TAX APPEALS COMMISSION

[redacted]

129TACD2021

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. Following a Revenue investigation, the following Amended Notices of Assessment were raised against the Appellant in respect of years 2002 to 2014 inclusive based on income charged to tax pursuant to Taxes Consolidation Act, 1997 (TCA), section 58:

Year	Assessed Tax
2002	€908.60
2003	€43,054.67
2004	€23,685.86
2005	€106,210.03
2006	€136,897.86
2007	€91,708.77
2008	€73,970.10
2009	€9,258.08
2010	€77,451.57
2011	€109,516.05
2012	€121,755.95
2013	€330,284.18
2014	€93,842.32
	€1,218,544.04

2. The assessments raised by the Respondent, albeit inclusive of contras, did not take account of any potential additional rental income that the Appellant may have earned.

3. Other than the years 2002, 2013 and 2014, the Appellant filed tax returns for all other years reflecting cumulative tax payable of €8,801.47 and paid tax of €7,839.72.

4. The Appellant appealed the Assessments for the years ending 2007, 2008 and 2009 dated 29 August 2012 on 25 September 2012 on the grounds that "*the amounts are not substantiated*" and on the basis that he was not resident in the State. Assessments for the years from 2002 to 2006 and 2010 to 2014 were raised on 2nd December 2015 and appealed on 17 December 2015, on the grounds that "*they have no basis in law; You cannot coerce me or my person into accepting and consenting to these incorrect amounts; Coercing in to contract is duress; Duress invalidates all contracts*".

5. As the tax affairs of the Appellant and his life and business partner, [redacted] are intrinsically linked, both individuals agreed that their appeals be heard together.

Legislation

6. The charge to tax under Schedule D is governed by TCA, section 18(1) and relates to:

> *"(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, …"*

7. TCA, section 52 TCA identifies the person chargeable to tax and states:

> *"Income tax under Schedule D shall be charged on and paid by the persons ... receiving or entitled to the income in respect of which tax under that Schedule is directed in the Income Tax Acts to be charged."*

8. TCA, section 58(1) charges profits and gains from an unknown source and provides:

> *"Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made –*

(a) the source from which those profits or gains arose was not known to the inspector,

(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or

(c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains."

Material Findings of fact

9. The Appellant and [redacted] are [redacted] life and business partners and have [redacted] children.

10. On 7 May 2009, an investigation commenced into the tax affairs of the Appellant covering the period 1 January 2003 to 7 May 2009. On 19 January 2012, this investigation was extended to cover the period up to the end of 2011. On 7 August 2015, this investigation was further extended to cover the 11.5 year period from 1 January 2003 to 30 June 2015.

11. In the absence of a full disclosure of information, notices pursuant to TCA, section 906A were issued to a number of financial institutions. An analysis of the information received identified lodgements into the following bank accounts:

[redacted]

12. Based on identified lodgements, Income Tax Assessments were raised for the years ending 2007, 2008 and 2009 on 29 August 2012.

13. Further TCA, section 906A notices issued to a number of financial institutions on 2 September 2015 in light of the information from the first such notice and lack of co-operation from the Appellant.

14. On receipt of information provided by the financial institutions, an analysis of the lodgements to the bank statements was undertaken in relation to the following accounts:

15. The total amount of monies lodged to the Appellant's accounts in the period of time, 2002 to 2014, was as follows:

Year	**Amount**
2002	€10,200.00
2003	€ 98,403.56
2004	€ 57,531.01
2005	€ 211,291.11
2006	€ 216,838.28
2007	€ 225,646.33
2008	€ 227,437.85
2009	€ 108,462.34
2010	€ 83,131.75
2011	€ 130,870.64
2012	€ 211,409.02
2013	€ 494,252.02
2014	€ 126,415.34
	€2,201,889.25

16. In raising the assessments, the Respondent sought to calculate the level of income received by the Appellant based on information provided to various financial institutions in support of mortgage applications. This analysis estimated a total gross income for 2002 to 2014 of €2,388,394, as opposed to the declared income of €409,725.

17. Following this analysis, amended tax assessments issued on 2 December 2015 for the years from 2002 to 2006 and 2010 to 2014.

18. The Appellant and [redacted] have been involved in a range of businesses individually and jointly and have acquired the following properties:

	Address	Category	Date of Instrument	Transaction Assignment Amount
1	[redacted]	Purchaser		(€45,000 per Appellant evidence)
		Vendor	[redacted]	€325,000
2	[redacted]	Purchaser	[redacted]	€120,000
3	[redacted]	Purchaser	[redacted]	€32,000
		Vendor	[redacted]	€500,000
4	[redacted]	Purchaser	[redacted]	€135,000
		Vendor	[redacted]	€230,000
5	[redacted]	Purchaser	[redacted]	€180,000
6	[redacted]	[redacted]	[redacted]	€190,000
		Vendor [redacted]	[redacted]	€285,000
7	[redacted]	Purchaser	[redacted]	€255,000
		Vendor [redacted]	[redacted]	€255,000
8	[redacted]	Purchaser	[redacted]	€415,000
9	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Purchaser [redacted]	[redacted]	€313,000
11	[redacted]	Purchaser [redacted]	[redacted]	€210,000
12	[redacted]	Purchaser [redacted]	[redacted]	€0.00

19. Other than the property, [redacted] their principal residence, all other residential properties were rented.

20. From a review of the Appellant's bank accounts, there was no evidence that any of the rental income derived from the rented properties was lodged into any bank account. During the hearing the Appellant explained that he "*had plenty of money in me account, I probably didn't need to put more in, as you see, I kept plenty of money in my house"*. The Appellant's agent when pressed confirmed that "*it will be a difficult task*" to identify any lodgements that related to rental income. Furthermore, the documentation to verify the expenses claimed was not provided to the Respondent including the PRTB documentation to confirm entitlement to the sizeable interest expense claimed against rental income of €179,441 for 2003 to 2009, inclusive, 2011 and 2012.

21. During the years 2003 to 2014, the Appellant through his company [redacted] and sold 31 apartments in [redacted] for an average selling price of €80,000. The total profit on those sales was €700,000. In evidence the Appellant confirmed that he remitted those funds into the State either by bank transfer or by giving funds to relatives to bring back to Ireland on his behalf.

