AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

70TACD2023

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") pursuant to section 111 of the Value Added Tax Consolidation Act 2010 ("VATCA 2010") and to section 933 of the Taxes Consolidation Act 1997, as amended ("TCA 1997") against assessments raised by the Revenue Commissioners to Value-Added Tax ("VAT") and income tax. The notice of appeal was stated to be in the total amount of €340,565 (€246,072 VAT + €94,493 income tax).

2. The appeal proceeded by way of a hearing on 20 February 2023.

Background

3. On 12 September 2018, the Respondent raised the following assessments to tax against the Appellant:

Income tax – 2014	19,640.00
Income tax – 2015	33,476.00
Income tax – 2016	41,263.00
VAT – 2014 to 2017	246,072.00

4. On 11 October 2018, the Appellant, via his agent, appealed the assessments to the Commission. An oral hearing was held in the appeal on 20 February 2023.

Legislation

5. Section 959AH(1) of the TCA 1997 provides that

> "*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*."

6. Section 959AC of the TCA 1997 provides *inter alia* that

> *"(2) Notwithstanding section 959AA, where in relation to a chargeable person—*
>
> *(a) the person fails to deliver a return for a chargeable period,*
>
> *(b) a Revenue officer is not satisfied with the sufficiency of a return delivered by the person having regard to any information received in that regard, or*

(c) a Revenue officer has reasonable grounds for believing that a return delivered by the person does not contain a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period,

then a Revenue officer may, at any time, make a Revenue assessment on the chargeable person for the chargeable period in such sum as, according to the best of the officer's judgment, ought to be charged on that person.

(3) Where a Revenue officer makes a Revenue assessment on a chargeable person under this section in the event of the failure of the person to deliver a return, it shall not be necessary to set out in the notice of assessment any particulars other than the amount of tax payable by the person for the chargeable period on the basis of that assessment."

7. Section 959V of the TCA 1997 provides *inter alia* that

"(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

[…]

(6) (a) Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.

(b) Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief.

(7) Notice under this section shall not be given in relation to a return and a self assessment after a Revenue officer has started to make enquiries under section 959Z in relation to the return or self assessment or after he or she has commenced an audit or other investigation which relates to the tax affairs of the person to whom the return or self assessment relates for the chargeable period involved."

8. Section 77A of the VATCA 2010 provides that

"(1)Where, following the submission to the Collector-General of a return (in this section referred to as an 'original return') required to be furnished under section 76 or 77, as appropriate, that return is adjusted by an accountable person by means of—

(a) a correction to the original return,

(b) a replacement of the original return, or

(c) a supplement to the original return,

(in this section and in section 76(4) referred to as an 'adjustment to a return') the provisions of any enactment relating to value-added tax shall apply to that adjustment to a return as if it were a return required to be furnished under section 76 or 77, as appropriate.

(2) Any adjustment to a return to which subsection (1) applies shall, where applicable, be deemed to be a claim for a refund of tax and be subject to the provisions of section 99."

9. Section 99(4) of the VATCA 2010 provides that

"A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates."

Submissions

Appellant

10. In written submissions handed to the Commissioner at the hearing, the Appellant's agent *inter alia*: queried the figures provided by the Respondent; stated that the Appellant required the "*Revenue Record"* in order to defend himself; stated that the assessments had been raised on the basis that the Appellant had failed to make returns but that returns had now been filed; that the newly filed returns would result in the VAT liability being "*totally wiped out*"; that consequently no VAT was owed; acknowledged that the High Court judgment in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 meant that officers of the Respondent may not be cross-examined as to their basis for assessments but that the judgment was wrong and did not apply to this appeal; that if the Respondent did not agree with the returns filed by the Appellant it should raise new assessments; that therefore the previous assessments could not be dealt with in this appeal; and that therefore the Appellant's appeal should succeed.

Respondent

11. In its written submissions, the Respondent stated that, as a preliminary point, the Appellant was not entitled to appeal the assessment to income tax for 2016 as the return had been filed but the tax not paid: section 959AH(1) of the TCA 1997. The remainder of its submissions was made without prejudice to the preliminary objection.

