AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

51TACD2022

Between

[redacted]

Appellant

-and-

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is a determination dealing with the Appellant's appeals of decisions of the Revenue Commissioners ("the Respondent") concerning two separate and disparate issues.

2. The first issue is whether the Appellant is chargeable to income tax on rent earned in respect of a property he owns at [redacted] ("the Property"), from which he says he was forced to flee in 2014 and to which he has not been able to return in safety. The Appellant appeals assessments of an inspector for the tax years 2014 – 2017 ("the Tax Years in Question") assessing liabilities to tax in respect of this rental income.

3. The second issue is whether the Appellant can avail of an exemption from income tax under s.192A of the Taxes Consolidation Act 1997 ("TCA 1997") in relation to the majority of a lump sum paid to him by his former employer, [redacted] ("the Employer"), pursuant to a written agreement dated 24 March 2014. The Appellant appeals the Respondent's refusal to allow him avail of this exemption.

4. The Appellant filed his appeal with Tax Appeals Commission ("the Commission") on 12 February 2019 and the hearing took place on 17 February 2022.

5. In opposing the appeals of the inspector's assessments, the Respondent objected to their acceptance by the Commission on the grounds that the Appellant failed to lodge annual returns in the prescribed form and pay income tax due and owing before appealing. This, it submitted, was contrary to the requirements of section 949AH TCA 1997. A finding on this objection forms part of this determination.

Background

6. The Appellant is an accountant and PAYE employee who now resides in [redacted], [redacted] ("the Current Home"). Previously, he and his family lived in the Property. He gave evidence that in 2014 they were forced to leave the Property permanently as a consequence of a protracted campaign of intimidation by unnamed persons. This included the burning of his car.

7. The Appellant gave evidence that leaving the Property was a last resort and before doing so he sought the assistance of [redacted] Council and the Garda Síochána. The Appellant informed the Commissioner that both organisations advised him that the only viable solution was to move to another area. As evidence of this advice, the Appellant produced a letter of 17 February 2014 from Detective Sergeant [redacted] of [redacted] Garda Station, which states:-

> *"With reference to the above, and following the previous correspondence from D/Garda [redacted], I would have serious concerns for Mr. [redacted] and his family if he was to return to the [redacted] area following previous incidents of harassment and serious incidents that occurred in the [redacted] of [redacted]. Please do not hesitate to contact me or D/Gda [redacted] at this office further if required."*

8. The Appellant gave evidence that, having been forced to move home, the only suitable alternative accommodation he could locate was available at a rental rate that was more expensive than the level of his mortgage repayments on the Property. Upon making the move with his family to the Current Home, the Appellant commenced renting the Property to tenants for a monthly sum. He gave evidence that he would have considered a sale at this time, but that this was not viable because of the depressed state of the housing market.

9. The Appellant did not file tax returns on time for the Years in Question disclosing the income received from renting the Property. When the Respondent became aware that

that the Appellant's property was registered with the PRTB, it sent a letter to him on 21 August 2018 asking him to submit computations in respect of any rental income he received for the Years in Question. The Appellant provided these computations and on 7 December 2018 inspector's notices of assessment issued assessing a tax liability of €79.61, €3,589.29, €5,729.90 and €5,848.27 for each year. Accordingly, the total amount of tax found to be owing by the Appellant in respect of rental income was assessed at €15,247.07.

10. After the assessment, and prior to bringing these appeals, the Appellant submitted "Form 12" income tax returns. Therein he self-assessed his own liability for each year at nil. As is set out hereunder, the Respondent contends that, based on the inspector's assessments, the form that the Appellant should have filed was "Form 11".

The lump sum payment

11. The Commissioner heard evidence from both parties that in October 2018, around the time of the inspector's investigation, the Appellant sought the repayment of a PAYE income tax deduction on a lump sum of €89,319.76 that he received in May 2014 from the Employer. This Appellant sought the return of the tax deducted on the grounds that it was, he argued, an exempted *"payment under employment law*" under section 192A TCA 1997. The Respondent refused to repay because, on the information provided by the Appellant, the lump sum did not meet the conditions specified in the statute for exemption. The amount of tax at issue in this context is €21,871.99.

