



14TACD2021

APPELLANT'S NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against the assessments to income tax for the period 6th April 1998 to 31st December 2008 inclusive in the aggregate sum of €1,609,994 broken down as follows:

Year	Income Tax €
5 th Apr 1999	240,115
5 th Apr 2000	245,691
5 th Apr 2001	229,918
31 st Dec 2001	128,107
31 st Dec 2002	97,956
31 st Dec 2003	133,909
31 st Dec 2004	116,705
31 st Dec 2005	100,512
31 st Dec 2006	95,541
31 st Dec 2007	116,426
31 st Dec 2008	<u>105,114</u>
Total	<u>€1,609,994</u>

2. The Appellant also appealed an assessment to Capital Gains Tax issued by the Respondent on 16 September 2015 in the amount of €1,532,560, in respect of the disposal of the property **Main Residence** in 2008 for €10 million.



Material Findings of Fact

3. From the evidence, I have made the following material finds of fact:

Tax Returns

- (a) The Appellant filed tax returns for the years 1998/99 and 1999/2000 on 10th October 2002 confirming his occupation as an accountant and declared earnings of £13,685 and £21,685 respectively.
- (b) Tax returns for the years 2000/2001, 31st December 2001, 31st December 2002, 31st December 2003 and 31st December 2004 were submitted on 7th April 2006 declaring income from his accountancy practice of £7,746, £19,241, €33,506, €29,321 and €41,386 respectively. No income was returned for his wife. His main residence was described as **Main Residence** in his 2004 tax return.
- (c) In 2004, the Appellant made a tax settlement of €150,000 with the Respondent.
- (d) A tax return for the year ending 31 December 2005 was submitted on 27th October 2006 declaring practice income of €36,813 and a salary of €20,000 paid to his wife recorded as acting as an employee of his practice. His main residence was described as **Main Residence**.
- (e) The Appellant submitted his tax return for the year ending 31 December 2006 on 10th October 2007, with declared earnings of €35,478. No income was returned for his wife.
- (f) The tax return for the year ending 31st December 2007 was filed on 10 September 2009, claiming a loss from his accounting practice of €27,876. No income was returned for his wife.
- (g) A tax return was submitted to the Respondent on 16th September 2009, declaring a loss of €83,353 from his accountancy practice for the year ending 31 December 2008. No income was returned for his wife.



- (h) The Appellant's declared income from his accountancy practice for the years to 5th April 1998 was as follows:

<u>Year</u>	<u>Income</u>
5th April 1992	£11,904
5th Apr 1993	£8,488
5th Apr 1994	£7,611
5th Apr 1996	£6,341
5th Apr 1997	€8,315
5th Apr 1998	€10,288

Property Interests

- (i) The Appellant purchased a site on **2nd Residence** in 1995 for £75,000 having also incurred stamp duty and professional fees of approximately £15,000. In a letter to the Respondent in 1995, the Appellant confirmed that he bought the site and incurred professional fees from the net proceeds of the sale of his residence **Initial Property** in 1994 and the remaining balance from that sale of approximately £40,000 was "*used for living and business operating expenses*".
- (j) The Appellant constructed a substantial five bedroom house **Location Redacted** in 1995 which was named **2nd Residence**, and occupied that property with his spouse and 3 children up until 2003. The Appellant produced a letter from his solicitor dated 22nd February 2000 enclosing correspondence of 18th February 2000 from IIB Homeloans concerning the release of a mortgage however there were no details of the mortgaged property or indeed the value of the mortgage. The correspondence from IIB Homeloans also referred to a letter of 30th November 1999 in which a shortfall in the outstanding mortgage was explained, but that letter was not made available to the Tax Appeals Commission. Furthermore from searches conducted by the Respondent, there was no record of a charge on **2nd Residence** in favour of IIB Bank.
- (k) During the year ended 5 April 2000, the Appellant borrowed £150,000 from ACC bank on which a mortgage was taken on **2nd Residence**.
- (l) On 1st June 2000, his spouse acquired a 3 bedroom bungalow on a 1.4 acre site for **Main Residence** for £1.1 million. The contract for sale recorded the purchase of the property as having been acquired in trust by **Person Redacted**, the same individual who acquired the property from the Appellant's spouse in 2008. The source of the



funds was a bridging loan of £1,350,000 from ACC Bank which required that the Appellant provide an undertaking to sell “2nd Residence”. The property failed to sell at public auction on Date Redacted and remained on the market with a guiding value of €2.5 million as evidenced by an article in the Irish Times dated Date Redacted.

