AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

38TACD2023

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against an assessment to income tax raised by the Revenue Commissioners ("the Respondent") on 27th July 2021.

2. The assessment covers the year 2017 and the income tax on the assessment amounts to €27,951. The Appellant makes his appeal in accordance with the provisions of section 933 (1) Taxes Consolidation Act 1997 ("TCA 1997").

Background

3. The Appellant is a director of [redacted] Limited ("the company") and has held that position since the company was incorporated on [redacted]. The company is a United Kingdom ("UK") resident company and trades solely in the UK providing concrete frame contractor works in that market.

4. The Appellant held 30% of the company's ordinary share capital and as such was considered a proprietary director. A proprietary director is a director of a company who is able to control more than 15% of the ordinary share capital of a company, either directly or indirectly.

5. On 21st February 2017, the Appellant transferred the entire amount of his shareholding in the company to his adult children. The effect of transferring his shareholding in the company was that he was no longer considered to be a proprietary director from the date of the transfer as his shareholding was reduced to nil. The Appellant continues working for the company in the role of non-proprietary director.

6. In 2017, the Appellant was paid a salary which equated to [redacted]. This was split to the sum of [redacted] for the period 1st January 2017 to 21st February 2017 and [redacted] for the period 22nd February 2017 to 31st December 2017.

7. The Appellant claimed Transborder Worker' Relief ("the relief") pursuant to section 825A TCA 1997 with respect to his UK employment income received from the company during the period in which he was employed as a non-proprietary director. The relief permits qualifying individuals who are tax resident in Ireland, but work and pay tax in another country, to effectively remove their earnings in respect of a qualifying foreign employment from liability to Irish tax where foreign tax has been paid on those earnings.

8. Within the Appellant's tax returns for 2017 and 2018, he included an identical expression of doubt which stated:

> "*The relevant section of the Act has been considered and on the basis of the legislation it would appear that the relief is available for the remuneration paid for the period from April [sic] 2017. However, when the published Revenue documentation is considered it would appear that the relief is intended to apply to individuals who commute on a daily/weekly basis to their place of work outside the State. In this case, the taxpayer commutes to the UK generally one day each month and for the relevant period he has been in the UK for not more than three days in any one month. The doubt is therefore whether the relief is available in the circumstances of this case.*"

The purpose of an expression of doubt is to indicate to the Respondent a genuine doubt about the application of law or the treatment for tax purposes of any matter contained in a tax return. The benefits of making a genuine expression of doubt is if it is subsequently found that the view taken by the taxpayer was incorrect, the taxpayer

will nevertheless be regarded as having made a full and true disclosure. This means that any additional tax due because of the correction of the error will be due and payable within one month of the date on which the assessment is amended.

9. The Respondent initiated an "aspect query" by way of letter to the Appellant on 29th November 2019. An aspect query is a type of assurance check conducted by the Respondent and is regarded as a short, targeted intervention for the purpose of checking a particular risk identified in relation to a taxpayer's affairs. The outcome of the Appellant's aspect query was that the Respondent formed the view that the Appellant was not entitled to avail of the relief and it denied the relief for the year 2017. The Respondent issued an amended notice of assessment for the tax year 2017 on 27th July 2021 in the sum of €27,951. This sum represents the quantum of additional tax due by virtue of withdrawing the relief originally claimed on the Appellant's 2017 income tax return.

10. The Appellant who was not in agreement with the notice of assessment filed a notice of appeal with the Commission on 25th August 2021.

11. The oral hearing took place remotely before the Commissioner on 28th October 2022. Both the Appellant and the Respondent were represented by Counsel and the Commissioner had the benefit of written submissions from both parties in advance of the hearing date.

Legislation

12. The legislation relevant to this appeal is as follows*:*

Section 2 TCA 1997

…

"year of assessment" means—

…

> *(c) hereafter, a calendar year and, accordingly, the "year of assessment 2002" means the year beginning on 1 January 2002 and any corresponding expression in which a subsequent year of assessment is similarly mentioned means the year beginning on 1 January in that year;*

…

Section 472 TCA 1997

(1) (a) In this section

…

"proprietary director" means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

…

Section 825A TCA 1997- Reduction in income tax for certain income earned outside the State

(1) In this section—

"authorised officer" has the same meaning as in section 818;

"proprietary director" has the same meaning as in section 472;

"qualifying employment", in relation to a year of assessment, means an office (including an office of director of a company which would be within the charge to corporation tax if it were resident in the State, and which carries on a trade or profession) or employment which is held—

