



**23TACD2021**

**BETWEEN/**

**REDACTED**

**Appellant**

**AND**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

### **Introduction**

1. This is an appeal against assessments for income tax for the Years 2013 and 2014.
2. The amount of tax concerned is €20,020
3. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 24 November 2020.

### **Background**

4. The Appellant operated a public house as a tenant in a premises known as the **NAME REDACTED**.
5. The Respondent, in the absence of the submission of income tax returns for 2013 and 2014, raised income tax assessments the subject of this appeal in accordance with the Taxes Consolidation Act 1997 (TCA 1997) as follows:

2013 €2,645  
2014 €17,375

6. The Appellant submitted the returns subsequent to the making of assessments by the Respondent and asked that the returns should displace the assessments raised.

## Legislation

7. *Sections 959C, 959Z and 1094 of the Taxes Consolidation Act 1997 (TCA 1997)*

### *S959C TCA 1997 Making of assessments: general rules*

*(1) Any assessment made under the Acts, other than a self assessment, shall be made by or on behalf of the Revenue Commissioners and shall be known as a "Revenue assessment".*

*(2) A Revenue assessment shall be made by a Revenue officer.*

*(3) An assessment made under an Act shall be an assessment to tax in relation to a person for a chargeable period and all tax that falls to be charged on the person under the Act for the chargeable period shall be included in one assessment.*

*(4) An assessment to tax in relation to a person shall be an assessment, in accordance with the Acts, for the chargeable period involved of—*

*(a) the amount of the income, profits or gains or, as the case may be, chargeable gains arising to the person for the period,*

*(b) the amount of tax chargeable on the person for the period,*

*(c) the amount of tax payable by the person for the period, and*

*(d) the balance of tax, taking account of any amount of tax paid directly by the person to the Collector-General for the period, which under the Acts—*

*(i) is due and payable by the person to the Revenue Commissioners for the period, or*

*(ii) is repayable by the Revenue Commissioners to the person for the period.*

*(5) Subject to section 959E(5), an assessment to tax in relation to a person for a chargeable period may relate to—*

*(a) tax chargeable under more than one of the Acts, and*



*(b) an amount due under an enactment other than the Acts which by virtue of that enactment is to be assessed and charged as if it were an amount of income tax.*

*(6) An assessment to tax in relation to a person shall, where required under section 1084, include the amount of any surcharge due for the chargeable period.*

*S959Z TCA 1997 Right of Revenue officer to make enquiries*

*(1) A Revenue officer may, subject to this section, make such enquiries or take such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to—*

*(a) whether a person is chargeable to tax for a chargeable period,*

*(b) whether a person is a chargeable person as respects a chargeable period,*

*(c) the amount of income, profit or gains or, as the case may be, chargeable gains in relation to which a person is chargeable to tax for a chargeable period, or*

*(d) the entitlement of a person to any allowance, deduction, relief or tax credit for a chargeable period.*

*(2) The making of an assessment or the amendment of an assessment in accordance with section 959Y(2) by reference to any statement or particular referred to in paragraph (a) of that section does not preclude a Revenue officer from, subject to this section, making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular.*

*(3) Subject to subsection (4), any enquiries or actions to which either subsection (1) or (2) applies shall not be made in the case of a chargeable person for a chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period.*

*(4) Enquiries and actions to which either subsection (1) or (2) applies may be made at any time in relation to a person or a return for a chargeable period where—*

*(a) any of the circumstances referred to in paragraph (a), (b) or (c) of section 959AC(2) apply,*

*(b) a Revenue officer has reasonable grounds for believing, in accordance with section 959AD(3), that any form of fraud or neglect has been committed by or on behalf of the person in connection with or in relation to tax due for the chargeable period.*



*(5) A chargeable person who is aggrieved by any enquiry made or action taken by a Revenue officer under this section for a chargeable period, after the expiry of the period referred to in subsection (3) in respect of that chargeable period, on the grounds that the chargeable person considers that the Revenue officer is precluded from making that enquiry or taking that action by reason of that subsection may, by notice in writing given to the Revenue officer within 30 days of the officer making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.*