- (m) The Appellant acquired a holiday home in Spain during 2001 for £379,000 and failed to report that acquisition in his 2001 tax return. No documentary evidence of the property acquisition, disposal and the means by which the Appellant acquired the property was furnished. The Appellant subsequently sold that property for €810,000 in 2006 and again failed to disclose that disposal in his 2006 tax return.
- (n) The Appellant, proceeded to demolish the 3 bedroom bungalow on the 1.4 acre site of Main Residence and constructed a 9,800 sq foot house with an indoor swimming pool and named that property Main Residence. The Appellant produced a Bridging Finance Housing Loan Agreement dated 13th February 2002 from ACC Bank in which it agreed to lend €761,842 to the Appellant. There is also a letter from ACC Bank dated 10th October 2002 to the Appellant’s Solicitors, Name Redacted enclosing a cheque in the sum of €252,842. That letter also confirmed the sanction of the loan of €761,842 out of which €509,000 had already been drawn down.
- (o) In a further Bridging Home Loan Agreement issued by ACC Bank dated 20th November 2002, the Appellant was offered a further €330,000. The Appellant also received a letter from ACC Bank on 5th December 2002 and enclosed in that correspondence was a letter sent to his solicitor in which a cheque of €330,000 was attached and required an “irrevocable” undertaking by the Appellant’s solicitor to furnish to the bank the net proceeds of the sale of 2nd Residence.
- (p) The Appellant occupied Main Residence as his principal private residence on the completion of the construction work in 2003 up until the time he vacated the property in 2009.
- (q) The property 2nd Residence was rented by the Appellant for the years 2003 to 2008 inclusive, the income from which he failed to include on his tax returns.
- (r) On 7th February 2003 the Appellant received a loan offer from Bank of Scotland in the amount of €1 million secured on 2nd Residence. On the same date, Bank of Scotland offered a second mortgage of €3 million secured on the Main Residence. The Appellant’s solicitors acknowledged receipt of the €4 million from Bank of Scotland on 11th April 2003 noting that €3,102,287 was paid to ACC Bank as a redemption



amount with a balance of €886,908.60 lodged to the Appellant's Bank of Ireland account.

- (s) The Appellant borrowed a further €1,450,000 in October 2004 from ICS Building Society which was secured on **2nd Residence**.
- (t) The Appellant sold **Main Residence** by contract dated **Date Redacted** 2008 for €10 million to **Company Name Redacted**, a company controlled by **Person Redacted**, the same individual who acquired the property in trust for the Appellant in August 2000. In correspondence dated 1st February 2008, the Appellant's solicitor informed a Mr **Name Redacted** from AIB that from the proceeds of €10 million, the Appellant would receive €5,800,000 in the short term with the balance to be paid in December 2009/January 2010. The Appellant produced copies of bank drafts all dated 2nd April 2008 in which the Appellant's solicitor was in receipt of the initial proceeds from the sale of **Main Residence** in the amount of €5,221,636.43. From those proceeds, the solicitor issued a cheque to Bank of Scotland in the amount of €3,065,473.61 and the balance of €2,150,071.82 was paid to the Appellant.
- (u) In 2008, the Appellant acquired a holiday home in Florida for \$612,000 or €402,000 and failed to include details of that acquisition in his 2008 tax return.

Revenue Investigation

- (v) The Appellant was notified of a Revenue Investigation into his affairs by letter dated 20th April 2015.
- (w) The Respondent had become aware that the Appellant's spouse had acquired a 3 bedroom bungalow on a 1.4 acre site for **Main Residence** for £1.1 million on **Date Redacted** without the ostensible financial means.
- (x) The Respondent also became aware that the Appellant had been renting **2nd Residence** as a result of an application from a third party who was claiming relief in respect of the rental allowance.
- (y) Additional requests were made to the Appellant for outstanding information and documentation. However, the failure to respond prompted the Respondent to issue an assessment to Capital Gains Tax on 16th September 2015 in the amount of €1,532,560 in respect of the disposal of the property **Main Residence** during the year ended 31st December 2008.



