



177TACD2020

Between/

[NAME REDACTED]

Appellant

-and-

THE CRIMINAL ASSETS BUREAU

Respondent

DETERMINATION

A. Introduction

1. The Appellant is a numismatist, or collector of and dealer in coins or medals of historic significance. He was born in Ireland and is an Irish citizen, and it is common case between the parties that he is Irish domiciled. However, he says that he left Ireland in [YEAR] and his case is that he has since led what his agent termed a “*nomadic*” lifestyle, travelling the world to acquire and sell rare coins and medals. For the years relevant to this appeal, the Appellant’s case is that he primarily stayed in [COUNTRY 1], [COUNTRY 2] and [COUNTRY 3], with frequent visits to other countries for business and return trips home to Ireland for holidays.

2. It was not apparent from the documents before me or the evidence I heard how the Appellant became subject to the attentions of the Respondent. I note from the papers furnished for the hearing that a non-resident account held by the Appellant with **[NAME OF FINANCIAL INSTITUTION]** was disclosed by that institution to the Revenue Commissioners on foot of a High Court Order made pursuant to section 908 of the Taxes Consolidation Act, 1997. I further note that the Appellant was stopped and searched by police at the **[NAME OF TRAIN STATION]** train station at **[CITY 1]** in **[COUNTRY 2]**, on the 25th of November 2005, when he was found to be carrying some €903,000 in cash. This resulted in certain proceedings before the courts in **[COUNTRY 2]**, which are discussed in greater detail later in this Determination, and resulted in the authorities in **[COUNTRY 2]** requesting information from the Irish police.
3. Irrespective of how he came to its attention, the Respondent formed the view that the Appellant was resident in Ireland and/or carrying on a trade in Ireland during certain years. On the 6th of March 2014, the Respondent assessed the Appellant to income tax for the years 2002 to 2006 inclusive. The Appellant was assessed to tax on alleged Case IV Schedule D miscellaneous income of €285,000 in 2002, €260,000 in 2003, €330,000 in 2004, €230,000 in 2005 and €320,000 in 2006. The total income tax assessed on the alleged miscellaneous income amounted to €673,554.20.

B. Grounds of Appeal

4. The Appellant appealed against the aforesaid assessments by Notices of Appeal dated the 3rd of April 2014.
5. The grounds of appeal advanced by the Appellant are the same in respect of each year and are as follows:-



- (a) The Appellant was neither resident nor ordinarily resident in Ireland for the year with the result that only Irish source income is assessable under Schedule D, and no such income arose;
 - (b) No trade was carried on by the Appellant in Ireland; and,
 - (c) No other income assessable under Schedule D arose.
6. Form 11 Pay and File Tax Returns were submitted on behalf of the Appellant in respect of each of the years under appeal, without prejudice to his contention that, as a non-resident with no Irish source income, there was no obligation on him to make such returns. Each of the returns recorded nil taxable income for the year in question and recorded the Appellant as being of Irish domicile, non-resident in Ireland and a citizen of Ireland not resident in the State. They further gave the address of the Appellant as being at [ADDRESS] in [COUNTRY 4]. They further stated that the Appellant was married but was living apart from his spouse.

C. Legislation

7. The provisions of the tax code which are applicable in the instant appeal can be set forth very briefly. Section 18(1) of the Taxes Consolidation Act, 1997, as amended, provides as follows:-

(1) The Schedule referred to as Schedule D is as follows:

SCHEDULE D

- 1. *Tax under this Schedule shall be charged in respect of –*
 - (a) *the annual profits or gains arising or accruing to –*
 - (i) *any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,*
 - (ii) *any person residing in the State from any trade, profession or employment, whether carried on in the State or elsewhere,*
 - (iii) *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, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax, in each case for every one euro of the annual amount of the profits or gains.

8. Section 818 of the 1997 Act provides, *inter alia*, that “‘present in the State’, in relation to an individual, means the personal presence of the individual in the State.”

9. The relevant parts of section 819 of the 1997 Act, as they were during the years under appeal, provided as follows:-

(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State –

(a) At any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or

(b) At any one time or several times –

(i) in the year of assessment, and

(ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days on which the individual was present in the State in the preceding year of assessment) in the aggregate amounting to 280 days or more.

(2) Notwithstanding subsection (1)(b), where for a year of assessment an individual is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days –



- (a) the individual shall not be resident in the State for the year of assessment, and*
- (b) no account shall be taken of the period for the purposes of the aggregate mentioned in subsection (1)(b).*

...

- (4) For the purposes of this section, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day.*

D. Documents submitted on behalf of the Appellant

10. Both parties submitted extensive documentation in the course of the appeal and relied upon same in the course of the hearing before me. Given the importance of this documentation to the factual issues which form the core of this appeal and which require determination, I believe it is necessary to set forth in some detail the documents which were put before me.

11. The first group of documents submitted on behalf of the Appellant were intended to support his assertion that he did not during any of the years under appeal spend 183 days or more in the State, nor did he spend 280 days or more in the State over two consecutive years. The Appellant's contention is that the number of days he spent in the State during the relevant years was as follows:-

2002	37 days
2003	103 days
2004	76 days
2005	76 days
2006	121 days

- 12.** In relation to 2002, the Appellant says that the 37 days he spent in the State were made up of:-
- (i)** 4 days between 01/01/02 and 05/01/02, which he said was supported by car rental documentation. The car rental documentation records a car being rented at **[IRISH**



AIRPORT 1] airport on 23/12/01 and returned there on 05/01/02. The Appellant is recorded as the driver. He further submitted that the duration of this visit would be verified by evidence from family members.

- (ii) 22 days between 15/07/02 and 06/08/02; he submitted that the duration of this visit would be verified by evidence from family members.
- (iii) 11 days between 21/12/02 and 31/12/02; he submitted that the duration of this visit would be verified by evidence from family members.

13. In relation to 2003, the Appellant says that the 103 days he spent in the State were made up of:-

- (i) 12 days between 01/01/03 and 13/01/03; he submitted that the duration of this visit would be verified by evidence from family members.
- (ii) 3 days between 06/06/03 and 09/06/03, which he said was supported by car rental documentation. The car rental documentation records a car being rented at **[IRISH AIRPORT 2]** airport on 06/06/03 and returned there on 09/06/03. The Appellant is recorded as the driver. He further submitted that the duration of this visit would be verified by evidence from family members.
- (iii) 29 days between 16/06/03 and 14/07/03, which he said was supported by car rental documentation. The car rental documentation records a car being rented at **[IRISH AIRPORT 1]** airport on 16/06/03 and returned there on 14/07/03. The Appellant is recorded as the driver. He further submitted that the duration of this visit would be verified by evidence from family members.
- (iv) 47 days between 15/07/03 and 31/08/03; he submitted that the duration of this visit would be verified by evidence from family members.
- (v) 12 days between 20/12/03 and 31/12/03; he submitted that the duration of this visit would be verified by evidence from family members.

14. In relation to 2004, the Appellant says that the 76 days he spent in the State were made up of:-

- (i) 7 days between 01/01/04 and 08/01/04; he submitted that the duration of this visit would be verified by evidence from family members.



- (ii) 54 days between 02/07/04 and 25/08/04; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he booked flights for himself and his wife on 23/08/04.
- (iii) 4 days between 29/10/04 and 02/11/04; he submitted that this was supported by car hire payments made at **[IRISH AIRPORT 3]** airport on those dates recorded on his credit card statement.
- (iv) 11 days between 21/12/04 and 31/12/04; he submitted that this was supported by a car hire payment made at Shannon airport on 21/12/04 recorded on his credit card statement.

15. In relation to 2005, the Appellant says that the 76 days he spent in the State were made up as follows:-

- (i) 4 days between 01/01/05 and 05/01/05; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing a car hire return payment at **[IRISH AIRPORT 3]** airport on 05/01/05.
- (ii) 4 days between 04/03/05 and 08/03/05, which he said was supported by car rental documentation. The car hire documentation records a car being rented in **[IRISH TOWN 1]** by a Mr. **[THIRD PARTY NAME]** of **[IRISH TOWN 1]**, with the Appellant and his daughter **[NAME OF DAUGHTER 1]** being named as alternative drivers, from 04/03/05 to 08/03/05.
- (iii) 5 days between 24/03/05 and 29/03/05; he submitted that the duration of this visit would be verified by evidence from family members and supported by car hire payments made at **[IRISH AIRPORT 3]** airport on those dates recorded on his credit card statement.
- (iv) 48 days between 26/07/05 and 31/08/05, which he said was supported by car rental documentation. The car hire documentation records a car being rented in **[IRISH TOWN 1]** by Mr. **[THIRD PARTY NAME]**, with the Appellant and his daughter **[NAME OF DAUGHTER 1]** being named as alternative drivers, from 25/07/05 to 25/08/05. The Appellant further submitted that his credit card statements recorded payments for flights from **[CITY 1]** to **[IRISH AIRPORT 2]** via **[IRISH AIRPORT 4]** on 26/07/05 and in the return



direction on 25/08/05. He further submitted that the duration of this visit would be verified by evidence from family members.

