot programme were considered to be successful and it is now being rolled out.
- 18.27** Local intelligence, certain transactions, taxpayer disclosures and Revenue's national imperatives are other key elements of the risk assessment process for HWIs.

## Anti-avoidance

- 18.28** Tax avoidance refers to the use of tax reliefs and allowances in a way in which they were not intended to be used. Tax avoidance often stems from marketed tax avoidance schemes. Such schemes can be sold to one or more individuals and typically involve contrived, artificial transactions that serve little or no purpose other than to produce a tax advantage for the taxpayer.
- 18.29** Revenue's anti-avoidance work tends to result in litigation — for example, all assessments raised by Revenue in 2016 relating to suspected avoidance schemes were challenged by the taxpayers. Often, taxpayers in the market for tax avoidance products expect to be challenged by Revenue and are prepared to appeal such challenges. Litigation is time consuming for Revenue and also presents difficulties in terms of planning as the duration of court proceedings can be difficult to determine.
- 18.30** In Revenue, the HWI Unit takes a lead role nationally in devising, managing and implementing Revenue's anti-avoidance strategy. Not all of the Unit's anti-avoidance work relates to HWIs. For example, in the course of 2016, 40 avoidance cases were settled, of which four related to HWIs managed within the Unit. Revenue's regional offices also have a role in both identifying aggressive avoidance transactions and challenging them, in conjunction with the HWI Unit.<sup>1</sup>

### *Revenue's response to avoidance*

- 18.31** The OECD outlined in 2009 that an in-depth understanding of the tax avoidance market is necessary before tax administrations can reduce or eliminate avoidance activity. Knowledge of the factors which drive demand for avoidance products, as well as understanding the marketplace for such products is critical.
- 18.32** The OECD has recognised the importance of a tax authority's HWI Unit working closely together with its anti-avoidance Unit, where one exists. Revenue's HWI and anti-avoidance work are managed in the same unit in line with this international good practice. Information gathered on HWIs, especially through direct interaction with HWIs and their advisers is indispensable in understanding and challenging tax avoidance.
- 18.33** The identification of HWIs for inclusion within the Unit is an on-going process. As information on wealth or net assets is not returned to Revenue, HWIs must be identified from a range of sources and intelligence, including media reports.
- 18.34** Revenue's National Anti-Avoidance Network provides a forum for detailed technical analysis of avoidance cases and provides support to regions in dealing with anti-avoidance issues and cases.<sup>2</sup>
- 18.35** In 2017, Revenue developed a document which outlines its approach to anti-avoidance compliance interventions and the complexities involved. Annex 18B summarises the key aspects of this document. Annex 18C provides examples of a number of tax avoidance schemes identified by Revenue.

<sup>1</sup> At the end of quarter 1, 2018, there were 420 cases where technical assistance was being provided to Revenue's regional offices.

<sup>2</sup> The network comprises representatives from the three anti-avoidance districts, representatives from Revenue Legislation Services and representatives from Revenue's Planning Division. Revenue Legislation Services are responsible for making a case to the Department of Finance for changes to tax legislation, if considered necessary.

## ***Revenue's legislative tools to challenge tax avoidance***

### *Anti-avoidance rules*

**18.36** Revenue has two options for challenging tax avoidance.

- General anti-avoidance rule (GAAR) — the GAAR is intended to defeat tax avoidance schemes which have little or no commercial purpose, and which are primarily entered into to obtain a tax advantage. If this is the case, then the taxpayer is not entitled to claim the tax advantage when submitting their tax return. There is no time limit on when Revenue can challenge or withdraw a tax advantage that is contrary to the GAAR.
- Specific anti-avoidance rules (SAAR) — there are many targeted SAARs throughout tax legislation. These are typically used by Revenue to tackle more specific or limited types of transactions than those to which the GAAR applies. When a person seeks to obtain the benefit of any tax advantage which is withdrawn by one of the SAARs, a tax avoidance surcharge of up to 30% can apply.

**18.37** A taxpayer can take steps to avoid incurring a tax avoidance surcharge.

- A taxpayer can make a qualifying avoidance disclosure (QAD) to Revenue if he/she had entered into a tax avoidance scheme and later decides to settle their tax affairs. It can be submitted any time after a tax return is filed but must be before a case is heard by the Tax Appeals Commission. This may result in a reduction in the 30% tax avoidance surcharge, and details will not be published on the tax defaulters list.
- A protective notification can be filed by a taxpayer who is concerned that a scheme they entered may be challenged by Revenue under the GAAR. A protective notification means that the tax avoidance surcharge will not apply if Revenue successfully challenges the scheme under the GAAR. Also, interest will not apply until 30 days after Revenue's assessment.