- (z) By letter dated 23rd March 2016, the Respondent requested that the Appellant complete a Statement of Affairs as at the 31st December 2002, 2006 and 2010. As no response was received, the Respondent raised income tax assessments on the Appellant for the period 6th April 1998 to 31st December 2008 inclusive in the aggregate sum of €1,609,994 in August 2016.
- (aa) In the absence of evidence to the contrary, the Respondent based the assessments on the level of earned income that would be considered necessary to enable the Appellant and his spouse maintain the **2nd Residence**, and acquire a 3 bedroom bungalow on a 1.4 acre site for **Main Residence** and subsequent construction of a 9,800 sq foot house with an indoor swimming pool.
- (bb) The Appellant subsequently filed the Statement of Affairs in respect of his assets as at the 31st December 2002, 2006 and 2010 on 28th March 2019.

Rental Income

- (cc) The Appellant failed to include following income in respect of the letting of **2nd Residence** in his tax returns:

<u>Year</u>	<u>Amount</u>
31 December 2003	€52,000
31 December 2004	€78,000
31 December 2005	€60,000
31 December 2006	€60,000
31 December 2007	€60,000
31 December 2008	<u>€60,000</u>
Total	<u>€370,000</u>



(dd) In addition to the above and in the absence of information and the lack of co-operation, the Respondent estimated the Appellant would have to have earned the following additional income from 5 April 1998 to 31 December 2008 inclusive to acquire substantial properties:

<u>Year</u>	<u>Source</u>	<u>Additional Income</u>	
		<u>£</u>	<u>€</u>
5 th Apr 1999	Misc – Self	£183,300	232,362
	Misc – Spouse	£183,300	232,362
5 th Apr 2000	Misc – Self	£183,300	232,362
	Misc – Spouse	£183,300	232,362
5 th Apr 2001	Misc – Self	£183,300	232,362
	Misc – Spouse	£183,300	232,362
31 st Dec 2001	Misc – Self	£100,000	126,974
	Misc – Spouse	£100,000	126,974
31 st Dec 2002	Misc – Self		100,000
	Misc – Spouse		100,000
31 st Dec 2003	Misc – Self		100,000
	Misc – Spouse		100,000
31 st Dec 2004	Misc – Self		78,315
	Misc – Spouse		78,315
31 st Dec 2005	Misc – Self		78,315
	Misc – Spouse		78,315
31 st Dec 2006	Misc – Self		78,315
	Misc – Spouse		78,315
31 st Dec 2007	Misc – Self		104,025
	Misc – Spouse		104,025
31 st Dec 2008	Misc – Self		104,025
	Misc – Spouse		<u>104,025</u>
Total			<u>€2,934,110</u>

(ee) Income tax assessments were raised by the Respondent to include such estimates of additional income for the years ended 5th April 1999 to 31st December 2008 inclusive of €2,934,110 and the undeclared rental income of €370,000 for the years 2003 to 2008 inclusive.



Cash Flows

(ff) At the hearing, the Appellant presented a plausible depiction of his financial affairs in which he attempted to support the acquisition and development of not only the **Main Residence** but also the property in Spain and the means by which he funded his lifestyle. However while I am accepting that the Appellant borrowed substantial sums based on the lending environment that prevailed at that time, I was not satisfied nor was there evidence to support certain borrowings. I was also not satisfied that the modest lifestyle depicted by the Appellant was supported by the reported low levels of income from his accountancy practice. As such, attached within this determination, is **Appendix 1** which calculates the monies borrowed, expended and the income earned which I have calculated based on the evidence of the Appellant and the Respondent over several days of hearing.

Parties' Submissions

4. The issue before me was based on the Appellant's ability to adduce evidence to support the acquisition of substantial assets in the absence of the ostensible financial means. As such, neither party made substantive legal submissions.

Analysis

Overview

5. As the Revenue investigation into the Appellant's tax returns commenced on 15th April 2015, the Appellant argued that his ability to provide the requisite level of evidence was compromised as the earliest period for which he was statutorily required to retain records was in respect of the year ended 31st December 2008 pursuant to TCA, section 886(4) which requires a person to retain records for 6 years from the end of the year of assessment in which a return has been delivered.
6. However, such a submission is deficient as the Appellant admitted in evidence that he was negligent in the preparation of his tax returns. Furthermore, it is trite law that the burden of proof in tax appeals falls on the Appellant, a burden acknowledged by Counsel for the Appellant. As such, had there been no negligence on the part of the Appellant, such an argument may have succeeded. Therefore, it was incumbent on the Appellant to produce evidence to challenge the Respondent's assessments.