- (v) 4 days between 28/10/05 and 01/11/05, which he said was supported by car rental documentation. The car hire documentation records a car being rented in **[IRISH TOWN 1]** by Mr. **[THIRD PARTY NAME]**, with the Appellant and his daughter **[NAME OF DAUGHTER 1]** being named as alternative drivers, from 28/10/05 to 01/11/05. The Appellant further submitted that his credit card statements recorded payments for flights from **[CITY 1]** to **[IRISH AIRPORT 2]** via **[IRISH AIRPORT 4]** on 28/10/05. He further submitted that the duration of this visit would be verified by evidence from family members.
- (vi) 11 days between 20/12/05 and 31/12/05, which he said was supported by car rental documentation. The car rental documentation records a car being rented at **[IRISH AIRPORT 2]** airport on 23/12/05 by Mr. **[NAME OF THIRD PARTY]** and returned there on 07/01/06. The Appellant further submitted that the duration of this visit would be verified by evidence from family members.

16. In relation to 2006, the Appellant says that the 121 days he spent in the State were made up of:-

- (i) 6 days between 01/01/06 and 07/01/06; he submitted that this was supported by payment for flights from **[IRISH AIRPORT 2]** to **[CITY 1]** via **[IRISH AIRPORT 4]** on 07/01/06 recorded on his credit card statement.
- (ii) 13 days between 15/04/06 and 28/04/06, which he said was supported by car rental documentation. The car hire documentation records a car being rented in **[IRISH TOWN 1]** by the Appellant from 19/04/06 to 26/04/06. The Appellant further submitted that the duration of this visit would be verified by evidence from family members.
- (iii) 9 days between 05/05/06 and 14/05/06, which he said was supported by car rental documentation. The car hire documentation records a car being rented at **[IRISH AIRPORT 3]** airport by the Appellant from 05/05/06 to 14/05/06. The car hire payment on 05/05/06 is also recorded on his credit card statement. The Appellant further submitted that his credit card statements recorded payment for a flight from **[CITY 2]** to



- [IRISH AIRPORT 3]** on 05/05/06. He further submitted that the duration of this visit would be verified by evidence from family members.
- (iv) 5 days between 29/05/06 and 03/06/06; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he booked a flight from **[CITY 2]** to **[IRISH AIRPORT 4]** on 29/05/06. His credit card statement further recorded his payment for a rental car at **[IRISH AIRPORT 4]** airport on 29/05/06 and its return on 04/06/06.
- (v) 16 days between 14/06/06 and 30/06/06, which he submitted would be verified by evidence from family members.
- (vi) 3 days between 10/07/06 and 12/07/07; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he booked a flight from **[IRISH AIRPORT 4]** to **[CITY 3]** on 12/07/06. His credit card statement further recorded his payment for a rental car at **[IRISH AIRPORT 3]** airport on 10/07/06 and its return in **[IRISH AIRPORT 4]** on 13/07/06.
- (vii) 41 days between 01/08/06 and 11/09/06; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he booked a flight from **[IRISH AIRPORT 4]** to **[CITY 3]** on 11/09/06. His credit card statement further recorded payments to a car hire company at **[IRISH AIRPORT 3]** airport on 14/08/06, 24/08/06, 30/08/06, 07/09/06 and 12/09/06.
- (viii) 14 days between 15/09/06 and 29/09/06; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he purchased a flight from **[CITY 2]** to **[IRISH AIRPORT 1]** on 15/09/06.
- (ix) 7 days between 16/10/06 and 23/10/06, which he submitted was supported by his credit card statement recording his purchase of a return ticket from **[CITY 3]** to **[IRISH AIRPORT 4]** on 16/10/06.
- (x) 7 days between 31/10/06 and 07/11/06; he submitted that the duration of this visit would be verified by evidence from family members and supported by his credit card statement showing that he purchased a flight from **[CITY 2]** to **[IRISH AIRPORT 1]** on 31/10/06.



17. The Appellant further submitted a signed statement from a Mr. **[NAME OF WITNESS]**, who is a company director and publican based in **[IRISH TOWN 1]**. The statement said as follows:-

*"I have known **[NAME OF APPELLANT]** for the past 40 years and spend time with him when he comes to **[IRISH TOWN 1]** for holidays and at Christmas.*

I consider him to be a reliable and trustworthy individual who conducts his affairs in an honest and lawful manner.

*To the best of my knowledge he has no business involvement in **[IRISH TOWN 1]**. In the time I have known him I have never heard him refer to business interests in the area and in my extensive dealings with business people in the locality I have never heard his name being mentioned in a business context."*

18. The Appellant further submitted a copy of a lease agreement between the owners of a studio apartment in the city of **[CITY 4]**, which is in the south of **[COUNTRY 1]**. The lease was executed on the 1st of June 2001 and the initial term thereof was to run until the 31st of December 2004. The lease agreement recorded the Appellant's then address as **[ADDRESS]** in **[COUNTRY 3]**.

19. The Appellant also submitted a copy of a subsequent lease agreement for a different apartment in **[CITY 4]**, which was executed on the 1st of January 2005 and was to run until the 31st of December 2006. Again, the Appellant's address was recorded therein as being in **[ADDRESS]** in **[COUNTRY 3]**.

20. The Appellant further submitted an affidavit sworn by a business associate, Mr. **[NAME OF ASSOCIATE 1]**, on the 29th of April 2014 which stated that:-

*"[I]n the period from 2000 to 2006, **[COMPANY 1 DETAILS]**, and the company **[COMPANY 2 DETAILS]**, both corporations incorporated under the laws of **[COUNTRY 1]** and located at the same place where I was in that period serving as Managing Director and Partner,*



actively cooperate with Mr. [NAME OF APPELLANT], born [DATE OF BIRTH], now residing at [ADDRESS], as a professional consultant in commodities gold, gold jewelry and bullion coins.

In the above period, we had with Mr. [NAME OF APPELLANT] regularly at least 2 times in a month business consultations and meetings in [COUNTRY 1], [COUNTRY 2], [COUNTRY 5] and [COUNTRY 6].”

21. The Appellant further submitted a letter from a Mrs. [NAME OF WITNESS] of [ADDRESS] in [COUNTRY 3]. The letter stated as follows:-

“We met [NAME OF APPELLANT] in 1987 as a paying customer in our Hotel [NAME OF HOTEL] at [ADDRESS] in [COUNTRY 3].

During the years after we met he stayed in our hotel numerous times. By the time we closed the hotel and changed it into a Mexican restaurant in 1990 he had become our family friend. Whenever he was in [COUNTRY 3] for a longer period of time he stayed in a guestroom of our private house, where we lived at that time, located on [ADDRESS].

Untill [sic] this day he is our close family friend and visits us on a regular basis.”

22. The Appellant further submitted a written statement signed on behalf of [NAME OF COMPANY 3], a [COUNTRY 5] financial institution, dated the 26th of March 2008, which stated that the cash sum of €900,000 given by that company to the Appellant on the 24th of November 2005 had been drawn from the Appellant’s account with the company, and that the funds had been in the account for more than three years.

23. The Appellant further submitted a copy of the passport which he had held during the years under appeal. The passport recorded three visits to [COUNTRY 7] in 2007 and 2008 and some eight



visits to [COUNTRY 8] during the same years. A copy of a receipt accompanying the passport copy indicates that the Appellant applied from [COUNTRY 5] for a new passport in January of 2011.