22. At the second hearing on 29th July 2021, the Appellant produced a letter from a [redacted] law firm dated 28th July 2021 in which it stated that:

> "[redacted] *did apply for and did hold residency permits furthermore the nature of his activities, the duration of activities and ambit of his commercial life necessitated that he spend most of any tax year resident here in* [redacted] *and to that extent, he met any required term to deem himself resident here in* [redacted] *in accordance with double tax treaty held between Ireland and* [redacted].
>
> *I herewith confirm that* [redacted] *was resident for tax purposes in* [redacted] *from 2004. I can also confirm that taxable profits generated by* [redacted] *were 557.598*[redacted] *which has been declared and taxed accordingly. Furthermore up and until 201 3, some 600.000TL was generated personally by* [redacted] *on property sales and no obligation was necessary as sales where exempt on amounts declared to* [redacted] *authorities."*

23. While the Appellant's evidence was that he was resident in [redacted], the analysis of the Appellant's bank statements conducted by the Respondent, demonstrated that he had continuously written cheques from his Irish bank accounts during the years under appeal. The Appellant also confirmed that his children remained in Ireland during the school term with their mother [redacted] Furthermore the Appellant, in cross

examination, confirmed that he personally collected the rent directly from some of his tenants.

24. At the hearing on 22nd July 2021, the Appellant calculated that the amount of undeclared income for all years under appeal amounted to €399,000 and proposed a tax settlement figure of €69,825. However the tax settlement proposed by the Appellant at the hearing on 29th July 2021 increased to €246,148 based on undeclared income of €984,740.

25. No income tax returns were filed for the years 2002, 2013 and 2014. In addition, the 2010 return filed was a nil return in which the Appellant declared no income.

Submissions – Appellant

26. The Amended Assessments issued on foot of alleged Miscellaneous Income in various years totalling €1,212,199 for the 13 years under appeal. The alleged sums for Miscellaneous Income derive from lodgements to the bank accounts in the sole name of the Appellant. Those bank accounts were:

[redacted]

27. Analysis of transactions discloses that the sum of €60,000 comprised direct bank transfers from bank accounts held by [redacted]. On this basis, it was deemed acceptable to disregard that sum of €60,000 as trade income in the hands of the Appellant

28. The year 2007, 2008 and 2009 on the Estimated Assessments show sums for rental Case V Income of:

	€
2007	199,854
2008	165,613
2009	59,433

29. Whereas the filed Income tax returns disclosed rental Case V sums of:

	€
2007	39,000
2008	33,400
2009	62,000

30. There exists no justification for the excessive sums set out in the Amended Assessments issued in respect of 2007 and 2008. On this basis, these Estimated Assessments have to be set-aside, displaced or alternatively reduced to the original amounts of €1,229.87 (2007) and Nil (2008).

31. The financial review undertaken by the Appellant proves that the total of net income after PAYE of the 12-year period amounted to €538,150. This includes the amount of income from the various activities of:

	€
Rental Income	426,350
Building Activities	62,700
Sch E Salary (net)	49,100
Total	**538,150**

32. The sum of €417,725 was declared on the filed income tax returns. The difference of €120,245 arises of foot of failure to account for 50% of the rental income in the years:

2010	€32,425
2013	€44,000
2014	€44,000
Total	**€ 120,425**

33. There is no immediate explanation as to why this income was not declared on the filed income tax returns other than to advise that the relevant financial data was made available to the then appointed Accountant/Tax Agent and omitted from data entered onto the Tax Returns.

34. In the course of the appeal hearing questionable evidence was advanced by the Respondent that if the transfer sums from [redacted] to the Appellant were not treated as taxable income, then the Respondent would deem that a further €60,000 lying elsewhere and not identifiable would serve to mitigate against this argument. This was wholly unacceptable and flies in the face of factual evidence. The Respondent, in its investigations into the Appellant failed to uncover the account transfer sums, identifiable as to date, amount and bank account number. The financial detail was now brought to bear wherein there was an expectation on the part of the Respondent that such account transfer sums should be regarded as taxable income in the hands of the

Appellant. This is unjust enrichment as defined in the Value-Added Tax Consolidations Act 2010, section 100 is inequitable and must fail.

35. The point has to be made that the financial data set out and used to determine the argument of the Appellant is documentation provided by the Respondent on the 9th March 2021. Thus, there is nothing new arising by way of financial data that the Respondent did not already have in its possession and in its possession for a number of years.

36. There is a requirement now for the Respondent to set out the basis of its computation of the sums classified as Miscellaneous Income so that differing financial data can be reconciled in the interests of equity and fairness.

37. The matter of the transfer of sums between the Appellant and [redacted] showing the respective dates and relevant bank account numbers, were set out in a letter addressed to Revenue on the 20th March 2021. The transfers between the Appellant and [redacted] total €220,527.14. These bank transfer sums have gone some way in explaining the background to the assumed Miscellaneous Income in the hands of the Appellant. Inter-bank account transfers between connected persons are not a new thing and cannot be regarded as exceptional or extraordinary.

38. Having set out what is outlined in the previous paragraph, there is the obvious debtor/creditor relationship between the parties and how same is accounted for. This point is made for the sake of completeness.

39. The appeal hearing held on the 22nd July 2021 focused on the subject matter of residency and tax residency and the requirement of providing a log of days spent in [redacted] and proof by way of travel tickets purchased. In the afternoon of the hearing, [redacted], on behalf of the Respondent gave evidence on residency and residency permits and nothing could convince her that the Appellant was resident in [redacted] during the years 2004 to 2014. Seeking to determine how a taxpayer proves residency outside of Ireland, [redacted] argued that it is up to the taxpayer to prove and any information sought is available on the Revenue website. Revenue stated that a residency permit merely signals a right to reside and nothing more.

40. The most reliable authority on same is Revenue's document titled "*Certification of Tax Residency for Individuals, Partnerships, Companies and Trusts*" which sets out the format of a certificate that the Irish Revenue would issue to a foreign person seeking to claim residency here in Ireland. Presumably, reciprocal arrangements apply in [redacted] for Irish Domiciled persons living in [redacted] The Department of Justice equally offers some

guidance in seeking to establish residence in Ireland to include copy of lease/rental agreements, form P60, bank statements.

41. It should be noted that purchased travel airline tickets is not definitive evidence that the travel arrangements were completed. The airline tickets may be purchased and not used. Thus, this item as a test is not complete in all respects. The Appellant was provided with a letter by his solicitor in [redacted] which gave reliable evidence that he was resident in [redacted] for the years 2004 to 2015. This document is issued by a solicitor, this solicitor provided counsel to the Appellant in respect of his financial and business dealings in [redacted] Furthermore, the document provides evidence of profits generated which profits were remitted to Ireland. The profits are TL557,598 arising from corporate earnings and [redacted]600,000 from personal property transactions. All sums are deemed after tax. Assuming an average [redacted]/Euro exchange rate of 2, the sums given equate to €578,799.