7. Furthermore, the Appellant filed all of his tax returns for the tax years 1998/99 to 31st December 2014 inclusive, several years after the statutorily prescribed deadlines. The Appellant also failed to report the acquisitions and disposals of **Main Residence** and Spanish property. He also failed to include details of acquisition of the property in Florida in his 2008 tax Return. To compound matters, the Appellant failed to disclose the rent received of €370,000 from the letting of **2nd Residence** for the years 2003 to 2008 inclusive. As such, the Appellant displayed a total disregard for his statutory obligations to file timely tax returns containing a full and true disclosure of his income and assets which is particularly disconcerting as he is a chartered accountant.
8. From a review of his tax returns for 6th April 1991 to 5th April 1998, it is not credible that the Appellant could have supported himself, his wife and indeed 3 young children in receipt of private education and have constructed a house in 1995 that had an estimated value of €2.5 million in the summer of **Year Redacted** solely from the reported income generated from his practice. It is also significant that the Appellant informed the Respondent in 1995 that he acquired the site for **2nd Residence** out of the proceeds from the sale of his previous residence in **Initial Property** in 1994, and lived off the remaining balance of approximately £40,000. However there was no evidence that any of those proceeds were used in the construction of **2nd Residence**. While there was some correspondence from IIB in February 2000 referring to a mortgage with that bank, there was no evidence as to the value of that mortgage or indeed that it related to **2nd Residence**. Furthermore and contrary the Appellant's assertions, based on searches conducted by the Respondent, IIB never held a charge on that property.
9. However as such observations relate to years of assessment prior to 5th April 1999, I have no authority to consider those years as they are not subject to this appeal.

Determination

10. It is understandable that in the absence of information and the lack of co-operation that the Respondent concluded that the Appellant would have to have earned substantial additional income from 5 April 1998 to 31 December 2008 inclusive to acquire, develop and subsequently dispose of substantial properties. Assessments were raised which were challenged by the Appellant as being incorrect and disproportionate.
11. As such, at the hearing the Appellant presented a cash flow schedule and gave evidence of his financial affairs in which he attempted to prove that the funds to acquire and develop **Main Residence**, the Spanish property and to fund his lifestyle were financed by bank borrowings.



12. Notwithstanding the Appellant's assertions set out above, attached with this determination are calculations at **Appendix 1**, which are based on my findings of fact depicting the monies borrowed, expended and income earned in respect of the years under appeal.

5 April 1999

13. In light of the Appellant's declared income of £13,685 from his accountancy practice, the Respondent considered that the Appellant's earnings should have been £366,600/€465,486 which appears to have been predicated on the assumption that the Appellant acquired assets during the year ended 5th April 1999.
14. Having considered the evidence, I have found that the only asset that the Appellant held in the year ended 5th April 1999 was **2nd Residence**. As noted above, it is not certain how the Appellant constructed that property as his historic income was not sufficient. However, the issue of the Appellant's requisite financial means to construct that property relates to years of assessment which are not before me.
15. While I am satisfied that the Appellant did not acquire any property in 1999 necessitating substantial earning or borrowing capacity, I am not satisfied that the Appellant could support his family and pay school fees for 3 children on an income of £13,685 or indeed on his estimated drawings of £10,000. On this basis I have found that the Appellant's additional income for the 5th April 1999 was £40,000/€50,790, a figure more in line with the Appellant's estimated living expenses in later years. Therefore the miscellaneous of £366,600/€465,486 assessed by the Respondent should be reduced to £40,000/€50,790 and the tax be calculated accordingly.

5 April 2000

16. The Appellant's declared income for the year ended 5 April 2000 was £21,685/€27,534. I am satisfied that the Appellant borrowed £150,000/€190,461 from ACC bank on which there was a charge on **2nd Residence**. I am therefore satisfied, based on the calculations at **Appendix 1**, that the Appellant had sufficient resources to cover his living expenses for that year with an excess of €59,577. On this basis the miscellaneous income assessed of £366,600/€465,486 should be reduced to nil and as a consequence no additional tax arises.



5 April 2001

17. From the evidence and documentation furnished, I am satisfied that the Appellant borrowed £1,350,000/€1,714,146 from ACC Bank to fund the acquisition of **Main Residence** site for £1,100,000/€1,396,712 and Stamp Duty of £90,000/€114,276. Therefore the excess of borrowings together with the Appellant's practice income of £7,746/€9,835 was more than sufficient to fund the Appellant's property acquisition and lifestyle and generate a surplus of that year of €151,458 as depicted at **Appendix 1**. On this basis income assessed of £366,600/€465,486 should be reduced to nil and as a consequence no additional tax arises.