24. Part of the Appellant's case advanced before me was that during the years under appeal, he was assembling a collection of coins from former British colonies, which became known as the '[NAME OF COLLECTION]'. The Appellant's case was that he began focusing on [ORIGIN OF COINS] coins in or around 2002 and began assembling a collection in conjunction with a [NATIONALITY] numismatist, Mr. [NAME OF ASSOCIATE 2]. During the years under appeal, he was focussed on purchasing coins from [ORIGIN OF COINS] and the collection was eventually sold over three auctions conducted by [NAME OF VENDOR], a specialist English auction house, in [DATE] 2008, [DATE] 2008 and [DATE] 2009.

25. In support of this aspect of the Appellant's case, he submitted the three auction catalogues relating to the sale of the [NAME OF COLLECTION] collection. The Cataloguer's Introduction to the first sale, written by Mr. [NAME OF ASSOCIATE 2], stated, *inter alia*, that "[t]his collection was started about 15 years ago by a knowledgeable collector who asked why [ORIGIN OF COINS] coins were so inexpensive in the catalogues and why so many of them are difficult to find in nice grade. I shared my thoughts with him and he gave me carte blanche to help him put together the best possible collection I could."

26. The catalogues were accompanied by a handwritten note from Mr. [NAME OF ASSOCIATE 2] to the Appellant, which stated:-

"Thank you [NAME OF APPELLANT], for your belief in me.

We did quite a remarkable "thing of beauty" with this collection.

I trust you found personal satisfaction in putting this together as well as the financial remuneration."



27. The Appellant further submitted three invoices sent to him by Mr. **[NAME OF ASSOCIATE 2]** and by Mr. **[NAME]**, a London-based coin dealer, in respect of the purchase of coins in 2005 and 2006. The three invoices were all addressed to the Appellant at **[ADDRESS IN IRISH TOWN 1]**.
28. The Appellant further submitted bills from the Hotel **[HOTEL NAME]** in **[CITY 1]**. The first bill covered the period from the 23rd of June 2005 to the 31st of December 2005 and showed that, with the exception of most of August, the Appellant had rented a room continuously in the Hotel **[HOTEL NAME]** throughout this period. During this time, the Appellant made some 34 cash payments in discharge of his bill, ranging in amount from €200 to €700. The bill also records the Appellant as having eaten dinner in the hotel on some 43 occasions over the period of just over 5 months.
29. Other bills covered the periods from 7 to 12 August 2002, 30 October to 29 November 2002, 23 April to 10 May 2003, 12 December to 19 December 2003 and 27 January to 30 January 2004. Again, these bills showed the Appellant settling his bill by making regular cash payments in round figures.
30. The Appellant further submitted a translated document entitled a *Summarising Report*, made by Police Commander **[NAME]** to the Inter-Regional Director of the **[CITY 1]** Criminal Police on the 13th of March 2006. The Report was submitted on foot of the Appellant having been stopped at **[CITY 1]** train station with a significant amount of cash in his possession.
31. The portions of the Report which I believe are relevant to this Determination are as follows:-
- “On November 25, 2005 at 6:25am in the **[NAME OF TRAIN STATION]** train station ... public security officers ... controlled Mr. **[NAME OF APPELLANT]**, born **[DATE OF BIRTH]** in **[IRISH TOWN 2]** in Ireland, Irish nationality, who had hand luggage which, when controlled, revealed a very important sum in banknotes of EUR 900 000 whereas Mr. **[NAME OF APPELLANT]** had told police that it held “books”.*
- ...



In the framework of Mr. [NAME OF APPELLANT]'s custody, he was heard in the presence of an interpreter; all of his statements were very elusive as he obviously did not wish to provide any concrete and verifiable explanations on himself, refusing to supply the slightest detail on his private or professional life and his presence in [CITY 1] or [COUNTRY 2] with the sum of EUR 900 000.

...

Mr. [NAME OF APPELLANT] simply indicated that he was a numismatist, a collector of [ORIGIN OF COINS] coins; that he traded in such items or served as intermediary for private collectors on whom he refused to provide any information whatsoever due to a concern for discretion, specifying that any statements would harm his interests. In his things he had approximately ten sheets of paper, handwritten in English, which listed old coins and values in pounds...

...

Further to technical research, we found that on the evening prior to being stopped for questioning Mr. [NAME OF APPELLANT] must have been at a hotel close to the [NAME OF TRAIN STATION] train station and this is how we discovered that he indeed occupied a room at the [NAME OF HOTEL] hotel.

A search of the said room, which he had occupied for at least 5 years, did not supply any elements that could validly direct our investigation as to where the sum he held came from. There was a lot of man and woman's clothing in this room, thereby evidencing the couple's regular life, but no banking documents or elements which substantiated a trading or other activity by Mr. [NAME OF APPELLANT]; only a few books on British coins were found.

In the hotel basement was a vehicle registered in [COUNTRY 9] in the name of a friend of Mr. [NAME OF APPELLANT], which he uses when travelling in Europe...

...

Questioned on his travels in Europe and in particular in [COUNTRY 5], Mr. [NAME OF APPELLANT] refused to reply and continued not to supply any verifiable information relating to his activities. We noted that Mr. [NAME OF APPELLANT] regularly stayed in [CITY 2] for weekends; questioned on this fact he declared that he liked [CITY 2] and indeed often spent the weekend there.

As regards taxes, Mr. [NAME OF APPELLANT], who has regularly resided in a hotel in [CITY 1] for at least 5 years, is totally unknown; he has never filed tax returns and has no property in [COUNTRY 2]. He has no bank account in [COUNTRY 2]."

32. The Report also recorded that the Appellant was domiciled at [ADDRESS IN IRISH TOWN 1]



33. The Appellant further submitted a decision of the **[NAME OF COURT]** Court of **[CITY 1]**, delivered on the 1st of December 2009. The background to this decision was that, following his arrest in November 2005, the **[COUNTRY 2]** police did not seek to prosecute the Appellant for any criminal offences. The Appellant did, however, agree to pay a fine of €162,000 for breach of **[LEGISLATIVE PROVISIONS]** of the **[COUNTRY 2]** Customs Code. The **[COUNTRY 2]** Revenue authorities then assessed the Appellant to income tax and related penalties for the years 2003, 2004 and 2005 on the grounds that he was resident in **[COUNTRY 2]** in those years. The Appellant's appeal against those assessments was ultimately heard and decided by the **[NAME OF COURT]** Court of **[CITY 1]**.

34. The relevant portions of the decision, which recorded the Appellant as residing at **[ADDRESS IN IRISH TOWN 1]**, are as follows:-

*"Whereas as according to statements made to the national police departments on December 20, 2005 by the reception manager of the **[NAME OF HOTEL]** hotel, Mr. **[NAME OF APPELLANT]** had rented a room in the said establishment on a yearly basis for at least three years, and used a vehicle which was parked in the basement...*

*... that the investigation also evidences that Mr. **[NAME OF APPELLANT]**, who has Irish nationality, owns a house in Ireland and that he has produced telephone invoices in his wife's name, electricity and fuel invoices in his own name, with the address that corresponds to the said house...*

...

*Whereas the sole fact that, during a lengthy period, Mr. **[NAME OF APPELLANT]** had a hotel room and a vehicle in **[CITY 1]**, does not lead to considering that his home was in **[COUNTRY 2]**; that it is not established that he stayed in **[COUNTRY 2]** each year for more than six months at the least and that this was therefore his main place of residence ... that accordingly he is grounded in requesting relief as regards the said tax to which he was subjected for the years 2003, 2004 and 2005, including related penalties..."*

35. The Appellant further submitted copies of bank statements from **[NAME OF FINANCIAL INSTITUTION]** and **[NAME OF FINANCIAL INSTITUTION]** from 2004 and 2010, which recorded his address as being at **[ADDRESS]** in **[COUNTRY 3]**.