12. The circumstances in which the payment of the lump sum was made are key to the determination of this issue and it is necessary to describe them in some detail. The Appellant began working for the employer in 2011, where he held the role of senior financial accountant. On 24 March 2014 the two parties entered into a written agreement that provided that the Appellant's employment would terminate by reason of redundancy on 20 May 2014. Clause 2.1 therein provided:

> *"The Employer shall make a payment to the Employee of €84,903.76 subject to tax and statutory deductions on or before the Termination Date, together with a statutory redundancy payment of €4,416.00 (together "the Termination Payment"). The said payment is without any admission of liability."*

13. Clause 2.3 -2.6 provided:

> *"2.3 The Employee will inform the Employer of any applicable tax relief he believes will be applicable to the Termination Payment on or before the 27th March 2014 and will return the tax exemption form and the redundancy form at*

Appendix 1 and the Employer will cooperate reasonably with the Employee to reduce taxation where legally possible as long as it does not involve any additional cost to the Employer. The parties believe that the payments made hereunder will be taxable as set out in Appendix 2 (hereinafter the proposed tax treatment") and agree to co-operate together and with the Revenue Commissioners to ensure Revenue approval on the proposed tax treatment is issued on or before the Termination Date.

"2.4 In the event that no such allowance(s) are applicable or where Revenue do not approve the proposed tax treatment on or before the Termination Date, the Employer will pay the Termination Payment to the Employee within 5 days of the Termination Date subject to tax and other statutory deductions but in the most tax efficient manner permissible by law and it will be for the Employee to make such application for relief as he considers appropriate thereafter and the Employer agrees to cooperate with any such application if required. In the event that Revenue approve the proposed tax treatment the Employer will pay the Termination Payment to the Employee subject to the tax and other statutory deductions as provided for in Appendices 1 & 2, within 10 days of receipt of the Revenue Approval or within 5 working days of the Termination Date, whichever is the earlier.

2.5 If it transpires on receipt of Revenue Approval that an amount less than the gross figure of €89,319.76 is required so as to arrive at an after tax and statutory deductions payment of €65,000 net to the Employee, the gross value of the Termination Payment can be reduced by the Employer as appropriate provided that and subject to the Employee receiving a net payment of 65,000 euro, (which includes statutory redundancy of €4,416.00) net of all taxes and statutory deductions of whatever nature and kind, within the time frames as set out at 2.4 above.

2.6. For the avoidance of doubt the Termination payment includes any bonus, salary, holidays or any other monies of any nature arising out of or in relation to the employment. The Employee agrees to remain on unpaid sick leave up to the Termination Date and, and [sic] *further agrees that he shall not attend for work unless requested. This does not affect any entitlements that the Employee may have under the Employer PHI policy."*

14. The document appended to the agreement at Appendix 1 was a form headed "Applications for Increased Exemption on Lump Sum Payments on Redundancy or retirement."

15. The document appended to the agreement at Appendix 2 contained calculations regarding the tax treatment of both the amount for "statutory redundancy" of €4,416.00 and the "ex gratia…severance" of €84,903.76, which together comprised the overall lump sum of €89,319.76.

16. Part 3 of the agreement was entitled *"Waiver/Acknowledgement".* Therein the parties agreed that:-

> *"3.1 The terms of this agreement are offered by the Employer without any admission of liability and are in full and final settlement of all and any claims or rights of action of any nature whatsoever including any action in respect of personal injuries that the Employee has or may have against the Employer: i) arising out of or during his employment with the Employer, or ii) its termination, whether under common law, contract, statute (including the Adoptive Leave Acts 1995 and 2005, Carers Leave Act 2001, Employment Equality Acts, Maternity Protection Acts 1994-2004, Minimum Notice and Terms of Employment Acts 1973-2001, National Minimum Wage Act 2000, Organisation of Working Time Act 2000, Parental Leave Acts 1998 as amended by the Parental Leave (Amendment) Act 2006, Protection of Employees (Employers' Insolvency) Acts 1984-2001, Protection of Employees (Fixed-Term Work) Act 2003, European Transfer of Undertakings (Protection of Employment) Regulations 2003, Redundancy Payments Acts 1967-2007, Safety, Health and Welfare at Work Act 2005 and all Regulations made thereunder, Terms of Employment (Information) Acts 1994 and 2001, Unfair Dismissals Acts 1977-2007, Worker Participation (State Enterprises) Acts 1977-2000 and Payment of Wages Act 1991) or otherwise, save in respect of the Employee's pension rights and rights under this agreement*.
>
> *3.2 The Employee warrants and assures that he not aware* [sic] *of any claims or rights of action, nor is he aware of any circumstances of any nature that could give rise to such claim or rights in any jurisdiction.*
>
> *3.3 The Employee agrees to withdraw any claims made or lodged with any entity including but not limited to a claim made to the Equality Tribunal and shall provide on the execution hereof an original signed letter addressed to the Authority acknowledging that no claim arises and withdrawing the said claim."*

17. Part 6 of the Agreement was entitled "*Legal Advice".* In this part the Appellant confirmed that he received independent legal advice regarding the effect of the agreement.