### *Mandatory disclosure regime*

**18.38** The mandatory disclosure regime came into effect in 2011 and places an obligation on promoters, marketers and users of 'disclosable transactions' to notify Revenue about the transaction. A disclosable transaction is one that may result in a person receiving a tax advantage that is or is expected to be, one of the main benefits of the scheme.<sup>1</sup> In most cases, the onus is on the promoter to disclose the transactions.<sup>2</sup> Revenue issues a transaction number specific to the scheme once a mandatory disclosure has been made. This does not mean that Revenue approves of the scheme, or that it is not a tax avoidance scheme.

**18.39** To date, 11 mandatory disclosures in respect of 494 taxpayers have been received by Revenue, seven of which were received in 2011. Revenue states that the 494 cases are either being examined or challenged. Revenue has not to date identified any schemes through its tax avoidance work which it considers should have been disclosed through the mandatory disclosure regime and were not.

<sup>1</sup> In addition, if the scheme matches any one of the specified descriptions set out in legislation, it will be regarded as a disclosable transaction.

<sup>2</sup> The onus is on the taxpayer to disclose in the following cases — when the promoter is outside Ireland, when the promoter is unable to make a disclosure due to professional privilege or when there is no promoter.

## Appeals

**18.40** Tax appeals are generally heard in the first instance by the Tax Appeals Commission. Determinations made by the Tax Appeals Commission can be appealed to the Courts. Figure 18.10 sets out the final determinations made over the period 2013 to 2017 on appeals relating to HWI and anti-avoidance cases. Over the period, Revenue determinations were upheld in 68% of appeals.

**Figure 18.10 Final determinations on HWI and anti-avoidance related appeals, 2013 to 2017**

	Final determination		Outcome	
	Tax Appeals Commission <sup>a</sup>	Courts	For Taxpayer	For Revenue
2013 <sup>b</sup>	2	—	1	1 <sup>d</sup>
2014 <sup>b</sup>	17	—	1	16
2015 <sup>b,c</sup>	5	3	4	4
2016 <sup>c</sup>	—	1	1	—
2017	4	5	5	4

Source: Revenue Commissioners

- Notes:
- a In March 2016, the Tax Appeals Commission succeeded the previous Office of the Appeals Commissioners.
  - b In addition, three cases showing a determination before 2013 closed during 2013 to 2015 on the basis of a taxpayer withdrawing an appeal.
  - c One appeal determined in 2015 had 964 follower cases associated with it. One appeal determined in 2016 had 1,100 follower cases associated with it.
  - d Individual cases can be found for both the taxpayer and Revenue on different points. This occurred in one case in 2013.

## Interventions

- 18.41** The main aim of Revenue's HWI compliance programme is to promote voluntary compliance and deter non-compliance. There are four main types of compliance interventions — aspect query, profile interview, audit and investigation (see Annex 18D). The type of intervention selected for use is determined by Revenue taking into account the assessed risk as well as the time and resources available.
- 18.42** Compliance interventions may arise from both the HWI Unit's risk assessment programme and screening of HWIs, and from the Unit's anti-avoidance work.
- 18.43** Figure 18.11 summarises the results of the interventions undertaken in relation to HWIs, and for Revenue intervention more generally.

**Figure 18.11 HWI and anti-avoidance compliance yields compared to all Revenue compliance yields, 2015**

	All Revenue <sup>a</sup>	HWI
<b>Proportion of interventions with a 'yield'</b>		
Non-audit interventions	15%	16%
Audits	68%	85%
All interventions	16%	19%
<b>Average yield per yielding case</b>		
Non-audit interventions	€4,400	€194,200 <sup>b</sup>
Audits	€76,500	€295,900
All interventions	€8,500	€212,900 <sup>b</sup>

Source: Revenue Commissioners. Analysis by Office of the Comptroller and Auditor General.

Notes: a *Report on the accounts on the public services 2015*, Comptroller and Auditor General, chapter 15.  
b This figure excludes the highest yielding intervention which was a significant outlier.