36. The Appellant further submitted a copy of a letter from **[FINANCIAL INSTITUTION]** dated the 29th of August 2003 which, as outlined in the opening section of this Determination, advised him that details of an account he held with that financial institution had been disclosed to the Revenue Commissioners on foot of a High Court application made by the Revenue Commissioners as part of their investigations into the tax affairs of the holders of non-resident accounts. The letter was addressed to Mr. **[NAME OF APPELLANT]** at **[ADDRESS]** in **[IRISH TOWN 1]**.
37. The Appellant further submitted a copy of a letter sent by the Revenue Commissioners to the Appellant's solicitors in **[IRISH TOWN 1]** dated the 28th of October 2006, notifying them that a Capital Gains Tax computation had been accepted. The Appellant was described in heading of the letter as being "*non-resident.*"
38. The Appellant further submitted copies of invoices relating to his purchases of coins and medals. Three of these, sent by Mr. **[NAME]** in August, October and November of 2003, were addressed to him at **[ADDRESS IN CITY 4]** in **[COUNTRY 1]**. A further 12 invoices, dated from November 2003 to February 2005, were sent by Mr. **[NAME]** to the Appellant at **[ADDRESS IN CITY 5]** in **[COUNTRY 10]**; this was seemingly the address of **[NAME OF ASSOCIATE 1]** Trading. A further invoice, dated the 8th of August 2002, was sent to the Appellant at "**[ADDRESS]**" in London, which appears to be the address of a coin dealership called **[NAME OF DEALERSHIP]**.
39. The Appellant further submitted a copy of his daughter **[NAME OF DAUGHTER 1]**'s Birth Certificate, which showed that in 1977 the Appellant's address was recorded as being at **[ADDRESS]** in **[IRISH TOWN 1]**, and gave his occupation as a Coin Dealer.
40. Finally, the Appellant submitted copies of his **[COUNTRY 5] [FINANCIAL INSTITUTION]** credit card statements for the years 2002 to 2006 inclusive.



E. Documents submitted on behalf of the Respondent

41. Extensive documentation was also submitted on behalf of the Respondent. It first submitted copies of invoices sent by **[NAME OF ASSOCIATE 2]** and by **[NAME]** to the Appellant relating to items purchased by the Appellant in April, May and December 2006. All three invoices were addressed to the Appellant at **[ADDRESS]** in **[IRISH TOWN 1]**.

42. The Respondent further submitted a document prepared by a **[NAME]** for the Head of Tax Services of the Fiscal Control Division of the **[DIVISION]** Division of the **[COUNTRY 2]** Revenue authorities, entitled *Examination of a Judgment Unfavourable to the Administration handed down on 1st December 2009 and notified on 3 December 2009*. This document was an internal review by the **[COUNTRY 2]** Revenue authorities of the decision by the **[NAME OF COURT]** Court of **[CITY 1]** to allow the Appellant's appeal against the assessments to **[COUNTRY 2]** income tax for 2003, 2004 and 2005 (which is discussed at paragraphs 33 and 34 above).

43. The relevant portions of the *Examination* document state as follows:-

*"Mr. **[NAME OF APPELLANT]** justified the origin of the sum of 903,000 Euros, as coming from a withdrawal from an account open with the **[COUNTRY 5]** company **[COMPANY 3]**. The enquiry would appear to have been closed without further action. A penalty of 162,000 Euros was applied to the interested party by the Regional Customs Division in **[CITY 1]** within the scope of an official settlement of the dossier on 6/12/2006.*

...

*Having taken this case at the **[NAME OF COURT]** stage, I have continued the defence, despite the fragility of the dossier...*

...

*But, concerning the **[NAME OF HOTEL]** Hotel invoices in possession by the Police, they covered the period 23 June to 31 December 2005. If they confirm the renting for all this*



*period, except for the month of August, the hotel room, they do not demonstrate that Mr. **[NAME OF APPELLANT]** occupied this room, in a continuous manner during this period. 43 meals or dinners were invoiced. We can only confirm that the interested party was present in **[CITY 1]** at least 43 days to which should be added his stays in **[CITY 2]** (18 in total) according to the invoices from the **[NAME OF HOTEL]** in the possession of the Service, i.e. present for a total of 61 days in **[COUNTRY 2]**.*

*On 29 April 2009, I asked the **[NAME OF HOTEL]** Hotel if it was possible to obtain the missing invoices. The request limited definitely to the period 1st January to 22 June 2005 ... was unsuccessful. The Director of the establishment indicated in his reply dated 1st September 2009 that it was not possible to satisfy this request as a change in software did not allow him to access elements relative to the period prior to June 2005.*

*The Authorities are unable to demonstrate that the taxpayer stayed in **[COUNTRY 2]** for at least 183 days in 2005, and as such his place of usual residence was situated in **[COUNTRY 2]**. With regards to 2003 and 2004 there are no elements concerning the presence of the interested party in the **[COUNTRY 2]** Territory. It is not possible to show that the interested party has his residence in **[COUNTRY 2]**.*

...

The interested party has declared that he exercises an activity of numismatist, specifying that he has neither shop nor business... The Authorities dispose of no elements concerning the location of this activity and the amount of revenue drawn from this activity.

*The Court notes that the “applicant” has produced copies of telephone invoices (invoices in his wife’s name relative to the period 22 July 2003 to 24 November 2005) and electricity (invoices in his name and relating to the period 6 August 2003 to 6 December 2005) relative to a residence, of which he is owner, situated **[ADDRESS IN IRISH TOWN 1]**.*



*The quality as Irish resident is recognised, according to the convention signed **[DATE OF TREATY]** between **[COUNTRY 2]** and Ireland, if the taxpayer has available a place to stay reserved for his own use, and if he resides in Ireland for any given period during the tax year.*

*The taxpayer seems to effectively justify the existence of a residence in Ireland, but there remains a doubt as to the effective occupation of this property by the interested party. He has declared to the Police Service that he was never in his home situated in **[IRISH TOWN 1]** “as he travels all the time”...*

There has been no request for administrative assistance in order to determine the situation of the interested party in Ireland and to ensure that he is known to the Irish tax authorities.

*No matter what, it is up to the authorities to establish that the petitioner qualifies as a resident in **[COUNTRY 2]**, with regards to internal laws.*

Or, this may not be shown.

...

The Authorities have no definitive serious element allowing them to effectively fight the Court decision.

With regard to all these elements, I propose to acquiesce to the judgement.”

- 44.** The *Examination* document was signed by the Divisional Director for the Head of Tax Services, who indicated in a handwritten comment thereon that he agreed with the assessment of the case and the decision not to appeal the judgment of the **[NAME OF COURT]**.



45. The Respondent further submitted a translation of a document entitled *Applicant's Reply*, dated the 4th of April 2008. This document sets out the claims and arguments made on behalf of the Appellant in support of his appeal to the **[NAME OF COURT]** Court of **[CITY 1]** against the income tax assessments raised by the **[COUNTRY 2]** authorities, following the Appellant being found to have €900,000 on his person when stopped at **[CITY 1]** train station in November 2005.
46. The document, which was prepared and submitted by the Appellant's **[COUNTRY 2]** lawyers, records the Appellant as living at **[ADDRESS IN IRISH TOWN 1]** and states "Mr. **[NAME OF APPELLANT]** of Irish nationality, still lives in his place of birth."
47. Having recited brief details of the Appellant's arrest, the relevant portions of the Reply document go on to state as follows:-
- "An enquiry, carried out by the Regional C.I.D. – [CITY 1], was opened for money laundering.*
- This allowed the perfectly legal origin of the confiscated funds to be established, coming from a withdrawal of 900,000 Euros from the account of Mr. [NAME OF APPELLANT] held by the [COUNTRY 5] Finance Company [COMPANY 3], on 24 November 2005, i.e. on the eve of his arrest.*
- The enquiry led to dismissal of the case without further action on 16 May 2006.*
- ...
- The dossier was transmitted to the Customs Authorities who proceeded with notification of an offence for breach of declaration of sums, shares or securities... [T]he Authority accepted the principal of an official agreement with Mr. [NAME OF APPELLANT] on 4 December 2006, and deducted the sum of 162,000 as penalty on the funds seized on 25 November 2005.*
- ...
- [The Appellant] discovered at this time, that a distraint order had been taken out by the Treasury Accountant, for an amount of 653,902 Euros, established by the Tax Authorities following an audit of the accounts, this latter considering that as Mr. [NAME OF APPELLANT] rented for more than three years a room in the hotel in [CITY 1], he was a [COUNTRY 2] resident, and should therefore be liable fiscally in [COUNTRY 2] for all his income.*
- ...



The Tax Authorities pretends that Mr. [NAME OF APPELLANT] should be taxed in [COUNTRY 2] because he resides principally in a hotel room in [CITY 1].

But, it can be shown that this is not his home, he resides habitually in Ireland ... and that he does not have his main place of residence in [COUNTRY 2]...

Similarly, Mr. [NAME OF APPELLANT] has no professional activity in [COUNTRY 2] any more than a centre of economic interest...

...

