



**98TACD2020**

**BETWEEN/**

**REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal:
  - firstly, against an assessment, in relation to the withdrawal from the Appellant of the One Parent Family Tax Credit (hereafter ‘the OP1 tax credit’), pursuant to section 462 of the Taxes Consolidation Act 1997, as amended (hereafter ‘TCA 1997’), in respect of the tax year of assessment 2013 and
  - secondly, this appeal relates to a claim in respect of the Single Person Child Carer Credit (hereafter ‘the SPCCC tax credit’) in accordance with section 462B of the TCA 1997 in respect of the tax years of assessment 2014 to 2016.
2. The Appellant sought an oral hearing, which took place at the Tax Appeals Commission on 4 March 2020.
3. The amount of tax in dispute is €9,511.33



## Background

4. The Appellant is separated from his wife since 2011 and has three children from this marriage.
5. The OP1 tax credit was granted to the Respondent for 2013.
6. The SPCCC tax credit was granted to the Respondent for 2014 and for the following years, subsequent to his ex-wife relinquishing her claim to the credit on 23 January 2014.
7. The Respondent reviewed the Appellant's tax returns for 2013 to 2016 in March 2017.
8. Following that review, the Respondent raised P21 balancing statements in respect of the tax years of assessment 2013 to 2016, withdrawing from the Appellant, the benefits of the OP1 and SPCCC tax credits. The Appellant duly appealed. The balancing statements are treated as assessments for the purposes of this appeal in accordance with s.997(3) TCA 1997.

## Legislation

### 9. Section 462 TCA 1997 One-parent family tax credit

(1) (a) *In this section, "qualifying child", in relation to any claimant and year of assessment, means—*

(i) *a child—*

(I) *born in the year of assessment,*

(II) *who, at the commencement of the year of assessment, is under the age of 18 years, or*

(III) *who, if over the age of 18 years at the commencement of the year of assessment—*

(A) *is receiving full-time instruction at any university, college, school or other educational establishment, or*

(B) *is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after*



*attaining the age of 21 years but while he or she had been in receipt of such full-time instruction,*

*and*

*(ii) a child who is a child of the claimant or, not being such a child, is in the custody of the claimant and is maintained by the claimant at the claimant's own expense for the whole or part of the year of assessment.*

*(b) This section shall apply to an individual who is not entitled to a basic personal tax credit mentioned in paragraph (a) or paragraph (b) of [section 461](#).*

*[(2) Subject to subsection (3), where a claimant, being an individual to whom this section applies, proves for a year of assessment that a qualifying child is resident with the claimant for the whole or part of the year, the claimant shall be entitled to a tax credit (to be known as the "one-parent family tax credit") of €1,650, but this section shall not apply for any year of assessment—*

*(a) in the case of a husband or a wife where the wife is living with her husband,*

*(b) [in the case of civil partners who are not living separately] in circumstances where reconciliation is unlikely, or*

*(c) in the case of cohabitants.*

*(3) A claimant shall be entitled to only one tax credit under subsection (2) for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.*

*(4)(a) The references in subsection (1)(a) to a child receiving full-time instruction at an educational establishment shall include references to a child undergoing training by any person (in this subsection referred to as "the employer") for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.*

*(b) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.*

*(5) Where any question arises as to whether any person is entitled to a tax credit under this section in respect of a child over the age of 18 years as being a child who is receiving full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Science.*



(6) *This section shall cease to apply for the year of assessment 2014 and subsequent years of assessment.*

## **10. Section 462B TCA 1997 – Single person child carer credit**

*(1)(a) In this section—*

*“order”, in relation to a child, means an order made by the court under section 11 of the Guardianship of Infants Act 1964 granting custody of the child to the child’s father and mother jointly;*

*“qualifying child” in relation to any primary claimant and year of assessment means a child—*

*(i) who is born in the year of assessment,*

*(ii) who, at the commencement of the year of assessment, is under the age of 18 years, or*