- 18.44** For 2015, the proportions of non-audit and audit interventions with a yield were higher for the HWI Unit compared to all Revenue interventions. The average yield per yielding case for non-audit interventions for HWIs was around 44 times that of all Revenue non-audit interventions. The average yield per yielding case for audit interventions for HWIs was almost four times that of all Revenue audit interventions.
- 18.45** Over the period 2012 to 2016, income tax accounted for just over 50% of the total yields from HWI interventions. Corporation tax accounted for 7% and VAT accounted for 4%. A combination of other taxes such as stamp duty, capital acquisitions tax and capital gains tax accounted for 39%.

### **Review of interventions**

- 18.46** As part of this examination, 29 yielding interventions that closed in 2015 were selected randomly for review.<sup>1</sup> In addition, the highest yielding intervention was also reviewed. The yield from the 30 cases totalled €16.7 million in tax, interest and penalties.<sup>2</sup> As part of this review, the interest and penalties charged (just over €4 million) were recalculated for the cases selected.
- 18.47** There was a qualifying avoidance disclosure programme (QAD) in place in 2015, and 14 of the 30 interventions reviewed had availed of this provision to settle their tax affairs. This regime was introduced in the Finance Act 2014.<sup>3</sup> In order to qualify as a QAD, full tax and interest payable must accompany the disclosure.
- 18.48** One aspect query in 2015 resulted in a yield of more than €10 million. The transactions which gave rise to the losses claimed in this case were complex and the taxpayer claimed that they had incurred professional fees as a result. Revenue formed the view that these fees were reasonable and allowed the taxpayer to deduct the amount in computing the tax due without sight of the invoice and without proof of payment. As a result, the tax collected as part of the final settlement was reduced by €270,000. Revenue was unable to confirm that the professional fees had not been paid for tax avoidance advice in relation to the transactions challenged.
- 18.49** It was noted by the examination team that one taxpayer who availed of the QAD programme had already paid the full amount of tax and interest due, prior to the introduction of the QAD regime. Penalties were outstanding. Revenue invited the taxpayer to make a QAD, which the taxpayer did. This resulted in a refund of 20% of the interest which had already been paid, and the avoidance of penalties and publication.
- 18.50** It was noted in one case reviewed that total interest charged was reduced by 17% due to delays in the progression of its appeal.<sup>4</sup> Revenue states that while there is no provision for the mitigation of interest, on occasion, it will make allowances for delays in case/appeal progression that cause the taxpayer to be put in an adverse financial position.

1 In the case of one taxpayer, two interventions were reviewed.

2 In three of the interventions reviewed, the yields were overstated. These errors accounted for 0.2% of the total compliance yield reviewed (€35,953).

3 Section 87(1)(b)(i) of the Finance Act 2014 allows a taxpayer, who entered into a tax avoidance transaction on or before 23 October 2014, to settle with Revenue by paying the tax or duty due and payable and a 20% reduction in the amount of interest otherwise due.

4 The 17% reduction in this case was calculated before the 20% reduction set out under the QAD regime.

5 Bank statements, debt profiles, and proposed schedules of repayment are amongst the items usually requested.

### **Non-standard phased payment arrangements**

- 18.51** Cases of non-standard phased payment arrangements can be facilitated by Revenue on a concessionary basis. Revenue's guidelines set out the evidence required before such arrangements are approved.<sup>5</sup> The guidelines also state that in some cases, phased payment/instalment arrangements may fall outside of Revenue guidelines. However, the guidelines do not explicitly state in what circumstances this should be granted.
- 18.52** In the case of one taxpayer reviewed, an exception was made and a phased arrangement for the payment of interest was granted on the basis of limited documentation. 26 other taxpayers involved in the same tax avoidance scheme were granted the same arrangements without the specified evidence. Revenue considered these cases to be exceptional given the need for the QAD declaration to be made before the end of June 2015. Regard was had to the fact that there was a limited availability of finance in the economic climate at that time and therefore the QAD should be interpreted reasonably. This treatment was approved at Assistant Secretary level.
- 18.53** Revenue states that a large number of applications were received close to the QAD deadline and therefore it was considered reasonable to accept basic documentation. Revenue considers the entry into an approved phased payment arrangement as constituting full payment for the purposes of QADs.