42. The amount of bank lodgements for the 12-year period of time amounts to €2,191,689. A reconciliation of cash sums is set out as follows:

Monies lodged to bank account	€2,191,689	
Net Income after tax	€ 538,150	(Rents, Building, Sch E)
Net to account for	€1,653,539	
Sums transferred from [redacted]	€ 578,799	
Unaccounted for Income	€ 984,740(sic)	

43. The Appellant was able to substantiate certain lodgements to his Bank of Ireland account, specifically a lodgement for the sum of €194,674.66 on the 15th January 2013. The explanation for having that level of funds in [redacted] is after tax sums arising from property transactions conducted in [redacted]

44. It is acknowledged that the Appellant and [redacted] were in partnership in terms of rental income and ownership of property and were required to register the partnership with the Respondent and account for the partnership profits and losses. While this does not appear to have happened, the Respondent and the Exchequer should not suffer adversely on foot of same as the partnership taxable profits would be apportioned between the respective partners who would individually be assessed on such profit share and taxed accordingly.

45. A matrix of the Property Portfolio is set out as follows for completeness:

Item	Address	Date Purchased	Cost €	If owned Jointly with [redacted]	Mortgage Amount €	Date Sold	Sale Proceeds €	CGT Exposure €
1	[redacted]	[redacted]	190,000	✓	267,750	[redacted]	285,000	25,000
2	[redacted]	[redacted]	255,000	✓	323,000	[redacted]	255,000	Nil
3	[redacted]	[redacted]	120,000	✓				
4	[redacted]	[redacted]	210,000	✓	200,000			
5	[redacted]	[redacted]	180,000	✓	228,000			
6	[redacted]	[redacted]	313,000	✓	313,000			
7	[redacted]	[redacted]	415,000	✓	525,000			
8	[redacted]	[redacted]	165,000		173,000			
9	[redacted]	[redacted]	125,000			[redacted]	325,000	60,000
10	[redacted]	[redacted]	328,000					
11	[redacted]	[redacted]	32,000 + 160,000			[redacted]	500,000	Deemed Exempt
12	[redacted]	[redacted]	135,000			[redacted]	230,000	28,000

46. The Appellant provided a reasonable analysis of how he financed various property deals. The house at [redacted] was purchased in 1995 and re-mortgaged creating equity which together with a further mortgage saw the further acquisitions. Further re-mortgaging and new loan advances allowed for the investments in 2004 and 2005. Investments acquired in 2008 were financed via a package of mortgage finance of €2.3 million. Not unfamiliar to the 2007/08 Property Market and Banking Industry crash, the features of the mortgage financing availed of by the Appellant saw matters progress into Receivership which he battled through, the saving grace being profits and cashflows created in [redacted]

47. The Appellant relies on the Double Taxation Treaty between Ireland and [redacted].

48. By way of conclusion, the Respondent did in the conduct of the Remote CMC Hearings suggest that the Appellant was at liberty to make an offer in connection with the total of the Amended Assessments. Taking cognizance of the detail set out in this submission, the Appellant is advised to consider a settlement based on the following terms:

Funds unaccounted for	€984,740
Apply tax rate of 25% thereto	€246,185

49. As such, there was merit in advising the Appellant that the sum of €246,185, at set out, is indicative of a fair and realistic settlement sum. The Respondent's acceptance of this offer would bring to a close the apparent nine-year history of the Investigation of Revenue, wherein there are unquestionable weaknesses on both sides.

Submissions Respondent

Valid Appeals

Pre-2013

50. For the tax years prior to the changes made in 2013, the Respondent relies on TCA, section 957(2)(a)(ii), which provides that where the inspector is not satisfied with the return delivered by a chargeable person, or has received any information as to its insufficiency, and the inspector makes an assessment in accordance with TCA, sections 919(4) or 922, no appeal shall lie against that assessment until such time as-

> *(II) ….the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person.*

51. The *Notes for Guidance on the Taxes Consolidation Act 1997* (Government of Ireland, 1999), 1564-5 applicable at the time provided:

> *"Where estimated assessments are made in the absence of a return, the assessment may be appealed only after the chargeable person has made a return and paid the tax due on the basis of the return. Similarly, if an assessment is made in a case where an inspector does not agree with a return, the assessment may be appealed only after the chargeable person has paid the tax due on the basis of the return…*
>
> *Conditions relating to appeals*
>
> *No appeal can be made against an estimated assessment based on an inspector's best information where a chargeable person has not filed a return or has filed a return which the inspector considers unsatisfactory. Only when a return is filed and the tax, based on the chargeable person's own figures, has been paid is it possible to appeal against the assessment.*"

52. According to Donnelly and Walsh, *Revenue Investigations and Enforcement* (Butterworths, 2002), 185:

"Section 957(2) provides for two conditions to any Appeal in respect of the self-assessment system. A tax return must be submitted in respect of the relevant year. An amount of tax equal to that which would be payable based on the information contained in the tax return must be paid to Revenue prior to any notice of Appeal."

Post-2013

53. For the years post the 2013 changes, the legislation was to the same effect. The right of appeal lies against a Revenue assessment contained in TCA, section 959AF(1) which states:

"*A person aggrieved by an assessment or an amended assessment, as the case may be, made on that person may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within a period of 30 days after the date of the notice of assessment".*

54. However, no appeal lies against a Revenue assessment, pursuant to TCA, section 959AH(1:

"*until such time as –*

(a) Where the assessment was made in default of the delivery of a return, the chargeable person delivers the return, and
(b) In all cases, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which –
(i) is payable by reference to any self assessment included in the chargeable person's return, or
(ii) where no self assessment is included, would be payable on foot of self assessment if the assessment is included if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person."

55. TCA, section 959AH(1) and its predecessor TCA, section 957(2), which applies for periods prior to 2013) preclude any right of appeal against an assessment until such time as a return is filed and the relevant tax and interest paid.

56. By way of preliminary objection, the Respondent submitted that there is no valid appeal. Pursuant to TCA, section 949J, an appeal is not a valid appeal if the conditions that are required to be satisfied, before an appeal may be made, are satisfied before it is made.

For an appeal to be valid, the Appellant must have filed returns and paid the tax that they say are outstanding on foot of those returns. As Maguire states at para 2.202:

> "*An appeal against an assessment under the self-assessment regime may only be made to the extent that the assessment differs in some respect from the detail of income deductions from income, allowances, reliefs and any other relevant facts stated in the taxpayer's return for the relevant year in question. Secondly, no appeal can be made until a tax return has been made for the relevant year and the taxpayer has paid the tax due in accordance with the income, etc details in that return (TCA 1997, s 959AH). Thirdly, the notice of appeal must state 'the grounds in detail' for each point of appeal (TCA 1997, s 959AJ)".*