31st December 2001

18. I am not satisfied that the Appellant was prevented from working on a fulltime basis in his practice due to his involvement with the education of his children and therefore had limited earning capacity. On the contrary, during the course of the hearing the Appellant confirmed that he was involved in his children's education in the evening and therefore had ample time to devote to his practice during the conventional working day.
19. As submitted by the Respondent, the Appellant would have required a substantial level of income to fund the £379,000/€481,231 acquisition of the Spanish property together with the subsequent refurbishment expenditure of £109,000/€138,401. However unlike his Irish property, there was no evidence to support the purchase or enhancement of the Spanish holiday home. Furthermore the Appellant failed to produce any loan documentation or indeed evidence of the interest paid.
20. I therefore agree with the Respondent, that the Appellant's assessment for the period ended 31st December 2001 should be increased to include additional miscellaneous income. Notwithstanding that the Respondent's estimate of that income was £200,000/€253,948, I have found that the Appellant had undeclared income of £366,000/€464,724 to enable him fund the cost and refurbishment of the Spanish Property in the amount of €619,632, which as noted above, neither the acquisition nor the disposal were declared in his tax returns in the years 2001 and 2006 respectively.
21. As his financial outlay for year ended 31st December 2001 was calculated at €685,149 to include living expenses of €50,790, the deficiency in his financial resources of €195,994 was financed by the surplus of €211,036 from the year ended 5th April 2001. Therefore the miscellaneous income of £200,000/€253,948 should be increased to £366,600/€464,724 and the tax be calculated accordingly.



31st December 2002

22. The Appellant had declared income of €33,506 from his practice and borrowed an initial €761,842 and a further €330,000 both from ACC Bank. The combination of income and borrowings in the sum of €1,125,348 would appear to have been sufficient to cover the cost of development of the **Main Residence** site and refurbishment of the Spanish property of €909,000 together with living expenses to produce a surplus of €145,288.
23. A significant component of the favourable cash flow balance of €160,329 is on the assumption that the Appellant's estimate of the development costs associated with the **Main Residence** site was only €800,000. However no evidence was adduced of such expenditure and therefore I cannot be satisfied that the expenditure was limited to €800,000 specifically in light of the fact that property was sold 5 to 6 years later for €10 million.
24. On this basis as the burden of proof in tax appeals falls on the Appellant, a trite statement of law which was not disputed, I am not in a position to reduce the assessment. As such, the assessment raised by the Respondent to include additional income of €200,000 stands and that tax be calculated accordingly.

31st December 2003

25. The Appellant borrowed €1 million from Bank of Scotland which was secured on the **2nd Residence**. He also borrowed a further €3 million from Bank of Scotland secured on the **Main Residence**. The Appellant's declared income from his practice for that year amounted to €29,321.
26. During that year, the Appellant was in receipt of rental income of €52,000 from the letting of **2nd Residence** which he failed to declare on his tax return.
27. Therefore, the Appellant's combined receipts for that year amounted to €4,081,321. His combined expenditure to include the additional development costs of the **Main Residence** site, repayment of the loan to ACC Bank of €3,102,287 and the assortment of living and other expenses was €4,130,791 producing a deficit of €49,470 would appear to have been financed by the surplus coming forward from 2002 in the amount of €160,329.



28. However, included in the expenditure sum of €4,130,791 is an amount of €309,000 which the Appellant claimed was incurred to undertake remedial work on the **2nd Residence** caused by a substantial water leak. The Appellant sought to claim repairs of €173,846 and capital allowances of €18,136 which would have been sufficient to reduce not only the 2003 rental income but rental income for all years to 2008. However, and as noted in the Appellant's submissions, that while *"it will be necessary to provide evidence of the costs of repairs"*, no evidence was produced. The position may however have been different had the Appellant declared the rental income source in 2003 and made a contemporaneous claim for the cost of repairs and capital allowances. Therefore, in light of the failure of the Appellant to produce evidence as to the exact nature of the work differentiating between capital and revenue expenditure and if capital expenditure, the basis upon which it qualified for capital allowances, any entitlement to a deduction for such work must be denied. Furthermore the Appellant sought to claim a rental deduction for any assortment of other expenditure for which there was no evidence. As such the Appellant should be assessed on the full amount of rental income. Furthermore it is significant that in the Appellant's own cash flow statement, no deduction was claimed for purported rental expenditure.
29. The assessment raised by the Respondent includes undeclared rental income of €78,000 and miscellaneous income of €200,000. However, I am satisfied that the Appellant did not let out **2nd Residence**, for the entire year and therefore only received €52,000 for the year and that the assessment be amended accordingly.
30. As with the year 2002, a significant component of the favourable cash flow balance is based on the Appellant's estimate that he incurred €600,000 in developing the **Main Residence** site. However no evidence was adduced of such expenditure and therefore I cannot be satisfied that the expenditure was limited to €600,000 specifically in light of the fact that property was sold 5 to 6 years later for €10 million.
31. On the basis that the burden of proof in tax appeals falls on the Appellant, which was accepted, I am not in a position to reduce the assessment. Therefore the assessment raised by the Respondent to include additional income of €200,000 stands but the undeclared rental income be reduced to €52,000 and that tax be calculated accordingly.

