63TACD2022

Between/

[redacted]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

1. Matters under Appeal

1. This matter comes before the Tax Appeals Commission by way of appeals against assessments to Income Tax and VAT.

2. On the 27th of February 2014, the Respondent issued Notices of Amended Assessment to Income Tax to the Appellant in respect of the years 2004, 2009, 2010, 2011 and 2012. On the 14th of March 2014, the Respondent issued further Notices of Amended Assessment to Income Tax to the Appellant in respect of the years 1999/2000, 2002, 2003 and 2008.

3. The additional income tax assessed by the Notices of Amended Assessment was as follows:-

1999/2000	€17,333.57
2002	€ 9,862.47
2003	€ 7,315.55
2004	€19,450.65
2008	€15,321.62
2009	€17,131.00
2010	€17,488.37
2011	€ 9,850.44
2012	€ 9,381.20

4. On the 5th of March 2014, the Respondent raised a Notice of Assessment to VAT pursuant to section 111 of the Value Added Tax Consolidation Act 2010 in respect of the periods January-December 2008, January-December 2009, January-December 2010, January-December 2011 and January-December 2012. On the 19th of March 2014, the Respondent raised a further Notice of Assessment to VAT on the Appellant in respect of the periods January/February 2002, November/December 2002 and March/April 2003. On the 28th of April 2014, the Respondent raised a further Notice of Assessment to VAT on the Appellant in respect of the period January/February 2000. Finally, on the 14th of May 2014, the Respondent raised a further Notice of Assessment to VAT on the Appellant in respect of the period January/February 2004.

5. The additional VAT assessed on the Appellant by the said Notices of Assessment was as follows:-

January/February 2000	€ 7,713.00
January/February 2002	€ 4,197.00
November/December 2002	€ 1,038.00
March/April 2003	€ 2,230.00

January/February 2004	€ 8,691.00
January – December 2008	€ 9,424.00
January – December 2009	€ 8,220.00
January – December 2010	€ 7,251.00
January – December 2011	€ 3,978.00
January – December 2012	€ 4,788.00

6. The aforesaid assessments and amended assessments were duly appealed by the Appellant.

2. Grounds of Appeal

7. The grounds of appeal advanced by the Appellant in respect of the amended assessments to Income Tax were as follows:-

(a) In relation to 1999/2000, 2002, 2003, 2004 and 2008 only, the assessments were invalid as they were out of time pursuant to section 955(2) and 955(3) of the Taxes Consolidation Act 1997 as amended (hereinafter **"TCA 1997**");

(b) in relation to 2004 only, an incorrect figure had been used in respect of the income assessed having regard to a previous audit of the Appellant in 2008;

(c) the assessments were not in accordance with the income tax returns for the income tax years;

(d) the assessments were based on theoretical and/or alleged mark ups of various items and products, which was an exercise which was not justifiable for the years in question. There was no basis for such an approach given that the Appellant had maintained adequate books and records;

(e) there was no factual or reliable evidence to support the mark ups used by the Respondent;

(f) there was no factual or reliable evidence to support the assertions by the Respondent that various funds held by the Appellant were derived from undeclared trading income;

(g) no account had been taken or consideration granted by the Respondent to various arguments and points put forward in rebuttal of the Respondent's allegations throughout the conduct of the matter; and,

(h) the assessments were estimated and excessive.

8. The grounds of appeal advanced by the Appellant in respect of the amended assessments to VAT were as follows:-

(a) the assessments for the periods under appeal were based on theoretical and/or alleged mark ups on various items and products, and there was no basis for such an approach;

(b) there was no factual or reliable evidence to support the mark ups used as a basis for the assessments;

(c) there was no factual or reliable evidence to support the assertion by the Respondent that various funds held by the Appellant derived from undeclared trading income;

(d) no account had been taken or consideration granted by the Respondent to various arguments in points put forward in rebuttal of the Respondent's allegations throughout the conduct of the matter; and,

(e) the assessments were estimated and excessive.

3. <u>Factual Background</u>

9. The Appellant is a licensed vintner and publican who carries on business at [redacted] Street, [redacted], Co. [redacted] and has traded there with his wife since in or about 197[redacted]. The Appellant's public house incorporates a small off-licence and did not at any material time sell food.

