Ref: 15TACD2017

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal is concerned with the entitlement of the Respondent to raise assessments for the years 2007, 2008 and 2009 with reference to the 4 year time limit prescribed by Taxes Consolidation Act 1997, section 955 and the Appellant's entitlement to the 'Rent-a-room' relief pursuant to section 216A of that Act in respect of the years 2010, 2011 and 2012.

Background

2. Following a compliance review undertaken by the Respondent, the Appellant furnished tax returns and rental income statements on various dates during the years 2013 and 2014 reflecting the following rental income:

Year	Gross Rental Income
2007	€10,800
2008	€11,400
2009	€11,400
2010	€ 9,400
2011	€ 9,000

2012	€ 9,000

3. The Appellant asserts that the Respondent is precluded from making assessments for the years ended 31st December 2007 to 31st December 2009 inclusive as the assessments were not issued within 4 years from the end of the year of assessment in which the income arose.

4. The Appellant also claims that the rental income derived from the letting of [**Address of Property Redacted**] (the Premises) for the years ended 31st December 2010, 31st December 2011 and 31st December 2012 qualified for 'Rent-a-room' relief pursuant to Taxes Consolidation Act 1997 (TCA), section 216A.

Legislation

Taxes Consolidation Act

5. Notwithstanding the legislative changes introduced by Finance Act 2012 to the self assessment procedures, TCA, Part 41 is applicable to periods prior to 2013.

6. As such TCA, section 950 defined a "*chargeable person*" in respect of a chargeable period *"as a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax".* However, individuals in receipt of "*other sources of income*" that have been "*taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the chargeable period*" are not considered to be "*chargeable persons*".

7. Correspondingly TCA, section 951 imposed an obligation on all chargeable persons to:

> *"prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form of -*
>
> *(a) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment-*
>
> *(i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 877, if the period specified in such notice were the year of assessment which is the chargeable period, and*
>
> *(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to*

those matters and particulars referred to in subparagraph (i), all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under section 879,

Statutory Time Limits

8. TCA, section 955 entitles an inspector to make or amend an assessment within 4 years after the chargeable period in which the return was delivered. Subsection 2(a) specifies that where:

   (a) a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and –

   (i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and
   (ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered"

9. Therefore, the time limit for making or amending an assessment is 4 years after the end of the tax year or accounting period in which the return is delivered.

Rent-a-room relief

10. Relief, pursuant to TCA, section 216A, is afforded from income tax in respect of gross receipts from the letting of a room or rooms in an individual's sole or main residence to include sums for meals, laundry or similar goods and services up to an annually prescribed monetary limit. Subsection 1 provides the following definitions:

    "*qualifying residence", in relation to an individual for a year of assessment, means a residential premises situated in the State which is occupied by the individual as his or her sole or main residence during the year of assessment;*

    "relevant sums" means all sums arising in respect of the use for the purposes of residential accommodation, of a room or rooms in a qualifying residence and includes sums arising in respect of meals, cleaning, laundry and other similar goods and services which are incidentally supplied in connection with that use;

11. Subsection 2 governs the relief and states:

(a) This subsection applies if—

(i) relevant sums, chargeable to income tax under Case IV or Case V of Schedule D, arise to an individual (regardless of whether the relevant sums are chargeable to income tax under Case IV or Case V or under both Case IV and Case V), and
(ii) the amount of the relevant sums does not exceed the individual's limit for the year of assessment,

(b) In ascertaining the amount of relevant sums for the purposes of this subsection no deduction shall be made in respect of expenses or any other matter.

(c) Where this subsection applies the following shall be treated as nil for the purposes of the Income Tax Acts—

(i) the profits or gains of the year of assessment, and
(ii) the losses of any such year of assessment, in respect of relevant sums arising to an individual."

14. Subsection 5 prescribes the annual rental income that a person is entitled to receive without giving rise to a tax liability. For the years up to 31st December 2007 the limit was €7,620. Thereafter and in respect of the years under appeal, the limit was set at €10,000.