*(iii) who, if over the age of 18 years at the commencement of the year of assessment—*

*(I) is receiving full-time instruction at any university, college, school or other educational establishment, or*

*(II) is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of such full-time instruction,*

*and who—*

*(A) is a child of the primary claimant, or*

*(B) not being such a child is in the custody of the primary claimant, and is maintained by the primary claimant at the primary claimant’s own expense for the whole or the greater part of the year of assessment or, in respect of a child born in the year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child.*

*(b) This section shall apply to an individual who is not entitled to a basic personal credit referred to in paragraph (a) or (b) of section 461.*

*(c) This section shall not apply for any year of assessment—*



*(i) in the case of either party to a marriage unless—*

*(I) the parties are separated under an order of a court of competent jurisdiction or by deed of separation, or*

*(II) they are in fact separated in such circumstances that the separation is likely to be permanent,*

*(ii) in the case of either civil partner in a civil partnership unless the civil partners are living separately in circumstances where reconciliation is unlikely, or*

*(iii) in the case of cohabitants.*

*(2)(a) This paragraph applies to an individual (in this section referred to as the “primary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child is resident with him or her for the whole or the greater part of that year of assessment or, in respect of a child born in that year of assessment, for the greater part of the period remaining in that year of assessment from the date of birth of that child, provided that where a child is the subject of an order and the child resides with each parent for an equal part of the year of assessment, this paragraph shall apply to whichever of the parents referred to in that order is the recipient of the child benefit payment made under Part 4 of the Social Welfare Consolidation Act 2005.*

*(b) This paragraph applies to an individual (in this section referred to as the “secondary claimant”), being an individual to whom this section applies, who proves for a year of assessment that a qualifying child of a primary claimant is resident with him or her for a period of, or periods that in aggregate amount to, not less than 100 days.*

*(3) Subject to subsection (5), an individual to whom subsection (2)(a) applies, shall be entitled to a tax credit (in this section referred to as a “single person child carer credit”) of €1,650.*

*(4) Subject to subsection (5), and notwithstanding subsection (3), where for any year of assessment a primary claimant would be entitled to a single person child carer credit but for the fact that he or she has, in the form specified by the Revenue Commissioners, relinquished his or her claim to that credit, a secondary claimant shall be entitled to claim a single person child carer credit in respect of the qualifying child concerned.*



*(5) A claimant under this section shall be entitled to only one single person child carer credit for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.*

*(6)(a) The references in subsection (1)(a) to a child receiving full-time instruction at an educational establishment shall include references to a child undergoing training by any person (in this subsection referred to as “the employer”) for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.*

*(b) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.*

*(7) Where any question arises as to whether any person is entitled to a single person child carer credit in respect of a child over the age of 18 years as being a child who is receiving full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Skills.*

*(8) For the purposes of this section a child shall be treated as resident with an individual for any day where the child so resides for the greater part of that day.*

## **11. Part 44B TCA 1997 Tax Treatment of Cohabitants**

### **Sections 1031P and 1031Q TCA 1997 interprets that**

*“cohabitant” has the same meaning as in section 172 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010”.*

## **12. Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

*s.172.—(1) For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.*

*(2) In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:*

- (a) the duration of the relationship;*
- (b) the basis on which the couple live together;*
- (c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;*



- (d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;*
- (e) whether there are one or more dependent children;*
- (f) whether one of the adults cares for and supports the children of the other; and*
- (g) the degree to which the adults present themselves to others as a couple.*