10. The Appellant had previously been subject to a Revenue audit which began in January 2008 and ended in December of that year. As a result of that audit, the Appellant agreed a settlement with the Respondent which included the payment of income tax in respect of the period from 01/04/2003 to 31/03/2006 of €84,300 and the payment of VAT in respect of the period from 01/04/2003 to 31/12/2007 of €48,173. The said liabilities arose in respect of unrecorded sales in the pub business and were exclusive of interest and penalties.

11. In the course of the 2008 audit, the Appellant signed a Certificate of Disclosure on the 26th of June 2008 in which he certified that he had made complete disclosure to the Respondent of all bank accounts, savings and loan accounts, investments, other assets of whatsoever nature and sources of income in respect of the period from 01/04/2003 to 31/12/2007.

12. In addition, the Appellant completed and signed a Form SA1 Statement of Affairs on the 12th of November 2008 which the Appellant declared gave full particulars of all of his assets and liabilities as of the 31st of December 2006. The Statement of Affairs recorded six accounts held by the Appellant with [redacted] plc.

13. As part of the settlement of the 2008 audit, the Respondent advised the Appellant that full till rolls should in future be maintained as part of the Appellant's books and records and by letter dated the 6th of January 2009 the Appellant confirmed that till rolls were now in use.

14. Following a screening review by the Respondent of the Appellant's income tax returns, concerns emerged in relation to the omission of financial accounts and/or deposit interest earned from the Appellant's income tax returns and the Form SA1, and further in relation to the level of mark up returned by the Appellant's trade having regard to the norms for the trade for the years subsequent to 2007.

15. On the 16th of June 2011, the Respondent began a further enquiry into the Appellant, initially for the period from the 1st of January 2007 to the 16th of June 2011. Arising from the said enquiry, the Respondent formed the view that:-

(a) significant financial investments and deposits had been omitted from the Appellant's Form SA1 and income tax returns;

(b) primary sales records consisted of an analysed receipts listing detailing daily totals for sales, off-licence outgoings and lodgements, and Z3 till summary readings for the bar only. There were little or no daily transactional till rolls available for the period under examination, notwithstanding the fact that till receipts and electronic payment receipts were in use; and,

(c) there was a lower than average mark up returned on declared purchases and sales by the Appellant.

16. There followed extensive correspondence between the Respondent and the Appellant's agent in relation to whether the Appellant had additional tax liabilities arising from the matters aforesaid. No agreement was reached between the parties and so the Respondent issued the assessments which are the subject matter of this appeal.

17. The Respondent issued the assessments on the basis that, even after allowance had been made for the bank statements submitted by the Appellant and having regard to the explanations proffered on his behalf, there were multiple documented

lodgements and balances during the years prior to 2004 for which the Appellant could not offer a satisfactory explanation. In the absence of documentary evidence as to the *bona fides* of these lodgements, the Respondent had treated the amounts as unrecorded income and assessed the Appellant to tax accordingly. The lodgements which the Respondent treated as unrecorded income for the years in question were as follows:-

(a)	Year ending 31/03/2000	1 lodgement	€ 44,440.38 (£35,000)
(b)	Year ending 31/03/2002	1 lodgement	€ 25,180.36
(c)	Year ending 31/03/2003	4 lodgements	€ 18,833.46
(d)	Year ending 31/03/2004	14 lodgements	€116,020.26

18. In respect of what the Respondent said were unexplained lodgements during the year ending 31/03/2004, the Respondent had allowed the Appellant a credit of €65,945 in respect of the monies assessed in the 2008 audit. The Respondent accepted prior to the hearing that this was a net figure and a credit of €79,844, being the VAT inclusive figure, should be allowed.

19. The Respondent had further reviewed the Appellant's original VAT and income tax returns for the years under appeal which had indicated the following mark ups:-

Year	*Cost of Sales Mark Up*	*Purchases Mark Up*
31/03/2007	89.71%	89.23%
31/12/2008	82.02%	81.95%
31/12/2009	80.98%	78.57%
31/12/2010	82.42%	94.94%
31/12/2011	96.55%	91.10%
31/12/2012	89.89%	93.67%

20. In the course of the 2011 audit, a detailed trade analysis of the Appellant's business for the year ended 31 December 2010 was undertaken by the Respondent. This analysis showed an average mark up in the Appellant's business of 122.51%. The Respondent used this average mark up for the purposes of assessing the Appellant to tax in 2010 and calibrated the mark up downwards for earlier years and upwards for subsequent years. Accordingly, the Appellant was assessed to tax on the basis that the following average mark ups were achieved in his business during the years under appeal:-

2008	115%
2009	120.5%
2010	122.5%
2011	124.5%
2012	126.5%

4. Submissions of the Appellant

21. The Appellant's agent indicated at the commencement of the hearing before me that the Appellant was no longer pursuing his argument that certain assessments were time-barred pursuant to the provisions of section 955 of TCA 1997.