Submissions

Appellant

15. The Appellant submitted that the assessments for 2007, 2008 and 2009 issued out of time. The Appellant also asserted that the 'Rent-a-room' relief should be allowed for all years under appeal as the Premises was his only property and therefore was his main residence.

Respondent

16. The Respondent submitted that the Appellant, as a "*chargeable person*", was obliged to complete and file tax returns for the years ended 31st December 2007, 31st December 2008 and 31st December 2009 within the prescribed dates. However, and as a result of a compliance review, the Appellant's furnished tax returns and statements for those years during the years 2013 and 2014 disclosing details of the rental income. As such, the Respondent was lawfully entitled to raise assessments during the year 2014 as those assessments were raised within 4 years from the end of the year of assessment in

which the returns were delivered to the Respondent. Furthermore, the gross rental income received in respect of those periods exceeded the annual limited prescribed by TCA, section 216A (5) and was within the charge to tax.

17. For the later years 2010, 2011 and 2012, the Respondent asserted that the lease agreement, which been previously furnished to the Tax Appeals Commission, clearly demonstrated that the Appellant had let the entirety of his house and was not occupying that property as his sole or main residence. Therefore, he was not entitled to the benefit of the 'Rent-a-room' relief.

Evidence

18. The Appellant accepted that the receipt of rental income for the years 2007, 2008 and 2009 exceeded the annual income limit prescribed for those years and therefore he was not entitled to the 'Rent- a-room' relief.

19. In relation to his claim for 'Rent-a-room' relief, it was agreed that the lease agreement executed by the Appellant entitled the tenants to the exclusive right to reside in the entire property subject to the normal conditions permitting the landlord "*at all reasonable times to enter the premises and examine the state of repair and condition thereof*".

20. While the tenant had exclusive use of the Premises, the Appellant said that a bedroom and bathroom facilities were made available to him. However, he had no authority nor did he avail of the kitchen facilities or occupy any other room of the house.

21. The Appellant said that during the years 2010 to 2012, he stayed approximately 50 nights per annum in the Premises. Between April and October each year, he resided in his mobile home in a seaside resort. The remaining time was spent with family and friends and on holiday aboard.

Analysis

Years 2007 – 2009

22. The quantum of rental income received during the years under appeal had the effect of designating the Appellant as a "*chargeable person*". As such there was an obligation on the Appellant to complete and file tax returns for all years.

23. The Respondent only became aware of the Appellant's rental income during 2013. As assessments for the years 2007, 2008 and 2009 were raised within 4 years from the end of the chargeable period in which the returns were "*delivered*", there is no statutory

impediment that prevents the Respondent from raising assessments for those years. Furthermore, as the gross annual rental derived from the letting of the Premises exceeded the prescribed limits, there can be no entitlement to the 'Rent a-room' relief for those years.

Years 2010 - 2012

24. It is clear from the lease agreement and the Appellant's evidence that the rental income was derived solely from the letting of the Premises during the years 2010, 2011 and 2012. No part of that consideration included a contribution towards "*meals, cleaning, laundry and other similar goods and services which are incidentally supplied in connection with that use".* As such in respect of that period, the Appellant did not derive "*relevant sums*".

25. Furthermore, the relief only applies to a "*residential premises*" which "*is occupied by the individual as his or her sole or main residence".* Residence is not defined by statute, however *Frost v Feltham* 55 TC 10, a decision of the English High Court, considered which of two residences constituted a taxpayer's sole or main residence for the purposes of determining the entitlement to mortgage interest relief. In the course of his judgment, Nourse J, relying on the Oxford English Dictionary, defined "main" as the "principal" or "most important". At page 13 of that judgment, Nourse J made the following observation:

> *"I therefore think I must assume that the Commissioners were of the opinion that Mount Severn was used by Mr. Feltham as his principal or more important residence, and I propose to treat that as having been the ground for their decision."*

26. A certain number of recent decisions from the First-tier Tribunal in the United Kingdom provide a consolidation of the relevant jurisprudence of the English Superior Courts that have dealt with the issue of determining "*a sole or main residence*". Notwithstanding that such cases considered the UK equivalent of the capital gains tax principal private residence relief, such jurisprudence provides assistance in determining the entitlement to the 'Rent-a-room" relief as the fundamental condition for that relief requires that the property be occupied as the "*sole or main residence*" of the individual.