But, it is quite obvious that Mr. [NAME OF APPELLANT] has his domicile in IRELAND, in a house acquired with his wife in 1976 ['property act', photographs of the house and plan of the land exhibited]

This has been his main and usual residence, for over 30 years.

The invoices for electricity, telephone or even heating oil, produced during the discussion, show quite clearly that this house is occupied in a regular and continuous manner by the [NAME OF APPELLANT] couple [telephone, electricity and heating fuel invoices exhibited]

The fact that certain of these invoices are in the name of Mrs. [NAME OF APPELLANT] is not important, contrary to what the Tax Authorities wish, since it is the "NAME OF APPELLANT" taxable household which is taxed.

...

The Court will note furthermore that only the telephone invoices are addressed to Madam, whereas the invoices for electricity and heating oil are in the name of Mr.

These pieces show quite clearly that the spouses [NAME OF APPELLANT] have their domicile at [ADDRESS IN IRISH TOWN 1] in IRELAND.

Moreover, they receive their post at this address, which is known as the address for taxation by the Irish Tax Authorities [letters and television licence exhibited]

...

Furthermore, this address is also on the subscription to the [NAME OF HOTEL CHAIN] Group and on which the Treasury relies to prove that he regularly stays in [COUNTRY 2] [police statement and [NAME OF HOTEL CHAIN] information sheet exhibited]

Finally, the address given by the petitioner to the Police Service during his interviews corresponds to the address of the family home of Mr. [NAME OF APPELLANT] in the same town as that where he usually resides, also mentioned on his Irish driving licence [driving licence exhibited]

- 48.** The Reply document then refers to certain provisions of the Ireland-[COUNTRY 2] Double Taxation Agreement and states that:-

"In addition they remind us that a person is resident in IRELAND for Irish taxes:

...



- if they dispose of in IRELAND a home reserved for their use and if they reside in IRELAND for any period during the tax year...

In the case in point, Mr. [NAME OF APPELLANT] has shown that he disposes of a “place of residence for his use” in IRELAND in which he resides in a continuous manner, which brings to an end any further discussion.

He is effectively an “Irish resident” in application of the aforementioned [COUNTRY 2]-Irish convention.”

49. Referring to the invoice from the Hotel [NAME OF HOTEL] in [CITY 1] for June to December 2005, the Reply document states:-

“The Court will note as a preliminary point that this invoice only covers 166 days during the course of the year 2005.

That in itself is not sufficient to establish that the petitioner stayed there at least 183 days in [COUNTRY 2].

The argument in reply from Mr. [NAME OF APPELLANT] could stop there!

But, in a subordinate manner, it should be noted that Mr. [NAME OF APPELLANT] rented this room by the year.

That does not signify however that he resided there permanently.

For proof, a comparative analysis of the [NAME OF HOTEL] invoice and the statement from the [HOTEL CHAIN] Group show that for the same nights as those, subject of the [NAME OF HOTEL] HOTEL invoice, Mr. [NAME OF APPELLANT] was in fact staying in other hotels, some of them abroad!

...

We should in addition emphasize that the defendant [i.e. the [COUNTRY 2] Revenue authorities], who quite obviously has had access to the penal file, carefully avoids revealing all the elements.



*This is why he has omitted to indicate that the statement of stays in establishments of the **[NAME OF HOTEL CHAIN]** Group show that Mr. **[NAME OF APPELLANT]** has also stayed regularly in **[CITY 6]** and in **[CITY 7]**.*

*In addition the police concluded within the scope of their enquiry that Mr. **[NAME OF APPELLANT]** travelled a lot and returned regularly to **[COUNTRY 5]** [police statement exhibited].*

*The room rented by the year in the **[NAME OF HOTEL]** establishment is therefore a simple commodity for the petitioner who leaves his personal belongings there, ready for occasional stays in **[COUNTRY 2]** and who has chosen **[CITY 1]** because of its central position and transport facilities and the **[NAME OF HOTEL]** Hotel because of its reasonable charges and its situation opposite the **[NAME OF TRAIN STATION]** station! [police statements and **[NAME OF HOTEL CHAIN]** Group statement and invoices exhibited]"*

50. The Reply document further states that:-

*"... Mr. **[NAME OF APPELLANT]** has always declared in the penal procedure that he carries out the profession of numismatist [police statement exhibited].*

Therefore, he is required to travel within the scope of his activity, as he has also justified during the enquiry carried out by the Regional C.I.D."

51. The Respondent further submitted additional documentation relating to the police enquiry conducted after the Appellant had been arrested in **[CITY 1]** train station. This included information received from the **[COUNTRY 5]** authorities, which indicated that **[COMPANY 3]** had been implicated in a financial case in 1998 and in a legal case in 1999, both brought by the **[NAME OF PROSECUTING AUTHORITY]**. The Appellant's phone also indicated that he had been in contact with one **[NAME REDACTED]**, who was a director of **[COMPANY 3]** and who was "[k]nown in the **[CITY 3]** files for ... money laundering linked to an international gang..."

52. The Respondent further submitted documentation recording that, following his successful appeal to the **[NAME OF COURT]** Court of **[CITY 1]**, the Appellant had received a refund of the monies



distraigned by the **[COUNTRY 2]** Revenue authorities in respect of his alleged income tax liabilities in **[COUNTRY 2]**.

53. The Respondent further submitted copies of 15 envelopes showing letters were sent to the Appellant at the **[ADDRESS]** address in **[IRISH TOWN 1]** between 2001 and 2006, 14 of which were sent by Mr. **[NAME OF ASSOCIATE 2]**.

F. Evidence given at the hearing of the appeal

54. I heard evidence under oath or under affirmation from the following witnesses at the hearing of the appeal.
55. The Appellant himself confirmed that the number of days he had spent in Ireland was largely in accordance with the documents submitted on his behalf.
56. He said that he and Mr. **[NAME OF ASSOCIATE 2]**, a **[NATIONALITY]** coin collector and dealer, had initially decided to build a collection of **[ORIGIN OF COINS]** coins. Mr. **[NAME OF ASSOCIATE 2]** sourced and frequently bought these coins on behalf of the Appellant while they were putting together the collection that ultimately became known as the **[NAME OF COLLECTION]** Collection. He said that his assembly of the **[NAME OF COLLECTION]** Collection was illustrated by the invoice sent to him by Mr. **[NAME]** dated 23 December 2005 (referred to in paragraph 27 above), recording the Appellant's purchase of a **[ORIGIN OF COIN]** coin from 1888 for £300; the Appellant testified that this coin had subsequently been sold as **[LOT X]** in the third **[NAME OF COLLECTION]** Collection auction on **[DATE]** in 2009.



57. The Appellant said his purchases of the coins which ultimately constituted the **[NAME OF COLLECTION]** Collection were further evidenced by the invoices discussed in paragraph 38 above. He said the **[NAME OF COLLECTION]** Collection was built up over approximately 15 years leading up to 2007, and began with **[ORIGIN OF COINS]** coins, before being sold in 2008 and 2009. He also collected **[ORIGIN OF COINS]** coins and furthermore worked with a dealer in **[CITY 8]** to build up a collection of **[ORIGIN OF COINS]** coins. He paid for his purchases of coins and medals with funds from **[COUNTRY 5]**. He said that he often paid for coins with cash, as sellers frequently preferred this, and that this was why he had such a large amount of cash on his person when he was stopped and searched by the **[COUNTRY 2]** police at **[CITY 1]** train station in November of 2005.

58. He further said that the invoices and the bank statements referred to at paragraph 35 above showed that he was mainly based in and working from **[COUNTRY 3]**, **[COUNTRY 2]** and **[COUNTRY 1]** during the years under appeal, and frequently had post sent to him in those countries.

59. In relation to his stays in **[COUNTRY 1]**, he confirmed that he had entered into the leases discussed in paragraphs 18 and 19 above. He said that he had chosen the city of **[CITY 4]** as a base because of its ease of access to other countries. He said that during the years under appeal, he would generally have spent 3 to 4 days, or up to a week, in **[COUNTRY 1]** every month.

