



26TACD2024

Between

[REDACTED]

Appellant

and

CRIMINAL ASSETS BUREAU

Respondent

Determination

Contents

Introduction	3
Background.....	4
Preliminary Issue – Validity of the Appellant’s Appeals	8
Background	8
Appeal Hearing – 23 rd March 2023.....	11
Appellant’s Submissions	12
Respondent’s Submissions	15
Analysis	16
Substantive issue	21
Material Facts.....	23
Analysis	23
Determination.....	25
Appendix One - Supplemental Legislation	27

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against Notices of Assessment to Income Tax. Those assessments which were issued by the Criminal Assets Bureau (hereinafter “the Respondent”) on 12th March 2018 record the following assessable income and the associated tax payable:

Year of Assessment	Income €	Tax €
5th April 1999	29,659	13,449
5th April 2000	75,638	44,499
5th April 2001	38,483	15,010
31st December 2001	24,198	7,093
31st December 2002	28,214	4,414
31st December 2005	107,347	42,730
31st December 2006	164,597	72,217
31st December 2007	511,772	247,414
31st December 2008	40,647	7,151
31st December 2009	167,068	77,924
31st December 2011	253,000	135,730
31st December 2012	168,600	84,668
31st December 2013	200,923	100,945
31st December 2014	168,741	84,752
31st December 2015	50,223	14,188
Total	<u>2,029,110</u>	<u>952,184</u>

2. The hearing of this appeal occurred on 23rd March 2023.
3. The Appellant was represented by Counsel, his solicitor and his accountant. The Respondent was represented by Counsel, its solicitor and five members of its staff. In addition, the Commissioner heard legal submissions from the parties’ representatives.
4. The Commissioner expresses his appreciation to all the parties for their preparation and attendance at the hearing and the subsequent submissions. This assisted the Commissioner in the adjudication of this appeal. The Commissioner also notes the grace and courtesy of the Appellant and the respect he and his family who attended the hearing demonstrated to the Commissioner and the Commission at all times. Again, this assisted the process and the Commissioner expresses his gratitude. The Commissioner must write any determination for an appellant. The Commissioner appreciates that there are many complex legal provisions in this determination but has attempted to ensure they are

accessible to the Appellant in this appeal, as would be the case for any appellant in any appeal.

Background

5. The Commissioner sets out the background and history to the hearing on 23rd March 2023 in order to assist the Appellant. The Appellant's appeal was previously heard by the Commission on 22nd February 2019. In order to distinguish the term "commissioner", it is noted that the hearing in February 2019 was conducted by Commissioner Kennedy. Commissioner Kennedy has since vacated the office of Appeal Commissioner.
6. Following that hearing, Commissioner Kennedy delivered his Determination to the parties in this appeal on 24th May 2019. That determination was subject to challenge by the Respondent, as set out below.
7. At the appeal hearing held on 22nd February 2019, the Appellant disputed that he had any taxation liability in this jurisdiction on the basis that he was non-resident, non-ordinarily resident, not domiciled in Ireland and had no income or gain from any trade in Ireland nor any assets in this jurisdiction.
8. The Appellant stated in his evidence during the appeal hearing on 22nd February 2019 that he spent an average of four weeks per annum in this jurisdiction, and while in this jurisdiction conducted a number of what he termed "deals" (trading activities). While Commissioner Kennedy who heard the appeal in February 2019 accepted that the Appellant was neither resident nor ordinarily resident during the years under appeal, he held that a charge to income tax arose under the provisions of section 18 (1) (iii) Taxes Consolidation Act 1997 ("TCA 1997"). That provision of the TCA 1997 taxes "*any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State*".
9. In addition, owing to the Appellant's transient lifestyle, Commissioner Kennedy held following the hearing in February 2019, that the Appellant was not tax resident in any jurisdiction and in particular that he was not resident in any jurisdiction which has an operative double taxation agreement with Ireland. As such, Commissioner Kennedy held that the Appellant could not avail of any double taxation agreement that could ameliorate a charge to Irish taxation.
10. In order to ascertain the Appellant's earnings in the State, following the conclusion of the appeal hearing Commissioner Kennedy held a Case Management Conference ("CMC")

on 28th March 2019 under the provisions of section 949T TCA 1997. Following that CMC, Commissioner Kennedy issued a direction to the Appellant in accordance with section 949E TCA 1997. Within that direction, Commissioner Kennedy requested the Appellant to provide specific details of the income derived from his trading activities exercised in the State.

11. By letter dated 23rd April 2019, the Appellant’s solicitors stated that the Appellant “*accepts and concedes that the sums set out in the attached schedule are due by him*” and calculated the following assessable income and associated tax payable based on the activities carried out annually over the four week Christmas period at 4/52 of the income assessed by the Respondent:

<i>Year of Assessment</i>	<i>Income</i>	<i>Tax</i>
5th April 1999	€2,896	€904
5th April 2000	€7,387	€2,238
5th April 2001	€3,758	€1,038
31st December 2001	€2,363	€591
31st December 2002	€2,170	€543
31st December 2005	€8,257	€2,064
31st December 2006	€12,661	€3,165
31st December 2007	€39,367	€9,841
31st December 2008	€3,126	€781
31st December 2009	€12,851	€3,212
31st December 2011	€19,461	€5,254
31st December 2012	€12,969	€3,436
31st December 2013	€28,236	€7,765
31st December 2014	€22,362	€6,519
31st December 2015	€10,042	€1,091

12. The Commission sent a copy of the Appellant's letter and the above calculations to the Respondent to enable it to make representations in accordance with fair procedures. No such representations were received by the Commission.
13. Commissioner Kennedy subsequently found that he accepted the Appellant's calculations of his Irish taxation liability for the periods under appeal subject to two variations. The first of these variations was that the assessments for the periods under appeal were to be increased to 5/52 of the figures originally assessed by the Respondent (as the Appellant stated in his evidence that he spent one week in Ireland outside of the Christmas period). The second such was that as the Appellant was considered "a general trader in an assortment of different types of goods and commodities" and as he had sold a property in 2006 on which a profit of €80,000 was derived, then he should be assessed to income tax on that profit.
14. As such, Commissioner Kennedy held that the Appellant was liable to income tax on the following amounts of income under Schedule D, Case IV:

<i>Year of Assessment</i>	<i>Income</i>
5th April 1999	€2,281
5th April 2000	€7,273
5th April 2001	€3,700
31st December 2001	€2,327
31st December 2002	€2,713
31st December 2005	€10,321
31st December 2006	€15,827
Property Sale	€80,000
31st December 2007	€49,209
31st December 2008	€3,908
31st December 2009	€16,064
31st December 2011	€24,326
31st December 2012	€16,211
31st December 2013	€28,236

31st December 2014 €22,362

31st December 2015 €10,042

15. Following the issuance of Commissioner Kennedy’s Determination, the Commission received a request from the Respondent on 10th June 2019 for a Case Stated to the High Court under the provisions of section 941 TCA 1997. In addition, the Commission received judicial review proceedings ¹ from the Respondent in respect of the Commissioner’s Determination.