18. After the conclusion of the agreement the employer submitted a P35 pursuant to which, in ostensible conformity with its express obligations under the terms of agreement set out above, it applied for relief from taxation in respect of the *ex gratia* amount under section 201 TCA 1997 – which relief is available to payments made under section 123 TCA 1997. This is a provision governing relief from tax on payments made upon redundancy and termination of contract. The Employer did not apply for an exemption under section 192A TCA 1997.

19. Despite this suggesting that the whole of the lump sum payment was connected with the termination of employment, the Appellant gave evidence that only the minor portion for statutory redundancy was for this purpose. He stated that the *ex gratia* amount was in fact paid in settlement of a claim that he had brought against the employer before the Equality Tribunal prior to his departure, and for unissued claims arising from his employment, including a potential personal injuries claim.

20. The Appellant did not provide any documentation setting out the precise nature of the Equality Tribunal claim against the Employer. He did, however, give evidence at hearing that it was brought for discrimination the he alleged he suffered at work. He furnished a document dated 10 December 2013 from the Equality Tribunal to his solicitors entitled "*Complaint under Employment Equality Acts* [redacted] *–v–* [redacted] *".* This stated:-

> "*This case has been deemed to be suitable for mediation and is at present in queue for a date for mediation…*
>
> *…The earliest mediation date will be after February 2014, and our mediation section will be in touch with you in due course regarding a date."*

21. The Appellant also provided a signed document of 24 March 2014, in which he informed the Equality Tribunal that he wished to withdraw his claim and cancel the mediation that was then scheduled.

22. In support of the contention that the bulk of the amount paid on foot of the agreement was compensation in respect of discrimination, the Appellant provided a number of documents that he said identified the agreement's true character. One of these was a letter dated 6 August 2019 from the solicitors that acted for him as against the Employer, addressed "*To whom it may concern*". It stated:-

"We write to confirm that we acted for [redacted] *in 2014 when, on terms mutually acceptable to both parties, his employment was terminated with [the employer] as of 20 May 2014*."

23. The Appellant also provided a letter dated 24 October 2018 from [redacted] of the Employer, whose role was described as "[redacted] *Senior Director Human Resources*". This stated:

> *"This is to confirm that the above named individual was employed by* [the Employer]. *His employment ended 20th May 2014 however Mr* [redacted] *did not attend work at any time during 2014.*
>
> *Mr* [redacted] *received a net payment in full and final settlement of any claim to employment at the end of his tenure with* [the Employer]*."*

Legislation, Guidelines and Forms

Legislation and prescribed forms relevant to the validity of the appeal

24. Section 877 TCA 1997 is entitled "*Returns by persons chargeable"* and subsection 1 therein provides:-

> "*Every person chargeable under the Income Tax Acts, when required to do so by a notice given to such person by an inspector, shall, within the time limited by such notice, prepare and deliver to the inspector a statement in writing as required by the Income Tax Acts, signed by such person, containing the amount of the profits or gains arising to such person, from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts."*

25. Section 879 TCA 1997 is entitled "*returns of income*" and provides:-

> *"(1) In this section*, "*prescribed" means prescribed by the Revenue Commissioners and, in prescribing forms for the purposes of this section, the Revenue Commissioners shall have regard to the desirability of securing in so far as may be possible that no individual shall be required to make more than one return annually of the sources of the individual's income and the amounts derived from those sources*."
>
> *(2) Every individual, when required to do so by a notice given to him or her in relation to any year of assessment by an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return in the prescribed form of—*

(a) all the sources of his or her income for the year of assessment in relation to which the notice is given;

(b) the amount of income from each source for the year of assessment computed in accordance with subsection (3);

(c) such information, accounts, statements and further particulars for the purposes of income tax for the year of assessment as may be required by the notice or indicated by the prescribed form.

(3) The amount of income from any source to be included in a return under this section shall be computed in accordance with the Income Tax Acts; but where under Chapter 3 of Part 4 the profits or gains (or, as respects the year of assessment 2001, 74 per cent of the profits or gains) of a particular 12 month period are to be taken to be the profits or gains of a year of assessment, the computation shall be made by reference to that period.

(4) Where a person delivers to any inspector a return in a prescribed form, the person shall be deemed to have been required by a notice under this section to prepare and deliver that return.

26. Section 959A and 959B TCA 1997 together give the definition of a "*chargeable person"* for the purpose of self-assessment. While complex, it appears that persons in receipt of PAYE income who, in addition, have a self-assessed income not exceeding €5,000, are excluded from the definition of a chargeable person. The Respondent submitted that the exception to this was 2014, where the relevant figure defining a chargeable person was €3,174. However, for reasons that are set out below, nothing turns on this difference.