12. The Respondent submitted that:

> *"a. The VAT Registration numbers of companies previously controlled by the [Appellant] were used to import goods into the State without payment of VAT and that the subsequent sale of these goods was not declared on VAT and Income Tax returns submitted by him or on his behalf. At the time of the transactions giving rise to the tax liabilities occurred the companies whose VAT registration numbers were used were dissolved in the records of the Companies Registrations Office (CRO) and as such no longer legal entities. The companies were not reinstated in the CRO.*
>
> *b. In relation to the Income Tax and VAT assessments for the year 2014 the VAT registration number of an individual named* [redacted] *was similarly used, and the subsequent sale of these goods was not declared on VAT and Income Tax returns submitted by him or on his behalf.*
>
> *c. The Appellant also traded as a* [redacted] *in the period 2015 to 2017 and that the tax liabilities arising from this activity were not reflected on the VAT and Income Tax returns submitted by him or on his behalf."*

13. The Respondent further submitted that:

> *"A formal request in accordance with section 900 (3) TCA 1997, for the production of books, records or other documents was made. This request included the books, records, information and documents in the name of or purporting to relate to* [redacted] *after the date it was struck off by the CRO on the* [redacted] *2015 and* [redacted] *which was struck off on the* [redacted] *2007.*
>
> *The Appellant was requested to complete and submit 2 statement of affairs forms in accordance with section 909 TCA 1997. The Income Tax assessments were raised in accordance with section 959Y TCA 1997. Revenue can raise assessments pursuant to Section 959AC in the absence of a return or where Revenue is not satisfied with the sufficiency of the return delivered.*
>
> *The Appellant has failed, refused and/or neglected to provide –*

a. Any records.

b. The statements of Affairs.

c. The volume of transactions or the identities of the suppliers for the [redacted] business in relation to EU acquisitions.

d. Bank account details.

The Appellant confirmed the following –

a. The Appellant advised that [redacted] ceased trading in 2017 and that he was aware it had been struck off in the Companies Registrations Office on [redacted] 2015.

b. That a [redacted] business was carried on with 3 main customers [redacted] – all businesses local to [redacted] area.

c. That there were EU acquisitions, mainly [redacted].

d. The Appellant was advised that the 3 VAT numbers of his dissolved companies were used to import these acquisitions VAT. He did not deny this.

When queried as to the possible restoration of [redacted] in the CRO the Appellant advised that he had no intention of doing so. When advised of the correspondence received by the Collector General's office from [redacted] he reversed his previous statement and said he had discussed it with his agent.

The Appellant was a director of the 3 companies, whose VAT registration numbers he used. In addition he controlled 99% of [redacted], 100% of [redacted] and had effective control of [redacted]. In essence he knew or ought to have known the status of these companies when using their VAT registration numbers.

As a result of the failure by the Appellant to provide the information sought and/or complete, the failure to submit the statement of affairs, the acknowledgement that the VAT numbers of companies dissolved were used in the importation of EU acquisitions assessments were raised by Revenue for Income Tax for years 2014, 2015 and 2016 and VAT for the years 2014, 2015, 2016 and 2017.

The Appellant has failed, refused and/or neglected to provide any information or evidence which dislodges the assessments raised.

The onus rests on the Appellant to provide evidence to dislodge the assessments raised. He has failed to provide any evidence which would enable this tribunal to so find."

14. Shortly prior to the hearing, the Respondent provided an additional booklet of documents. These documents included:

    - Mutual Assistance Information received from HMRC, regarding transactions using VAT Number for [redacted].
    - Mutual Assistance Information received from HMRC, regarding transactions using the VAT Number for [redacted].
    - List of bank payments included on bank statements provided under exchange of information request
    - Sample of invoices issued by [redacted] to [the Appellant] using VAT Number for [redacted].
    - Evidence of transactions with [redacted] including Mutual Assistance Information received from HMRC.
    - Information received from German Tax authorities in relation to Inter community [*sic*] acquisitions made by made by the Appellant.
    - Evidence of [redacted] Services provided by the Appellant.

Material Facts

15. Having read the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:

    15.1 The Appellant had not paid the tax arising on foot of his income tax return for 2016.

    15.2 The Appellant had not provided any evidence to support his appeal and demonstrate that the Respondent's assessments were incorrect.