(a) outside the State in a territory with the Government of which arrangements are for the time being in force by virtue of 826 (1), and

(b) for a continuous period of not less than 13 weeks, but excluding any such office or employment—

(i) the emoluments of which are paid out of the revenue of the State,

(ii) with any board, authority or other similar body established in the State by or under statute;

"the specified amount" in relation to an individual means, as respects the year of assessment concerned, the amount of tax for that year determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the amount of tax which, apart from this section, would be chargeable on the individual for that year of assessment, other than tax charged in accordance with section 16(2), and after taking account of any such reductions in tax as are specified in the provisions referred to in Part 2 of the Table to section 458 but before credit for any foreign tax paid on any income, profits or gains assessed for that year,

B is the total income of the individual for that year but excluding any income, profits or gains from a qualifying employment for that year,

C is the total income of the individual for that year.

(2) This section shall not apply in any case where the income, profits or gains from a qualifying employment are—

(a) chargeable to tax in accordance with section 71(3),

(b) income, profits or gains to which section 822 applies, or

(c) income, profits or gains paid to a proprietary director or to the spouse of that person by a company of which that person is a proprietary director.

(3) Where for any year of assessment an individual resident in the State makes a claim in that behalf to an authorised officer and satisfies that officer that—

(a) he or she is in receipt of income, profits or gains from a qualifying employment,

(b) the duties of that qualifying employment are performed wholly outside the State in a territory, or territories, with the Government or Governments of which arrangements are for the time being in force by virtue of section 826(1),

(c) the full amount of the income, profits or gains from that qualifying employment is, under the laws of the territory in which the qualifying employment is held or of the territory or territories in which the duties of the qualifying employment are performed, subject to, and not exempt or otherwise relieved from, the charge to tax,

(d) the foreign tax due on that income, profits or gains from that qualifying employment has been paid and not repaid or entitled to be repaid, and

(e) during any week in which he or she is absent from the State for the purposes of the performance of the duties of the qualifying employment, he or she is present in the State for at least one day in that week,

he or she shall, where the amount of tax payable in respect of his or her total income for that year would, but for this section, exceed the specified amount, be entitled to have the amount of tax payable reduced to the specified amount.

(4) In determining for the purposes of paragraph (b) of subsection (3) whether the duties of a qualifying employment are exercised outside the State, any duties performed in the State, the performance of which is merely incidental to the performance of the duties of the qualifying employment outside the State, shall be treated for the purposes of this section as having been performed outside the State.

(5)This section shall not apply in any case where the income, profits or gains of a qualifying employment are the subject of a claim for relief under—

(a) section 472B, or

(b) section 823.

(6) Where in any case an individual has the tax payable in respect of his or her total income for a year of assessment reduced in accordance with subsection (3), that individual shall, notwithstanding anything in Part 35, not be entitled to a credit for foreign tax paid on the income, profits or gains from a qualifying employment in that year.

(7) For the purposes of this section—

(a) as respects the year of assessment 2009 and previous years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day, and

(b) as respects the year of assessment 2010 and subsequent years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at any time during that day.

(8) Notwithstanding anything in the Tax Acts, the income, profits or gains from a qualifying employment shall for the purposes of this section be deemed not to include any amounts paid in respect of expenses incurred wholly, exclusively and necessarily in the performance of the duties of the qualifying employment.

Section 959P Expression of doubt.

(1) In this section—

"law" means one or more provisions of the Acts;

"letter of expression of doubt", in relation to a matter, means a communication by written or electronic means, as appropriate, which—

(a) sets out full details of the facts and circumstances of the matter,

(b) specifies the doubt, the basis for the doubt and the law giving rise to the doubt,

(c) identifies the amount of tax in doubt in respect of the chargeable period to which the expression of doubt relates,

(d) lists or identifies the supporting documentation that is being submitted to the appropriate inspector in relation to the matter, and

(e) is clearly identified as a letter of expression of doubt for the purposes of this section,

and reference to "an expression of doubt" shall be construed accordingly.

(2) Where a chargeable person is in doubt as to the correct application of the law to any matter to be contained in a return required for a chargeable period by this Chapter, which could—

(a) give rise to a liability to tax by that person, or

(b) affect that person's liability to tax or entitlement to an allowance, deduction, relief or tax credit,

then, the chargeable person may—

(i) prepare the return for the chargeable period to the best of that person's belief as to the correct application of the law to the matter, and deliver the return to the Collector-General,

(ii) include a letter of expression of doubt with the return, and

(iii) submit supporting documentation to the appropriate inspector in relation to the matter.