57. As Maguire states at pages 160-161:

> "*TCA 1997, s 959 AH imposes two conditions which must both be satisfied before any appeal against an assessment can be made under the self assessment system. Since no appeal exists before the conditions are met, any tax charged by the assessment remains due and payable from the appropriate due date so that interest on the tax assessed accrues from that date on any unpaid tax.*
>
> *The first condition is that the person assessed must, if he has not already done so, file a return for the relevant year. The second condition is that the person assessed must pay, to the extent that he has not previously done so, an amount of income tax (and PRSI and [USC]) at least equal to the tax payable by reference to the self assessment included in the return or where no self assessment has been included in the amount of tax which would be payable if an assessment were to be made by reference to the details included in the return (TCA 1997, s 959AH(1)). A self assessment must include any surcharge for the late filing of a return which is payable (TCA 1997, s 959R). The amount of tax payable before an appeal can be made must therefore include any surcharge payable…Further, if any interest has become due and payable on or before the date on which the pre-appeal tax payment is fully paid (the 'pre-appeal tax payment date'), then an amount of interest must also be paid before the appeal against the assessment can be made"*

58. The Appellant has not filed tax returns for the years 2002, 2013 and 2014 despite being on notice of this issue well in advance of the appeal hearing and having every opportunity to do so. At the CMC heard on 28 May 2021, the Commissioner directed that the Appellants' agent arrange for the returns be filed when Revenue raised the issue of there being no valid appeal. However, this was still not done and, indeed, the Appellant's submission did not address the issue of the returns not filed. The Appellant

gave oral evidence, without any proof of such actions, that the files were returned manually on paper. Revenue has not received copies of these returns and the Appellant's agent did not address this issue at the hearing. Further, no payments have been made if there is a liability and the financial matrix in the Appellant's submission did not take any of the "declared" income into account. The concession of surplus undeclared income above the returns was only apparent from the submissions filed on behalf of the Appellant on the eve of the hearing. In evidence, the Appellant stated: *"I say we've submitted something there recently in relation to an offer, that we did make mistakes"*.

59. Both Appellants accept that further monies are owing to the Respondent for the period, i.e., in the case of [redacted] the sum of €101,044 and in the case of [redacted] the sum of €69,825 albeit that Revenue submits that the evidence supports that this is a vast underestimation of the further monies owed by the Appellants

60. TCA, section 949N provides that the Appeal Commissioners, *inter alia*, if not satisfied that an appeal is a valid appeal, can refuse to accept an appeal (even if it had been previously accepted as valid or if satisfied that an appeal is without substance or foundation). Pursuant to Section 949E, the Appeal Commissioners have the power to make a direction at any time to any party regarding the conduct or disposal of an appeal.

61. None of the appeals adequately set out the grounds of appeal. The Appellants opted instead to write "*freeman of the land*" type letters, including issuing demands to Revenue for €1 million on 22 January 2016 in the form of a "*Notice of Non Acceptance and Non Consent*".

62. The submissions made below are strictly without prejudice to this preliminary objection.

Substantive Issue

63. The substantive issue in this case is the fact that the funds lodged to the Appellants' accounts exceed the amount declared for the relevant years and no explanation or no adequate explanation has been provided to date as to what these lodgements relate to.

64. Because of the linkages and movements of monies between the various bank accounts of [redacted] the analysis was completed on both parties together. As such there were no large withdrawals in 2011 for the purchase of [redacted] vehicle for €26,995 and there were no repayments for any related financing arrangement, that the Respondent can identify from the bank statements. At the hearing, the Appellants

gave various and inconsistent explanations at hearing as to the funding of this vehicle specifically the degree of vagueness in [redacted] testimony.

65. There were no payments from any of the bank accounts for weekly groceries until 2013. The amount spent in 2013 and 2014 totalled €2,512. There were no expenses for clothing or shoes including school uniforms. There was only one year where Revenue could identify expenditure on possible Christmas presents.

66. The purchases for petrol or diesel only relate to 2014 and total just over €75, despite each having their own vehicle. The evidence of the Appellant was that "*But if I give cash out how is it going to be on any evidence there".* Similarly, despite payments for Motor Tax being made, the Respondent can only identify from the bank statements one motor tax payment in 2014 for €308.

67. There were very little expenses for entertainment, leisure activities or medical expenses. The Appellant conceded at the hearing that he paid cash for living expenses. However, this cash is not reflected in his tax returns or the financial matrix in his submissions.

68. The Appellant amended his evidence under cross-examination to concede that the properties at apartment [redacted], apartment [redacted] and the properties on [redacted] were purchased without mortgages. These properties were acquired at a total cost of €663,000 excluding incidental costs such as legal fees, stamp duty fees, etc and were funded fully from his own sources. Given that [redacted] was purchased in 2015, the Respondent submitted that it was likely purchased with undeclared income from unknown sources relating to the period under the appeal.

69. The couple purchased a Principal Private Residence in 2005 but there are no payments for any expenses that you would expect to see following the acquisition of a new home or the maintenance of this property.

70. There were monthly direct debit payments from [redacted] bank account to [redacted] from June 2004 until April 2011. The total amount transferred is €45,476.41. It is not known what these payments related to but it seems implausible that they related to the purchase of vehicle worth €26,995 which on the Appellants oral evidence was partly funded from the sale of another vehicle and / or money from a relative.

71. [redacted] gave oral evidence which was almost immediately retracted on cross-examination of a [redacted] bank account. The Appellant makes maintenance payments to another individual and these payments reduce in 2011, which may suggest

if such payments continued to be made that they were possibly paid in cash from then on.

72. There was a significant discrepancy in the business and rental expenses but not including interest claimed in tax returns versus the payments made from the business accounts. This may suggest that these were funded through cash payments or through another unknown bank account. It was possible that some may have been funded from the cheque payments made from their individual personal accounts but the Appellants have not provided any information for the Respondent to verify this and were unable to explain this discrepancy under cross examination.

73. An intervention took place on a third party during 2016 which was unrelated to this Revenue Investigation. This person was [redacted] cousin [redacted] who provided confirmation that [redacted] gave him €31,960 in cash to lodge to [redacted] on his behalf. [redacted] bank statement showed the cash lodgement and also a number of transfers from [redacted] account totalling €12,000. There are transfers to [redacted] amounting to €45,644.44. These events took place in July 2014 and are not in dispute.

74. Information obtained from a mutual assistance request with the [redacted] Tax Authorities established that [redacted] held a [redacted] Bank Account (IBAN ending in [redacted]). In an interview with the Appellant on 20 May 2013, he denied all knowledge of any transfers between [redacted] and Ireland relating to property. It is recorded, inter alia, that: "*I asked [the Appellant] twice were any monies in relation to his property dealings in* [redacted] *ever transferred into his bank accounts in Ireland and he said no.*" Bank statements obtained under the TCA, section 906A notice identified a sizeable transfer of €194,674.66 on 11 January 2013. Notwithstanding the Appellant's denial of this transfer of money, he has only now provided the back-up documentation regarding this bank transfer in his submissions received 21 July 2021.