### **Submissions by the Appellant**

13. The Appellant submitted that:

- a) He had a relationship with a third party between 2012 and 2017;
- b) He and his partner availed of IVF treatment during 2013 and later;
- c) He (the Appellant) lived at 202 FULL ADDRESS REDACTED from 2012 until 2015
- d) As he had three children from his previous marriage and as his partner NAME REDACTED lived in a small two-bedroom house at 33 FULL ADDRESS REDACTED, living full time with his new partner was not an option for him;
- e) Instead he did stay at 33 FULL ADDRESS REDACTED three days a week, whilst residing the rest of the time in 202 FULL ADDRESS REDACTED;
- f) This arrangement continued until 2015 when he moved into his parents' house at 77 FULL ADDRESS REDACTED in 2015 as they had 2 spare rooms to accommodate himself and his children;
- g) He continued to stay 2 – 3 days with his partner at 33 FULL ADDRESS REDACTED from 2015;
- h) He didn't pay any bills at his partner's house at 33 FULL ADDRESS REDACTED.
- i) He understood his living arrangements did not contravene the rules for the SPCCC tax credit;
- j) He told Revenue that the medical bills were all addressed to 33 FULL ADDRESS REDACTED as that was the address used by the medical people when contacting his partner for medical appointments etc.

14. The Appellant provided invoices and receipts in his partner's name addressed to her at 33 FULL ADDRESS REDACTED, indicating that she had paid outlay for the house and other personal expenditure, essentially treating this as her address.

15. The Appellant provided various proofs of personal addresses at 202 FULL ADDRESS REDACTED for various dates between 2014 and 2015 and for 2016 at 77 FULL ADDRESS REDACTED. These proofs included Garda correspondence, an employment P60, an



insurance policy, a car purchase invoice, a Dublin City Council receipt and a KBC bank payment acknowledgement.

### **Submissions by the Respondent**

#### **16. The Respondent submitted that**

- a) This appeal arose following the withdrawal of the One Parent Family Tax Credit for 2013 and the Single Person Child Carer Credit for 2014, 2015 and 2016;
- b) The Appellant is separated from his wife since 2011;
- c) Following a request for a claim to tax relief for medical expenses Revenue initiated a compliance intervention in 2017;
- d) During a telephone call with the Appellant on 15 February 2017 the Appellant confirmed that he had been cohabiting for five years;
- e) The Appellant wrote to Revenue in a letter date stamped 6 March 2017 stating that he lived with his partner for three days of the week and with his parents for the rest of the week. In that letter the Appellant requested that the tax credits be re-instated;
- f) In a letter dated 7 March 2017, Revenue set out the conditions to qualify for the Single Person Child Carer Credit;
- g) Revenue advised the Appellant in the letter of 7 March 2017 that as he had previously advised Revenue that he was cohabiting with his partner for the previous five years he did not meet the qualifying conditions for the Single Person Child Carer Credit;
- h) On the 26<sup>th</sup> April 2017 P21 balancing statements issued to the Appellant for the years 2013-2016 which are now the subject of this appeal;
- i) By letter dated 10 July 2017, Revenue supplied and requested completion of the following forms – One Parent Family, Single Person Child Carer 1- and Single-Person Child Carer 2;
- j) On 17 July 2017 the Appellant wrote to Revenue to say he could not get his ex-spouse to complete the SPCCC form;
- k) On 19 and 26 July 2017 the Appellant sought to obtain the SPCCC tax credit through the Revenue online system. On both occasions the credit was removed by Revenue;
- l) The appellant stated in his grounds for appeal that he lived with his partner for two or three days a week and with his mother for four or five days per week;





- m) The Appellant also stated that his partner's house had only two bedrooms and as he had three children there was not enough room for his children to stay over;
- n) The property in question was advertised on daft.ie as a three-bedroom property on 14 June 2017. The Respondent provided copies and photographs from the advertisement;
- o) In accordance with records held in Revenue **both** the Appellant and his partner resided at 202 **FULL ADDRESS REDACTED** between July 2013 and March/April 2016;
- p) In accordance with records held in Revenue both the Appellant and his partner resided at 33 **FULL ADDRESS REDACTED** between March/April 2016 and February 2017;
- q) Both the Appellant and his partner took part in a TV documentary filmed over a year called the **REDACTED** which followed their journey through the **REDACTED**. This programme was shown on Irish Television in 2017 but filmed earlier;
- r) During this programme the Appellant stated that he and his partner were living together;