(3) This section applies only if—

(a) the return referred to in subsection (2) is delivered to the Collector-General, and

(b) the documentation referred to in paragraph (iii) of that subsection is delivered to the appropriate inspector,

on or before the specified return date for the chargeable period involved.

(3A) (a) The documentation referred to in subsection (3) (b) shall be delivered by electronic means where the return referred to in subsection (2) is delivered by electronic means.

(b)The electronic means by which the documentation referred to in subsection

(3) (b) shall be delivered shall be such electronic means as may be specified by the Revenue Commissioners for that purpose.

(4) Where a return is delivered in accordance with subsection (2), a self assessment shall, where required under section 959R, be included in the return by reference to the particulars included in the return.

(5) Subject to subsection (6), where a letter of expression of doubt is included with a return delivered by a chargeable person to the Collector-General for a chargeable period—

(a) that person shall be treated as making a full and true disclosure with regard to the matter involved, and

(b) any additional tax arising from the amendment of an assessment for the chargeable period by a Revenue officer to give effect to the correct application of the law to that matter shall be due and payable in accordance with section 959AU(2).

(6) Subsection (5) does not apply where a Revenue officer does not accept as genuine an expression of doubt in respect of the application of the law to a matter, and an expression of doubt shall not be accepted as genuine in particular where—

(b) the officer is of the opinion, having regard to any guidelines published by the Revenue Commissioners on the application of the law in similar circumstances and to any relevant supporting documentation delivered to the appropriate inspector in relation to the matter in accordance with subsections (2) and (3), that the matter is sufficiently free from doubt as not to warrant an expression of doubt, or

(c) the officer is of the opinion that the chargeable person was acting with a view to the evasion or avoidance of tax.

(7) Where a Revenue officer does not accept an expression of doubt as genuine, he or she shall notify the chargeable person accordingly and any additional tax arising from the amendment of an assessment for the chargeable period by a Revenue officer to give effect to the correct application of the law to the matter involved shall be due and payable in accordance with section 959AU (1).

(8) A person aggrieved by a Revenue officer's decision that the person's expression of doubt is not genuine may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

Section 959 AU TCA 1997 -Date for payment of tax: amended assessments.

(1)Subject to subsection (2) and section 959AV, any additional tax due by reason of the amendment of an assessment for a chargeable period shall be deemed to be due and payable on the same day as the tax due under the assessment, before its amendment, was due and payable.

(2)Where—

(a) the assessment was made after the chargeable person had delivered a return containing a full and true disclosure of all material facts necessary for the making of the assessment, or

(b) the assessment had previously been amended following the delivery of the return containing such disclosure,

any additional tax due by reason of the amendment of the assessment shall be deemed to have been due and payable not later than one month from the date of the amendment.

Submissions

Appellant

13. The Appellant's Counsel advised the Commission that the Appellant was deemed eligible for the relief in the years of assessment following 2017 as the Respondent accepted that he fulfilled the conditions necessary for the relief in the years of assessment 2018 onwards.

14. Counsel for the Appellant stated that the Respondent wrote to the Appellant on 15th March 2021 outlining its reasons why it was denying the relief for the period under appeal. It stated:

> "*Having reviewed the information provided on Mr [redacted] behalf, I confirm that it is Revenue's view that the claim for Transborder Workers' Relief is invalid. Section 825A (2) (c) TCA 1997 states that relief "shall not apply in any case where the income, profits or gains from a qualifying employment are – income, profits or gains paid to a proprietary director or to the spouse of that person by a company of which that person is a proprietary director". Section 825A also defines a "qualifying employment" in relation to a "year of assessment".*
>
> *Transborder Workers' Relief is a relief given on the total income in a year of assessment. As Mr [redacted] only held one qualifying employment in 2017, the year of assessment, the income from that employment includes income paid to a proprietary director and therefore, he is not entitled to claim relief for any part of his income in that year. Section 825A does not provide for the apportionment of the income from the qualifying employment*."

15. As the Respondent deemed that the Appellant was ineligible for the relief in 2017 on the grounds that he had acted as a proprietary director for part of that year, Counsel for the Appellant submitted that the Respondent had erred in its interpretation of section 825A TCA 1997.