27. The Respondent's "*Form 12 Tax Return*" states that it is the prescribed form for those that do not fall within the definition of a "*chargeable person*". A note thereon states that if a person is a "chargeable person" the form they must file a "*Form 11 Tax Return".* Such as person is defined as one with a PAYE source of income and a gross self-assessed income of €30,000 or, alternatively, a net self-assessed income of €5,000 or more.

28. Section 959AH is entitled "Chargeable persons: requirement to submit a return and pay tax". It provides that:-

"(1) Where a Revenue officer makes a Revenue assessment, no appeal lies against the assessment 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 a self 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."

Legislation relevant to whether the Appellant had income tax due

29. Section 12 TCA 1997 provides:-

"Income tax shall, subject to the Income Tax Acts, be charged in respect of all property, profits or gains respectively described or comprised in the Schedules contained in the sections enumerated below—

…Schedule D – Section 18…

…and in accordance with the provisions of the Income Tax Acts applicable to those Schedules."

30. Section 18 TCA 1997 is entitled "*Schedule D".* Section 18(1) provides:-

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

SCHEDULE D

1. *Tax under this Schedule shall be charged in respect of —*
   (a) the annual profits or gains arising or accruing to —
   (i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere…

31. Section 18(2) TCA 1997 provides:-

"Tax under Schedule D shall be charged under the following Cases:

…Case V — Tax in respect of any rent in respect of any premises or any receipts in respect of any easement…"

32. The Appellant relied on the Income Tax Act 1967 in support of his appeal. Section 1080 of the TCA 1997 repealed the whole of the 1967 Act insofar as it was not already repealed.

33. Specifically, the Appellant relied on section 2(i)(b) of the 1967 Act, which defines "earned income" as meaning, among other things:

> *"…any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual…"*

34. The Appellant also relied on section 44 of the 1967 Act, which is entitled *"Relief to persons prevented from using their land"*. This provision, repealed by the section 65 of the Finance Act 1969, provides:-

> *"Where the Revenue Commissioners are satisfied that a person entitled to the ownership and occupation of any land was in any year of assessment prevented by trespass, intimidation, or the disturbed state of the neighbourhood from using and occupying such land, they shall have power to cause to be given such relief as is just and reasonable in those circumstances in respect of any tax payable with reference to such land under Schedule A or Schedule B for such year of assessment."*

35. Section 44 of the Income Tax Act 1967 appears to be a near exact re-enactment of section 6 of the Finance Act 1927.

36. The TCA 1997 does not contain relief from taxation of the kind provided for in section 44 of the Income Tax Act 1967. It is also worthy of note that, as in the TCA 1997, the Income Tax Act 1967 provides that annual profits or gains accruing to a person from their property is to be taxed under Schedule D. Section 44 of the Income Tax Act 1967 appears to limit the availability of the exemption therein to tax paid under Schedules A and B – i.e. tax assessed on the annual valuation of the property.

Legislation relevant to the refusal of relief on the lump sum payment

37. Under section 9 TCA 1997 employment income is charged under Schedule E.

38. Section 123 TCA 1997 is entitled "General tax treatment of payments on retirement or removal from office or employment". It provides:-

> *"(1) This section shall apply to any payment (not otherwise chargeable to income tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise*

in connection with, the termination of the holding of an office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.

(2) Subject to section 201, income tax shall be charged under Schedule E in respect of any payment to which this section applies made to the holder or past holder of any office or employment, or to his or her executors or administrators, whether made by the person under whom he or she holds or held the office or employment or by any other person."

39. Section 201 TCA 1997 sets out the reliefs from taxation that are applicable to payments for retirement or removal from office under s.123 TCA 1997.

40. Section 192A TCA 1997 is entitled "Exemption in respect of certain payments under employment law". In full, it provides:-

"(1) In this section "relevant Act" means an enactment which contains provisions for the protection of employees' rights and entitlements or for the obligations of employers towards their employees; "relevant authority" means any of the following –

(a) a rights commissioner,

(b) the Director of the Equality Tribunal,

(ba) an adjudication officer of the Workplace Relations Commission,

(bb) the Workplace Relations Commission,

(bc) the District Court,

(c) the Employment Appeals Tribunal,

(d) the Labour Court,

(e) the Circuit Court, or

(f) the High Court.

(2) Subject to subsections (3) and (5), this section applies to a payment under a relevant Act, to an employee or former employee by his or her employer or former employer, as the case may be, which is made, on or after 4 February 2004, in accordance with a recommendation, decision or a determination by a relevant authority in accordance with the provisions of that Act.

(3) A payment made in accordance with a settlement arrived at under a mediation process provided for in a relevant Act shall be treated as if it had been made in accordance with a recommendation, decision or determination under that Act of a relevant authority.