22. The Appellant's agent submitted in relation to the period 1999/2000 to 2004 inclusive that assessments had been raised to income tax and VAT by treating certain lodgements to various bank accounts as undeclared trading income from the Appellant's licensed premises. He submitted that it was apparent from an analysis of the lodgements that the majority of them were balances which had previously existed

in bank accounts and/or transfers between accounts, such as maturity of term deposits and rollovers to new accounts.

23. The Appellant's agent accepted that certain bank and financial accounts had been omitted from the Form SA1 completed by the Appellant during the 2008 audit. He submitted that, as a result of the stress and pressure of that audit, and the significant tax liabilities disclosed thereby which meant the Appellant had to mortgage his business premises, the Appellant was not in a fit state of mind to appreciate the complexities of the form SA1.

24. He further submitted that the Appellant had sought detailed information on the transactions from [redacted]/[redacted] Bank, and had been advised that [redacted] Bank were unable to provide the Appellant with some of the requested information and statements. I was furnished with copies of certain correspondence to and from [redacted] Bank in this regard. He submitted that, nonetheless, the Respondent had been provided with bank statements confirming the description of certain transactions as "*Balance fwd*" and "*Transfer in*".

25. The Appellant's agent submitted that such transactions were clearly not trading income and that legitimate funds held in the Appellant's bank accounts in the years 2000 to 2004 could very reasonably be expected to be funds and savings accumulated over the years from his declared trading income. He submitted that I should have regard in this respect to the Appellant's age, the number of years he had been in business and the fact that throughout his life he had been very careful regarding his finances and a regular saver.

26. The Appellant's agent further submitted that insufficient credit had been allowed by the Respondent for the monies paid by the Appellant in settlement of the 2008 audit

and that the undeclared income on which he had been assessed to tax in the 2008 audit must reasonably have been expected to have been lodged somewhere, thereby explaining the lodgements and transfers now questioned by the Respondent. The Appellant's agent submitted that the Respondent was effectively seeking to assess the Appellant to income tax and VAT twice on the same income.

27. The Appellant's agent further submitted that the treatment of the balances, account transfers and lodgements in question as unrecorded trade income would show purported trading results and a profit margin percentage of extraordinary and unachievable levels. In support of this, he submitted that the Respondent's approach suggested that the Appellant's business had an average mark up percentage of 136.97% in 2004, 89.37% in 2005, 100.15% in 2006 and 99.43% in 2007. He pointed out that these percentages were far higher than those agreed with the Respondent in settlement of the 2008 audit, namely 77.23% in 2004, 81.23% in 2005, 85.23% in 2006 and 89.23% in 2007.

28. In summary in relation to these years, the Appellant's agent submitted that the source of the £35,000 lodgement in 1999/2000 was funds received from the Appellant's mother-in-law. The €25,180.36 sought to be assessed in respect of 2002 constituted an amount invested in bonds. The sums sought to be assessed in respect of 2003 and 2004 constituted existing balances, account transfers and lodgements. The Appellant's agent submitted that these monies came from accounts held and savings accumulated legitimately by the Appellant from his trade over the years. He submitted that the Respondent could not simply assume that these monies came from undeclared trading income just because the Appellant was no longer able, by reason of the passage of time, to obtain bank statements showing the source of the funds.

29. Turning to the years 2008 to 2012 inclusive, the Appellant's agent submitted that assessments had been raised by the Respondent for these periods based on alleged

additional pub sales which the Respondent contended had been unrecorded. The amount of the deemed unrecorded income had been calculated by the Respondent by applying their estimate of the mark up percentage to the trade purchases in each year.

30. The Appellant's agent referred me to the mark up percentages accepted by the Respondent for the years 2003 to 2007 inclusive in settlement of the 2008 audit (as detailed in paragraph 27 above) and pointed out that these percentages included an increase of 4% each year, which he described as "*apparently arbitrary*."