## Performance measures

- 18.54** Traditionally, compliance yield compared year-on-year is the key measure used by revenue bodies to assess the financial impact of their work in tackling non-compliance. The LCD sets targets for the number of audit and non-audit interventions which it intends to close each year. Revenue does not consider that it is appropriate to set targets for yields.
- 18.55** The HWI Unit achieved its targets for aspect queries and appraisals for 2017. However, it did not meet its targets for audits and profile interviews. Revenue considers the progression of cases to be the main performance measure and noted that case progression is actively managed in the Unit on an ongoing basis.
- 18.56** Revenue informed the examination team that it uses a number of other measures in assessing its performance in its management of HWIs and its anti-avoidance work such as
- the number of new avoidance schemes identified in a year
  - the number of engagements with other operational areas in Revenue in promoting anti-avoidance work and the quality of these engagements (knowledge in Revenue's regions is also considered)
  - the quality of the work of the Unit and ensuring that it operates within Revenue's governance and quality control systems
  - networking both within and outside of Revenue
  - ensuring customer service standards are satisfied e.g. repayment claims dealt with on time
  - the number of meetings held with agents
  - the number of technical legislative issues identified and referred to the Revenue's legal services for examination
  - success or otherwise in implementing special projects or establishing new work.
- 18.57** Revenue does not set targets for these performance measures, and does not consider that it would be beneficial to do so, because targets could be met without necessarily providing any organisational or divisional benefit.

## Conclusions and recommendations

### *Threshold value*

- 18.58** The threshold used by Revenue to define HWIs — net assets greater than €50 million — is high by international standards. As a result, just 480 HWIs are currently being managed on a focused, integrated basis in the Unit.

### **Recommendation 18.1**

Revenue should review this threshold in order to ensure it remains appropriate.

#### **Accounting Officer's response**

Agreed.

Revenue agrees with the recommendation and will be expanding the number of HWIs managed in its HWI and anti-avoidance units. It has already been decided that the Large Cases Division be split into two divisions: one focussing on corporates and the other focusing on HWIs, anti-avoidance and pensions. Assistant Secretaries to head up the new Divisions have already been appointed.

### *Tax collection*

- 18.59** On average, HWIs pay a higher effective rate of tax on their income than the average taxpayer, with an average effective rate for 2015 of 39.2%, compared to 16.3% for the entire population of income tax taxpayers. However, there are significant variations within the HWI population. While an effective tax rate of between 30% and 40% dominates, 90 HWIs have an effective tax rate lower than the average income tax taxpayer.
- 18.60** Total income tax due from HWIs in 2015 was highly concentrated in a small number of taxpayers with 85% of the income tax due from just ten taxpayers.
- 18.61** Despite the fact that HWIs have net assets of at least €50 million each, 42% report taxable income below the high income earner restriction threshold of €125,000 and 25% report taxable income below the average annual industrial wage.
- 18.62** There are a small number of tax reliefs which give annual benefits of an average of €167,000 to very few taxpayers.
- 18.63** The mandatory disclosure regime places an obligation on promoters, marketers and users of 'disclosable transactions' to notify Revenue about the transaction. Revenue has received 11 mandatory disclosures since the scheme came into effect in 2011, with seven of these received in 2011. Revenue states that it has not identified any schemes through its tax avoidance work, which it considers should have been disclosed through the regime and were not.

### ***Compliance interventions***

- 18.64** The Finance Act 2014 set out that payment of any tax and interest payable in respect of the matter contained in a qualifying avoidance disclosure must accompany the disclosure. Revenue considers the entry into an approved phased payment arrangement as constituting full payment for the purposes of the qualifying avoidance disclosures regime. As a result of this review, 27 cases were identified in which Revenue did not follow its own procedures regarding agreements for phased payments arrangements. Revenue's guidelines allow in some cases for phased payment/instalment arrangements to fall outside of the guidelines. The guidelines do not state in which circumstances these arrangements should be granted.

#### **Recommendation 18.2**

In the interests of equity, Revenue should ensure that a consistent approach in line with approved procedures is taken in all interventions. In the case of phased payment arrangements, Revenue's procedures should explicitly state the circumstances which warrant departure from standard procedures.

#### **Accounting Officer's response**

Agreed.

Revenue operates within a framework of quality intervention standards which prioritises consistency of treatment in carrying out compliance interventions across all Revenue divisions. However, this includes recognition that Revenue guidelines that are designed for most circumstances, may on an exceptional basis, not be applicable in the context of all the facts and circumstances of a specific case.