(4)

(a) Subject to subsection (5) and without prejudice to any of the terms or conditions of an agreement referred to in this subsection, this section shall apply to a payment –

(i) made, on or after 4 February 2004, under an agreement evidenced in writing, being an agreement between persons who are not connected with each other (within the meaning of section 10), in settlement of a claim which–

(I) had it been made to a relevant authority, would have been a bona fide claim made under the provisions of a relevant Act,

(II) is evidenced in writing, and

(III) had the claim not been settled by agreement, is likely to have been the subject of a recommendation, decision or determination under that Act by a relevant authority that a payment be made to the person making the claim,

(ii) the amount of which does not exceed the maximum payment which, in accordance with a decision or determination by a relevant authority (other than the Circuit Court or the High Court) under the relevant Act, could have been made under that Act in relation to the claim, had the claim not been settled by agreement, and 6

(iii) where –

(I) copies of the agreement and the statement of claim are kept and retained by the employer, by or on behalf of whom the payment was made, for a period of six years from the day on which the payment was made, and

(II) the employer has made copies of the agreement and the statement of claim available to an officer of the Revenue

Commissioners where the officer has requested the employer to make those copies available to him or her.

(b)

(i) On being so requested by an officer of the Revenue Commissioners, an employer shall make available to the officer all copies of –

(I) such agreements as are referred to in paragraph (a) entered into by or on behalf of the employer, and

(II) the statements of claim related to those agreements

kept and retained by the employer in accordance with subparagraph (iii) of that paragraph.

(ii) The officer may examine and take extracts from or copies of any documents made available to him or her under this subsection.

(5) This section shall not apply to so much of a payment under a relevant Act or an agreement referred to in subsection (4) as is–

(a) a payment, however described, in respect of remuneration including arrears of remuneration, or

(b) a payment referred to in section 123(1) or 480(2)(a).

(5A) This section shall not apply to payments made pursuant to an order under section 2B of the Employment Permits Act 2003.

(6) Payments to which this section applies shall be exempt from income tax and shall not be reckoned in computing total income from the purposes of the Income Tax Acts."

Appellant's Submissions

The Inspector's Assessments

41. In relation to the issue of the validity of the appeals of the inspector's assessments, the Appellant submitted that he had adhered to the requirements of section 959AH TCA by filing annual returns for the years in question. He submitted that Form 12 was the correct from, prescribed by the Respondent, because he was not a chargeable person with a gross non-PAYE income of over €30,000 or a net assessable income of over €5,000. By his own assessment he had no assessable income and therefore was not required to pay any sum prior to the bringing of this appeal.

42. On the substance of the inspector's assessments, the Appellant submitted, firstly, that he should not be liable to tax because he and his family had been forced from his property against their will to ensure their safety. While the relief provided for in section 44 of the Income Tax Act 1967 had been repealed in the Finance Act 1969 and not recreated in subsequent legislation, he contended that it evidenced the desire on the part of legislators to accommodate those in a position such as applied in his case.

43. The Appellant also suggested that the definition of "earned income" in section 2(1)(b) of the Income Tax Act 1967 should inform whether the annual sums gained by him in rent should be considered as profits liable to tax. Specifically, he argued that they should not be so liable because they were not profits "held" by him. It was never his intention to turn a profit. Rather, he said, the rent received was put straight back into the renting of his more expensive alternative accommodation for himself and his family.

44. The Appellant also argued that as the State had failed in his view to provide him with protection sufficient to permit him to reside safely in the Property, he should not be liable to tax on the rent received for the relevant years. He submitted that the ultimate purpose of taxation, including income tax, is to finance the provision of public services, including policing. As his family's move was prompted by the State's inability or unwillingness to provide continuous protection at the Property, he should not be taxed in respect of income put towards financing the renting of the Current Home.

The Refusal of Relief under section 192A TCA 1997

45. The Appellant submitted that the sum of €84,903.76 paid to him on 20 May 2014 pursuant to the aforementioned settlement agreement was attributable primarily to the settlement of his proceedings before the Equality Tribunal against his Employer. He submitted that this was clear from the letter of 24 October 2018 from the Employer's director of Human Resources**.** He also submitted that it was paid in relation to potential, but as then unissued, proceedings for other wrongs suffered. The consequence of this, the Appellant argued, was that the payment fell within the definition under section 192A TCA of a payment under employment law. He was therefore entitled to an exemption from tax under this provision.

46. Elaborating on the above, the Appellant pointed to the fact that the discrimination claim he had brought reached the advanced stage of being set down by the Equality Tribunal for mediation. This was cancelled only because of the conclusion of the agreement on 24 March 2014 between him and the Employer.

47. The Appellant submitted that the size of the payment was an important indicator of its true nature. It was, he said, too large in relation to his salary of approximately €55,000 to credibly be taken to be in respect of the termination of his employment.