60. The Appellant confirmed that he also kept a room and frequently stayed in the **[NAME OF HOTEL]** Hotel in **[CITY 1]**. He began staying there in about 1991 and continued to do so until about 2007. He said that he usually ate in the hotel if he was staying there and confirmed that during the period of 5 months recorded on the invoice referred to in paragraph 28 above, he had dined in the hotel on 43 occasions; he said that this pattern and frequency of staying in **[CITY 1]** would have been generally the same in other years as it was in the latter half of 2005. He said that this was supported by the invoices for 2002 and 2003 which are discussed in paragraph 29 above. The Appellant further stated that he frequently visited **[CITY 2]**, usually at weekends. His daughter



[NAME OF DAUGHTER 1] had been living in [CITY 2] for some of the years under appeal and he would go and visit her there.

61. The Appellant further stated that he had in addition spent significant time in [COUNTRY 3] during the years under appeal, and confirmed as accurate the contents of the letter from Mrs. [NAME OF WITNESS] discussed in paragraph 21 above. He said that he kept a room in [ADDRESS] because it was convenient for travel to [CITY 8] and [CITY 9], where he quite frequently visited to purchase coins.
62. The Appellant confirmed that the two Irish bank accounts referred to in paragraph 35 above were his bank accounts, and that he had received the correspondence from [NAME OF FINANCIAL INSTITUTION] and from the Revenue Commissioners referred to in paragraphs 36 and 37 above. He further confirmed that the [COUNTRY 5] [NAME OF FINANCIAL INSTITUTION] credit card statement referred to in paragraph 40 above was his credit card.
63. In cross-examination, the Appellant stated that he had financed the acquisition of the [NAME OF COLLECTION] Collection with earnings from his trading in coins and medals. In relation to the invoices addressed to him at [ADDRESS IN CITY 4], discussed in paragraph 38 above, he said that he could not recall what was at [ADDRESS] or why he would have received post there.
64. In relation to the invoices from the Hotel [NAME OF HOTEL] in [CITY 1] from 2002 and 2003, discussed in paragraph 29 above, the Appellant said that he was unable to explain why invoices from those years were available while invoices from other years were not.
65. In relation to the *Reply* document submitted to the Administrative Court of [CITY 1], and in particular the portion thereof discussed in paragraph 47 above, the Appellant confirmed that, as stated therein, his driving licence recorded his address as being at [ADDRESS IN IRISH TOWN 1].



66. Finally, the Appellant told Counsel for the Respondent that the €900,000 in his possession when he was stopped by the [COUNTRY 1] police at [CITY 1] train station had come from a withdrawal from [COMPANY 3], the [COUNTRY 5] finance house. He further stated that the source of the electronic fund transfers to his [COUNTRY 5] credit card came from his business bank account in [COUNTRY 5].
67. Mr. [NAME OF ASSOCIATE 1] gave evidence under affirmation. He confirmed the accuracy of the information contained in his Affidavit, discussed at paragraph 20 above. He said that he worked in [COUNTRY 1] and had moved from [COUNTRY 3] to [COUNTRY 1] in 2003. He gave evidence that the Appellant would have spent several days or up to a week at a time in [COUNTRY 1]. In cross-examination, he said that he would estimate that the Appellant would have spent an average of about 60 days a year in [COUNTRY 1] during the years under appeal.
68. Ms. [NAME OF DAUGHTER 1], the Appellant's daughter, gave evidence under oath and said that between 2003 and 2006, she frequently saw her father in [CITY 2], where she was living at the time. She said that she estimated that she would have seen him 5 or more times per month during this period. She further gave evidence that she had visited the Appellant's apartment in [CITY 4] during 2006.
69. Ms. [NAME OF DAUGHTER 2], another daughter of the Appellant, also gave evidence under oath and said that in the years 2002 to 2006, her parents were in [COUNTRY 2] most of the time. She said that while they were away, she would check their house once a week and would forward on any post that had arrived for the Appellant.
70. She stated that her recollection was that in 2002, the Appellant had returned to Ireland for a holiday in July and August and that he had come home for approximately 2 weeks around Christmas. She further testified that the Appellant had followed a largely similar pattern of visiting Ireland during the summer and at Christmas in 2003, 2004, 2005 and 2006. She said that the



Appellant had returned home for her sister's wedding on the [DATE] in 2004 and had come home for the wedding of one of her cousins in December 2005. She gave evidence that her grandmother had died on [DATE] in 2006 and she thought her father had returned home for the funeral on the 16th of April, leaving again on the 18th. She said that the Appellant had returned to Ireland again in May of 2006 to attend the wedding of another of her cousins. In cross-examination, she said that she believed that the Appellant had left Ireland following the said wedding on about the 7th of May. She further told Counsel for the Respondent that she had forwarded the post received in [IRISH TOWN 1] to an address in [CITY 3]. In re-examination, she testified that she had never sent post to the hotel in [CITY 1].

71. I further heard evidence from Mr. [NAME OF WITNESS], who is the Appellant's godson. He gave evidence that the Appellant did not live in Ireland during the years under appeal, but simply came home for extended holidays during the summer and around Christmas.

G. Submissions of the Appellant

72. It was submitted on behalf of the Appellant that the key issue for all years concerned the residence status of the Appellant, and that no charge to Irish tax could arise for a non-resident individual who had no Irish-source income. It was submitted that the Appellant was not tax resident in Ireland during any of the years under appeal, and that he had consistently stated this to be the case. It was further submitted that the Appellant did not carry on any trade in the State during any of the relevant years.
73. It was further submitted on behalf of the Appellant that he had done his best to calculate the number of days which he spent in Ireland during the years 2002 to 2006, and that he had assembled the best evidence still available to him many years later to support this calculation.



This evidence consisted of the Appellant's own recollection, a review of his credit card statements, foreign property leases and third-party testimonials. The calculation of the number of days was prepared to the best of the Appellant's ability from his own recollection, from discussions with family members, car hire documents and credit card statements. It was accepted on behalf of the Appellant that there might be some minor inaccuracies, but it was submitted that the calculation was substantially correct.

- 74.** The Appellant acknowledged that he is Irish-domiciled, and that his family home is in Ireland. However, he says that he left Ireland in 1970 and has since lived a nomadic lifestyle. During the years under appeal, he moved regularly between different countries and maintained living arrangements in several of them. It was submitted that the pattern of the Appellant flying into Irish airports and hiring a car for his visits was more consistent with a visitor to Ireland than with someone who was resident here.
- 75.** Counsel for the Appellant said that it was important to note that no assessments had been raised by the Respondent or by the Revenue Commissioners for any year in the 1970s, 1980s, 1990s or indeed any other year outside the years under appeal. She further submitted that there had been no explanation whatsoever by the Respondent of how it had calculated the alleged miscellaneous income on which the Appellant had been assessed to income tax, notwithstanding requests from the Appellant's representatives that some explanation or calculation be furnished.
- 76.** Counsel for the Appellant further submitted that there was, at a minimum, a question mark about the admissibility of documents received from the **[COUNTRY 2]** tax authorities on foot of a mutual assistance request, and relied upon by the Respondent. She further said that it was clear from the papers submitted by the Respondent that only some of the documents received from the **[COUNTRY 2]** authorities had been put in evidence, and that the failure to put forward all of the documents received had not been explained.



77. In relation to the decision of the **[NAME OF COURT]** Court of **[CITY 1]**, it was submitted that this established that the Appellant was not resident in **[COUNTRY 2]** during the years 2003, 2004 and 2005; it had little bearing on the question of whether the Appellant was resident in Ireland during those years. It was further pointed out that the *Reply* document, upon which considerable emphasis was placed by the Respondent, had been prepared by the Appellant's lawyers, and not by him personally. Counsel further pointed out that there had been no oral hearing before the **[NAME OF COURT]** Court of **[CITY 1]**. She said that it was also relevant to note that both the *Reply* document and the *Examination* document appear to be premised on a mistaken understanding of Irish law, in that they state that a person is resident in Ireland for Irish taxes if, *inter alia*, they have in Ireland a home reserved for their use and if they reside in Ireland for any period during the tax year. Counsel submitted that this had not been the case since 1994.

78. Counsel for the Appellant further submitted that the evidence in relation to the Appellant's dealing in coins was entirely consistent with his having traded solely outside Ireland. She said that he had never carried on his trade in this jurisdiction; it was simply not feasible for him to do so given the nature of his business. She further stated that this was supported by the statement from Mr. **[NAME OF WITNESS]**, discussed at paragraph 17 above. She said that Mr. **[NAME OF WITNESS]** had wanted to attend and give evidence but was ill and was unable to attend

H. Submissions of the Respondent

79. The Respondent began by submitting that the Appellant had been assessed to Irish income tax on the grounds that he was resident in Ireland from 2002 to 2006 inclusive, and/or that he carried on a trade in Ireland during those years. The Respondent had satisfied itself that the Appellant was so resident or, alternatively, was so trading. Counsel for the Respondent submitted that the Appellant had submitted no evidence to establish that he was resident anywhere but Ireland, and



that the evidence before me was insufficient to show that he was not resident in Ireland for the years under appeal.