31st December 2004

32. The Appellant borrowed €1,450,000 in October 2004 from ICS Building Society which was secured on the property **2nd Residence**. The Appellant's declared income from his practice for that year amounted to €41,386 and undeclared rental income of €78,000 from the letting of **2nd Residence**.



33. The Appellant's combined receipts for that year amounted to €1,569,386. His combined expenditure for that year to include the loan repayment to Bank of Scotland of €1,000,000, a tax settlement to the Respondent of €150,000 and assortment of living and other expenses amounted in aggregate to €1,315,490. After deducting such expenditure, the Appellant had a surplus of €253,896.
34. The assessment raised by the Respondent included undeclared rental income of €78,000 and miscellaneous income of €156,630. However on the balance of probabilities, I have calculated that the Appellant had sufficient resources to meet his financial obligations and living expenses. As such, the assessment for the year ended 31st December 2004 should be reduced to exclude the assessment of the miscellaneous income of €156,630, leaving only the undisputed rental income of €78,000 to be taxed.

31st December 2005

35. The Appellant's declared income from his practice amounted to €36,813, a salary of €20,000 paid to the Appellant's spouse and undeclared rental income of €60,000 from the letting of **2nd Residence**. I have calculated his expenditure in that year was €203,258 producing a deficit of €86,445. However, with a surplus of €364,755 coming forward from 2004, it is reasonable on the balance of probabilities that the Appellant had sufficient financial resources to support his outings and living expenses.
36. The assessment raised by the Respondent included undeclared rental income of €60,000 and miscellaneous income of €156,630. However, on the balance of probabilities, I have calculated that the Appellant had sufficient resources to meet his financial obligations and living expenses, the assessment for the year ended 31st December 2005 should be reduced to exclude the assessment of the miscellaneous income of €156,630 leaving the undisputed rental income of €60,000 to be taxed.

31st December 2006

37. The Appellant's had declared income from his practice was €35,478 and undeclared rental income of €60,000 from the letting of **2nd Residence**. The Appellant also derived proceeds of €810,000 from the sale of his Spanish property which he did not declare to the Respondent notwithstanding his assertions that the 5% tax withheld by the Spanish Revenue authorities was sufficient to offset against the Irish tax payable on that disposal. Therefore, the Appellant's receipts for 2006 was €905,478.



38. I have calculated his expenditure in that year was €228,305 leaving the Appellant with a cash flow surplus for that year of €677,173 after discharging financial outings and living expenses.
39. The assessment raised by the Respondent included undeclared rental income of €60,000 and miscellaneous income of €156,630. However, on the balance of probabilities, I have calculated that the Appellant had sufficient resources to meet his financial obligations and living expenses, the assessment for the year ended 31st December 2006 should be reduced to exclude the assessment of the miscellaneous income of €156,630 leaving the undeclared and undisputed rental income of €60,000 to be assessed.

31st December 2007

40. The Appellant declared a trading loss of €27,876 in his practice. However, he was in receipt of undeclared rental income of €60,000 from the letting of **2nd Residence**.
41. I have calculated his expenditure in that year was €260,848 leaving a cash flow deficit of €200,848, after discharging financial outings and living expenses.
42. The assessment raised by the Respondent included undeclared and undisputed rental income of €60,000 and miscellaneous income of €208,050. However, and notwithstanding that the expenditure exceeded his receipts, on the balance of probabilities, the Appellant had a sufficient financial buffer coming forward from 2006 of €955,483 to fund his outgoings and expenses. As such the assessment for the year ended 31st December 2006 should be reduced to exclude the assessment of the miscellaneous income of €208,050 leaving the undeclared and undisputed rental income of €60,000 to be assessed.