16. For procedural reasons the High Court refused to make an order within the judicial review proceedings. In place, the case stated proceedings were settled on terms agreed between the parties and ruled by the High Court on 8th June 2021. Those terms are as follows:

(i) The parties are agreed that, subject to the approval of [The High Court], an Order of Certiorari be granted in terms of paragraph (1) of the Notice of Motion herein, quashing the Decision and Determination of the [Commission], dated 24th May 2019, in Tax Appeal [REDACTED]

(ii) The parties are agreed that, subject to the approval of [The High Court], an order in terms of paragraph (iv) of the Notice of Motion herein, remitting Tax Appeal [REDACTED] to the [Commission] herein for re-hearing may be granted, it being noted that:

(a) At any re-hearing, neither party will invite the [Commission] to revisit the findings that the [Appellant] was not resident in the State and was not resident in Malta in the tax years under appeal;

(b) At any re-hearing, neither party will invite [the Commission] to revisit the finding that the [Appellant] falls within the definition of “chargeable person” as that phrase is used in the Tax Acts;

(c) At any rehearing, for the avoidance of doubt, if the [Commission] proposes to consider the quantum of tax to be charged on the [Appellant], each party may advance all such arguments and/or

¹ Judicial Review is a mechanism by which an application can be made to the High Court to challenge the decision making processes of administrative bodies, such as the Commission and lower Courts. The High Court Rules applying to judicial review applications are found in Order 84 of the Rules of the Superior Courts.

evidence in support of or in opposition to such a proposal as they may determine; and

(d) The [Appellant] will inform the [Commission] that the existing requisition to state a case for the opinion of [The High Court] is withdrawn, without prejudice to the right of either party to appeal any final determination of Tax Appeal [REDACTED] and with neither party seeking costs in relation to same.

(iii) The parties request that [The High Court] make no order as to costs.

17. Following notification to the Commission that the High Court proceedings were withdrawn, the Commission re-opened the Appellant's appeal as a *de novo* hearing subject to the above qualifications contained within the terms ruled by the High Court on 8th June 2021. As noted above, the appeal hearing was held before the Commission on 23rd March 2023. Hence, a new Commissioner heard the appeal *de novo*.

Preliminary Issue – Validity of the Appellant's Appeals

Background

18. In addition to the history and background to the hearing of this appeal, the Commissioner must also consider the validity of the Appellant's appeals. The Commissioner has considered the documentation and submissions by both parties in addressing this preliminary issue.

19. The Appellant filed his Notice of Appeal with the Commission on 16th March 2018. On 19th April 2018, the Respondent objected to the Commission accepting the Appellant's appeal under the provisions of section 949L TCA 1997. The grounds of the Respondent's objections were that the Appellant had not complied with the conditions set out in section 957 (2) (a) (I) and (II) TCA 1997 and section 957 (2) (b) TCA 1997.

20. Section 957 TCA 1997 was deleted from the TCA 1997 by section 129(2) Finance Act 2012 with effect from 1st January 2013. As that section was effectively replaced by a new provision of the TCA 1997, section 959AH TCA 1997, the Commissioner refers to that latter section throughout the balance of this Determination as it is the correct law to be applied in determining the matter under appeal. It provides:

“(1) Where a Revenue officer makes a Revenue assessment, no appeal lies against the assessment until such time as—

(a) where the assessment was made in default of the delivery of a return, the chargeable person delivers the return, and

(b) in all cases, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which—

(i) is payable by reference to any self assessment included in the chargeable person's return, or

(ii) where no self assessment is included, would be payable on foot of a self assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person.

(3) References in subsection (1) to an amount of tax shall be construed as including any amount of interest which would be due and payable under section 1080 on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(4) The requirements of this section apply in relation to an assessment as amended by a Revenue officer as they apply to a Revenue assessment made by a Revenue officer."

21. On 12th March 2018, which was the date the Respondent issued its Notices of Assessment for the periods under appeal, the Appellant was not in compliance with the requirements of section 959AH TCA 1997, as he had neither paid the tax due on the issued Notices of Appeal nor submitted income tax returns for the periods under appeal and paid the associated tax liability based on the self-assessment figures which would have been included in those returns. Thus, this formed the basis of the Respondent's objections and upon receipt, those objections were sent to the Appellant for comment.
22. On 4th May 2018, the Appellant's accountants replied to the Respondent and the Commission. Within the correspondence the Appellant's accountants stated that as the Appellant was not resident or ordinarily resident in the State and did not earn any income or gains in Ireland then he was not required to satisfy the requirements of section 959AH TCA 1997.
23. On 4th July 2018, the Commission issued correspondence which stated that the Appellant's appeal was being refused as he did not meet the conditions necessary for it to be a valid appeal.

24. Owing to subsequent correspondence received from the Appellant's agent and as the decision to refuse the appeal was not a "final and conclusive decision" within the meaning of section 949N TCA 1997, the Commission subsequently reversed this decision. This was done on the understanding that the Appellant undertook to file tax returns for the periods under appeal and if applicable, pay the corresponding taxation liability due on those returns.
25. On 16th July 2018, the Appellant's accountant filed the required returns for the periods under appeal on a "strictly without prejudice" basis. Within each of those returns, the Appellant was treated as being non-resident in Ireland and his income from all sources was returned as "nil".
26. In advance of the appeal hearing on 23rd March 2023, the Respondent's solicitor wrote to the Commission on 23rd February 2023. Within that letter it stated:

"...In light of the fact that the dates for hearing are only a short distance away, we have also drawn the appellant's attention to the fact that the returns in respect of the years under appeal which he originally filed were marked "without prejudice".

Since it is not possible to file "without prejudice" returns and since the appellant, in agreeing to the remittal of the Commission, agreed that he was no longer disputing that he was a chargeable person for the periods in question, we have requested that the appellant comply with section 959AH of the Taxes Consolidation Act, 1997, as amended, in advance of the hearing".

27. The Respondent also presented the Commission with a Draft Statement of Agreed Facts on 7th March 2023. Included within that document was the following narrative:

...

(3) The Appellant had not made returns of income in respect of the Relevant Years however, the Appellant has filed nil returns marked 'without prejudice' for the Relevant Years;

...

(7) On this re-hearing neither party invites [the Commission] to revisit the findings of fact that:

- *The Appellant was not resident in the State in the years under appeal;*
- *The Appellant was not resident in Malta in the years under appeal; and*

- *The Appellant was a “chargeable person” as that phrase is used in the Taxes Consolidation Act, 1997 as amended, in the years under appeal.”*

28. On 8th March 2023, the Appellant’s accountant wrote to the Respondent and the Commission. Within that correspondence he stated:

“Tax returns for all the years under appeal have been posted to your offices today 8th March 2023 for your attention...”

29. On the same date the Appellant’s solicitor wrote to the Respondent and the Commission. That correspondence stated:

“...In relation to the draft statement of agreed facts, and point 3 in particular, and we note that the amended returns in respect of this taxpayer has been sent to the Criminal Assets Bureau. As you will see, the liability is commensurate with the Taxpayer’s stance as to quantum before Commissioner Kennedy...”

30. On 15th March 2023, the Appellant’s solicitor wrote to the Respondent and the Commission. Within that correspondence, the Appellant stated that he agreed to the points contained within the Respondents Draft Statement of Agreed Facts with the qualification that point (3) should be amended to reflect the position that the Appellant filed amended tax returns on 8th March 2023.

Appeal Hearing – 23rd March 2023

31. At the commencement of the appeal hearing, the Respondent noted that the Appellant had filed two sets of tax returns for the periods under appeal. As the latter of those tax returns showed taxation due to the Respondent and as the Appellant had failed to pay that liability, the Respondent repeated its objections to the Commission accepting the Appellant’s appeal as he had failed to satisfy the requirements of section 959AH TCA 1997.

32. Following legal argument, the Commissioner requested the Appellant to make legal submissions on the admissibility of the Appellant’s appeal on or before 2nd May 2023. The Respondent was invited to make representations on those submissions on or before 23rd May 2023 and the Appellant was further invited to make representations on the Respondent’s submissions, if any, on or before 7th June 2023.