### **Appeal Hearing**

- 17. The Appellant contested revenue's assertions that he stated he was cohabiting with his partner in the telephone call on 15 February 2017;
- 18. He asked if the call was recorded [Revenue stated it was not recorded];
- 19. The Appellant reiterated that he lived at 202 **FULL ADDRESS REDACTED** from 2012 until 2015 and thereafter at 77 **FULL ADDRESS REDACTED** with his parents. He failed to provide any further evidence of this such as a letting agreement or a witness to verify the accuracy of these assertions;
- 20. The Appellant credibly stated that his ex-wife did not want their children residing with his new partner;
- 21. He also pointed out as in his submission that his partner's house was too small to accommodate himself and his three children;
- 22. The Appellant advised that he has reviewed the television programme that he had participated in and he stated that he never said that he was living with his partner in the programme.



23. The Appellant pointed out that the Revenue's view of the house at 33 **FULL ADDRESS REDACTED** as being a three-bedroom house in 2017 is correct at 14 June 2017 but he asserted that the bathroom had been converted at that time to a bedroom. He failed to provide any evidence of the conversion.
24. The Appellant advised that he was previously granted the SPCCC tax credit when his ex-wife relinquished her claim to the tax credit in 2014.
25. The Respondent in support of its determination that the Appellant was cohabiting provided copies of historic data from its records of the Appellant and his partner claiming relief for medical expenses from the same addresses as follows:
- Form Med 1 for 2012 medical expenses from **REDACTED** showing her address at 202 **FULL ADDRESS REDACTED** dated 4 July 2013
  - Form Med 1 for 2012 medical expenses from the Appellant showing his address at 202 **FULL ADDRESS REDACTED** dated 18 July 2013
  - Form Med 1 for 2014 medical expenses from **REDACTED** showing her address at 33 **FULL ADDRESS REDACTED** dated 19 January 2015
  - Form Med 1 for medical expenses from the Appellant showing his address at 33 **FULL ADDRESS REDACTED** dated 8 May 2014
26. The Respondent provided further history of the Appellant and his partner's addresses from its files.
27. The examples of the Med 1 claim forms are included in this history. In addition, the Revenue record shows that the Appellant engaged electronically with the Revenue system on 3 March 2016 and input his address as 33 **FULL ADDRESS REDACTED**. The Appellant's partner engaged electronically with the Revenue system on 6 April 2016 and input her address as 33 **FULL ADDRESS REDACTED**.
28. The Respondent provided a copy of the SPCC1 claim form provided to it on 23 January 2014 in which the Appellant's ex-wife relinquished her claim to the tax credit, thus confirming the Appellant's contention that the relevant claim to the credit was correctly made in 2014.
29. The Respondent provided a copy of the Appellants letter date stamped as received on 6 March 2017 following the phone call with a Revenue Official on 15 February 2017. The Respondent contended that this letter in which the Appellant seeks to infer his part-time cohabitation, amounts to an effort by the Appellant to deny his cohabitation,



admitted in the phone call and in the documented claims for medical expenses and in the electronic communications with Revenue.

30. The Respondent advised that the telephone call on 15<sup>th</sup> February 2017 was not recorded.

31. In summary the Respondent pointed to the reasons why it has denied the tax credits to the Appellant were as follows:

- Revenue relied on the Appellant's verbal admission of cohabitation in the telephone conversation of 15 February 2017 in its initiation of enquiries.
- Revenue considered that the Appellant may not have been aware of the nuances involved in his admitted cohabitation and has attempted to create a scenario that supports his contention of not cohabiting.
- Revenue noted the common submission of medical expenses in relation to the cost of the REDACTED treatment using the address at 33 FULL ADDRESS REDACTED. Revenue noted the commonalities of addresses with the appellant and his partner in historic medical claims made by the parties
- Revenue noted the commonality of addressees when updating their records over several years
- Revenue regarded the Appellant as being in a committed relationship from its examination of the TV programme in which the Appellant participated.
- Revenue stated that it is in possession of undisclosed 3<sup>rd</sup> party information that satisfies it that the Appellant does not meet all the qualifying conditions that would allow him to claim the Single Person Child Carer Credit. This was not presented in evidence.