48. He addressed the fact of the express terms of the settlement. He accepted that pursuant to its terms the parties agreed that the employer would apply for, and do its best to obtain, relief under section 201 TCA for payments made consequent on the termination of employment – as opposed to exemption under section 192A TCA 1997. He submitted though that the employer had in truth been the party that insisted on the inclusion of this term. He submitted at hearing that at the time of the conclusion of the settlement agreement he was suffering from medical difficulties that caused him considerable pain. He was not, he said, fully aware that under the agreement the employer was to apply to the Respondent for a tax treatment of the entire lump sum payment that was expressly reserved for payments made consequent to the termination of employment or redundancy. Had he been in a better medical state he would not have agreed to this term.

Respondent's submissions

The inspector's assessments

49. The Respondent made a brief submission that the Appellant's appeals of the inspector's assessments should not be deemed valid because the Appellant was a chargeable person and had not filed a return of income in the "prescribed form". In addition, he had not paid the tax assessed by the inspector as owing prior to bringing the appeal, contrary to section 959 AH TCA 1997.

50. As regards the substance of the appeals, the Respondent firstly made the point that section 44 of the Income Tax Act 1967 was repealed long ago by section 65 of the Finance Act 1969. There is, it submitted, no extant provision in the tax code that provides for an exemption from income tax on the grounds suggested by the Appellant. Section 18 TCA 1997 mandates that income tax be charged on profits arising or accruing from the renting of a property. The rent paid by the Appellant himself in return for the right to occupy the Current Home does not have an impact on the assessment of the profits accrued from the letting of an altogether different property elsewhere.

51. Moreover, the Respondent submitted that the definition of "*earned income"* in section 2(1)(b) of the 1967 Act was not relevant to the question of whether income tax was due under section 18 TCA 1997.

The Refusal of Relief under section 192A TCA 1997

52. The Respondent highlighted the letter of March 2014 from the Appellant to the Equality Tribunal stating that he wished to withdraw his claim. This, the Respondent said, showed that the payment was not made *"in accordance with a recommendation, decision or determination*" of a "*relevant authority*" as defined by section 192A (1) TCA 1997. As such, the payment clearly fell outside its parameters.

53. The Respondent submitted that all of the terms of the agreement were indicative of it being a settlement relating to the termination of employment. In particular the Respondent pointed to the application that was actually made for relief under section 201 TCA 1997, which application was a term of the agreement. If the Appellant was dissatisfied with what was agreed, it was a matter between himself and the employer. The Respondent however was not in a position to refund tax on the information provided.

Material Facts

54. The material facts were not actually in dispute between the parties. The Commissioner heard the evidence put forward by the Appellant and the Respondent and has read the documentation provided by both parties. As a result, the Commissioner makes the following material findings of fact:-

    i. the Appellant previously lived with his family in the Property until 2014;

    ii. the Appellant and his family left the Property in circumstances where the Appellant believed it was no longer safe for them to reside there;

    iii. for the years 2014-2017 the Appellant rented out the Property to tenants and received a rental income in relation to the Property;

    iv. the Appellant made late returns for the tax years 2014 – 2017. He did so using the Respondent's Form 12 and self-assessed himself as having no income tax liability;

    v. the Appellant entered into the agreement with his Employer on 24 March 2014, pursuant to which he received a "Termination Payment" of €89,319.76. This comprised a sum for statutory redundancy of €4,416.00 and an *ex gratia* sum of €84,903.76;

    vi. in accordance with the terms of the agreement, an application was to be made by the Employer for tax relief under section 201 TCA 1997, as provided for in

s.123 TCA 1997, in respect of the *ex gratia* payment. This was carried out and the Appellant was granted the appropriate level of tax relief applicable to payments consequent on the termination of employment;

vii. at the time of the settlement the Appellant had proceedings before the Equality Tribunal against his employer for discrimination at the workplace, which were due to be the subject of mediation. The proceedings were withdrawn in accordance with the terms of the agreement.

Analysis

The inspector's assessments

55. The Respondent challenged the validity of the appeal on the basis that the Appellant, as a chargeable person, failed to file returns in the prescribed form and failed to pay income tax due according to the contents of the return. This, it said, was in contravention of section 959AH TCA 1997. In this instance the dispute is not over whether a return was made, but rather whether it was the correct type of return. While the Commissioner did not have the benefit of having seen the returns it appears from the information given by the parties that the Appellant sought to claim the rent he paid in respect of the new family residence as an expense that resulted in him having no liability in respect of his non-PAYE income. This determination addresses the merits of this self-assessment below, however the Commissioner is willing to accept that the requirements of validity set out in section 959AH TCA 1997 have been met in circumstances where the Appellant has assessed himself as having an income that was sufficiently low that he was not a "chargeable person" (and thus was entitled to file using Form 12) and had no liability to tax.