31. He pointed out that the Respondent had in the instant appeal calculated a mark up percentage of 122.5% for 2010, based on a trade analysis which the Appellant disputed. A 2% increase was then added for the years 2011 and 2012, and a 2% reduction had been applied for 2009.

32. The Appellant's agent further submitted that the mark up percentage appeared, on the Respondent's figures, to have increased from 93.23% in 2007 to 115% in 2008. He submitted that no satisfactory or detailed explanation for this significant increase had been provided by the Respondent, notwithstanding his having queried same.

33. The Appellant's agent submitted that he had carried out a detailed trade analysis and computation of the realistic mark up percentage achieved by the Appellant in 2010. This computation was calculated on the basis that the Appellant obtained 84 pints per keg of draft beer and took account of several factors affecting the mark up percentage, such as wastage rate and off-licence sales; the agent submitted that little or no account had been taken by the Respondent of such factors. The mark up percentage calculated by the Appellant's agent was 94.51% and he submitted that this accorded with the actual net sales as returned by the Appellant. The Appellant's agent further submitted that the Respondent's computations failed to take account of the fact that

the Appellant's business was located in a small village and was competing with three other licensed premises and two other off-licence outlets.

34. In summary, it was submitted on behalf of the Appellant that the mark up percentages as reflected in the Appellant's records and accounts for the years 2008 to 2012 inclusive reflected the actual trading results he achieved, and that the additional assessments raised by the Respondent were premised on notional and arbitrary mark up percentages and were consequently excessive.

5. Submissions of the Respondent

35. It was submitted on behalf of the Respondent that there were two core areas of dispute in the instant appeal, namely:-

(a) the source of multiple lodgements to various financial accounts of the Appellant in the years 2000 to 2004 inclusive; and,

(b) the mark up percentage applicable to the Appellant's business.

36. In relation to the first of these issues, the Respondent submitted that approximately 25 accounts and investments belonging to the Appellant had been identified which were not included in the Form SA1 submitted during the 2008 audit. All of the Appellant's financial accounts and investments had been examined in detail and the relevant bank statements had been requested from the Appellant. Based on the statements submitted, multiple lodgements and balances had been documented for which there was no documentary evidence to satisfactorily explain the source. In the absence of documentary evidence confirming the source of the lodgements, all of the amounts had been treated as unrecorded income and assessed accordingly.

37. In relation to the second issue, the Respondent submitted that the mark ups returned for all periods post the 2008 Revenue audit were unacceptably low. Its detailed trade analysis of the Appellant's business for the year ended 31 December 2010 showed an average mark up in the Appellant's business of 122.51%, and I was furnished with the trade analysis supporting this calculation. The Respondent further pointed out in relation to the calculation that:-

(a) this was an analysis of the Appellant's business itself, and was not the application of industry-wide average margins on various products to the Appellant's business;

(b) absenting sales records, the selling prices for the year ended 31 December 2010 were derived from price lists provided by the Appellant;

(c) the number of pints per keg of beer applied in the trade analysis was 88;

(d) purchases of €81,395 for the nine months ending 31 December 2007 and consequent sales were omitted to reflect the VAT settlement for the year ended 31 December 2007 following the 2008 audit; and,

(e) the mark up in respect of the other subject years assessed was arrived at by reference to the 122.51% mark up as established by the 2010 trade analysis, calibrated downwards and upwards for earlier and subsequent years. These adjustments reflected the fact that the selling prices over the years in question had increased to a greater extent than the purchase costs.

38. The Respondent submitted that it was inappropriate to have regard to the mark up percentages which had been agreed in settlement of the 2008 audit, as those figures had been agreed on a 'without prejudice' basis with a view to bringing that audit to a conclusion.

39. The Respondent further submitted that the Appellant's submissions in relation to the appropriate mark up percentages in his business were premised on his achieving 84 pints per keg. The Respondent pointed out that Tax Briefing 36 (June 2009) detailed an achievable return of 91/92 pints per keg. The Respondent's trade analysis for 2010 was premised on 88 pints per keg which, the Respondent submitted, made adequate allowance for wastage issues.