33. Owing to an error in delivery, the Appellant did not lodge its submissions to the Respondent and the Commission until 5th May 2023. The Respondent made its submissions on 23rd May 2023, following which the Appellant made further replying

submissions on 7th June 2023. The Commissioner accepted those submissions and has considered all submissions in his decision and this Determination.

34. The Commissioner noted that a summons was required under section 949AE TCA 1997 to secure the Appellant's attendance at the appeal hearing as he was incarcerated as at the date of his appeal. In complying with his duties under section 949H TCA 1997 and in noting that the Appellant's appeal was remitted back to the Commission from the High Court for a "qualified *de novo*" hearing, the Commissioner suggested to the Appellant and the Respondent (the parties) that the Appellant's appeal proceed to hearing of the substantive matter under appeal since that matter would have to be determined in the event that the Appellant's appeal was held to be a valid appeal.
35. This was agreed between the parties subject to the Commissioner issuing a complete Determination on all matters arising in the Appellant's appeal, including the changes (if any) to be made to the quantum of assessments under appeal. As such, it was agreed between the parties and the Commissioner that there was no intention to issue a partial or preliminary Determination on the issue of compliance with the statutory pre-requisites which is in keeping with the decision of *O'Rourke v Appeal Commissioners and Anor* [2016] 2 IR 615.
36. As such, in advance of considering the parties substantive submissions, the Commissioner is required to consider the Appellant's submissions on the validity of his appeal and whether he has complied with the requirements of section 959AH TCA 1997.

Appellant's Submissions

37. The Appellant opened section 9 TCA 1997 which concerns "remittances" and provides:
- "Any remittance made to the Chief Special Collector under section 2(3) (b) or 3(6) (a) shall—*
- (a) where it is made otherwise than in cash, be made payable to the Revenue Commissioners, and*
- (b) be lodged to the General Account of the Revenue Commissioners in the Central Bank of Ireland as soon as prompt recording, and secure transmission to that account, of that remittance permits."*
38. The Appellant submitted it was evident from the use of the words "otherwise than in cash" that a number of other taxation payment options are facilitated by the Respondent. As those other payment options are not mandated by law, the Appellant submitted that it was open to him to elect to whatever payment method of which he wished to avail.

39. The Appellant stated that the Respondent obtained a search warrant from [REDACTED] District Court under section 14 of the Criminal Assets Bureau Acts 1996 and 2005 on 12th December 2006. This search warrant entitled the Respondent to collect material in respect of alleged criminal conduct regarding the Appellant and a number of named parties.
40. Following the execution of that warrant on 14th December 2016, the following items were seized and acknowledged as such by the Appellant:
1. Short term rental agreement from [REDACTED] for vehicle [REDACTED] in the name [REDACTED]
 2. Long term hire agreement from [REDACTED] for vehicle [REDACTED] in the name [REDACTED]
 3. UK vehicle registration certificate (new keeper details) for vehicle [REDACTED]
 4. Part 10 of UK vehicle registration certificate for vehicle [REDACTED]. New keeper's address is recorded as [REDACTED]
 5. UK Vehicle registration certificate for vehicle [REDACTED].
 6. Part of UK vehicle registration certificate for vehicle [REDACTED].
 7. Part 10 of UK vehicle registration certificate for vehicle [REDACTED]. New keeper's address is [REDACTED].
 8. Part of vehicle registration certificate for vehicle [REDACTED]
 9. [REDACTED] car rental agreement for [REDACTED] in the names of [REDACTED] and [REDACTED].
 10. UK vehicle registration certificate for vehicle [REDACTED]
 11. Long term hire agreement [REDACTED] for vehicle [REDACTED]
 12. Receipt from [REDACTED] dated 28th July 2015.
 13. Loan car indemnity from [REDACTED] dated 31st July 2015.
 14. UK vehicle registration certificates for vehicle [REDACTED]
 15. An amount of cash in the sum of €88,740 and Stg. £23,405 in the property searched by officers of the Respondent who were also members of An Garda

Síochaná. At the time of the execution of the warrant, that property was occupied by the Appellant, his wife, his daughter and his two adult sons.

16. The sum of €4,484 which was found in possession of the Appellant when he was searched at [REDACTED] Garda Station.
41. The Appellant submitted that the Respondent uplifted a considerable sum of assets from the Appellant during the executed search which exceeded the “sum of tax” due under section 959AH TCA 1997.
42. The Appellant further submitted that the seizure of those assets, “as a matter of law” amounted to no more than “involuntary bailment” of those assets. As such the Appellant submitted that the Respondent acting in the capacity of the Appellant’s Inspector of Taxes, acquired no property or other entitlement to the assets held and the position existed that the Appellant was a debtor of the Respondent (meaning that the Respondent owed the Appellant a sum of money from the assets withheld).
43. The Appellant stated that this “*de facto* legal relationship” has not been disturbed by an Order of any Court for instance, under the Proceeds of Crime Act 1996, or under section 39 of the Criminal Justice Act 1994 (a “Forfeiture Order”).
44. As such, the Appellant submitted that the assets held by the Respondent, by virtue of the election of the taxpayer to offset the taxation due by appropriation against the assets held by the Respondent, satisfied the requirements of section 959AH TCA 1997. Put more plainly, the Appellant submitted that as the Appellant is the “payer” and the Respondent the “payee” and as the payee has “the money” then the amount of tax has “been paid” and therefore the Appellant satisfied the requirements of section 959AH TCA 1997.
45. Further or in the alternative, the Appellant submitted that the provisions of section 959AH TCA 1997, which require the Appellant to pay the amount of outstanding tax and interest in advance of his appeal being accepted by the Commission, are contrary to the Constitutional and Convention rights afforded to a citizen under the Constitution and European Convention on Human Rights (“ECHR”).
46. In the event that the Commission refused the Appellant’s submissions on the validity of his appeal, the Appellant submitted that the Commission should treat the (second) tax returns for the periods under appeal, lodged with the Respondent on 8th March 2023, as moot. If this proposition was accepted, the Appellant submitted that as the liability on the original filed returns (the first tax returns lodged with the Respondent on 16th July 2018) was nil, then the issue on admissibility of the Appellant’s appeal under section 959AH

TCA 1997 did not arise (as the tax returns were submitted and as there was no liability on those returns to discharge).

Respondent's Submissions

47. The Respondent noted that section 960C TCA 1997² requires tax due and payable to the Revenue Commissioners shall in accordance with the provisions of section 960E (1) TCA 1997 *"be paid to and collected by the Collector-General"*.
48. The Respondent submitted that despite regulations being made under section 960EA TCA 1997, which permit payment methods by credit card, debit card and in other ways, there is nothing prescribed in the manner proposed by the Appellant. The Respondent further submitted that despite section 960G TCA 1997³ requiring *"every person who makes a payment of tax to the Revenue Commissioners or to the Collector-General shall identify the liability to tax against which he or she wishes the payment to be set"*, the Appellant had not complied with this requirement.
49. The Respondent noted that the Appellant relied heavily in his submissions on the section quoted by him, as pertaining to the payment methods permitted by the Respondent that is section 9 TCA 1997. However, the Respondent submitted that those submissions were moot as the section 9 TCA 1997 does not contain the narrative quoted by the Appellant in his submissions, which in place are to be found in section 8 of the Waiver of Certain Tax Interest and Penalties Act 1993. The Respondent submitted as that Act regulated for an "amnesty" which was available on the making of a declaration for the purposes of that Act, it did not apply to the Appellant.
50. The Respondent submitted as the Appellant had agreed in advance of the appeal hearing that he was a chargeable person and as he had not paid the associated tax liability, then he failed to comply with the provisions of section 959AH TCA 1997 and as such, his appeal should be refused by the Commission.
51. However, for the sake of completeness, the Respondent stated that it could confirm that in December 2016 there was a search of a property owned by the Appellant. The Respondent further confirmed that the items detailed at paragraph 40 above were seized by the Respondent and this list of items was sent to the Appellant's solicitor on 2nd February 2017.