56. However, on the substantive issue, the Commissioner finds the arguments made by the Appellant against the inspector's assessments are misconceived and cannot succeed. The origins of the relief provided for in section 44 of the Income Tax Act 1967 are not obvious, although it is clear that the provision mirrored what was in section 6 of the Finance Act 1927. In any event, it was repealed by section 65 of the Finance Act 1969 and not replicated in subsequent legislation.

57. Section 18 TCA 1997 makes it abundantly clear that tax under Schedule D must be charged on profits or gains that accrue to a person from a property. Case V states that this includes tax "[…] *in respect of any rent in respect of any premises or any receipts in respect of any easement".* The Appellant submitted that, notwithstanding the repeal of section 44 of the Income Tax Act 1967, its prior existence suggests that permitting him

relief from taxation under section 18 TCA 1997 because he felt compelled to leave the Property would be in accordance with public policy. To the extent that section 44 of the Income Tax Act 1967 Act is of any relevance at all in assessing the Appellant's liability in this context, the fact that it was repealed and not replaced indicates strongly that the opposite is true. Whether it was repealed because it became otiose or for some other reason, it is clear that the Oireachtas intended by enacting section 6 of the Finance Act 1969 to bring an end to the relief that could be obtained under section 44 of the 1967 Act.

58. As part of the same argument the Appellant stated that the money was not "*earned income",* as defined in section 2(1)(a) the 1967 Act and now section 3(2)(a)(i) TCA 1997. In this regard he focused on the word "*held*" therein, and argued that its use meant that he should not be charged income tax on the rent he obtained because it was put into letting the Current Home. It is true that the Appellant's income is not "*earned income*", as this is income under TCA 1997 that is derived from the holding of an office or carrying out of a trade or profession. It is distinct from income such as rental income accrued by a person that might be described as 'passive'. Under section 472AB TCA 1997, certain tax credits can apply to earned income that are not available in respect of passive income. All of this is irrelevant to the Appellant's charge to income tax in respect of his rental income, which is to be judged by reference to section 18 TCA 1997. As already noted, this income plainly falls within Case V in Schedule D. The wording of the provision *"…annual profits or gains arising or accruing to…any person residing in the State from any kind of property"* indicates that it is not possible for an individual to claim the cost of renting of one property as an expense to reduce or eliminate entirely tax owed from income earned on another.

59. It is the Commissioner's job to seek to establish whether tax is owed and if so how much. This involves the reading of the relevant legislation and the application of it to the individual's case (see ***Lee v Revenue Commissioners [2021] IECA 18***). The Commissioner is not empowered to exempt the Appellant from the payment of tax that is due under section 18 TCA 1997 because of the nature and extent of public services that have been made available to him and his family. While it is understandable that the Appellant is upset and distressed about the leaving of the Property, that the Appellant feels more could have been done to assist or protect him and his family is something that it is outside the role of the Commissioner to consider. For these reasons the Appellant's appeals of the inspector's assessments must fail.

The Refusal of an exemption under section 192A TCA 1997

60. The Appellant seeks an exemption from income tax as it is a "payment under employment law" within the meaning of section 192A TCA 1997. Subsections (2), (3) and (4) therein define the types of payments to which this exemption can apply. In addition, 192A (5) TCA 1997 defines the particular types of employment related payments to which this relief does *not* apply – i.e. those for remuneration/arrears, or termination payments referred to in section 123(1) TCA 1997.

61. In determining the nature and purpose of a payment made pursuant to a written settlement agreement, the key document is the agreement document itself. This is underlined in this context by the mandatory requirement in section 192A (4)(a)(i)(II) that an agreement to which the section applies be evidenced in writing. It is the Commissioner's view that the settlement agreement furnished by the Appellant provides that the *ex gratia* payment was consequent to the termination of his employment and, as such, was correctly taxed in 2014 and afforded relief under s.201 TCA 1997, applicable to payments under s.123 TCA 1997. By definition therefore it was not a "payment under employment law" in respect of which an exemption could have been granted under section 192A TCA 1997.

62. That the *ex gratia payment* was made consequent to the termination of the Appellant's employment is clear from its terms. Paragraph 1 gave an indication of what the agreement was about generally by stating:-

> "The Employee's employment with the Employer shall terminate by reason of redundancy on 20th May 2014 (Termination Date) without any further requirement for notice by him".

63. In the next paragraph, 2.1, the whole payment, redundancy and *ex gratia* sums, was defined plainly as "*the Termination Payment*". Paragraph 2.3 made it the task of the Appellant to inform the employer of any tax relief he believed was applicable and then referred to the Respondent's "*Tax Exemption Form and the Redundancy Form*", attached at Appendix 1.