16. The Appellant's Counsel submitted that the correct rules for interpretation of section 825A TCA 1997 was that proffered in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 5 ("*Dunnes*"). In *Dunnes*, it held that the correct rules for interpreting taxation statues was firstly to interpret the relevant statutory provision giving the words within that provision their "*plain and ordinary meaning*".

17. In so doing, the Appellant's Counsel submitted that as section 825A (1) (b) TCA 1997 specifically refers to "*emoluments paid*", then the relief ought to apply to those periods in 2017 where the Appellant was paid a salary in respect of his role as a non-proprietary director.

18. Counsel for the Appellant advised that unlike what the Respondent was suggesting in its letter of the 15th March 2021, the Appellant was not seeking to have his income for the year apportioned. The Appellant's Counsel submitted that apportionment was not necessary as it was easily identifiable from looking at the Appellant's employer's

payroll for the period under review to establish those payments which were paid to the Appellant when he acted in the role of proprietary director and those periods in which he did not. Hence, what the Appellant sought was that those payments obtained from the Appellant's employer's payroll for the periods in which he acted as a non-proprietary director be deemed eligible for the relief as they related to payments made when the Appellant was not engaged in the role of a proprietary director.

19. Counsel for the Appellant further submitted that the only temporal limit imposed within section 825A TCA 1997 was under subsection (1) (a) of that provision which requires the Appellant to have held his employment for a minimum period of 13 weeks. As the Appellant held his role as a non-proprietary director for excess this time requirement, Counsel submitted that he fulfilled this condition and as such was entitled to the relief.

20. The Appellant's Counsel submitted that the approach adopted by the Respondent sought to restrict the relief without basis. Counsel further submitted that the Respondent's reliance on the reference to the "year of assessment" in section 825A TCA 1997 in denying the claim was ill founded and it did not have the narrow meaning that the Respondent was advancing, namely that once a person in concern is a propriety director in a year of assessment then all other qualifying employments or offices are tainted and, therefore, they are unable to claim this relief in its entirety despite satisfying all the other criteria.

21. Counsel for the Appellant submitted there was no ambiguity in the wording of section 825A TCA 1997, but if the Commissioner determined otherwise, then regard ought to be had to the intentions of the Oireachtas as promulgated in *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60. Counsel submitted in so doing that the Commissioner would find that the intention of the Oireachtas was not to impose a total prohibition on the relief in circumstances where an individual held a position of proprietary director for part of a tax year but rather to allow the relief to be granted in those periods where an individual was paid for services rendered as a non-proprietary director.

22. In summation, the Appellant's Counsel submitted that the Respondent had incorrectly interpreted the provisions of section 825A TCA 1997, and accordingly, the Appellant is entitled to claim the relief for the period 22nd February 2017 to 31st December 2017. In those circumstances, the Appellant's Counsel requested the Commission to allow the within appeal.

Respondent

23. The Respondent's Counsel submitted that the relief operates as an effective exemption from income tax on qualifying income in a year of assessment. As a year of assessment equates to the period 1st January to 31st December in any given tax year, and as the Appellant only had one source of income in the period under appeal, Counsel submitted as the income was derived from the Appellant's role as a proprietary and non-proprietary director, and given that the former income was precluded from the relief, then it was incumbent on the Respondent and the Commission to deny the Appellant the relief sought.

24. Counsel for the Respondent submitted that as section 825A TCA 1997 is a relieving section as opposed to a charging section of the taxes acts then the correct method of interpreting section 825A TCA 1997 was that advanced by the Supreme Court in *Revenue. Commissioners v. Doorley* [1933] I.R. 750 ("*Doorley*") where Kennedy C.J. held at p. 766:

> "*Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible'."*

25. Counsel for the Respondent submitted in applying the principles of *Doorley,* and in noting that section 825A TCA 1997 did not set out the exemption sought by the Appellant in clear and unambiguous terms and/or at all, then this was further proposition that the relief sought must be denied to the Appellant.

26. The Respondent's Counsel submitted that the Appellant only held one employment in the 2017 year of assessment and as such the Respondent was unsure why the Appellant was advancing submissions in relation to other qualifying employments. The Respondent's Counsel advised in circumstances where a taxpayer held more than one

foreign employment in a year of assessment and had submitted claims under section 825A TCA 1997 in respect of those employments, that each individual employment was assessed under the legislation in order to establish if it fulfilled the requisite criteria under section 825A TCA 1997. Counsel for the Respondent submitted, however, that as there was only one employment held by the Appellant in 2017, then it was required under the legislation to look solely at that employment and in so doing found that the Appellant was ineligible for the relief.