31st December 2008

43. The Appellant declared a trading loss of €83,353 in his practice. He was however in receipt of undeclared rental income of €60,000 from the letting of **2nd Residence**. The Appellant was also in receipt of net proceeds of €2,150,072 after repaying €3,065,473 to Bank of Scotland from the sale of **Main Residence**.
44. After discharging the loan to Bank Of Scotland, the Appellant made 'gifts/loans' to his children of €1,960,000 to assist in their purchase of residential property. The Appellant also acquired a holiday home in Florida for the equivalent of €402,000. In total the Appellant's net expenditure of €2,472,318 exceeded his rental income and net proceeds



of sale of **Main Residence** by €262,246. Notwithstanding that deficit, on the balance of probabilities, I have calculated that the Appellant's remaining cash balance as at 31st December 2008 was €492,389.

45. As such the assessment for the year ended 31st December 2008 should be reduced to exclude the assessment of the miscellaneous income of €208,050 leaving the undeclared rental income of €60,000 to be assessed.



Conclusion

46. Therefore the income assessed by the Respondent in respect of the assessments raised in August 2016 for the years 5th April 1999 to 31st December 2008 inclusive be amended as follows:

<u>Year</u>	<u>Classification</u>	<u>Income Assessed</u>	<u>Income To Be Assessed</u>
		€	€
05-Apr-99	Miscel	464,724	50,790
05-Apr-00	Miscel	464,724	-
05-Apr-01	Miscel	464,724	-
31-Dec-01	Miscel	253,948	464,724
31-Dec-02	Miscel	200,000	200,000
31-Dec-03	Miscel	200,000	200,000
	Rental	71,500	52,000
31-Dec-04	Miscel	156,630	-
	Rental	78,000	78,000
31-Dec-05	Miscel	156,630	-
	Rental	60,000	60,000
31-Dec-06	Miscel	156,630	-
	Rental	60,000	60,000
31-Dec-07	Miscel	208,050	-
	Rental	60,000	60,000
31-Dec-08	Miscel	208,050	-
	Rental	<u>60,000</u>	<u>60,000</u>
		<u>3,323,610</u>	<u>1,285,514</u>



47. In the absence of information, the Respondent's estimates were based on the requisite level of income to enable the Appellant acquire and subsequently develop substantial property interests. While there is no questioning the Respondent's logic, based on the evidence adduced, I was satisfied that not only did the Appellant borrow substantial sums, he also was well positioned to take advantage of the lending environment that prevailed during the years under appeal.
48. As there was no evidence of the source of funds to acquire and subsequently develop the Spanish property, I have found that the Appellant would have needed a cash source of an additional €464,724 in that year to remain in positive cash flow territory. Furthermore while the cash flow schedule at **Appendix 1** shows an improvement in his financial position, his failure to provide evidence of the expenditure on the development of the **Main Residence** site compromised his ability to displace the assessments for the years 2002 and 2003 as I was not convinced with the Appellant's estimate of the expenditure incurred. Furthermore for the years 2003 to 2008, the Appellant was in receipt of €370,000 of undeclared rental income which would significantly contributed in the funding his personal expenditure.
49. Therefore pursuant to TCA, section 949AK, the income assessed on the Appellant for all years under appeal from 5th April 1999 to 31st December 2008 be reduced from €3,323,610 to €1,285,514 and that tax be calculated accordingly.



Capital Gains Tax

50. In the absence of information and the lack of co-operation, the Respondent issued an assessment to Capital Gains Tax for the year 2008 in the amount of €1,532,560, in respect of the disposal of the property at, **Main Residence** based on proceeds of €10 million.
51. At the hearing, the Respondent accepted the Appellant's entitlement to the principal private residence relief. In this regard and based on his evidence, I was satisfied that the Appellant occupied **Main Residence** situated on 1.4 acres as his principal private residence and therefore had an entitlement to relief on the gain made on the disposal of that property pursuant to TCA, section 604 on the proportion of proceeds relating to the disposal of the residence and 1 acre. However there was no evidence as to the value of the remaining .4 acre and a further hearing may be required to consider the proportion of proceeds that related to the house and 1 acre and the proportion of value attribute to the other 0.4 acre.

Conor Kennedy
Appeal Commissioner
23rd October 2020

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.