64. The same paragraph stated that the parties believed that the tax treatment calculations in Appendix 2 to the settlement agreement applied. The Appellant and the Respondent agreed at hearing that this calculation accorded with the relief available to termination/redundancy payments under s.201 TCA 1997. Moreover, the calculation document in appendix 2 was headed *"Increased exemption in a redundancy*

scenario…" and, in respect of the whole €89,319.76, described the amount of the "*severance*" that was to be exempted from tax and the amount was to be taxable.

65. Paragraph 2.6 made clear that the payment included salary and other work entitlements to which the Appellant was entitled and under paragraph 2.7 the employer undertook to stand over a work reference appended at Appendix 3 of the settlement agreement that it would furnish to prospective employers of the Appellant. These were terms inherently connected to the details of the cessation of his employment.

66. The Appellant emphasised section 3, entitled "*Waiver/Acknowledgement"*, in support of his contention that the settlement agreement was not related to termination. It is true, that paragraph 3.1 was "*in full and final settlement of all and any claims or rights of action"* he might have had against the employer under a raft of employment legislation. Most notably under paragraph 3.3 he agreed to abandon his claim lodged before the Equality Tribunal. However, it was expressly stated that the settlement of these claims was without admission of liability on the part of the employer and, in abandoning the then live claim before the Equality Tribunal, the employee expressly acknowledged that "*no claim* [arose]". The settlement agreement plainly was directed toward setting out the basis for the termination of the Appellant's employment. That it contained terms whereby the Appellant abandoned live and any future claims in respect of rights protected by employment law did not change this. On the contrary, what these terms actually did was express what the settlement was *not* about – i.e. compensation for breach of those rights.

67. The final waiver in section 3 concerned the employer's waiving of the right to notice from the Appellant and was another part of the settlement agreement going to the terms of his severance. The same is true of section 4 (return of property) and section 5 (confidentiality). Again, these were matters inherently related to the terms of his termination.

68. The Appellant suggested that if the terms of the agreement should be construed against him, they should be disregarded by the Commissioner because he was physically incapacitated at the relevant time, with the result that he did not know their import. He says instead that the letters from the employer and from his solicitors should be taken instead to indicate what the payment of €84,903.76 was for in reality. In this regard I find, firstly, that there was no evidence put before me to substantiate the claim that the Appellant, who was and remains a professional [redacted] and came across at hearing as a capable person, was unable to understand the nature of the agreement he was entering into with the Employer. In fact, it is clear from section 6, headed "*Legal*

Advice" that the Appellant took such advice from his solicitors on the consequences of entering into the settlement of agreement. It is therefore not possible for the Commissioner to agree with the Appellant's submission that the terms of the agreement, if they are found to relate to termination, can and should be ignored.

69. The Appellant emphasised the importance of the letter from the Employer's Director of Human Resources concerning the payment. The Commissioner finds that this brief correspondence cannot override the clear contemporaneous written terms of an agreement concluded four years earlier. In any event, this letter states only that there was a settlement of "*any claim to employment*". It does not state the nature of those claims. Exactly the same observation applies in relation to the letter from his solicitors, which he produced in support of this appeal.

70. Section 192A (5) 1997 provides that it does not apply to payments falling under section 123 (1) TCA 1997, which includes payments made in consequence of the termination of the holding of an office. In the Commissioner's view it is clear from the facts that the sum of €84,903.76 was paid for this precise reason and not, as submitted by the Appellant, in settlement of his claim against the employer in the Equality Tribunal.

71. Finally, as regards the Appellant's submission that settlement was also for other unspecified claims yet to be initiated, even if this were found to be so – and it is not – the finding would not assist him. Section 192A (2),(3) and (4) TCA 1997 make plain that it is only payments arising from *issued* proceedings under one of the relevant acts described in subsection (1) that can obtain exemption. This is a further reason why the Appellant's appeal must fail.

Determination

72. It is clear that the circumstances of the departure from the Property were distressing to the Appellant. The Appellant is deserving of sympathy and he was correct to seek to establish his rights by bringing this appeal. However, for the reasons set out above in this determination the Commissioner finds that the appeals against the inspector's assessments for the tax years 2014-17 cannot succeed and the sums assessed must stand. In addition, the Commissioner finds that the Appellant is not entitled to the repayment of tax on the grounds that the payment was made consequent to the termination of his employment.

73. The Appellant's appeals of the inspector's assessments are determined under section 949AK TCA 1997. The appeals of the refusal to make repayment are determined under section 949AL TCA 1997. This determination contains full findings of fact and reasons

for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

Conor O'Higgins
Appeal Commissioner
Date 7th March 2022

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