75. At the hearing, it was conceded by the Appellant that all profits of circa €700,000 made in [redacted] were sent back to Ireland. More curiously, the Appellant contended that he made the €700,000 in profit over 12 years in [redacted], yet he was not in [redacted] for the full 12-year period by his own admission made later under cross-examination. Specifically, his Agent put it to him that he was in [redacted] for the whole of the 12 year period and he accepted this. Subsequently, the Appellant asserted in evidence that he was only resident in [redacted] since 2006.

76. Remittals from [redacted] to Ireland at this level are not evident from the bank statements. There is circa €400,000 of unexplained monies remitted to Ireland from [redacted] that are

not evidenced in the Appellants' bank accounts. When this was put to the Appellant, the following exchange occurred:

> *"Q. We have looked at your bank statements to assess the evidence in your bank statements of income that was remitted from -- you point out the GP, the [redacted]. So we have looked at those for the periods and the total amount for the periods that Revenue can see in transfers is €306,531. So that differs considerably from the amount that you told to the Commissioner today. Can you explain that?*
> *A. You're saying to me that the [redacted] was 370 grand, is it?*
> *Q. 306,531?*
> *A. Okay. And that's up until '14, is it, or '13?*
> *Q. It's for the full period, but the transfers are only in 2012 and 2013?*
> *A. Answer.*
> *Q. Sorry, there's a very small one in 2013 for 3,000?*
> ***A. Okay. I would have brought cash back. If my family and friends was visiting me they would have brought cash back for me too.***" (Emphasis added)

77. The Appellant also contended that he paid tax on that sum before it was remitted to Ireland but no evidence of the tax paid has been furnished.

78. Requests for information regarding offshore assets have not been responded to. There is considerable information online to suggest that the Appellant owns foreign property ([redacted]) and has been involved in the development of a complex in [redacted]. Information suggests that there were [redacted] villas in two phases with prices ranging from €90k to €110k. He has provided the Respondent with information regarding [redacted] but the documentation is in [redacted]. There is mention of [redacted] in places though. Furthermore, the mutual assistance request with the [redacted] authorities which related to [redacted] advised that she was the general manager of this entity since 2005. The information obtained under the TCA, section 906A notice includes an application for funds to purchase a property in [redacted] in 2005.

79. The Appellant did not include his [redacted] assets in his Statement of Affairs, even though he had those at the time and notwithstanding the consequences of a false declaration.

80. When purporting to explain the significance of the [redacted] documents the Appellant furnished the Respondent, the following transpired:

Q. And the next page?
A. That's my tax number in [redacted]
Q. Go on?
A. That's Property Tax under local government for my holiday home.
Q. So Revenue weren't aware that you had a holiday home in [redacted]*, can you explain details of that to the Commissioner?*
A. As in?
Q. Well, where is it? When did you buy it? How much did you buy it for?
A. It was a long time back, I don't remember.
Q. In your Statement of Affairs you didn't reference any property in [redacted]*?*
A. Okay.
Q. Why not?
A. What year did I not?
Q. Well, you said you bought the property a long time back, the Statement of Affairs is of 2009?
A. Mmm-hmm. It's probably, 2004 probably, I don't know."

81. The Appellant claimed non-residency in his 2010, 2011 and 2012 Income Tax Returns. His Form 11 for 2013 was returned as the non-residency information was incomplete and Revenue was unable to process it, in the absence of the required information. Residency is a matter of fact and the Appellant has not to date, despite repeated requests, provided the necessary information to support his non-residency claim and also has not provided his [redacted] tax returns. It seems that his own agent is suffering the same difficulty when stating:

"There are, I suppose the best piece of information that's outstanding from my point of view, and I'm not speaking on behalf of Revenue, are copy bank statements from [redacted]*, both for his personal activities and for the corporate activities, that's the* [redacted]*h bank statements and if I got that, because he has told me that on occasion there were substantial sums of money in those accounts and if I could see that, those bank statements, it would allow me to reconcile, because they did provide some* [redacted] *financial statements, which I have and I can copy to you, I have copies here for you, but it would allow me to reconcile bank statement lodgements with sales that are reported. It would allow me to understand how he managed to, for example, transfer 194,000 in January of 2013.*

It's a lot of money. It's, you know, there has to be evidence behind it and that evidence I think, he has alluded to, that he sold properties, and so forth, and I accept all of that.

But, however, in terms of where we are with his tax affairs I really need concrete evidence and if I may suggest, that the handling of his tax affairs in the years 2003 to 2014 were poor in the sense that they didn't consolidate everything, reconcile everything and make sure that they had, you know, accounted for income abroad, accounted for income here, reconciled transfers and at the end of the day, X lodgements represented the sales, or whatever, and equally for costs…. I would love to try and assist now if I could, but until I get those bank statements, Commissioner and even until Revenue could see those bank statements it's very difficult for both of us to understand from an accounting point of view and its implications on tax how he stands fully in that regard…He did tell me that his [redacted] based accountant said that he paid €413,000 in taxes and I accept that. However, what I have to get behind is, show me the evidence, show me a tax return, show me a receipt, show me something that allows me to go before the Tax Appeal Commissioner, and indeed before Revenue, and say, look, you know, that's the figure that was paid and therefore, we have to take account of that. And if we could prove that it would mean then that, I would suggest a gross sum in terms of sales of 1.375 million, which means, at the end of the day, he has about 400,000, or thereabouts, 399,000 I think it is, which he reasonably, he can't explain to me unless he can give me bank statements."

82. It should also be noted that the Appellant was only assessed on income from property held in the State or on income lodged into Irish bank accounts. The Appellant did not provide evidence to support a claim for double taxation relief. Instead he omitted all of this income from his tax returns.

83. At the CMC heard on 28 May 2021, it was conceded on behalf of the Appellant and [redacted] that additional income was not declared by them.

84. Both the Appellant and [redacted] submitted Statements of Affairs to the Respondent in June 2009, notwithstanding the significant obligations associated with same. The Appellant is a successful businessman who would understand his obligations in this regard. The Appellant accepted that he has been "*successful*" in his businesses. The following exchange occurred at the hearing when the Appellant was asked about the contents of his Statement of Affairs under cross-examination:

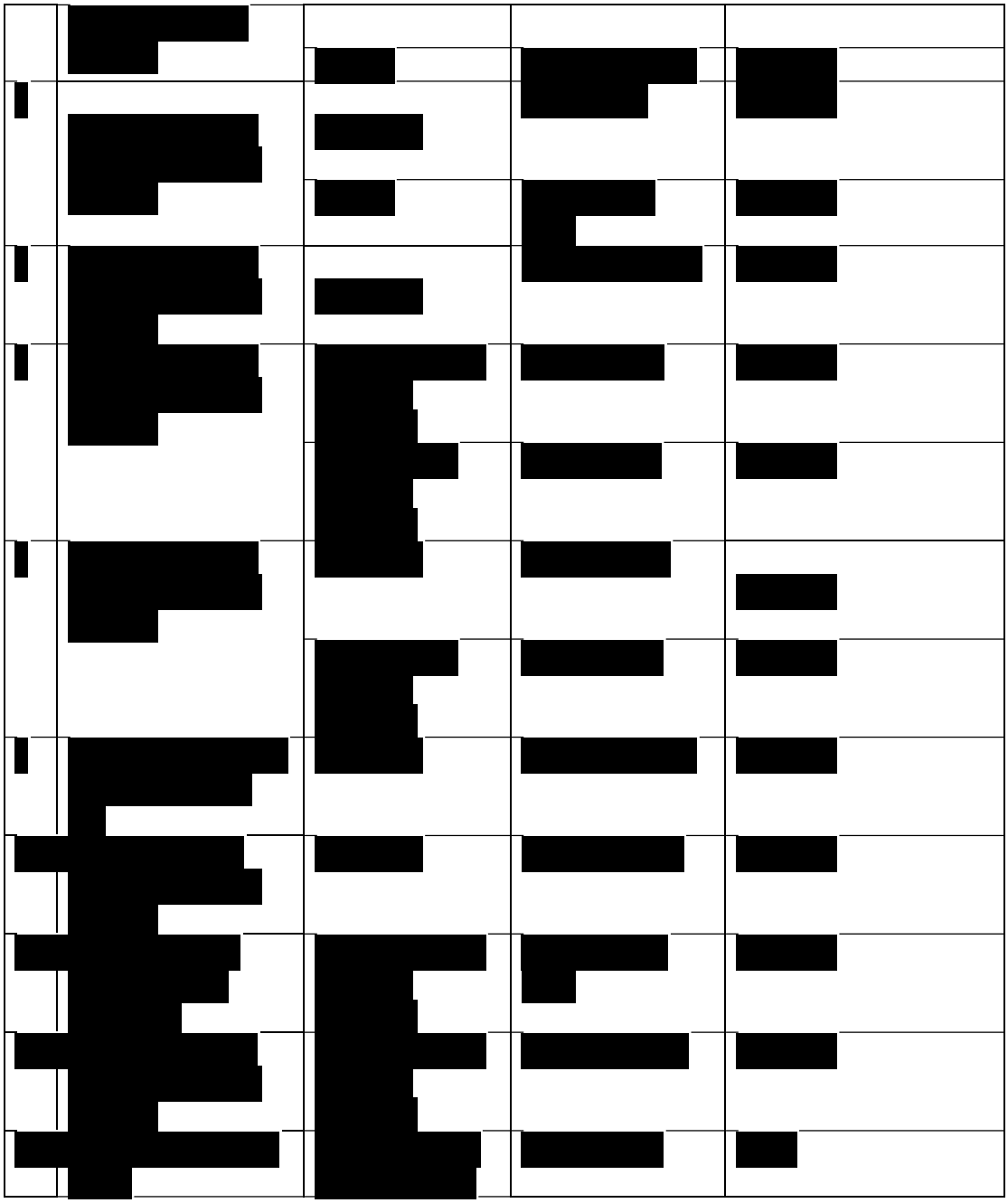
"COMMISSIONER: On the left-hand column it says, "Trade Debtors and work-in-progress". There's a dash, a stroke?
A. Yeah, it just means it's probably not applicable.
Q. Not applicable. So you indicate that you don't have money at the bank. You don't have cash to declare?
A. No, that's probably just a mistake. As I said, [redacted] submitted them Returns, so.

Q. You have indicated that you didn't have money on deposit or in a current account, or any cash?
A. As I said, [redacted] submitted them Returns. That's a mistake.
Q. But for your own self though? .. You don't have cash or money on account, in an account?
A. In 2008?
Q. Yeah. Well this is for May -- well, sorry, you signed it on the 10th of June. So we're talking the summer of 2009?
A. Okay, if that's what I said then maybe not.
Q. And if we go down further: Money on deposit with building society, An Post or credit union; you say nothing.
Saving certs or national instalment saving plan; you say nothing.
Foreign currency holdings; you say nothing.
Loans given by you; you say nothing."

85. The Appellant indicated that the figure for director's remuneration / drawings in a mortgage application (which he signed and which was in the sum of €121,000) was overstated for the purposes of obtaining that finance. He stated: "*It was probably topped up to get the mortgage, I don't know*". This is not the first time that the Appellant's credibility is an issue. He pleaded guilty in 1999 to 21 charges of fraud in [redacted] and his legal issues with the [redacted] are well documented.

86. The following properties were acquired by the Appellant (and, in some cases, [redacted]) and this information obtained from Revenue records was put in evidence at the hearing, some of which have recently sold:-

	Address	**Category**	**Date of Instrument**	**Transaction Assignment Amount**
1	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]



87. Notwithstanding the significant property portfolio and admitted rental activity in respect of same for the period, no rental income was recorded in the 2010 tax return for the Appellant.

[redacted]

88. There is no evidence of Electronic Fund Transfers (EFTs) in the relevant bank accounts that would constitute monthly rental income transferred by tenants for the period. Indeed, there is no evidence of rental payments being lodged in cash in the relevant bank accounts that would constitute monthly rental income lodged by tenants for the period. It was admitted by the Appellant that some rental income was paid in cash, however, it is apparent that the vast majority was paid over in cash and not lodged directly to the bank accounts. As per the Appellant:

> "*A. As I said, sometimes I collected cash and sometimes I wasn't around, they would put it into my account or someone else would collect it for me*".

89. After a lengthy exchange about the rental income not evident from the bank accounts, the Appellant stated then went to explain:

> *"A. Well sure, I had plenty of money in me account, I probably didn't need to put more in, as you see, I kept the cash in my house, or whatever.*
>
> *COMMISSIONER: The rent is not in these bank accounts, is that correct?*
> *A. As I said, Commissioner, it wasn't always transfers. It could have been cash."*

90. Later, the following exchange occurred:

> *"So it's alleged on this document, [redacted], that, for example on page 2 one person is saying:*
>
> *'The rent payments are made by two methods, the tenants leave the collective rent in an envelope in their respective apartments in the kitchen and [redacted] lets himself in at the start of each month and personally picks it up, usually when the tenants are not present. And the second method, which some tenants use, is to go directly to [redacted] Street on the 1st of every month and hand the rent in directly to the [redacted]. The rent is then presumably passed on to either [redacted].' Is that a correct assessment?*
> *A. Yes."*

91. When asked how he kept track of the rent each month, the Appellant stated:

> *"A. We kept a ledger and we gave it to the accountant every year to submit.*
> *Q. And where is that ledger now?*
> *A. I'd imagine it's with the accountant.*

Q. And did you ask the accountant if he could provide it to [redacted] or to TAC for the purpose of this appeal, or to Revenue?