### ***Performance measures***

- 18.65** The regular measurement of outcomes achieved against set targets allows the effectiveness and efficiency of objectives and goals to be evaluated. Not all of the performance measures used by Revenue for the HWI Unit appear measurable. Furthermore for those that are measurable, with the exception of the number of compliance interventions, Revenue does not set targets.

#### **Recommendation 18.3**

Revenue should consider designing a set of performance measures which are capable of measurement, achievable and relevant to the strategic aims of the HWI Unit.

#### **Accounting Officer's response**

Agreed.

Revenue has set up a new Division focused on HWIs, anti-avoidance and pensions. The HWI and anti-avoidance Units currently measure their work by setting intervention targets and monitoring and tracking the progress of interventions which are all risk based. In the context of developing the new Division, Revenue will take account of the recommendations as regards performance measures and how best to reflect the performance in the management of HWI cases.

## Annex 18A

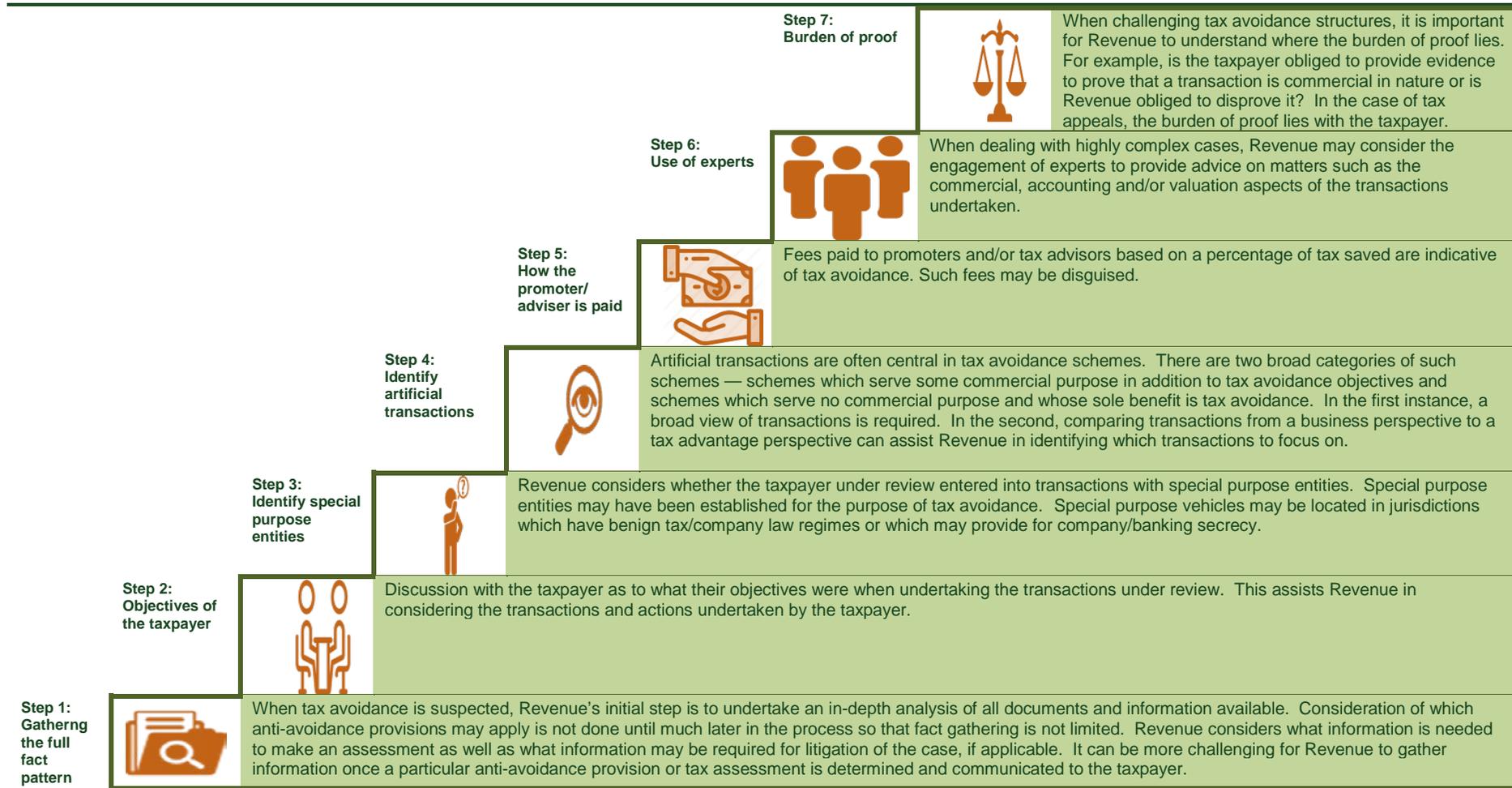
**Figure 18A.1 High Net Worth Individual (HNWI) criterion and thresholds — OECD survey for the year 2013**