### **Cohabitation**

#### **Section 172 (2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

32. The Respondent used the definition of cohabitation in the above Act in support of its contention that it regarded the Appellant as being in a committed relationship.

33. Section 462 TCA 1997 concerns the OP1 tax credit and Section 462B TCA 1997 concerns the SPCCC tax credit. There is no definition of cohabitant in these sections.

34. Sections 1031 P and 1031 Q of Part 44B TCA 1997, in setting out the Tax Treatment of Cohabitants, draws attention to Section 172 (2) of the Civil Partnership and Certain



Rights and Obligations of Cohabitants Act 2010, in finding the definition of cohabitants.

35. The Appellant in discussing the nature of his cohabitation if any,

*“In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship”*

concluded that the guidelines in Section 172 (2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 do not establish cohabitation under any of the six sub-headings in Section 172(2) (a) to (g) of that Act.

36. The Respondent countered this in addressing each of the factors in determining whether or not the Appellant and his partner were cohabiting during the years 2013 to 2016. (*Section 172(2) (a) to (g) are outlined in bold italics below:*)

*(a) the duration of the relationship;* The Respondent submitted that there is an acknowledged relationship by the Appellant of having lived with his partner over a sustained period of time for at least three nights of the week

*(b) the basis on which the couple live together;* Revenue insisted that it was reasonable and clear to assume from their records that the couple lived together as partners

*(c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;* Revenue advised that it was not focussed on any degree of financial dependency but noted that the REDACTED treatment appears to have been shared

*(d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;* Revenue again advised that it was not focussed on any degree of financial dependency but noted that the REDACTED treatment appears to have been shared

*(e) whether there are one or more dependent children;* Revenue agreed that the Appellant has dependent children of his own only and this subsection has no bearing on their decision to regard the Appellant as cohabiting for the assessment periods

*(f) whether one of the adults cares for and supports the children of the other;* Revenue considered that there may be some pooled income but produced no documentation or evidence in support of this.

*(g) and the degree to which the adults present themselves to others as a couple.* Revenue considered the medical expenses involved in the REDACTED treatment and the fact that the Appellant and his partner presented themselves as a couple in the TV programme, as an indication of cohabitation by the parties.



## Analysis and Findings

37. This appeal concerns whether or not the Appellant is entitled to the tax credits known as the One Parent Family Tax Credit, pursuant to section 462 of the Taxes Consolidation Act 1997 for 2013 and known as the Single Person Child Carer Credit in accordance with section 462B of the TCA 1997 for 2014, 2015 and 2016.
38. The Respondent has based its assessments on its view that the Appellant does not qualify for the tax credits only on the basis of his cohabitation with his partner during the years 2013 to 2016. This is the only item of concern to the Respondent and it has not raised any objections to the other qualifying criteria in Sections 462 and 462 B TCA 1997.
39. The Respondent in not raising any issues other than the disqualification of cohabitants' entitlement to the tax credits has de-facto accepted all the other qualifications for the awarding of the tax credits the subject of this appeal.
40. Sections 1031P and 1031Q TCA 1997, points to **Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**, when interpreting cohabitation. *“For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.”*
41. There is a reported decision by the Superior Courts in relation to cohabitants under the above Act delivered by **Baker J. on the 5th May 2015 in the High Court case of D.C. and D.R. [2015] IEHC 309**. In her conclusion on the test to be applied for cohabitation, Baker J. set out the test for cohabitation to be adopted by the Court is:
- “to determine whether a reasonable person who knew the couple would have regarded them as living together in a committed and intimate relationship, and that the individual and many factors in how they are perceived must be taken into account”*
42. The Respondent in this appeal contends that the Appellant advised a Revenue official of his cohabitation with his partner. This contention was not proven in evidence. Nevertheless, it led the Respondent to review its files for the Appellant.