40. The Appellant had further submitted that 33.7% of non-draught purchases should be applied to off-licence sales with an aggregated mark up of 22.5%. The Respondent submitted that its weighted mark up of 122.51% already included and made allowance for lower mark ups applicable to small spirits, large wines, beer cans, large ciders, large minerals and cans of minerals. The Respondent further submitted that there were little or no transactional records maintained or submitted which documented off-licence sales of any other products, notwithstanding the Appellant having confirmed that he would maintain such records. The Respondent submitted that the sales records produced by the Appellant were wholly unreliable.

41. The Appellant had further submitted in correspondence that the aggregate mark up on all non-draught, non-off-licence purchases should be reduced from 128% to 112% on account of large spirit measures per 700ml/1000ml being reduced. The Respondent submitted that there was no basis whatsoever for such reduction, and the Appellant's submission was not in accordance with industry norms.

42. The Respondent further pointed out that the Appellant's trade analysis included an allowance of €3,000 in respect of free/promotional drinks. The Respondent submitted that no records whatsoever had been submitted to support the assertion of what was clearly an estimate for free/promotional drinks. They further submitted

that the purchases invoices recorded free products been received from suppliers which would adequately address any instances of free drinks.

43. In closing, the Respondent submitted that the burden of proof in the appeal rested on the Appellant and, unless the Appellant by his own or other lawful evidence established that he had been overcharged by the assessments under appeal, those assessments should stand in accordance with section 934(3) of TCA 1997.

44. They further submitted that there was a duty on the Appellant to maintain records, including till rolls, pursuant to section 886 of TCA 1997, section 84 of the Value Added Tax Consolidation Act 2010 and regulation 8 of the VAT Regulations 2006 (S.I. 548/2006) as amended by S.I. 238/2008.

6. Evidence on behalf of the Appellant

45. I heard evidence over two days at the hearing of this appeal. The Appellant gave evidence on Oath and his testimony was reflective of the submissions made on his behalf by his agent. He testified that the primary source of the 2000 lodgement of £35,000 was funds received from his mother-in-law. His evidence was that the source of the other lodgements to the various accounts which had been assessed by the Respondent as undeclared income was in fact declared income which had been properly assessed to tax. He reiterated that some of the other lodgements would have been reinvestments or roll-overs of previously invested funds. He submitted that other cash or mixed lodgements could "*possibly*" have been from sales generated in the pub. The Appellant was unable to recall precisely the source of any lodgements other than the original lodgement of £35,000.

46. I further heard evidence on Oath from the Appellant's wife. In advance of giving evidence, the Appellant's wife had submitted a short written statement dated the 15th of March 2016 dealing with the source of the funds which made up the lodgement of £35,000 on the 25th of February 2000. She said that the said sum was comprised as follows:-

(a) £10,000 received from her mother and father in or around 1979, 1980 or possibly 1990;

(b) Her personal savings of £8,000 from AIB, which she had earned before 1978;

(c) Wedding presents of some £7,000;

(d) Money taken from the pub safe belonging to the Appellant's mother of £2,000;

(e) Winnings from greyhound racing of £1,980;

(f) Winnings from horse races at [redacted] of £1,500; and,

(g) Money belonging to Mrs [redacted]'s mother of £4,000, which Mrs. [redacted] kept in her own name.

47. In her oral evidence, the Appellant's wife stated that the lodgement of £35,000 came from cash which had previously been kept in a safe in the cellar of the pub premises.

48. She testified that some £8,000 of the £35,000 was her own money, which she had saved prior to her marriage in 1978. She had worked in the Post Office for approximately 7 years prior to her marriage. She had formerly kept the £8,000 in savings in an account with AIB but took the monies out of the account approximately 2 years prior to 2000.

49. She further confirmed that another source for the £35,000 lodgement was "*more than £7,000*" which she and the Appellant had received as wedding presents in 1978.

50. She further testified that the safe had held some £17,000 or £18,000 or £19,000 which belonged to the Appellant's mother. She said that the Appellant's mother had asked the Appellant to keep her money safe following a robbery at her home. She said that these monies had been kept in a rolled-up newspaper in the safe. She further testified that some £8,000 or £9,000 had been kept in an envelope in the safe.

51. She further testified that the Appellant's mother had given her "*a couple of thousand*". When I asked her to clarify this, she said that she had received "*maybe £5,000*."