² Inserted by Finance Act (No. 2) 2008 with effect from March 2009.

³ *Ibid.*

52. The Respondent opened section 7 of the Criminal Justice Act 2006, as amended, which it submitted provides a ready mechanism for a claim to be made to property which is removed during a search. It provides:

“(1) Where a member of the Garda Síochána who is in—

(a) a public place, or

(b) any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be,

finds or comes into possession of any thing, and he or she has reasonable grounds for believing that it is evidence of, or relating to, the commission of an arrestable offence, he or she may seize and retain the thing for use as evidence in any criminal proceedings for such period from the date of seizure as is reasonable or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and thereafter the Police (Property) Act 1897 shall apply to the thing so seized in the same manner as that Act applies to property which has come into the possession of the Garda Síochána in the circumstances mentioned in that Act.”

53. The Respondent further opened The Police (Property) Act 1897 which provides:

“a court of summary jurisdiction may, on application, either by an officer of police or by a claimant of the property, make an order for delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.”

54. The Respondent submitted that as no application was made to the Respondent, or to the knowledge of the Respondent, to any Court by any person claiming the monies in question or requiring that the monies be delivered up to such person, either under the foregoing provisions or at all, then it was not open to the Appellant to claim to be entitled to offset the assets seized against his taxation liabilities.

Analysis

55. In order to consider the validity of the Appellant’s appeal, an overview of the Commission’s statutory jurisdiction to accept an appeal is required.

56. As noted, the Appellant’s appeal was received by the Commission on 16th March 2018. As the Appellant’s appeal is in respect of Notices of Assessment, he was required in

accordance with the provisions of section 933 (1) (a) TCA 1997 to have made his appeal within 30 days after the date of issue of those Notices of Assessment.

57. As the Notices of Assessment issued by the Respondent on 12th March 2018 and as the Appellant submitted his appeal on 16th March 2018, it follows that the Appellant's appeal complied with the requirements of section 933 (1) TCA 1997 and as such was admitted to the Commission.
58. Upon receipt of an admissible appeal, the Commission are required under the provisions of section 949K TCA 1997 to "*send a copy of each notice of appeal, any item that was appended to the notice, to the [Respondent] as soon as is practicable after they have received them*".
59. Upon receipt of the Notice of Appeal, the Respondent is entitled under the provisions of section 949L TCA 1997 to object to the Commission on the grounds that the appeal is not a "valid appeal".
60. On receipt of the Appellant's Notice of Appeal, as noted, the Respondent objected to the Commission accepting the Appellant's appeal on the grounds that he had not complied with the provisions of section 959AH TCA 1997.
61. As also previously noted, under that section no appeal lies against an assessment until such stage as the chargeable person delivers a return and pays the corresponding tax and, if applicable, statutory interest arising on that return.
62. Where an Appellant fails to comply with the provisions of section 959AH TCA 1997 within the specified 30 day period, the Appellant's appeal is only valid in circumstances where the Appellant complies with the provisions of section 949O TCA 1997 which governs "Late Appeals".
63. In order to comply with the provisions of section 949O TCA 1997, the Appellant must comply with a number of statutory requirements. In particular, the provisions of section 949O (3) (b) TCA 1997 requires that where an appeal is made against an assessment, any tax charged on that assessment (together with statutory interest, if applicable) must be paid in order for the Appellant's appeal to be valid.
64. The practical effect of the foregoing provisions, in circumstances where an Appellant has not lodged his relevant tax return(s) and paid the associated tax and interest charge arising within 30 days of receipt of the Notice(s) of Assessment, is that he or she is deprived the right of an appeal unless he or she pays the tax and associated interest charge arising on the Respondent's Notice(s) of Assessment. Therefore, the right of an

Appellant to “reduce” the amount of tax owing on the Respondent’s Notice(s) of Assessment, by virtue of lodging a tax return(s) (and paying the associated tax/interest charge) containing a lesser figure than that on the assessment(s), is deprived where the taxpayer fails to conduct that action within the specified 30 day timeframe.

65. The Commissioner notes that the Appellant included a ground of appeal within his submitted Notice of Appeal that he was not required to comply with the provisions of section 959AH TCA 1997 as he was not a chargeable person and had no income or gains arising in the State.
66. As those grounds of appeal have been displaced by virtue of the terms of compromise entered into between the parties in which the Appellant concedes that he was a “chargeable person” for the periods under appeal, it follows that the Commissioner is required to reconsider whether the Appellant’s appeal is valid before proceeding.
67. While the Commissioner is required to look at acceptance of an appeal at a point in time, the provisions of section 949N (1) TCA 1997 provide that the Commission may subsequently refuse to accept an appeal, in circumstances where that appeal was originally accepted. Those provisions state:

“(1) Where the Appeal Commissioners—

are satisfied that an appeal is not a valid appeal,

become aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or

are satisfied that an appeal is without substance or foundation,

they shall refuse to accept the appeal...”

68. Thus, while the Commission accepted carriage of the Appellant’s appeal when received on 16th March 2018, section 949N TCA 1997 provides a legislative basis for the Commission to later form the opinion that the appeal is not a valid appeal and as such, refuse same.
69. In considering this matter, the Commissioner notes the Appellant submits in the first instance that the amount of tax required to be discharged for his appeal to be admissible is the tax due on those returns submitted on 8th March 2023 which is apparently⁴

⁴ The Commission were not provided with a copy of the tax returns submitted by the Appellant on 8th March 2023 and rely on the Appellant’s provided covering letter stating that they were submitted using the figures determined by the Commissioner in 23TACD2019.

computed on the basis of 5/52^{nds} of the amounts originally assessed by the Respondent and the additional sum of €80,000 for 2016 in respect of the purported property sale that occurred within that tax year. In the alternative, the Appellant submits, if prejudicial to his appeal, the Commissioner considers that the nil sum of taxation arising from his “first” submitted tax returns (being those submitted on 16th March 2018) be considered as the quantum in determining if his appeal is a valid appeal.

70. As the Appellant did not lodge his tax returns for the period under appeal (and pay the associated taxation and interest charge arising) within the 30 days period specified under section 933 TCA 1997 (that is 30 days from the date of issuance of the Notices of Assessment by the Respondent, being 12th March 2018), it follows that his appeal is a late appeal.
71. As the Appellant’s appeal is a late appeal, therefore for his appeal to be valid, he is required to pay the amount of taxation due on the Notices of Assessment issued by the Respondent on 12th March 2018, which is the sum of €952,184 plus statutory interest on that sum.
72. The Appellant submits the Respondent seized various assets belonging to him and as such the quantum of those seized assets is sufficient to discharge the taxation liabilities on the Respondent’s issued Notices of Assessment. Furthermore, the Appellant submits that as the Respondent is in possession of those assets, then a right of offset of the value of those assets is available to discharge his taxation liabilities.
73. The Commissioner notes from the Appellant’s submissions that the Respondent seized two categories of assets during its executed search warrant, that is motor vehicles and apparent associated documentation and amounts of cash in the sums of €88,740 and Stg. £23,405 from the searched property and the separate sum of €4,484 from the Appellant’s person.
74. Ignoring the fact that the value of those seized assets is unlikely to be capable of discharging the quantum of the Respondent’s assessments, the Commissioner has a number of concerns in accepting the Appellant’s submissions. Firstly, the Commissioner notes that the motor vehicles and associated documentation seized do not legally belong to the Appellant. The Commissioner further notes within the provided appeal documentation, the Appellant’s solicitor wrote to the Respondent on 7th March 2017 and requested that those seized vehicles be returned to the Appellant and his siblings as he (the solicitor) was “*advised that our client’s interest in these vehicles are purely on a rental basis*”. As such, the Commissioner finds that as the Appellant did not legally own

the seized motor vehicles then there is no value available, potentially or otherwise, for offset against the Appellant's taxation liability.