A. I don't know is the answer. [redacted] were dealing with it and our accountant. [redacted] is on a special assignment here.

Q. So you don't know if you asked for that?

A. You're asking me did I ask for something, is it, the ledger to be provided to [redacted], is it?

Q. Yeah, of your rental income?

A. I don't know, can I ask him? Was that given to you, [redacted]?

[redacted] It wasn't, no. I didn't receive any rents ledger, no."

92. There is no evidence in the bank accounts showing expenditure on costs related to the rental properties indicating that same were paid in cash The Appellant referred to "*doing up*" the properties that he purchased/owned, but there is no evidence of expenditure on same (even acknowledging that the Appellant may have been able to do the labour, materials would still have been required). He also claimed that he borrowed €100,000 from a bank to do up his family home but no evidence of this is seen in the bank accounts. [redacted] admitted that if costs were required to be spent, say on a washing machine, cash would be used.

93. A total of €121,535 was lodged to the [redacted] Builders Account in 2005, yet only €62,700 was declared for that year. When asked about this, the Appellant was not able to explain it.

94. The joint accounts held by the Appellants (e.g. [redacted] joint account) have not been included in the table in [redacted] Submission.

95. The Appellant indicated in his Statement of Affairs that he had a €8,000 credit card debt in June 2009 which on the Respondent's analysis the repayment is not accounted for. It is submitted that the balance was paid in cash. The Appellant did not identify how the payment was made.

96. When asked about how he paid for living expenses (in particular, fuel, given that only one transaction was identified for the period), The Appellant stated:

"A. Do you want an answer? If it's not by one of my credit cards it could have been by cash. So there's your answer.

Q. Well how many credit cards did you have, [redacted]?

A. Which year?
Q. All years?
A. Credit and debit cards, who knows, four or five."

97. The Appellant referred to a number of different credit cards in respect of which Revenue has no visibility. The Respondent cannot identify payments to these credit cards from the bank statements.

98. It is asserted in the Appellant's Statement of Affairs that [redacted] was purchased for circa €37,000 in 2009. When asked to explain what this relates to, the Appellant stated: "*It was a tile business I had, I imported tiles*". However, he later asserted that it was in fact [redacted] business. Indeed, [redacted] stated in evidence:

"Q. And then there was one final business, which was the tiling business?
A. Yeah, that was very small.
Q. And did you run that on your own?
A. I did.
Q. I just want to be clear, did you run the laundry on your own or was [redacted] involved?
A. On my own.
Q. That was totally on your own?
A. Yeah."

99. Later, the following exchanged occurred with [redacted]:

"Q. And this business, the tiling business that [redacted] says was your business, that was acquired, according to his Statement of Affairs, for about €37,000 in or about 2009, what was that acquisition cost related to?
A. I actually have -- I can't remember. I don't really remember anything about the tiling business. It was very short lived.
Q. You don't remember anything, neither you nor [redacted] can explain what the figure of €37,000 relates to at all?
A. No."

100. It is assumed, although the Appellant had not made it clear, that the acquisition relates to the purchase of tiles, etc. The recorded sales of the years the business operated are low: €13,462. Yet, the balance of stock is not accounted for.

101. There is minimal evidence of regular day-to-day living expenses in the accounts, such as payments for food, medical, fuel, clothes, shoes and school uniforms, entertainment,

childcare, household, leisure, communions, Christmas, etc. Likewise, there is limited evidence of business costs/expenses being debited from the bank accounts. In addition, [redacted] has referred to his taking out mortgages to purchase some of the properties (with four of his Irish rental properties being funded through their own sources). However, he changed his evidence. When pressed about the absence of living expenses evident in the accounts, the Appellant stated that he lives a "*boring life*".

102. When it was put to the Appellant that using TCA, section 906A, Revenue sought information in respect of the properties and the mortgages and was not able to obtain any mortgage evidence for the Apartment [redacted], the Apartment [redacted], the property at [redacted] the properties on [redacted] the Appellant conceded that there were none for those properties. However, he had earlier stated that all of his properties had mortgages taken out:

> *"A. Yeah, all mortgages taken out. Go on.*
> *Q. Sorry, I beg your pardon, I didn't hear that, [redacted]?*
> *A. There was all mortgages taken out on these properties.*

103. In addition to the failure to prove that any tax on income is paid in [redacted], limited visibility has been given by the Appellant as to his foreign assets, such as the bank accounts in [redacted], credit cards allegedly held in [redacted], property development activities. In addition, significant cash payments were sent to an investment scheme in the [redacted].

104. In summary, therefore, there appears to have been a significant amount of cash floating around in view of the [redacted] cash not accounted for in the bank transfers, the cash businesses, in particular the [redacted] and the rental income from the Appellants' substantial property portfolio.

105. The excess [redacted] cash is not accounted for in the bank transfers. Based on the Appellant's evidence, the lodgements with "GP" are transfers from [redacted]. This amounts to €306,531.97 leaving a shortfall of €393,468.03 not satisfactorily accounted for.

Conclusions

106. It is submitted that the Respondent's approach is correct and the amended assessments should be upheld. The Respondent was entitled to raise the amended assessments given the undeclared income evident from the Appellant's bank accounts pursuant to TCA, section 58(1). The onus of proof that the amounts due are excessive rests on the

Appellant and nothing has been put forward to date which establishes that the figures are excessive. Indeed given the cash available to the Appellants based on the evidence, TAC could, in exercise of its jurisdiction, increase the assessments to a sum considered to be correct. Both Appellants have made concessions of monies owed to Revenue (less surcharges and interest) in their submissions, which proves that the returns to date are underdeclared. The Respondent conducted a subsequent analysis based on information supplied by the Appellant to financial institutions in support of mortgage applications which estimates a total gross income for 2002 to 2014 of €2,3818,394, as opposed to the declared income of €409,725 and undeclared income for 2001 and 2002 totalling €64,850. Further, in the course of their oral evidence, the Appellant has conceded to significant sums of cash and by implication income which the Appellant has not made returns.

Analysis

Jurisdiction of the Appeal Commissioners

107. An appeal conducted by way of hearing pursuant to TCA, 949AH, is adjudicated*, inter alia*, by examination of the appellant. Thereafter the Appeal Commissioner, in accordance with TCA, section 949AK, is required to determine whether the assessment should be:
    (a) reduced,
    (b) increased, or
    (c) where neither paragraph (a) nor (b) applies, determine that the assessment stand.

108. In compliance with these obligations, this appeal proceeded by way of several case management conferences and 2 days of hearings.

Valid Appeals

109. The Respondent argued that the Appellant should be denied the entitlement to appeal the years 2002, 2013 and 2014 as no returns were filed for those years. Furthermore no evidence was provided by the Appellant of having filed those returns.