Analysis

16. The Commissioner considers that it would be helpful to set out a summary of the engagement between the parties and the Commission insofar as it is relevant to the matters under consideration in this appeal:

- 12 September 2018 - Assessments raised by the Respondent against the Appellant.
- 11 October 2018 – Appeal against assessment received from the Appellant's agent. The amount under appeal was stated to be €246,072 of VAT and €94,493 of income tax. The grounds were stated to be *inter alia* that the assessments were "*erroneous*", "*without foundation or reason*" and "*totally incorrect*".
- 14 January 2019 – the Respondent objected to the acceptance of the Appellant's appeal regarding income tax for 2016 on the basis that no return had been filed.
- 23 March 2019 – The Commission requested both parties to submit a Statement of Case ("SoC").
- 10 June 2019 – SoC received from the Respondent.
- 14 November 2019 – The Commission requested both parties to submit additional pre-hearing documentation.
- 12 March 2020 – The Respondent noted that no SoC had been provided by the Appellant and requested that the appeal be dismissed.
- 26 March 2020 – The Appellant's agent, [redacted], wrote to the Commission to state *inter alia* that

  "I apologise for delays but I am locked down in my office due to the virus and unable to visit [the Appellant] to discuss matters.

  However, I can answer most of your queries. If I omit any, please advise.

  (1) I estimate the hearing at one day max.

  (2) Our argument is simple. It is outlined in the appeal. It is that there is no basis for the [Respondent's] assessments and that we [w]ill want to cross examine them on the basis for their assessments. As they decline to provide them in advance we have to wait until the hearing to do so.

  (3) We have no documentary evidence to present as we have no idea on what basis [the Respondent] have made their assessments. If they would provide us [sic] it would shorten the hearing as we could then prepare our arguments in advance.

  (4) There is no agreed statement of facts, we don't even know what the facts are.

(5) *We are not relying on case law and have no commentaries. This case will be based on cross-examination unless [the Respondent agrees] to provide the full basis of their assessments in advance."*

- 4 May 2021 – The Respondent notified the Commission that it had not received the Appellant's SoC.
- 19 May 2021 – The Commission directed the Appellant to provide its SoC to the Respondent.
- 5 July 2021 – The Respondent stated that it had not received the Appellant's SoC and asked the Commission to dismiss the appeal.
- 14 July 2021 – The Commission notified the Appellant, via his agent, of the intention to dismiss the appeal for failure to provide the SoC to the Respondent, and directed him to comply with the previous direction and/or provide an explanation within fourteen days.
- 22 September 2021 – The Respondent sought an update.
- 22 September 2021 – The Commission sent a further notification to the Appellant and his agent of the intention to dismiss his appeal.
- 23 September 2021 – The Appellant's agent replied by email, "*My apologies but I have been very ill and only just am recovering. I hope to be back at work next Monday and will comply with your direction by following Monday October 4th. October 2021. Please do not dismiss as it would be unfair to my client [the Appellant] and is not his fault*."
- 8 November 2021 – Nothing have been received from the Appellant, a further notice of intention to dismiss the appeal issued to the Appellant and his agent.
- 17 November 2021 – The Appellant's agent submitted SoC which he claimed had originally been provided to the Commission on 24 May 2019. He also stated "*All Form 11 are filed up to date. Sorry for delay but Covid played havoc*."
- 17 November 2021 – The Commission advised the Appellant's agent that he was obliged to provide a copy of the SoC to the Respondent.
- 9 February 2022 – The Respondent referred to the previous notifications of intention to dismiss for non-compliance and asked the Commission to confirm whether the Appellant's appeal was dismissed.