43. The Respondent submitted that these files have concluded that the appellant and his partner shared addresses over the years 2013 to 2016.

## **Conclusion**

44. I have considered that there is considerable doubt as to whether the Appellant was cohabiting with his partner during the years 2013 to 2016. Notwithstanding the fact that REDACTED provided 202 FULL ADDRESS REDACTED as her address in her med 1 in 2013, I am satisfied that no other evidence has been proffered by the Respondent that confirms cohabitation.
45. The Appellant has provided invoices and correspondence at alternative addresses during the years in question.
46. The Appellant has provided invoices and correspondence in his partner's name at the address where he said she resides.
47. I am influenced by the facts that the Respondent failed to provide evidence of the details in the telephone conversation of the 15<sup>th</sup> February 2017 and by the failure of the Respondent to challenge any other aspect of the Appellant's entitlement to the tax credits.
48. The Respondent has pointed out that
- a. The Appellant and his partner separately advised Revenue of a common address at 202 FULL ADDRESS REDACTED in claiming tax relief for medical expenses in July 2013
  - b. The Appellant claimed tax relief for medical expenses in May 2014 using the address at 33 FULL ADDRESS REDACTED
  - c. the Appellant and his partner separately advised Revenue in their electronic engagements on 3 March 2016 and 10 March 2016 that their address was 33 FULL ADDRESS REDACTED.
  - d. The Appellant and his partner portrayed themselves as a couple in their participation in the television programme during the assessment period.
49. The Appellant has consistently stated in his correspondence with the Respondent and at the Appeal Hearing that he did reside with his partner for three days per week.
50. The Respondent raised no issues with the Appellants statement that his ex-wife prohibited his caring for their children at his new partner's house. If the Appellant qualified for the tax credits in all other aspects of the qualification in accordance with



Sections 462 and 462B TCA 1997 then it follows that he had to care for the children at some other place. The Appellant in his written and oral submissions stated that he resided at alternative addresses during the years of assessment for parts of every week. I found the Appellant's evidence to be credible, particularly in respect of his assertion that the mother of his children was not agreeable to him caring for their children at the home of his new partner.

51. There is no clear definition of cohabitation in Sections 462 or 462B TCA 1997. The tests outlined in the **Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010** and in the reported High Court case of **D.C. and D.R. [2015] IEHC 309** give some guidance on cohabitation. These tests do not amount to a conclusion of proof of cohabitation where parties live together for certain periods of each week and live elsewhere for the remainder of the week.

### **Determination**

52. The basis for the relief claimed in relation to the OP1 tax credit is contained in section 462 of the TCA 1997. The basis for the relief claimed in respect of the SPCCC tax credit is contained in Section 462B of the TCA 1997. In both instances the reliefs could be lost in the case of cohabitants [section 462 (2) (c) TCA 1997 for the OP1 and section 462B (1) (c) (iii) TCA 997 for the SPCCC].
53. Having considered the facts and circumstances of this appeal, together with the evaluation of the oral and documentary evidence as well as the submissions from both parties, I have concluded that the Appellant was not cohabiting during the years of assessment. I determine that the Appellant has succeeded in discharging the burden of proof in relation to cohabitation. As a result, I determine that the P21 balancing statements in respect of the tax years of assessment 2013 to 2016, withdrawing from the Appellant, the benefits of the tax credits shall not stand.
54. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, s.949AL thereof.

**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**24 March 2020**