*(6) Any action required to be taken by the chargeable person and any further action proposed to be taken by a Revenue officer pursuant to the officer's enquiry or action shall be suspended pending the determination of the appeal.*

*(7) If on the hearing of the appeal the Appeal Commissioners determine that the Revenue officer was precluded from making the enquiry or taking action by reason of subsection (3), then the chargeable person shall not be required to take any action pursuant to the officer's enquiry or action and the officer shall be prohibited from pursuing his enquiry or action.*

*(8) If on the hearing of the appeal the Appeal Commissioners determine that the Revenue officer was not precluded from making the enquiry or taking action by reason of subsection (3), then the officer may continue with his or her enquiry or action.*

*(9) Nothing in this section affects the operation of section 811 or 811A.*

*S1094 TCA 1997 Tax clearance certificates in relation to certain licences*

*(1) In this section-*

*["the Acts" means—*

*(a) the Customs Acts,*

*(b) the statutes relating to the duties of excise and to the management of those duties,*

*(c) the Tax Acts,*

*[(ca) Parts 18A, 18B, 18C and 18D,]*

*(d) the Capital Gains Tax Acts,*

*(e) the Value-Added Tax Acts,*

*and any instruments made thereunder;]*



*“beneficial holder of a licence” means the person who conducts the activities under the licence*

*“licence” [means a licence, permit or authorisation], as the case may be, of the kind referred to in-*

*(a) the proviso (inserted by section 156 of the Finance Act, 1992) to section 49(1) of the Finance (1909-1910) Act, 1910,*

*(b) the further proviso (inserted by section 79(1) of the Finance Act, 1993) to section 49(1) of the Finance (1909-1910) Act, 1910,*

*(c) the proviso (inserted by section 79(2) of the Finance Act, 1993) to section 7(3) of the Betting Act, 1931,*

*(d) the proviso (inserted by section 79(3) of the Finance Act, 1993) to section 19 of the Gaming and Lotteries Act, 1956,*

*[(h) Section 101 of the Finance Act, 1999*

*(j) section 93, 116 or 144 of the Consumer Credit Act, 1996*

*[(k) subsection (2A) (inserted by section 106 of the Finance Act, 2000) of section 62 of the National Cultural Institutions Act, 1997*

*[(l) subsection (1A) (inserted by section 172 of the Finance Act, 2001) of section 2 of the Intoxicating Liquor (National Concert Hall) Act, 1983*

*[(m) subsection (3) (inserted by the Finance Act, 2002) of section 122 of the Finance Act, [1992],*

*(n) subsection (1A) (inserted by the Finance Act, 2002) of the Finance (1909-10) Act, [1910,]*

*[(o) section 21 of the Intoxicating Liquor Act, [2003, and]*

*[(p) section 1 of the Intoxicating Liquor (National Conference Centre) Act 2010;]*

*[“Market value”, in relation to any property means the price which such property might reasonably be expected to fetch on a sale in the open market on the date on which the property is to be valued;]*

*“specified date” means the date of commencement of a licence sought to be granted under any of the provisions referred to in [paragraphs (a) to (o)] of the definition of “licence” as specified for the purposes of a tax clearance certificate under subsection (2);*

*“tax clearance certificate” shall be construed in accordance with subsection (2).*



*(2) Subject to subsection (3), the Collector-General shall, on an application to him or her by the person who will be the beneficial holder of a licence due to commence on a specified date, issue a certificate (in this section referred to as a “tax clearance certificate”) for the purposes of the grant of a licence if-*

*(a) that person and, in respect of the period of that person’s membership, any partnership of which that person is or was a partner,*

*(b) in a case where that person is a partnership, each partner,*

*(c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,*

*has or have complied with all the obligations imposed on that person or on them by the Acts in relation to-*

*(i) the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and*

*(ii) the delivery of returns.*

*(3) Subject to subsection (4), where a person (in this section referred to as “the first-mentioned person”) will be the beneficial holder of a licence due to commence on a specified date and another person (in this section referred to as “the second-mentioned person”) was the beneficial holder of the licence at any time during the year ending on that date, and-*

*(a) the second-mentioned person is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,*

*(b) the second-mentioned person is a company and the first-mentioned person is a partnership in which-*