75. Secondly, the Commissioner notes that the majority of cash seized by the Respondent was seized from the Appellant's home which was occupied by a number of individuals, all or some of who may have been the owner of that cash. As the Commissioner has not been provided with any evidence of who owns that cash seized from the Appellant's home, it follows that the Commissioner is unable to consider whether that cash is available, potentially or otherwise, for offset against the Appellant's taxation liabilities. The Commissioner further notes that the same position applies to the cash seized from the Appellant's person but even if it did belong to the Appellant, that sum is incapable of discharging the Appellant's taxation liabilities.
76. Thirdly, the Commissioner notes from the Respondent's submissions that no application, to its knowledge has been made to it or to any Court for those sums to be returned to their rightful owner under the legislation which exists for such purposes. The Commissioner confirms that he was not provided with such documentation in any event.
77. Having considered the parties submissions, the Commissioner finds that there is no available mechanism within the TCA 1997 or associated legislation that would permit the Appellant to contra or offset the sum seized by the Respondent against his taxation liabilities. Hence, on a factual and legal basis, the Commissioner does not accept that there can be an offset of any sum seized against taxation liability.
78. As the Appellant's taxation arising on the Respondent's issued Notices of Assessment remains unpaid, it follows that the Commissioner is not satisfied the Appellant's appeal is a valid appeal and hence is required to refuse to accept the Appellant's appeal in accordance with the provisions of section 949 (1) TCA 1997.
79. In reaching his findings the Commissioner has considered the Appellant's reference to unfairness and alleged breaches of constitutional and convention rights. It is important to state that the scope of the jurisdiction of an Appeal Commissioner is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. It is discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and the *State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

80. The jurisdiction of the Commission does not extend to the consideration of constitutional rights nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

Substantive issue

81. As noted, during the re-hearing of the Appellant's appeal on 23rd March 2018, it was agreed between the parties and the Commission in the event of the Appellant's appeal being refused, for the purpose of completeness the Commissioner would determine the substantive matter under appeal that is whether the Respondent's issued Notices of Assessment should stand or be varied. Hence, the Appellant is saved further time and costs as the Commissioner has proceeded to adjudicate on the substantive appeal on taxation in any event. The Commissioner also notes the incarceration of the Appellant and the various administrative burden for release to attend the hearing. It is not the role of the Commissioner to have any judgment on the Appellant's incarceration and the referral to same is in the context of the completion of this matter under appeal for the Appellant and all parties to same.

82. At the commencement of the Appeal hearing on 23rd March 2018, the Appellant advised the Commission that it did not intend on introducing any new submissions to the Commission and in place relied on the transcript of the appeal hearing which was held on 22nd February 2019. The Respondent did not object to this approach but made its own submissions which are considered at paragraphs 87 below.

83. Based upon the Appellant's evidence tendered at the appeal hearing on 22nd February, Commissioner Kennedy found that the Appellant was not resident in the State but as he conducted trading activities whilst in Ireland, he was liable to income tax on the profits of those trading activities. This view was formed by Commissioner Kennedy when he examined the Appellant's direct evidence in which he admitted to conducting a number of "deals" on St. Patrick's weekend⁵ and over a number of weeks at Christmas time⁶ and in further noting that this position was accepted by his Counsel⁷.

⁵ Transcript 22nd February 2019. at page 40, lines 21-22

⁶ *Ibid.* at page 122, lines 23-32

⁷ *Ibid.* at page 183, lines 13-17

84. As the Appellant also stated in his direct evidence that he only dealt in cash for the periods under appeal⁸ and that he tore up his records at year end⁹ before discarding them in the bin¹⁰, Commissioner Kennedy formed the view that he was unable to ascertain an appropriate quantum of income upon which to assess the Appellant's taxation liability for the periods under appeal.
85. Commissioner Kennedy's approach to establishing that quantum is discussed at paragraph 10-14 above but for ease of reference was calculated upon the number of weeks the Appellant alleged he spent in the State conducting trading activities pro-rated at 5/52nds of the amount originally assessed by the Respondent together with the additional sum of €80,000 in respect of an alleged property deal conducted in 2016.
86. The Appellant submitted that this methodology of apportionment was specifically legislated for under the provisions of section 107 TCA 1997, and as such, he commended Commissioner Kennedy's findings and requested the Commission to uphold those figures in dispensing with the Appellant's appeal.
87. Conversely, the Respondent drew exception to Commissioner Kennedy's findings. As those findings were reached without any associated documentation and were based entirely upon the Appellant's direct evidence, the Respondent submitted that it would form "a dangerous trend" for the Commission to determine matters on such basis.
88. Furthermore, the Respondent submitted that there was no basis in law to endorse Commissioner Kennedy's findings and if adapted could lead to under-assessment of taxation. Put plainly, the Respondent's Counsel stated by way of illustration, that if he received a fee of €1 million euros for a legal case conducted in the State, and only spent one week in this jurisdiction, if the proposed methodology was applied this would result in him only being assessed to 1/52nd of that income despite generating all that income in this jurisdiction.
89. In addition, the Respondent stated that established jurisprudence of the Superior Courts has held that the "onus of proof" in an appeal is for the Appellant to discharge, on a "balance of probabilities basis". The Respondent submitted as the Appellant had no documentation to discharge this burden, then adapting Commissioner Kennedy's methodology would be aghast this established jurisprudence. As such, the Respondent

⁸ Transcript 22nd February 2019 at page 61 lines 27-29.

⁹ *Ibid.* at page 86, lines 10-13.

¹⁰ *Ibid.* at page 88, lines 8-9.

submitted there was no basis in law to uphold Commissioner Kennedy's findings and given this position the Respondent's issued Notices of Assessment should be upheld.

Material Facts

90. The Commissioner has considered the transcript from the hearing in February 2019 and all the submissions of the parties. As such, the Commissioner finds in this hearing the following material facts, which for completeness are not in dispute between the parties:

90.1. The Appellant was not resident in the State for the periods under appeal.

90.2. The Appellant was a "chargeable person" as that phrase is used in the TCA 1997 for the periods under appeal.

91. In addition, the Commissioner finds the following material facts based on the Appellant's testimony in the February 2019 hearing and not disputed in the *de novo* hearing in 2023:

91.1. Owing to the Appellant's transient lifestyle, he was not resident in any jurisdiction, in particular any jurisdiction which had a concluded double-taxation agreement with Ireland. As such, the Appellant cannot avail of any double taxation agreement that could ameliorate a charge to Irish taxation.

91.2. The Appellant operated his trading activities for the periods under appeal in "cash format".

91.3. The Appellant destroyed his business records at the end of each chargeable year.

91.4. When those business records were destroyed, the Appellant discarded them in a bin.

Analysis

92. The appropriate starting point for analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*") where Charleton J held at paragraph 22:-

"The burden of proof in this appeal process is ... on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."

93. This burden of proof was reiterated in the recent High Court case of *O’Sullivan v Revenue Commissioners* [2021] IEHC 118, where Sanfey J. held at paragraph 90:

“...The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer’s position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position...”