52. In relation to the £10,000 which her statement recorded her as receiving from her parents, the Appellant's wife testified that she believed that this was made up of a gift for her daughter of £5,000 received in 1979 and a further gift of £5,000 received for her son in 1982.

53. The witness further testified that some £1,980 had been received as winnings from greyhound racing, but she said she was no longer sure if these monies made up part of the £35,000 lodgement.

54. The witness further confirmed that some £1,500 of the £35,000 lodgement was the proceeds of a winning bet on a horse race at [redacted].

55. The witness said that the proceeds of the £35,000 lodgement were probably spent on "*stuff for the house*" and reinvested into other savings products with [redacted].

56. In cross-examination, the Appellant's wife testified that she had been prompted to take the cash from the safe and lodge it to [redacted] in February 2000 because the Appellant was sick and because the Appellant's mother had been robbed. She was unable to say how much money had been stolen from the Appellant's mother and said that not all of her money had been stolen because some of it was hidden. She testified

that she and the Appellant kept track of how much money belonged to the Appellant's mother by keeping her money in an envelope with her mother-in-law's name on it. She further testified that she had returned some of the monies to the Appellant's mother but was unable to say how much had been returned. She said that she would have given money back to her mother-in-law so that her mother-in-law could give money to her grandchildren on their birthdays.

57. The Appellant's wife further testified that she did not know why her mother-in-law did not lodge the monies to her own bank account – she did not know whether or not her mother-in-law had a bank account. She said that the Appellant's siblings did not know that she and the Appellant were minding money for her mother-in-law because her mother-in-law had asked them not to reveal this to the siblings.

58. The witness further testified that she had given some of the money belonging to her own mother back to her, but she was unable to say how much of her mother's money she had returned.

59. She further confirmed that the safe was also used for the purposes of holding monies generated by the pub and off-licence.

7. Analysis & Findings

60. I believe the appropriate starting point for my analysis of the issues is to record my agreement with the Respondent's submission that the burden of proof in this appeal rests upon the Appellant. This proposition is now well-established by case law; for example, in ***Menolly Homes Ltd –v- Appeal Commissioners*** **[2010] IEHC 49**, Charlton 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."

61. Turning to the first core issue in this appeal, in order to succeed in this aspect of his appeal, the Appellant must satisfy me on the balance of probabilities that the various lodgements made to accounts and investments in his name and his wife's name were not made from undeclared trading income from his pub and off-licence business.

62. The first of these lodgements was the sum of £35,000 paid into [redacted] on the 25th of February 2000. This was a Single Premium Investment Policy. The position maintained by and on behalf of the Appellant up to the hearing of the appeal was that the source of these funds was the Appellant's mother-in-law. This was stated consistently and repeatedly in correspondence. The Appellant furnished me with a copy of a receipt from First Active for payment of £35,000 dated the 24th of February 2000 upon which was written in manuscript "*MAMMY MONEY*"; however, it is not clear when this note was made on the receipt.

63. A different explanation was, however, given at the commencement of and during the appeal. The written statement of the Appellant's wife dated the 15th of March 2016 stated that there were seven different sources for the sum of £35,000, namely:-

(a) £10,000 received from her mother and father in or around 1979, 1980 or possibly 1990;

(b) Her personal savings of £8,000 from AIB, which she had earned before 1978;

(c) Wedding presents of some £7,000;

(d) Money taken from the pub safe belonging to the Appellant's mother of £2,000;

(e) Winnings from greyhound racing of £1,980;

(f) Winnings from [redacted] of £1,500; and,

(g) Money belonging to Mrs [redacted]'s mother of £4,000, which Mrs. [redacted] kept in her own name.

64. In her oral evidence, the Appellant's wife stated that she was no longer certain that the £1,980 winnings from greyhound racing had formed part of the £35,000 lodgement.

65. More significantly, in my view, it is apparent from both the written statement and from the oral evidence given by the Appellant's wife that the position sought to be advanced at the hearing of this appeal was that a substantial proportion of the £35,000 had not in fact come from the Appellant's mother-in-law. The written statement indicated that only £4,000 had come from the Appellant's mother-in-law, and a further £10,000 had been received from his mother- and father-in-law.

66. Some £18,480 was, according to the written statement, the personal property of the Appellant and his wife, made up of her pre-marital savings, their wedding presents and their horse-racing and greyhound winnings. This was the first time that it was suggested that more than half of the total amount lodged in February 2000 had been the property of the Appellant and his wife.