80. On the issue of the Appellant's residency in Ireland, Counsel submitted that the small number of receipts for car rentals submitted by the Appellant were evidence of nothing; at best, they showed that the Appellant had occasionally rented a car which, she pointed out, could as easily be done by a tax resident as by a non-resident. She further pointed out that a number of the car hire invoices showed the car as having been hired by someone other than the Appellant, and listed a number of potential drivers, which suggested that the cars might not even have been used by the Appellant.
81. Counsel further submitted that the payments for flights recorded on the Appellant's credit card statements were not good evidence that the Appellant actually took the flights. She further pointed out that the Appellant had not submitted the entirety of his bank statements for the years under appeal, and said that this necessarily raised a question as to the veracity of the evidence submitted.
82. Counsel for the Respondent placed significant emphasis on the documents related to the proceedings before the **[NAME OF COURT]** Court of **[CITY 1]**. She noted that in the *Reply* document submitted on behalf of the Appellant, the Court had been informed that the Appellant "*still lives in the place of his birth*", that **[ADDRESS IN IRISH TOWN 1]** had been the Appellant's "*main and usual residence*" for over 30 years, that he "*resides habitually in Ireland*", and that the house had been occupied "*in a regular and continuous manner*" by the Appellant and his wife. She further pointed out that the *Reply* document stated that the Appellant had given a **[IRISH TOWN 1]** address as his home address to the **[COUNTRY 2]** police when arrested, and that this was the same address as that recorded on the Appellant's driving licence.
83. In relation to the question of whether the Appellant was carrying on a trade in Ireland during the years under appeal, Counsel for the Respondent pointed to the invoices posted to the Appellant



at his address at **[ADDRESS IN IRISH TOWN 1]** and the multiple items of correspondence from **[NAME OF ASSOCIATE 2]** sent to the same address during the period in question, and submitted that they were good evidence that the Appellant was in fact carrying on a trade in this jurisdiction.

I. Analysis and Findings

84. It is clear that to determine this appeal, two questions of fact must be considered and answered, namely:-

- (i)** Was the Appellant present at midnight in Ireland for 183 days or more during any of the years from 2002 to 2006 inclusive, or was he present at midnight in Ireland for 280 days or more in the aggregate during any two consecutive years during that period? and,
- (ii)** Did the Appellant carry on a trade in Ireland during any of the years from 2002 to 2006 inclusive?

85. To succeed in this appeal, the Appellant must satisfy me that both questions should be answered in the negative. It is trite law that the burden of proof rests with the Appellant in relation to both issues, and that the evidence put forward by him and on his behalf must satisfy me on a balance of probabilities basis.

86. Turning to the first question, the Appellant contends that the number of days spent in this jurisdiction amounted to 37 days in 2002, 103 days in 2003, 76 days in 2004, 76 days in 2005 and 121 days in 2006. The Appellant accepts that these figures may not be perfectly accurate but says that they are the most accurate figures he can give based on the information that is available to him at this remove of time. In support of these figures, he has submitted the documentation detailed in section **D** of this Determination and attended before me to give evidence in support of his position. His account of his travels, his business dealings and his lifestyle was supported by



the evidence given on his behalf by his daughters, by his godson and by Mr. **[NAME OF ASSOCIATE 1]**.

87. It is clear even from an examination of the documentation alone that the Appellant's account of the dates on which he was present in Ireland is not entirely accurate. I note, for example, that:-

(a) the Appellant says that he was in Ireland for 22 days between 15/07/02 and 06/08/02.

However, his credit card statement indicates that his credit card was used to hire a car in **[CITY 8]** on the 21st of July 2002;

(b) the Appellant says that he was in Ireland for 29 days between 16/06/03 and 14/07/03.

However, his credit card statement indicates that his credit card was used to make a purchase at **[NAME OF SHOP]** in **[CITY 2]** on the 8th of July 2003;

(c) the Appellant says that he left Ireland after 29 days on 14/07/03 and then returned for a further 47 days the following day. This would seem somewhat implausible, and is not supported by any contemporary documentary evidence save for a document indicating that he returned a hire car on the 14th of July;

(d) the Appellant says that he left Ireland on 08/01/04 and did not return until 02/07/04.

However, his credit card statement indicates that his credit card was used to make a purchase in Arnotts in Dublin on the 6th of March;

(e) the Appellant says that he left Ireland on 05/01/05 and did not return until 04/03/05.

However, his credit card statement indicates that a charge was made to his credit card by **[NAME OF CAR RENTAL FIRM]** in **[IRISH AIRPORT 2]** on the 18th of January;

(f) the Appellant says that he spent 48 days in Ireland between 26/07/05 and 31/08/05.

However, his credit card statement indicates that he purchased a ticket to fly from Ireland to **[CITY 1]** on the 25th of August, the car hire documentation submitted indicates that the car hire was returned on the 25th of August and the invoice from the Hotel **[NAME OF HOTEL]** in **[CITY 1]** indicates that the Appellant dined there on the 25th and the 26th of August; and,

(g) the Appellant says that he spent 16 days in Ireland between 14/06/06 and 30/06/06.

However, his credit card statement indicates that his credit card was used in a hotel in **[CITY 10]** on the 16th of June, to purchase a train ticket in **[CITY 1]** on the 20th of June, and in a hotel in **[CITY 3]** on the 23rd of June.



88. I think it is of relevance to point out that most of the errors detailed above are actually against the Appellant's interests, in that they indicate that he may not have been in Ireland on dates when he has accepted that he was in the State. I am also cognisant of the fact that some of the apparent errors may in fact be explicable; for example, there may have been a delay in processing a charge to the Appellant's credit card, or his card may have been used to make an online purchase from another country.
89. It should also be pointed out that the Appellant's written statement of the number of days he spent in this jurisdiction during the years under appeal does not accord entirely with the evidence given by his daughter, **[NAME OF DAUGHTER 2]**. Her evidence differed from his in certain particulars, although I accept her evidence was generally consistent with the Appellant's account of his movements.
90. I believe that the greatest difficulty the Appellant faces in satisfying me that he was not resident in Ireland during the years under appeal arises from the documents relating to the proceedings before the **[NAME OF COURT]** Court of **[CITY 1]**.
91. As I indicated above, Counsel for the Appellant objected to the admission of these documents in evidence on the grounds that the documents would not be formally proved by testimony from an appropriate witness or witnesses, and also because it was clear on their face that not all of the documents received from the **[COUNTRY 2]** authorities had been submitted by the Respondent. However, I am satisfied that pursuant to the provisions of section 949AC of the Taxes Consolidation Act, 1997, as amended, I have the statutory power to admit the documentary evidence received from the **[COUNTRY 2]** authorities. Having regard to the nature and content of the documents, I am further satisfied that it is relevant evidence and I have decided to admit same notwithstanding the objections advanced on behalf of the Appellant.