94. The Appellant’s representatives did not put forward any submissions which made the Commissioner question that burden of proof. As the Appellant advised the Commission that he destroyed his records at the end of each tax year (see paragraph 84 above), it follows that he is incapable of discharging the requisite burden of proof as he has no corroborating evidence to vouch his direct evidence. The Commissioner notes from jurisprudence such as the UK case of *Terrace Hill (Berkeley) Ltd v HMRC* [2015] UKFTT 75 (TC) (12 February 2015) that while an Appellant’s evidence can be persuasive, it should be capable of being verified with reference to some supporting documentation.

95. Furthermore, the Commissioner notes that such documentation is a mandatory requirement under section 886 (2) (a) TCA 1997. It requires every person who “*carries on or exercises any trade, profession or other activity the profits or gains are chargeable under Schedule D*” to “*keep, or cause to be kept on that person’s behalf, such records as will enable true returns to be made for the purpose of income tax... of such profits...*” Subsection 4(a) further requires that those records are kept for a minimum of six years from the date they relate or in the event of an appeal to the Commission until such stage as the Commissioner’s determination has become “final and conclusive”.

96. It is unclear to the Commissioner as to whether the Appellant had access to professional advice at the time he conducted his trade. However, the position remains absent any documentation, the Commissioner must uphold the Respondent’s assessments in discharging his statutory role.

97. There is no bar to any person conducting their affairs and trade in cash but if that choice is made, then it is imperative that other records are kept. For those who conduct their trade in the more traditional methods utilising bank accounts, those accounts can verify payments for materials, stock, equipment, staff costs, hiring of plant (if applicable), rental costs (if applicable), bank loans and interest thereof and payments made for services/goods from customers. In addition, those in trade will traditionally have written records of for example quotations provided, invoices for goods or services and receipts

for goods or services provided. Again, there is no requirement for any party to keep typed records and handwritten contemporaneous records can be considered by the Commission. Parties can provide information from customers about services or goods provided to substantiate payments received or made or indeed from suppliers for goods or services to enable their business to operate. Again, the Commissioner has discretion as to how this evidence is provided to the Commission but no information was provided to corroborate the Appellant's testimony in this appeal. The Commissioner would expect some documentation to be available to assist the Appellant in demonstrating the trade he undertook in the State.

98. Therefore, as the Appellant has no documentary evidence in any format or corroborating evidence from any other person or organisation to support his direct testimony, the Commissioner is left with no choice, in line with *Menolly Homes*, to find that the Appellant is not capable of discharging the necessary burden of proof required to demonstrate to the Commissioner that the assessments issued by the Respondent are not payable.
99. Given this position, the Commissioner finds that had the Appellant's appeal not been refused by the Commission, it would have been unsuccessful as he failed to discharge the requisite burden of proof to establish that the tax due on the Respondent's Notices of Assessments was incorrect.

Determination

100. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal is not a valid appeal and should be refused in accordance with the provisions of section 949N TCA 1997. For the purpose of completeness, the Commissioner further determines that the Appellant has not succeeded in showing that the assessed tax is not payable.
101. Therefore, the Notice of Assessments dated 12th March 2018, in the sum of €952,184 for the years of assessment under appeal are upheld and stand.
102. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal. The Commissioner has spent the appropriate time reviewing all the history of this appeal, all documentation, the transcript, all legal submissions and all applicable legal jurisprudence in reaching the conclusions made in this Determination. The Commissioner thanks the Appellant for attending the hearing and for the respect he and his family demonstrated throughout the

process. In addition, the Commissioner repeats his appreciation for the time spent and effort expended by the parties' representatives.

103. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

104. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ (6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

105. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Andrew Feighery

Appeal Commissioner

04 December 2023

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.

Appendix One - Supplemental Legislation

Section 9 TCA 1997 – Subsidiaries.

- (1) *For the purposes of the Tax Acts, except where otherwise provided, a company shall be deemed to be—*

...

Section 74 TCA 1997 – Case IV Basis of Assessment.

- (1) *Income tax under Case IV of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to the average of such a period, not being greater than one year, as the case may require and as may be directed by the inspector.*
- (2) *The nature of the profits or gains chargeable to income tax under Case IV of Schedule D, and the basis on which the amount of such profits or gains has been computed, including the average, if any, taken on such profits or gains, shall be stated to the inspector.*
- (3) *Every such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits or gains.*

Section 107 TCA 1997 – Apportionment of profits.

- (1) *Where in the case of any profits or gains chargeable under Case I, II or IV of Schedule D it is necessary, in order to determine the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts of such profits or gains or losses, it shall be lawful to make such division and apportionment or aggregation.*
- (2) *Any apportionment under this section shall be made in proportion to the number of months or fractions of months in the respective periods.*

Section 886 TCA 1997 – Obligation to keep certain records.

- (1) *In this section—*

“linking documents” means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

“records” includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to—

- (a) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,*
- (b) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,*
- (c) the assets and liabilities of the trade, profession or other activity referred to in paragraph (a) or (b), and*
- (d) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.*

(2) (a) Every person who—

- (i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,*
- (ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or*
- (iii) is chargeable to capital gains tax in respect of chargeable gains, shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.*

(aa) Without prejudice to the generality of paragraph (a) and subsection (4)—

- (i) the records shall include records and linking documents relating to any allowance, deduction, relief or credit (referred to in this paragraph as a 'relevant amount') taken into account in computing the amount of tax payable (within the meaning of section 959A), for the year of assessment or accounting period concerned,*
- (ii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4)(a)(i), be treated as transactions, acts or operations that were completed at the end of the year of assessment or accounting period for which a relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid) for the year of assessment or accounting period concerned, and*
- (iii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4) (a) (ii), be treated as transactions, acts or operations that were completed at the end of the*

year of assessment or accounting period in which the return, in which the relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid), has been delivered.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept—

(a) in written form in an official language of the State, or

(b) subject to section 887(2), by means of any electronic, photographic or other process.

(4) (a) Notwithstanding any other law, linking documents and records kept in accordance with subsections (2) and (3) shall be retained by the person required to keep the records—

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

(ii) in the case of a person who fails to comply with Chapter 3 of Part 41A requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations, or

(iii) where the transaction, act or operation is the subject of—

(I) an inquiry or investigation started by the Revenue Commissioners or by a Revenue officer into any matters to which this Act relates,

(II) a claim under a provision of this Act,

(III) proceedings relating to any matter to which this Act relates,

linking documents and records shall be retained by the person required to keep the records for the 6 year period and until such time as—

(A) the enquiry or investigation has been completed or the claim has been determined, and

(B) any appeal to Appeal Commissioners in relation to that enquiry or the determination of that claim or to any other matter to which the Act relates, has become final and conclusive, and

(C) any proceedings in relation to the outcome of the inquiry or investigation or the determination of that claim or that appeal, or to any other matter to which the Act relates, has been finally determined, and

(D) the time limit for instituting any appeal or proceedings or any further appeal or proceedings has expired.

...

(5) Any person who fails to comply with subsection (2), (3), (4), (4A) or (4B) in respect of any records or linking documents in relation to a return for any year of assessment or accounting period shall be liable to a penalty of €3,000; but a penalty shall not be imposed under this subsection if it is proved that no person is chargeable to tax in respect of the profits or gains for that year of assessment or accounting period, as the case may be.

Section 933 TCA 1997 – Appeals against assessment.

(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as “other officer”) shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

...