67. There was a further move away from the original position (*i.e.* that all of the £35,000 had been received from the Appellant's mother-in-law) in the course of his wife's oral evidence. Her evidence was that the £10,000 she had received from her parents was comprised of two gifts of £5,000 each for her children.

68. Overall, I am not satisfied as to the accuracy and veracity of the evidence given by the Appellant and his wife in relation to the sources of the £35,000 lodgement. Their evidence was, as the Respondent pointed out, frequently inconsistent and

contradictory. It was also manifestly at variance with the position which had been maintained by the Appellant up to the commencement of the appeal. No documentary evidence was submitted by the Appellant to support his explanations for the sources of the money; the only document offered, namely the receipt from [redacted] for the £35,000 with "*MAMMY MONEY*" written thereon at an unknown date does not corroborate the account of there being some seven different sources for the lodgement. I also find it implausible that monies the property of the Appellant's mother and mother-in-law were lodged in a financial account in the name of the Appellant and his wife, and not in their own names.

69. I believe it is also relevant to have regard to the fact that the existence of this investment was not disclosed by the Appellant to the Respondent in the course of the 2008 audit, and particularly when he completed the Form SA1. While I readily accept that the Appellant may have been stressed and under pressure as a result of that audit and the likely consequences thereof, he was professionally advised at the time and I do not accept that he was unaware of the obligation to disclose all bank accounts and investments. I also find it impossible to believe that he simply overlooked the existence of such a substantial asset.

70. For the reasons set forth above, the Appellant has not satisfied me on the balance of probabilities that the source of the £35,000 was not previously undeclared trading income from his pub and off-licence business.

71. In relation to the second lodgement of €25,180.36 made on the 19th of February 2002, the Appellant's agent accepted that the Appellant could not establish exactly where the funds for this lodgement had come from. He submitted that they "*possibly*" came from bonds or a previous account. I accept that efforts were made to obtain information and documents from [redacted] Bank but these were only partially successful because of the passage of time. He submitted that I was entitled to conclude that the

funds were the proceeds of the Appellant's savings from previously declared income from the pub business, and that I ought to have regard to the fact that the Appellant had been in business for many years and was prudent in the management of his financial affairs.

72. However, the Appellant has proffered no evidence whatsoever in support of this submission. I also find it relevant that this account was not disclosed by the Appellant to the Respondent in his Form SA1 or otherwise during the 2008 audit. The Appellant therefore has not satisfied me on the balance of probabilities that the source of the €25,180.35 was not previously undeclared trading income from his pub and off-licence business.

73. Turning to the four lodgements made in December 2002 and March 2003, it was submitted on behalf of the Appellant that these transactions were simply a statement of an existing balance (in the case of the December 2002 transaction) and transfers in from other accounts (in the case of the March 2003 transactions). It was suggested in correspondence that a lodgement of €5,941.13 on the 14th of March 2003 came from the existing balance of €5,983.46 recorded on the 31st of December 2002. However, no documentary evidence was proffered by the Appellant in support of this submission, nor was any documentary evidence offered in relation to the other three transactions.

74. Accordingly, the Appellant has not satisfied me on the balance of probabilities that the source of the €25,180.35 was not previously undeclared trading income from his pub and off-licence business.

75. Turning finally to the 14 lodgements made between the 1st of July 2003 and the 4th of February 2004, it was submitted on behalf of the Appellant that these were a mixture of transfers in from or balance statements of existing accounts and cash or mixed

lodgements. No documentary evidence was proffered to me in relation to these sums, nor was the Appellant able to offer an explanation for the source of the funds, other than submitting that they represented earnings and savings from his business activities over his years as a publican. The Appellant's agent also submitted that some of the lodgements could have come from sales in the pub, remaining monies held in the safe and/or the proceeds of successful bets on horse and greyhound races.

76. Again, while the submission made on behalf of the Appellant is certainly possible in theory, no satisfactory evidence was given in support of the submission. I find it difficult to accept that that the Appellant and his wife were unable to offer any explanation for certain of the larger lodgements, such as the sum of €46,634.72 transferred in on the 4th of February 2004. Again, I believe it is relevant that none of the five accounts into which these lodgements were made was disclosed by the Appellant to the Respondent in his Form SA1.