Appendix 1

Appellant Name Redacted

Cash Flow Reconciliation

Euro/IR£ = 0.787564

	<u>Payments</u>	<u>Receipts</u>	<u>Payments</u>	<u>Receipts</u>	<u>Total</u>	<u>Tax Year</u> <u>Excess/(Deficit)</u>	<u>Cumulative</u> <u>Excess/(Deficit)</u>
	IR£	IR£	€	€	€	€	€
<u>05-Apr-00</u>							
Income from Practice		21,685		27,534			
Loan - ACC		<u>150,000</u>		190,461	217,995		
Loan Repay - ACC	(76,301)		(96,882)				
Interest ACC	(8,463)		(10,746)				
Living Expenses	<u>(40,000)</u>		<u>(50,790)</u>		<u>(158,418)</u>	59,577	59,577
<u>05-Apr-01</u>							
Income from Practice		7,746		9,835			
Loan - ACC		<u>1,350,000</u>		<u>1,714,146</u>	1,723,982		
Property Purchase	(1,100,000)		(1,396,712)				
Stamp & Cost	(90,000)		(114,276)				
Interest ACC	(8,463)		(10,746)				
Living Expenses	<u>(40,000)</u>		<u>(50,790)</u>		<u>(1,572,524)</u>	151,458	211,036
<u>31-Dec-01</u>							
Income from Practice		19,241		24,431			
Additional Income		<u>366,000</u>		<u>464,724</u>	489,155		
Spanish Property	(379,000)		(481,231)				
Spanish Prop - Renovations	(109,000)		(138,401)				
Interest ACC	(11,599)		(14,728)				
Living Expenses	<u>(40,000)</u>		<u>(50,790)</u>		<u>(685,149)</u>	(195,994)	15,041
<u>31-Dec-02</u>							
Income from Practice				33,506			
Loan - ACC				<u>1,091,842</u>	1,125,348		
Main Residence Dev			(800,000)				
Spain Refurb			(109,000)				
Interest ACC			(21,060)				
Living Expenses			<u>(50,000)</u>		<u>(980,060)</u>	145,288	160,329
<u>31-Dec-03</u>							
Income from Practice				29,321			
Loan - BOS				4,000,000			
Rent - 2nd Residence				<u>52,000</u>	4,081,321		
Main Residence Dev			(600,000)				
Renovations - 2nd Residence			(309,000)				
Loan Repay - ACC			(3,102,287)				
Interest - BOS			(69,504)				
Living Expenses			<u>(50,000)</u>		<u>(4,130,791)</u>	(49,470)	110,859

Appendix 1

Appellant Name Redacted

Cash Flow Reconciliation

Euro/IR£ = 0.787564

	Payments IR£	Receipts IR£	Payments €	Receipts €	Total €	Excess/(Deficit) €	Excess/(Deficit) €
31-Dec-04							
Income from Practice				41,386			
Loan -ICS				1,450,000			
Rent - 2nd Residence				<u>78,000</u>	1,569,386		
Loan Repay - BOS			(1,000,000)				
Tax Settlement			(150,000)				
Interest - BOS			(108,000)				
Interest ICS			(7,490)				
Living Expenses			<u>(50,000)</u>		<u>(1,315,490)</u>	253,896	364,755
31-Dec-05							
Income from Practice				36,813			
Salary to Spouse				20,000			
Rent - 2nd Residence				<u>60,000</u>	116,813		
Interest - BOS			(108,000)				
Interest ICS			(45,258)				
Living Expenses			<u>(50,000)</u>		<u>(203,258)</u>	(86,445)	278,310
31-Dec-06							
Income from Practice				35,478			
Spanish Property Sale				810,000			
Rent - 2nd Residence				<u>60,000</u>	905,478		
Interest - BOS			(82,664)				
Interest ICS			(41,641)				
Spanish Tax			(54,000)				
Living Expenses			<u>(50,000)</u>		<u>(228,305)</u>	677,173	955,483
31-Dec-07							
Income from Practice				0			
Rent - 2nd Residence				<u>60,000</u>	60,000		
Interest - BOS			(124,210)				
Interest ICS			(86,638)				
Living Expenses			<u>(50,000)</u>		<u>(260,848)</u>	(200,848)	754,635
31-Dec-08							
Income from Practice				0			
Net Proceeds from Sale of Main Residence				2,150,072			
Rent - 2nd Residence				<u>60,000</u>	2,210,072		
Interest - BOS			(13,200)				
Interest ICS			(47,118)				
US Property			(402,000)				
Gifts to Children			(1,960,000)				
Living Expenses			<u>(50,000)</u>		<u>(2,472,318)</u>	(262,246)	492,389
						<u>492,389</u>	
Total (05/04/00 to 31/12/08)			<u>(12,007,161)</u>	<u>12,499,550</u>		<u>492,389</u>	