Section 941 TCA 1997 - Statement of Case for High Court

(1) Immediately after the determination of an appeal by the Appeal Commissioners, the appellant or the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as “other officer”), if dissatisfied with the determination as being erroneous in point of law, may declare his or her dissatisfaction to the Appeal Commissioners who heard the appeal.

- (2) *The appellant or inspector or other officer, as the case may be, having declared his or her dissatisfaction, may within 21 days after the determination by notice in writing addressed to the Clerk to the Appeal Commissioners require the Appeal Commissioners to state and sign a case for the opinion of the High Court on the determination.*
- (3) *The party requiring the case shall pay to the Clerk to the Appeal Commissioners a fee of €25 for and in respect of the case before that party is entitled to have the case stated.*
- (4) *The case shall set forth the facts and the determination of the Appeal Commissioners, and the party requiring it shall transmit the case when stated and signed to the High Court within 7 days after receiving it.*
- (5) *At or before the time when the party requiring the case transmits it to the High Court, that party shall send notice in writing of the fact that the case has been stated on that party's application, together with a copy of the case, to the other party.*
- (6) *The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.*
- (7) *The High Court may cause the case to be sent back for amendment and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.*
- (8) *An appeal shall lie from the decision of the High Court to the Supreme Court.*
- (9) *If the amount of the assessment is altered by the order or judgment of the Supreme Court or the High Court, then—*
 - (a) *if too much tax has been paid, the amount over-paid shall be refunded with interest in accordance with section 865A, or*
 - (b) *if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.*

- (a) if too much tax has been paid, the amount over-paid shall be refunded with interest in accordance with the provisions of section 865A, or*
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.*

Section 949E TCA 1997 – Directions.

- (1) The Appeal Commissioners may, on their own initiative or on the application of a party, give a direction at any time to a party in relation to the conduct or disposal of an appeal, including a direction amending an earlier direction or suspending or setting aside its operation.*
- (2) Without prejudice to the generality of subsection (1), the matters in relation to which the Appeal Commissioners may give a direction include—*
 - (a) requiring a party to provide, to the Appeal Commissioners or to another party, documents, statements, accounts, returns, computations, explanations, particulars, records, certificates, declarations, schedules and such other items or information as they consider relevant to the adjudication of the matter under appeal,*
 - (b) consolidating or hearing together 2 or more appeals raising common or related issues,*
 - (c) staying proceedings,*
 - (d) holding a preliminary hearing,*
 - (e) adjourning a hearing, and*
 - (f) extending the time within which a direction must be complied with.*
- (3) In a case in which the giving by them of a direction is applied for by a party, such an application shall be made—*
 - (a) by sending, in writing, the application to the Appeal Commissioners, or*
 - (b) orally, during the course of a hearing or preliminary hearing,**and shall include the reason for seeking the direction.*
- (4) A direction by the Appeal Commissioners may be given by them orally but, where this happens, the terms of the direction shall be reduced to writing as soon as practicable thereafter unless the Appeal Commissioners consider this to be unnecessary.*
- (5) Where the Appeal Commissioners give a direction then, unless they consider that there is a good reason not to do so, they shall send a written notice of the direction to each party and to any other person affected by that direction.*

- (6) *A party who asserts that a direction ought not to have been given by the Appeal Commissioners or that a direction given by them should be amended shall apply to the Commissioners for a direction setting aside or suspending its operation or, as appropriate, amending it.*
- (7) *That application shall be made not later than 14 days after the date on which the party was notified of the first-mentioned direction in subsection (6).*
- (8) *Where the direction given is one requiring compliance with its terms, it shall specify a date by which these terms are to be complied with.*
- (9) *Where a direction requires the provision of such items or information as are referred to in subsection (2) (a), it may specify the format in which those items are to be provided.*
- (10) *A party to whom a direction is given shall comply with it.*
- (11) *Where a party applies in writing for a direction, the party shall, at the time of such application, send a copy of the application to the other party.*

Section 949H TCA 1997 – Flexible proceedings.

- (1) *The Appeal Commissioners shall, subject to the provisions of this Part, endeavour to the best of their ability to manage and conduct proceedings in a way that will meet the reasonable expectations of members of the public (and in particular tax payers) with regard to—*
 - (a) *undue formality being avoided, and*
 - (b) *a flexible approach being adopted by the Commissioners in respect of procedural matters.*
- (2) *Without prejudice to the generality of subsection (1), the Appeal Commissioners shall—*
 - (a) *provide an opportunity to the parties to settle the matter under appeal by agreement with each other, and*
 - (b) *avoid delay insofar as this is compatible with the proper consideration of a matter under appeal.*

Section 949L TCA 1997 – Objection by Revenue Commissioners.

- (1) *Where the Revenue Commissioners consider that—*
 - (a) *an appeal is not a valid appeal, or*
 - (b) *the appellant has not complied with the requirements of section 949O,**they may send to the Appeal Commissioners a written notice of objection to the making of the appeal and that notice shall state the reason for their objection.*

- (2) *Where the Revenue Commissioners do not send the notice referred to in subsection (1) to the Appeal Commissioners within 30 days after the date on which the Appeal Commissioners send the notice of appeal to them, the Appeal Commissioners shall not be required to have regard to the objection in deciding whether to accept an appeal.*
- (3) *Where the Revenue Commissioners send a notice of objection in accordance with subsection (1), the Appeal Commissioners shall notify such objection to the appellant.*

Section 949N TCA 1997 – Refusal to accept an appeal.

- (1) *Where the Appeal Commissioners—*
 - (a) *are satisfied that an appeal is not a valid appeal,*
 - (b) *become aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or*
 - (c) *are satisfied that an appeal is without substance or foundation,**they shall refuse to accept the appeal.*
- (2) *Where the Appeal Commissioners refuse to accept an appeal, they shall notify the parties in writing accordingly stating the reason for the refusal.*
- (3) *Where, in respect of a refusal on their part to accept an appeal, the Appeal Commissioners declare that their decision in that regard is final, then that decision shall be final and conclusive.*
- (4) *For the avoidance of doubt—*
 - (a) *references in the preceding subsections to the Appeal Commissioners' refusing to accept an appeal include references to a member or members of staff of the Commission, pursuant to an authority granted under section 5(2) of the Finance (Tax Appeals) Act 2015, refusing to accept an appeal, and*
 - (b) *the Appeal Commissioners may make a declaration under subsection (3) in respect of a foregoing refusal by a member or members of staff to accept an appeal as they may make such a declaration in respect of such a refusal on their part.*

Section 949O TCA 1997 – Late Appeals.

- (1) *The Appeal Commissioners may accept a late appeal where—*
 - (a) *they are satisfied that—*

(i) the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the period specified by the Acts for the making of that appeal, and

(ii) the appeal is made thereafter without unreasonable delay,

and

(b) the appeal is made within a period of 12 months after the end of the period specified by the Acts for the making of that appeal.

(2) Notwithstanding the period specified in paragraph (b) of subsection (1) for the making of an appeal, the Appeal Commissioners may accept an appeal made after the end of that period where paragraph (a) of that subsection applies and—

(a) any return that was required to be delivered to the Revenue Commissioners under the Acts has been so delivered, and

(b) the requirement in subsection (3) (a) or (b) (or both as the case may be) has been complied with.

(3) Each of the following is a requirement mentioned in subsection (2) (b)—

(a) where, in the opinion of the Appeal Commissioners, the return referred to in subsection (2)(a) is insufficient to enable the appeal to be determined, such other information as, in the opinion of the Appeal Commissioners, would enable the appeal to be determined by them without undue delay has been provided, and

(b) where an appeal is made against an assessment, any tax charged by the assessment has been paid together with any interest on that tax chargeable under—

(i) section 1080,

(ii) section 159D of the Stamp Duties Consolidation Act 1999,

(iii) section 103 of the Finance Act 2001,

(iv) section 51 of the Capital Acquisitions Tax Consolidation Act 2003,

(v) section 114 of the Value-Added Tax Consolidation Act 2010, or

(vi) section 149 of the Finance (Local Property Tax) Act 2012,

as the case may be, at the time the appeal is made.