Country	Criteria applied to identify HNWI
Australia	Residents (and any associates) who effectively control over AUD 30 million in net wealth
Canada	Individuals who alone or with related parties control net worth over CAD 50 million
New Zealand	Assets over NZD 50 million (most have over 30 entities associated with them)
Portugal	Income over €5 million and wealth over €25 million
Spain	Income of over €1 million or personal assets of over €10 million
UK	Assets over Stg £20 million
United States	Individuals with tens of millions of USD of assets or income
Malaysia	Income over MYR 1 million, assets over MYR 5 million or both together over MYR 5 million (MYR 5 million is approximately €1 million)
Romania	Individuals who control over €20 million in wealth or annual reported income over €3 million
South Africa	Gross income over ZAR 7 million and/or unencumbered assets over ZAR 75 million (ZAR 75 million is approximately €5 million)

Source: *Tax Administrations 2015: Comparative information on OECD and other advanced and emerging economies*, OECD, 2015

## Annex 18B

**Figure 18B.1 Revenue’s structured approach to anti-avoidance compliance interventions**



Source: Revenue Commissioners

## Annex 18C

**Figure 18C.1 Examples of tax avoidance schemes as at January 2018**

Type of scheme	Number of cases and tax at risk	Progress
Cash extraction scheme involving the transfer of share rights	110 cases with tax at risk of €40.8m.	€11.9m from 43 settled cases and payments on account of €1.7m from 9 cases.
Cash extraction scheme involving settlements on trusts	Notices of opinion issued in 6 cases.	Liability established and settlements agreed in a number of cases.
Share-for-share exchange, non-filing structure and capital reduction	Each case to be considered on its merits.	Ongoing
Foreign exchange contract for difference and gilt forward contract CGT loss scheme	Circa 25 taxpayers with total losses of €550m with a potential reduction in CGT of approximately €110m.	Ongoing
Income Tax losses	Tax at risk of up to €37m.	Ongoing
Capital Gains Tax loss scheme	Specific compliance programme to target in excess of 10 taxpayers in this scheme. Tax at risk in the region of €1.2m.	A number of taxpayers have settled their liability.
Employment benefit trust scheme (A)	A number of cases likely to be referred to the Appeals Commissioners.	Interventions ongoing.
Employment benefit trust scheme (B)	In excess of 15 taxpayers targeted in a specific compliance programme in part 2. Tax at risk in the region of €2m.	Interventions ongoing.
Artificial trading loss scheme	70 taxpayers. Tax at risk of €3.5m.	Most taxpayers withdrew appeals following first Tax Appeal Commission hearing.
Capital loss scheme	In excess of 30 taxpayers. Tax at risk €33.7m with potential further tax risk arising from tax losses of €3.4m.	9 cases heard so far in favour of Revenue by Tax Appeals Commission — 3 settled and 6 appealed to Circuit Court.
Section 248 schemes	In excess of 50 taxpayers. Tax at risk of €16.5m.	15 taxpayers withdrew appeals prior to Tax Appeals Commission hearings.

Source: Revenue Commissioners

## Annex 18D

**Figure 18D.1 Types of compliance interventions**

Type of intervention	Description
<b>Aspect query</b>	A short, targeted intervention to check a particular risk. It can be carried out by telephone, secure email, letter or visit and escalated to a profile interview or audit, if necessary.
<b>Profile interview</b>	Revenue write to a taxpayer identifying the relevant risk areas. A date is scheduled for a profile interview at which the risks highlighted will be discussed. A profile interview can be escalated to an audit or investigation if warranted.
<b>Audit</b>	An examination of an individual's or a company's books, records and compliance with tax obligations in order to establish the correct level of liability. It may also involve collection of tax arrears.
<b>Investigation</b>	Where Revenue believes, from an examination of the information available, that serious tax or duty evasion may have occurred or a Revenue offence may have been committed, a Revenue investigation is carried out. It may lead to criminal prosecution.

Source: Revenue Commissioners