92. I accept the argument advanced by Counsel for the Appellant that the decision of the **[NAME OF COURT]** Court of **[CITY 1]** is of little, if any, relevance to the issues which fall for determination in this appeal. The decision of that Court is not, of course, binding on me, although I have had careful regard to same. Of greater significance, in my view, is the fact that the **[NAME OF COURT]** Court was focussed on a single, specific issue, namely whether or not the **[COUNTRY 2]** Revenue authorities had proved that the Appellant was resident in **[COUNTRY 2]** in accordance with **[COUNTRY 2]** domestic law. I believe this is manifestly clear from the findings made, which are prefaced by the Court saying “*Without it being necessary to examine the other arguments of the application...*”. The **[NAME OF COURT]** Court concluded that the **[COUNTRY 2]** Revenue authorities had not established that the Appellant was resident in **[COUNTRY 2]** for the three years the Court had to consider; the fact that the Appellant continuously rented a room in a **[COUNTRY 2]** hotel and kept a vehicle there for his use did not establish that the Appellant stayed in **[COUNTRY 2]** for at least 6 months every year, and therefore it was not proven that **[COUNTRY 2]** was the Appellant’s main place of residence.
93. The **[NAME OF COURT]** Court did not have to, and did not, decide whether the Appellant was in fact resident in Ireland. The Court accepted that the investigation had established that the Appellant “... *has Irish nationality, owns a house in Ireland and that he has produced telephone invoices in his wife’s name, electricity and fuel invoices in his own name, with the address that corresponds to the said house...*” However, this finding is not, in my view, inconsistent with the case being advanced by the Appellant in this appeal; he has never disputed that he is an Irish national, owns a property in **[IRISH TOWN 1]** and pays the utility bills in respect of same.
94. I have therefore come to the conclusion that the judgment of the **[NAME OF COURT]** Court of **[CITY 1]** does not contradict the evidence or diminish the arguments made by and on behalf of the Appellant; equally, I find that the judgment does not assist the Appellant’s case in this appeal.
95. More problematic, from the Appellant’s perspective, is the *Reply* document submitted by his **[COUNTRY 2]** lawyers on his behalf to the **[NAME OF COURT]** Court. This document was



presumably prepared by the lawyers on the Appellant's instructions. It is of particular relevance, in my opinion, that the *Reply* made the following assertions of fact:-

- (a) that the Appellant was living at **[ADDRESS IN IRISH TOWN 1]**;
- (b) that the Appellant still lived in the place of his birth;
- (c) that the Appellant habitually resided in Ireland;
- (d) that the house acquired by the Appellant and his wife in 1976 had been his main and usual residence for over 30 years;
- (e) that the Appellant's driving licence gave his address as **[IRISH TOWN 1]**, that being the town where usually resided; and,
- (f) that the Appellant had a place of residence for his use in Ireland in which he resided in a continuous manner.

96. These assertions are naturally of concern and relevant to this Determination. If true, they would obviously make it extremely difficult, if not impossible, for the Appellant to succeed in this appeal; the mere fact that they were made is unhelpful to the Appellant's cause.

97. However, in considering the *Reply* document and its impact on the Appellant's position, I have had regard to the fact that the document was prepared by the Appellant's lawyers, and not by the Appellant personally. I am also cognisant of the fact that the document was originally written in **[LANGUAGE OF COUNTRY 2]**, which is not the Appellant's first language; this has some bearing on any assessment or review he may have made of the accuracy of the statements made in the document. It is also relevant, I believe, that there was no oral hearing before the **[NAME OF COURT]** Court, so the Appellant did not give evidence to confirm the accuracy of the assertions of fact contained in the document. I also accept the point made by Counsel for the Appellant that the document was prepared in a particular context, namely to persuade the **[NAME OF COURT]** Court in **[CITY 1]** that the Appellant was not tax-resident in **[COUNTRY 2]**; it is also germane that the document appears to have been prepared on the basis of a misunderstanding of the grounds on which a person could be deemed Irish-resident for the purposes of Irish tax law.



98. Overall, I am of the view that the document certainly evidences that the factual assertions therein were made to the **[NAME OF COURT]** Court; I believe it could also be fairly said that there must be a *prima facie* presumption that the document was prepared in accordance with the information which the Appellant gave to his **[COUNTRY 2]** lawyers. However, I am not persuaded that the *Reply* document is good or sufficient evidence of the truth of the factual assertions it contains. While the document is certainly of relevance and must be considered in any assessment of the truth and credibility of the Appellant's other evidence, I do not believe that the assertions contained therein can properly be said to be determinative of the question of the Appellant's tax residence in Ireland, and I therefore do not believe that they are fatal to the Appellant's case.
99. It is not difficult to understand why the Respondent does not accept the Appellant's assertion that he was not resident in Ireland during the years under appeal. Even before regard is had to the factual assertions contained in the *Reply* document discussed above, the Appellant's account of his movements, mode of living and manner of doing business might ordinarily invite a degree of incredulity. The Appellant's peripatetic lifestyle is at the very least unusual, and certainly extremely rare. I have also had regard to the fact that the Appellant withdrew almost €1,000,000 in cash from a **[COUNTRY 5]** financial company which had been the subject of two sets of legal proceedings brought by the local **[PROSECUTING AUTHORITY]**, and which had as a director an individual who was known to the authorities in **[CITY 3]** for money laundering linked to an international gang.
100. Overall, however, having had careful regard to the totality of the oral testimony and documentary evidence before me, I am satisfied that the Appellant's assessment of the number of days he spent in Ireland during the years under appeal is largely correct. I am satisfied that the Appellant travelled very extensively, maintained an habitual place to stay in at least three countries other than Ireland, and divided his time between those and other countries, as well as spending time in Ireland.



- 101.** Even though, for the reasons outlined above, I believe that the number of days given by the Appellant in respect of each particular year is not perfectly accurate, I believe that they are generally accurate. I further believe that any difference between the figures given by the Appellant and the number of days he actually spent in Ireland is not likely to be sufficiently material to mean that the Appellant was in Ireland for a sufficient number of days during the relevant years so as to cause him to exceed the statutory thresholds for residency.
- 102.** Accordingly, I am satisfied that the Appellant has established on the balance of probabilities, and I find as material facts, that he was not present at midnight in Ireland for 183 days or more during any of the years from 2002 to 2006 inclusive, and was not present at midnight in Ireland for 280 days or more in the aggregate during any two consecutive years during those years.
- 103.** It follows therefrom that I find that the Appellant was not resident in Ireland for tax purposes during the years the subject matter of this appeal.
- 104.** Turning then to the second question of fact, I must determine whether the Appellant carried on a trade in Ireland during the years under appeal.
- 105.** The Respondent has directed me to the invoices sent by Mr. **[NAME]** and Mr. **[NAME OF ASSOCIATE 2]** to the Appellant at his address at **[ADDRESS]** in **[IRISH TOWN 1]**, as well as the numerous letters sent by Mr. **[NAME OF ASSOCIATE 2]** to that address, and submits that these documents are good evidence that the Appellant was carrying on a trade in this jurisdiction.
- 106.** The Appellant has pointed out that invoices were also sent to him at addresses in a number of countries other than Ireland, including **[COUNTRY 11]** and **[COUNTRY 1]**, and that he also received correspondence addressed to the house where he stayed in **[COUNTRY 3]**.



107. The Appellant's assertions on this issue are supported by the evidence of Mr. **[NAME OF ASSOCIATE 1]** as well as his own testimony. While the Appellant has also sought to rely on the Statement made by Mr. **[NAME OF WITNESS]** referred to in paragraph 17 above, I do not find the assertions of fact made therein to be of any material assistance to my decision, even if accepted as correct.

108. I have also had regard to the relatively unusual nature of the Appellant's trade as a numismatist; I did not understand the Respondent to seriously challenge, if indeed it challenged at all, the fact that the Appellant and Mr. **[NAME OF ASSOCIATE 2]** built up the **[NAME OF COLLECTION]** Collection of coins over a number of years and subsequently disposed of it at auction in London. I accept the submission made on behalf of the Appellant that it would simply not have been feasible for him to carry on his business in this country; the very nature of his trade, particularly when regard is had to the type of coins he was collecting, meant that it was more easily conducted abroad. I further accept his evidence that he therefore did so. The fact that the Appellant received invoices and correspondence sent to his home in Ireland is not, in my view, sufficient evidence that he carried on a trade in this jurisdiction.

109. Overall, I am satisfied that the Appellant has established on the balance of probabilities that he did not carry on a trade in Ireland during any of the years from 2002 to 2006 inclusive, and I so find as a material fact.

J. Determination

110. My findings can be summarised as follows:-

- (a) The Appellant was not present at midnight in Ireland for 183 days or more during any of the years from 2002 to 2006 inclusive, and was not present at midnight in Ireland



for 280 days or more in the aggregate during any two consecutive years during those years.

- (b) The Appellant was not resident in Ireland for tax purposes during any of the years from 2002 to 2006 inclusive.
- (c) The Appellant did not carry on a trade in Ireland during any of the years from 2002 to 2006 inclusive.

111. I will therefore allow the appeal. I consider that the Appellant has, by reason of the Assessments dated the 6th of March 2014, been overcharged and determine, in accordance with section 949AK(1), that the Assessments should be reduced accordingly.

Dated the 31st day of July 2020

MARK O'MAHONY
Appeal Commissioner