27. *TC04915: Mitesh Kothari* [2016] UKFTT 127 (TC), summarised the current state of UK law in determining whether the sale of a property constituted the individual's principal private residence, in which it was stated at paragraph 19:

> *"As regards the meaning of residence for these purposes Mr Corbett referred us to the case*

of Goodwin v Curtis [1998] BTC 176, a decision of the Court of Appeal. In his judgement in that case, Millett LJ quoted with approval the words of Viscount Cave LC in Levene v IR Commissioners [1928] AC 215 at p. 222-223, which he described as "The classic exposition of the meaning of 'residence'". In that case Viscount Cave said:

> *"My Lords, the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have ones settled or usual abode, to live in or at a particular place". No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside'."*

28. English jurisprudence has also confirmed that a caravan can constitute an individual's principal private residence. In *Makins v Elson* [1977] STC 46, Foster J. held at page 49 that when he looked at:

> *"this caravan and at all the facts in regard to the electricity, the telephone and the water, and at the fact that the wheels were not on the ground, I can only come to the conclusion that the caravan was for the relevant period a dwelling-house and the taxpayer's only or main residence"*

29. As such, the Appellant's claim that the Premises was his sole or main residence must be considered in context of the 50 nights per annum that he stayed in that property with his tenants.

30. In the absence of a statutory definition of "*sole or main residence*" and any judicial interpretation of such a designation by the Irish courts, recourse can be made to the influential but non-binding English jurisprudence particularly the words of Lord Cave in *Levene v IR Commissioners [1928] AC 215* who defined 'reside' as dwelling *"permanently or for a considerable time, to have ones settled or usual abode, to live in or at a particular place".*

31. In light of such judicial interpretation, it is clear from the evidence adduced that the Appellant did not live *"permanently or for a considerable time, to have ones settled or usual abode"* in the Premises. Rather for a significant part of the years under appeal, the Appellant resided in his mobile home and with family and friends. On this basis, the 'Rent-a room relief' is not available due to the failure of the Appellant to "*occupy*" the Premises as his "*sole or main residence*".

Conclusion

32. The Respondent, pursuant to TCA, section 955 raised assessments on the Appellant for the years 2007, 2008 and 2009 within 4 years from the end of the year assessment in which those returns were delivered to the Respondent. As such, the Respondent is entitled to raise assessments for the years 2007, 2008 and 2009.

33. The annual rental income for the years 2007 to 2009 received by the Appellant exceeded the prescribed limits governed by TCA, section 216A(5) and therefore such income falls within the charge to tax.

34. With regard to the years 2010 to 2012, none of the Appellant's rental income was in consideration for the provision of meals, cleaning and laundry and other similar good and services. Rather all of that income represented consideration for the exclusive use of the Premises. Such income does not constitute "*relevant sums*" and therefore not amenable for 'Rent-a-room' relief pursuant to TCA, section 216A.

35. Finally, the failure of Appellant to occupy the Premises as his sole or main residence for the years 2010 to 2012 excludes any entitlement to 'Rent-a-room' relief as a fundamental requirement for the relief requires substantial occupation of the Premises.

36. This appeal is therefore determined in accordance with TCA, section 949AK and as a consequence the assessments for the years ended 31st December 2007 to 31st December 2012 stand.

APPEAL COMMISSIONER
4th September 2017

No request was made 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 as amended.