77. Accordingly, the Appellant has not satisfied me on the balance of probabilities that the source of the €116,020.26 was not previously undeclared trading income from his pub and off-licence business.

78. It was further submitted on behalf of the Appellant that the payments he had made in settlement of the 2008 audit had not been taken into account or fully taken into account by the Respondent in assessing him to tax. The Respondent accepted that insufficient credit had been given initially, as it had only allowed a net deduction of €65,945.00 in respect of unrecorded sales to be assessed for the year ending 31 March 2004. In its written submissions dated the 14th of April 2015, the Respondent accepted that a credit should have been allowed for the VAT-inclusive sum of €79,844 when calculating the unrecorded income to be assessed to income tax and VAT.

79. Having carefully considered the submissions of the parties in this regard, and in particular the letter from the Respondent to the Appellant's agent dated the 23rd of October 2013, I am satisfied that the Appellant has been allowed full credit for the monies assessed to tax in the 2008 audit by the increased credit of €79,844 now being accepted as the appropriate amount by the Respondent. I am further satisfied that the Appellant is not, once the aforesaid credit has been allowed in the calculation of his liability to tax, being subject to a double taxation of the same income.

80. The next issue to be considered is the question of the appropriate mark up percentage applicable to the Appellant's trade. Again, the onus of proof is on the Appellant to satisfy me that the Respondent's estimate of the appropriate mark up percentage to be applied is excessive or incorrect.

81. I would firstly observe in this regard that resolution of this issue would have been significantly easier if the Appellant had maintained full and proper books and records in relation to the business, as he had undertaken to do following the 2008 audit. The failure by the Appellant to use or retain daily transactional till rolls meant that both parties were obliged to rely on a trade analysis of the Appellant's business for 2010.

82. Having carefully considered the submissions made by both parties in relation to this issue, I am satisfied and find as a material fact that the trade analysis carried out by the Respondent is the more accurate. In particular, I believe that the trade analysis carried out on behalf of the Appellant is flawed in being premised on only 84 pints per keg being achievable, rather than 88; I am satisfied that the latter figure is more appropriate and makes adequate allowance for wastage. I am further satisfied that there is no adequate justification for the Appellant's suggested reduction in the aggregate mark up on all non-draught, non-off-license purchases from 128% to 112%. I also believe that the sum of €3,000 claimed by the Appellant in respect of

free and/or promotional drinks is excessive when allowance is given for the fact that purchases invoices record that he received free products from suppliers.

83. Accordingly, the Appellant has not satisfied me on the balance of probabilities that the average mark ups used by the Respondent for the purposes of assessing the Appellant to tax in the years 2008 to 2012 inclusive were excessive and ought to be reduced.

84. For the reasons outlined above, I find that the Appellant has not succeeded in either aspect of his appeal against the amended assessments to income tax and the assessments to VAT.

8. Conclusion

85. The Appellant has not succeeded in his appeal in relation to the source of multiple lodgements to various financial accounts between 2000 and 2004 inclusive, nor has he succeeded in his appeal in relation to the appropriate mark up percentage to be applied in calculating the sums to be assessed to tax in respect of the years 2008 to 2012 inclusive.

86. However, as recorded in paragraphs 18 and 78 above, the Respondent accepts that insufficient credit was allowed to the Appellant in calculating the amount assessable to tax for the year ended 31 March 2004. A credit of €65,945 was allowed by the Respondent but a credit of €79,844 should have been allowed.

87. I therefore determine pursuant to section 949AK of the Taxes Consolidation Act 1997 as amended that the Appellant has by reason of the assessment to VAT for the period January/February 2004 dated the 14th of May 2014 been overcharged to tax, and determine that the said assessment be reduced to €8,891 accordingly.

88. I further determine pursuant to section 949AK of the Taxes Consolidation Act 1997 as amended that the Appellant has by reason of the amended assessment to income tax for the year ending 31 March 2004 dated the 27th of February 2014 been overcharged to tax, and determine that the said assessment be reduced accordingly.

89. I further determine pursuant to section 949AK of the Taxes Consolidation Act 1997 as amended that the Appellant has not been overcharged or undercharged to tax by reason of the other assessments the subject matter of this appeal, and determine that those assessments stand.

Dated the 11th of March 2022

MARK O'MAHONY
Appeal Commissioner