(4) For the purpose of deciding whether to accept a late appeal, the Appeal Commissioners may make such enquiries as they consider necessary or appropriate and may do so by holding a hearing.

(5) *Nothing in this section derogates from the functions of the Appeal Commissioners under section 949N.*

Section 949T TCA 1997 – Case management conference.

(1) *At any stage in proceedings, the Appeal Commissioners may give a direction that a party attend a meeting in the nature of, and referred to subsequently in this Part as, a case management conference—*

- (a) *to review the conduct of the proceedings and the actions that have been taken or that remain to be taken,*
- (b) *to clarify any matters raised by the parties or by the Appeal Commissioners, and*
- (c) *so as to enable the Appeal Commissioners to give all such directions as appear to them to be necessary or desirable for the purpose of securing the completion of the proceedings in an expeditious and fair manner.*

(1A) *A direction given under subsection (1) shall specify—*

- (a) *the date on which and time at which the case management conference shall commence, and*
- (b) *the location at which the case management conference shall be held.*

(2) *With the consent of the parties, the Appeal Commissioners may determine a matter under appeal at, or following, a case management conference without the need to hold a hearing.*

(3) *If the Appeal Commissioners permit this to be done, a party may take part in the proceedings of a case management conference by means of a suitable telecommunication link, and accordingly, in such a case, the party shall not be required to appear in person.*

Section 949AE TCA 1997 – Summoning and examination of witnesses.

(1) *The Appeal Commissioners may summon any person to appear before them to be examined where they consider such a person to be in a position to give evidence relating to a matter under appeal.*

(2) *A summons under subsection (1) shall—*

- (a) *unless the person being summoned consents to a shorter period, be sent to that person not less than 21 days before the date of a hearing,*
- (b) *inform the person being summoned of his or her entitlement to apply to the Appeal Commissioners to vary or set aside the summons if he or she did not have an opportunity to object to it before it was issued, and*

- (c) *state the consequences, under section 949AU, of failure to comply with the summons.*
- (3) *The Appeal Commissioners may limit the number of witnesses whose evidence a party may put forward.*

Section 960C TCA 1997 – Tax to be due and payable to Revenue Commissioners.

Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.

Section 960E TCA 1997 - Collection of tax, issue of demands, etc.

- (1) *Tax due and payable to the Revenue Commissioners by virtue of section 960C shall be paid to and collected by the Collector-General, including tax charged in all assessments to tax, particulars of which have been given to the Collector-General under section 959G.*

...

Section 960EA TCA 1997 – Payment of tax by relevant payment methods.

- (1) *In this section—*
- “prescribed” means prescribed by the Revenue Commissioners in regulations made under subsection (3);*
- “relevant payment method” means each of the following methods of payment:*
- (a) credit card,*
 - (b) debit card,*
 - (c) any other prescribed method or methods of payment;*
- “relevant person” means the Revenue Commissioners, the Collector-General or a Revenue officer, as the case may be.*
- (2) *Where a person makes any payment of tax to a relevant person using a relevant payment method, the relevant person may refuse to accept such payment where, by accepting the payment made using such relevant payment method the Revenue Commissioners would, but for this section, incur any fees or charges (however described) in connection with any amount paid, using the relevant payment method concerned, to the relevant person, unless, at the time of making the payment, the person making the payment agrees to the payment of such additional charge or additional charges, as the case may be, as may be prescribed, by reason of the person’s making payment by that relevant payment method.*
- (3) *The Revenue Commissioners may make regulations—*

- (a) *prescribing a relevant payment method or relevant payment methods or class or classes of relevant payment method or relevant payment methods for the purposes of this section,*
- (b) *prescribing the additional charge or additional charges payable in respect of each relevant payment method or each class of relevant payment method or relevant payment methods and different additional charges may be prescribed for different relevant payment methods or classes of relevant payment methods, and*
- (c) *specifying—*
 - (i) *the period of time within which or the time by which, and*
 - (ii) *the manner in which,**any such additional charge or additional charges as may be prescribed under paragraph (b) shall be paid.*

Section 960G TCA 1997 – Duty of taxpayer to identify liability against which payment to be set. etc.

- (1) *Subject to subsection (2), every person who makes a payment of tax to the Revenue Commissioners or to the Collector-General shall identify the liability to tax against which he or she wishes the payment to be set.*
- (2) *Where payment of tax is received by the Revenue Commissioners or the Collector-General and the payment is accompanied by a pay slip, a tax return, a tax demand or other document issued by the Revenue Commissioners or the Collector-General, the payment shall, unless the contrary intention is or has been clearly indicated, be treated as relating to the tax referred to in the document concerned.*
- (3) *Where a payment is received by the Revenue Commissioners or the Collector-General from a person and it cannot reasonably be determined by the Revenue Commissioners or the Collector-General from the instructions, if any, which accompanied the payment which liabilities the person wishes the payment to be set against, then the Revenue Commissioners or the Collector-General may set the payment against any liability due by the person under the Acts.*

Section 14 – Criminal Assets Bureau Act 1996 – Search Warrants.

- (1) *A judge of the District Court, on hearing evidence on oath given by a bureau officer who is a member of the Garda Síochána, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts, is to*

be found in any place, issue a warrant for the search of that place and any person found at that place.

- (2) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent may, subject to subsection (3), if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.*
- (3) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for a search warrant.*
- (4) Subject to subsection (5), a warrant under this section shall be expressed to and shall operate to authorise a named bureau officer who is a member of the Garda Síochána, accompanied by such other persons as the bureau officer thinks necessary, to enter, within one week of the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place and seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search, which the officer believes to be evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts.*
- (5) Notwithstanding subsection (4), a search warrant issued under subsection (3) shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.*
- (6) A bureau officer who is a member of the Garda Síochána acting under the authority of a warrant under this section may—*

 - (a) require any person present at the place where the search is carried out to give to the officer the person's name and address, and*
 - (b) arrest without warrant any person who—*

 - (i) obstructs or attempts to obstruct that officer or any person accompanying that officer in the carrying out of his or her duties,*
 - (ii) fails to comply with a requirement under paragraph (a), or*
 - (iii) gives a name or address which the officer has reasonable cause for believing is false or misleading.*

- (7) *A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, who fails to comply with a requirement under subsection (6) (a) or who gives a false or misleading name or address to a bureau officer who is a member of the Garda Síochána, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a period not exceeding 6 months, or to both.*
- (8) *The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.*
- (9) *In this section, “place” includes a dwelling.*

Section 39 Criminal Justice Act 1994 – Forfeiture of cash seized under section 38.

- (1) *A judge of the Circuit Court may order the forfeiture of any cash which has been seized under section 38 of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.*
- (2) *Any application under this section shall be made, or caused to be made, by the Director of Public Prosecutions.*
- (3) *The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.*

Section 8 Waiver of Certain Tax Interest and Penalties Act, 1993.

Any remittance made to the Chief Special Collector under section 2 (3) (b) or 3 (6) (a) shall—

- (a) *where it is made otherwise than in cash, be made payable to the Revenue Commissioners, and*
- (b) *be lodged to the General Account of the Revenue Commissioners in the Central Bank of Ireland as soon as prompt recording, and secure transmission to that account, of that remittance permits.*