*(i) a partner is or was able, or*

*(ii) where more than one partner is a shareholder, those partners together are or were able,*

*directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or*

*(c) the second-mentioned person is a partnership and the first-mentioned person is a company in which-*



*(i) a partner is or was able, or*

*(ii) where more than one partner is a shareholder, those partners together are or were able,*

*directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,*

*then, a tax clearance certificate shall not be issued by the Collector- General under subsection (2) unless, in relation to the activities conducted under the licence, the second-mentioned person has complied with the second-mentioned person's obligations under the Acts as specified in subsection (2).*

*(3A) Where –*

*(a) the first-mentioned person will be the beneficial holder of a licence due to commence on a specified date on foot of a certificate granted or to be granted under section 2(1) (as amended by section 23 of the intoxicating Liquor Act, 1960) of the Licensing (Ireland) Act, 1902,*

*(b) the second-mentioned person was the beneficial holder of the last licence issued prior to the specified date in respect of the premises for which the certificate referred to in paragraph (a) was granted, and*

*(c) the acquisition of the premises by the said first-mentioned person was for a consideration of less than market value at the date of such acquisition,*

*then subsection (3) shall apply as if-*

*(i) the reference to the year ending on that date were a reference to 5 years ending on that date, and*

*(ii) the reference to the activities conducted under the licence was a reference to the activities conducted by the second-mentioned person under the last licence held by the said person prior to the specified date.]*

*(4) Subsection (3) shall not apply to a transfer of a licence effected before the 24th day of April, 1992, or to such transfer effected after that date where a contract for the sale or lease of the premises to which the licence relates was signed before that date.*

*[(5) An application for a tax clearance certificate under this section shall be made to the Collector-General in a form prescribed by the Revenue Commissioners or in such other manner as the Revenue Commissioners may allow.]*

*(6) Where an application for a tax clearance certificate under this section is refused by the Collector-General, he or she shall as soon as is practicable communicate in writing such refusal and the grounds for such refusal to the person concerned.*





*(7)(a) Where an application under this section to the Collector-General for a tax clearance certificate is refused, the person aggrieved by the refusal may, by notice in writing given to the Collector-General within 30 days of the refusal, apply to have such person's application heard and determined by the Appeal Commissioners; but no right of appeal shall exist by virtue of this section in relation to any amount of tax or interest due under the Acts.*

*(b) A notice under paragraph (a) shall be valid only if-*

*(i) that notice specifies —*

*(I) the matter or matters with which the person is aggrieved, and*

*(II) the grounds in detail of the person's appeal as respects each such matter,*

*and*

*(ii) any amount under the Acts which is due to be remitted or paid, and which is not in dispute, is duly remitted or paid.*

*(c) The Appeal Commissioners shall hear and determine an appeal made to them under this subsection as if it were an appeal against an assessment to income tax and, subject to paragraph (d), the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.*

*(d) On the hearing of an appeal made under this subsection, the Appeal Commissioners shall have regard to all matters to which the Collector-General is required to have regard under this section.*

*[(8) A tax clearance certificate to be issued by the Collector-General under this section may—*

*(a) be issued in electronic format, and*

*(b) with the agreement in writing of the applicant, be published in a secure electronic medium and be accessed by persons authorised by the applicant to do so.*

*(9) A tax clearance certificate shall be valid for the period specified in the certificate.]*





## Submissions

### *Appellant*

8. The Appellant in his appeal for both years stated that the assessments were estimated and excessive and advised that the returns for 2013 and 2014 have been lodged and paid.
9. The Appellant's agent submitted that the assessments should be displaced as the Appellant had, subsequent to the issue of the assessments, submitted returns for these years in order to make an appeal.
10. The Appellant's agent submitted that the estimated assessment under appeal is ridiculous when one considers the difficult trading situation of public houses in small towns.
11. The Appellant's agent submitted that he had no base knowledge of how the assessments as issued were determined particularly for 2014.
12. The Appellant's agent submitted that the quantum assessed for 2014 is completely out of context even when compared with the Respondent's own assessment for 2013.
13. The Appellant's agent submitted that the tax liabilities as computed in the returns submitted were as follows:

2013 €3,585.20

2014 €2,377.85

### *Respondent*

14. The Respondent submitted that the Appellant had submitted VAT returns for all periods May/June 2013 to Jan/April 2015.
15. The Respondent submitted that these VAT returns declared VAT payable and deductible as follows:



Period	Gross VAT due €	VAT Deductible €	Net VAT Due €
2013	16,365	11,379	4,986
2014	28,038	14,200	13,838

16. The Respondent submitted that the income tax assessments for 2013 and 2014 were made by taking the VAT declared figures reduced by the amount of gross wages declared by the Appellant to compute estimated profits for the enterprise as follows:

Year	Net VAT Due €	Grossed Up Profit	Gross Wages €	Profit €
2013	4,986	21,678	5,625	16,053
2014	13,838	60,165	9,022	51,143

17. The Respondent submitted that these estimated profits result in the tax liabilities assessed for 2013 and 2014 in the amounts of €2,645 and €17,375 respectively, the subject of this appeal.

### Analysis

18. The Respondent has made assessments on the basis of the estimated gross profit, less wages paid and any overhead expenditure included in the VAT deductible element of the Appellant's VAT return as declared in the VAT returns by the Appellant.

19. The Appellant has submitted that the income tax returns made by him after the raising of the assessments represents his full liability for the years 2013 and 2014.

20. The Respondent has sought records supporting these returns which have not been provided to it.

21. The liability for 2013 declared by the Appellant and assessed by the Respondent are similar but the Respondent's estimate for 2014 differs substantially from the liability declared by the Appellant.



22. The Appellant in support of his assertion that the returns submitted by him following the making of the assessments has failed to provide any evidence as to how the liabilities were computed.
23. The Appellant merely asserts that the amounts sought by the Respondent particularly for 2014 are ridiculous. This assertion was made by the Appellant without providing any supporting documentation either to the Respondent or at the Appeal hearing.
24. I find that the estimated tax liability arising as a consequence of computing the estimated profits for 2013 was made in accordance with the best judgement of the Inspector, done so in the absence of full information, is fair and consistent, taking account of the turnover declared by the Appellant in his VAT returns in the year of assessment. Furthermore the assessment is broadly in line with the return submitted by the Appellant for 2013.
25. The Appellant has failed to provide any support to his assertion that the Inspector's estimate of the Appellant's income for 2014 is incorrect. The Inspector's estimated tax liability for 2014 is based on the computed gross profit less actual wages and any overheads included in the VAT deductible element of the VAT return.
26. I find that the assessment takes no account of the obvious overheads of rent, rates and insurance (not subjected to VAT) paid that would have arisen in 2014. The turnover in the business as represented by the VAT returns would amount to approximately €125,000.
27. On the balance of probabilities overheads not reflected in the VAT returns would amount to at least 10% of turnover. Accordingly I will reduce the assessable income by €12,500 to take reasonable account of these overheads for 2014.

## **Conclusion**

28. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal



actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation.

29. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments to tax are incorrect.
30. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, 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.'*
31. The onus in this appeal rests on the Appellant and the question is whether the Appellant has shown that his income for 2013 and 2014 is as declared by him in the returns made after the Respondent has made assessments in the absence of returns.
32. The Appellant has failed to discharge the onus of proof required to substantiate his claim that his returns were in fact correct. On the contrary the Respondent has provided contemporaneous evidence from the Appellant's own VAT returns of the turnover and gross profit in the Appellant's business. However the Respondent has not made any allowance for the obvious overheads of rent, rates and insurance (not subjected to VAT) paid that would have arisen in making its assessment for 2014.
33. I find that the Appellant on the balance of probabilities is entitled to some adjustment in the liability for 2014 in respect of such overhead expenditure and I am estimating such expenditure at €12,500 for 2014.

## **Determination**

34. For the reasons set out above, I determine that the income tax assessment for 2013 the subject of this appeal, shall stand and that the profits for 2014 shall be reduced by €12,500 and the income tax assessment for 2014 shall be reduced by the consequent amount taking this into account.





35. This appeal is hereby determined in accordance with section 949AK TCA 1997.

**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**9 DECEMBER 2020**