- 6 April 2022 – The Respondent again asked the Commission to confirm whether the appeal had been dismissed.
- 29 June 2022 – The Commission provided the Respondent with a copy of the Appellant's SoC.
- 29 June 2022 – The parties were directed to provide pre-hearing documentation.
- 26 August 2022 – The Respondent provided its Outline of Arguments (OoA) to the Commission.
- 26 August 2022 – The Respondent emailed the Appellant's agent, copying the Commission, asking him to provide OoA, statement of facts and index of authorities.
- 1 November 2022 – The Commission notified the parties that the hearing of the appeal would be held on 17 January 2023.
- 7 November 2022 – The Respondent asked the Commission to advise whether the Appellant's OoA had been received.
- 7 November 2022 – The Commission confirmed to the Respondent that the Appellant's OoA had not been received.
- 11 November 2022 – The Respondent asked the Commission to issue a notice of intention to dismiss the appeal to the Appellant.
- 11 November 2022 – The Commission advised the Respondent that the Commissioner considered that the hearing could be scheduled on the basis of the SoC received from the Appellant and was therefore not willing to issue a notice of intention to dismiss.
- On 31 December 2022, the Appellant's agent email the Commission as follows:

  "*Thank you for your letter of November 1.*

  Unfortunately I got a dose of Covid which has prevented me complying with your request.

  I am therefore unable to comply with your deadlines.

  May I therefore respectfully request the following as I am sure I will be able to meet them.

  1. I liaise with other side by Janary 14.

2. *We provide the docments requested by January 31.*

3. *The hearing be scheduled on or after March 1.*

Becasue I appreciate that the Commissioners time is valable I sugegst deadlines I can meet."

- On 3 January 2023, the Commission wrote to the Appellant's agent to state

  "*The Appeal Commissioner has considered your request and notes this is the first we have heard from the Agent since we issued the hearing notice on 1 November. The Commissioner is willing to allow a short postponement until Monday 20th February 2023, please see updated letter attached.*

  The Commissioner also directs the Appellant to provide all the documents for the hearing which were previously directed by 31 January 2023 and has advised there will be no further adjournments granted."

- 7 February 2022 – the Respondent stated that it had not received any documentation from or on behalf of the Appellant and asked for an update from the Commission.

- 7 February 2022 – The Commission requested the Appellant's agent to comply with the direction to provide all documentation by 31 January 2023 as a matter of urgency.

- 8 February 2022 – The Appellant's agent submitted his OoA. He stated "*I apologise for delay but I had Covid.*" He stated that he would attend the hearing with the Appellant and requested that the start time of the hearing be delayed slightly to facilitate their arrival by train.

  The OoA stated inter alia that "*In short there is no basis for the revenue assessments and that we will want to cross examine them on the basis for their assessments. As they decline to provide them in advance we have to wait until the hearing to do so…We are not relying on case law and have no commentaries. This case will be based on cross-examination unless Revenue agree to provide the full basis of their assessments in advance…At the start of the hearing we will make a motion to make an order directing revenue to give us the basis of their assessments and adjourn until they do*."

- 8 February 2022 – The Commission notified the parties that the Commissioner had agreed to amend the start time of the hearing, in ease of the Appellant. It also

notified the Appellant that "*The Commissioner wishes to remind you that the burden of proof in all tax appeal cases rests on the appellant, as per the High Court judgment in Menolly Homes v Appeal Commissioners [2010] IEHC 49. Please also note that, as previously advised, the hearing will proceed on 20 February 2023 as scheduled and no further adjournments will be granted*."

- 17 February 2022 – The Respondent provided the Commission with an additional booklet of documents (referred to at paragraph 14 above). The Respondent's solicitor stated that "*I have had no contact from the Appellant Agent to date. I will have copies of all booklets for the Appellant Agent on the 20th.*"

17. The Commissioner considers it clear from the above summary that the Appellant has been provided with every opportunity to present his case to the Commission. He notes that there is a clear pattern of delay and failure to comply with directions emanating from the Commission; notwithstanding these repeated failures, the appeal was not dismissed but instead listed for hearing.

18. In his submission of 8 February 2022, the Appellant's agent contended that "it is up to [the Respondent] to provide us with the figures on which they have based their assessments – which they have not done – so that we may examine them and rebut them where they are incorrect and we say that is indeed the case." The agent stated that he would seek an adjournment at the outset of the hearing and a direction from the Commissioner to the Respondent "to give us the basis of their assessments".