110. Therefore on the basis that TCA, section 959AH(1) and its predecessor, section 957(2), denies a taxpayer a right of appeal until such time as returns are filed and the relevant tax and interest paid, I am prevented from hearing the Appellant's appeal against the income tax assessments for the years 2002, 2013 and 2104.

Hearsay

111. The Appellant placed significant emphasise on a letter provided by a [redacted] law firm which asserted that the Appellant was resident in [redacted] since 2004 and therefore by inference not liable to tax on a certain proportion of income assessed by the Respondent. The Respondent objected to the production of this letter arguing that it was a hearsay document.

112. While TCA, section 949AC allows evidence to be admitted notwithstanding that such evidence would not be "*admissible in proceedings in a court in the State,"* it is of course necessary to consider the basic principles of the rules of evidence.

113. The law of evidence concerning hearsay includes, *inter alia*, a document generated out of court or tribunal by another person who is not produced as a witness to prove the truth of what is asserted in the document. While there are many reasons why hearsay evidence should be excluded, the lack of opportunity to cross-examine is considered to be the principle one.

114. Administrative tribunals are not necessarily restricted by the rule against hearsay. However as note above, TCA, section 949AC gives an Appeal Commissioner certain flexibility to admit hearsay evidence. However, where such evidence is admitted, tribunals are required to observe natural justice as espoused by Hench J. in *Kiely v Minister for Social Welfare* (No. 2), [1977] IR 267. In that case, the Supreme Court held that an appeals officer in a social welfare tribunal was wrong to accept the hearsay evidence of a doctor, in the form of a written opinion, in rebuttal of the oral testimony of two other doctors when considering a claim for a death benefit under the Social Welfare Acts. In delivering judgment, Henchy J said at pg 281:

> *"Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the proceedings. Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross-examination. The dispensation of justice, in order to achieve its ends, must be even-handed in form as well as in content. Any lawyer of experience could readily recall cases where injustice would certainly have been done if a party or a witness who had committed his evidence to writing had been allowed to stay away from the hearing, and the opposing party had been confined to controverting him simply by adducing his own evidence. In such cases it would be cold comfort to the party who had been thus unjustly vanquished to be told that the tribunal's conduct was beyond review because it had acted on logically probative evidence and had not stooped to the level of spinning a coin or consulting an astrologer. Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice."*

115. In this regard and in light of the principles espoused by Henchy J. in *Kiely,* to admit the letter from the [redacted] law firm would have the effect of denying the Respondent an opportunity to cross-examine and test the veracity of such evidence and would create an imbalance thereby depriving the Respondent of the entitlement to participate in a balanced and fair hearing. As such and in accordance with TCA, section 949AC(c)(iii), I have not relied on any of the assertions contained in that letter.

116. However and notwithstanding the above, the assertion by the [redacted] law firm that the Appellant "*was resident in* [redacted] *from 2004*" conflicts with the Appellant's evidence when asserting that he became resident in [redacted] in 2006. Furthermore the Appellant's tax 2010 return was the first return in which the Appellant declared that he was not resident in the State.

117. It is also relevant that the Appellant was unable to provide the standard corroborative evidence supporting his [redacted] residency such as a Certificate of Residency from the [redacted] revenue authorities. He also failed to provide details, receipts, vouchers or any documentation supporting his travel to and habitual presence in [redacted], such as airline tickets, credit card statements, details of accommodation, utility bills or any other supporting documentation.

118. I am also satisfied that the Appellant was present in the State during the years under appeal based on his confirmation that he personally collected the monthly rents from his tenants. The analysis of the Irish bank statements also demonstrated an active use of funds by the Appellant on a consistent basis. On this basis, I can only conclude that the Appellant was present in the State on a habitual basis and therefore resident in the State for all years covered by this Appeal.

Burden of Proof

119. The general principle of "*he who asserts must prove*" is the civil burden of proof imposing an obligation to sustain an assertion or proposition by positive argument. The default position in tax litigation, accepted by the agent for Appellant during the hearing, requires the taxpayer to provide sufficient evidence to reduce or displace a tax assessment. In *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, Charleton J. stated:

> *"The burden of proof in this appeal process, is as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal*

Commissioners as to whether the taxpayer has shown that the relevant tax is not payable"

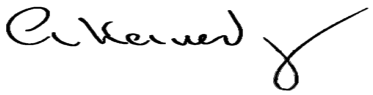
120. The agent for the Appellant correctly acknowledged in his closing submission that "*this was a matter of getting information, if basic information had of been supplied we may not be here today. The whole thing became frustrated for a number of reasons, change of staff, change of taxations and so forth and we are here today. Unfortunately I don't have a lot of documentary evidence so I am, as in trying to present this case I obviously do struggle … I am unclear at this moment in time as to whether it is unaccounted for income taxable in the hand of the Irish authorities or taxable in the hand of the* [redacted] *authorities so that point has to be, is certainly there and cannot be dispensed with ... We have come here and we said hands up, we have a million quid that is unaccounted for and we said let's tax that at 25%. It is a hard bullet to swallow".* As such, it is quite apparent that Appellant's agent had a difficult task in attempting to reduce or abate the assessments.

121. Such a task was compounded by the €2.2 million lodged into the Appellant's bank over a 13 year period together with his failure to provide documentation, evidence or even an adequate explanation as to why his cumulative declared tax liability for that period was only €8,800. It is therefore inconceivable how the Appellant could have acquired and continue to hold a substantial property portfolio based on an average yearly declared tax liability of €677. Furthermore, the Appellant received significant cash sums from the assortment of residential properties which were not taken into account by the Respondent in raising the assessments.

122. Therefore the assessments raised by the Respondent were based on bank lodgements and mortgage applications which also included €220,000 of bank transfers between the Appellant and his partner [redacted]. However there were no bank lodgements in respect of rental income or indeed the substantial sums of cash remitted from [redacted]. As such and in light of this additional unreported income, it would not be appropriate to reduce the assessments.

Determination

123. The Appellant was unable to provide any cogent evidence that would have had the effect of reducing or displacing the assessments raised by the Respondent and as such has frustrated his own appeal. Therefore in accordance with TCA, section 949AK, I have determined that the assessments raised by the Respondent in respect of the years 2003 to 2012 inclusive as set out at paragraph 1, shall stand. While there were no valid appeals against the assessments for the years 2002, 2013 and 2014, it is incumbent on the Appellant to file returns, pay the tax on the reported income together with any associated interest for the late payment of those taxes if he intends to appeal those years of assessment.



Conor Kennedy
Appeal Commissioner
26th August 2021

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended. However this request has been refused as the Appellant failed to "*state in what particular respect the determination is alleged to be erroneous on a point of law*", pursuant to TCA, section 949AP(3)(b).