27. In summation, the Respondent submitted that the Appellant was not entitled to the relief for the period under appeal as he received income from his role as both a proprietary and non-proprietary director in the year of assessment. As section 825A (2) TCA 1997 precludes income paid to a proprietary director from the relief, Counsel submitted that the relief ought to be denied and the assessment upheld.

Material Facts

28. The Commissioner finds the following material facts:-

    28.1 The Appellant was employed as a proprietary director until he disposed of his entire shareholding on 21st February 2017.

    28.2 For the period 22nd February 2017 to 31st December 2017, the Appellant continued to work for and receive salary from his employer in his role as a non-proprietary director.

    28.3 In 2017, the Appellant received the sum of €[redacted] in respect of his role as a proprietary and non-proprietary director from his employer. This sum represented payment to the Appellant in respect of his dual role as a proprietary and non-proprietary director.

Analysis

29. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 *("Perrigo")* where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

> *"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at*

paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter

under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible"

30. Section 825A (1) (b) TCA 1997 provides that an amount which it refers to as "*the specified amount*" arising from a "*qualifying employment*" shall be relieved from an additional Irish taxation charge where certain conditions have been fulfilled and the specified amount has been subject to an amount of taxation in a foreign jurisdiction.

31. As all of those conditions have been satisfied, potentially save one, it follows that the Commissioner is required to determine whether the payments received from the Appellant's employer ("the specified amount") in the period under appeal were derived from a "qualifying" employment.

32. In considering the latter, the Commissioner is assisted by section 825A TCA 1997 which at subsection (1) defines a qualifying employment as "*in relation to a year of assessment, means an office…or employment which is held … for a continuous period of 13 weeks…*" Subsection 825A (2) TCA 1997, states that the section shall not apply "*in any case where the income, profits or gains from a qualifying employment are… income, profits or gains paid to a proprietary director…*"

33. In calculating the specified amount, section 825A (1) TCA 1997 requires use of a formula to calculate the amount of relief and similarly refers to "*a year of assessment*" within that calculation.

34. Applying the principles promulgated in *Perrigo*, and in giving those words their "*ordinary and plain meaning*" means that as the Appellant had income in the period under appeal (the year of assessment) from his role as a proprietary director, and as Section 825A TCA 1997 prohibits relief on such payments, then the appeal must fail.

35. Indeed, section 825A TCA 1997, refers to the "year of assessment" no less than five relevant times and within the provisions of section 825A TCA 1997, there is no legislative basis for the Appellant's submission that split year treatment is afforded in circumstances where the Appellant was engaged in the dual role as a proprietary and non-proprietary director in the year of assessment under appeal. The Commissioner

further endorses the Respondent's submission in noting that section 825A TCA 1997 is a relieving rather than a charging section of the taxes acts that if the legislator had intended to provide relief such as that sought in the within appeal, then having regard to the principles in *Doorley*, those provisions would be clearly set out in section 825A TCA 1997 "*in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes*". As Section 825A TCA 1997 does not contain provisions of a type envisaged by the Appellant, it follows that the appeal must be denied and the assessment upheld.

36. The Commissioner was advised during the course of the hearing that the expression of doubt furnished with the Appellant's 2017 and 2018 income tax returns were accepted by the Respondent as a "genuine" expression of doubt in advance of the appeal hearing. In accord with that agreement, the Commissioner further determines in compliance with the provisions of section 959P (5) (b) TCA 1997 and 959AU TCA 1997, that the due date on which the tax payable per the assessment is due for payment is 27th August 2021. This date represents a period of one month after the date the Respondent issued its revised notice of assessment.

37. In an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 where 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*"

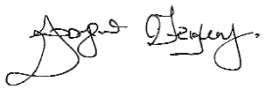
38. The Commissioner determines that the Appellant has not discharged the necessary burden of proof to satisfy the Commission that the assessment should be vacated. Accordingly, the appeal is denied and the assessment for 2017 in the sum of €27,951 is upheld.

Determination

39. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant tax is not payable. The assessment in the sum of €27,951 is therefore upheld with the due date for that sum being 27th August 2021.

40. The Commissioner appreciates this decision will be disappointing for the Appellant but the Commissioner has no discretion and must apply the provisions of the TCA, 1997. The Appellant was correct to check to see whether his legal rights were correctly applied.

41. The appeal is determined in accordance with section 949AK 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.



Andrew Feighery
Appeal Commissioner
20th December 2022