19. The burden of proof in all tax appeals rests with the appellant. In *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, Charleton J stated, at paragraph 22, that

> "*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. The absence of mutuality in this form of appeal procedure is illustrated by the decision of Gilligan J in TJ v Criminal Assets Bureau [2008] IEHC 168. While the appeal in question there concerned income tax, the observations made in the course of the judgment as to the nature of a tax appeal are germane to deciding this issue. The Applicant in that case was assessed for income tax by a tax inspector assigned to the Criminal Assets Bureau. He was assessed to tax on a large amount of income from apparently mysterious sources. Invoking his statutory right of appeal in those circumstances, the Applicant sought disclosure of all information on which the*

assessment was made. Referring to the Revenue Customer Service Charter, the court noted that there was a self-imposed obligation on the Revenue Commissioners to give all relevant information whereby the taxpayer would understand his tax obligations. This did not extent, it was held by Gilligan J, to making an order for discovery. In taking the appeal, the taxpayer was undertaking the burden of appeal within the relevant formula as to the relief which he might be granted if successful. At para 50 Gilligan J stated:

> *"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for the self assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by the legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter*

would have to be or have been in the knowledge and in the power procurement and control of the applicant.""

20. While the Appellant in this case stated that he wished to be provided with the "*figures*" underpinning the Respondent's assessment, the Commissioner understands the above judgment, quoting from *TJ v Criminal Assets Bureau* [2008] IEHC 168, to be authority for the proposition that all relevant material would already be within the procurement of the Appellant. While the Appellant's agent submitted that *Menolly Homes* was wrong in law, obviously this is an argument that the Commissioner has no jurisdiction to entertain; he is obliged to apply the law as interpreted by the superior courts.

21. At the hearing herein, the Appellant's agent stated that the Appellant would not give evidence. Furthermore, no written response has been provided by the Appellant to the assessments and reasons provided by the Respondent, other than to assert that he does not accept their accuracy and cannot comment further in the absence of receiving documentary records from the Respondent setting out the basis for the assessments.

22. The Commissioner considers that the clear consequence of the Appellant refusing to give evidence, in an appeal such as this, is that his appeal cannot succeed. The burden of proof rests on the Appellant to demonstrate why the Respondent's assessments were incorrect. The burden of proof does not rest on the Respondent to demonstrate that its assessments were correct. In circumstances where an appellant fails or refuses to attempt to satisfy the burden of proof that rests on him, it follows logically, and in law, that he must be unsuccessful.

23. At this juncture, the Commissioner notes that during the hearing the Appellant's agent claimed there was confusion regarding the assessments to income tax, and that the Appellant was not disputing €2,000 but did not accept the larger sum sought. The Commissioner did not understand the basis for the Appellant's agent's claim that he did not know what assessment the Respondent was seeking to enforce, as the relevant assessments were provided with the Notice of Appeal and the amount of income tax being appealed was stated on the Notice of Appeal. In any event, for the avoidance of doubt, this appeal is concerned with the 2014, 2015 and 2016 income tax assessments in the amounts of €19640, €33476 and €41263, respectively.

24. The oral submissions made by the Appellant's agent at the hearing were not primarily directed to the substance of the case but were rather an attempt to seek a further adjournment of the matter. The request for an adjournment was based on two grounds:

    1. The submission of new returns by the Appellant the previous day.

2. The provision by the Respondent of the booklet of additional documentation prior to the hearing.

The Commissioner rejected the application for an adjournment on both grounds.

25. In respect of the first ground, the Commissioner considered that this appeal was founded on the assessments raised by the Respondent in September 2018. If, as the Appellant's agent submitted, the new returns would supersede the current assessments, the Commissioner's view was that the correct approach would be for the Appellant to withdraw this appeal and await the Respondent's consideration of the new returns. It could not be the case that this appeal, founded on the September 2018 assessments, could now disregard those assessments and deal with any new assessment that might potentially be raised by the Respondent in the future. The Appellant's agent was not agreeable to withdrawing this appeal.

26. In Lee v Revenue Commissioners [2021] IECA 18, the Court of Appeal (Murray J) held that, "*From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge*." The Commissioner is satisfied that he would not have jurisdiction to consider any new assessment in the context of this appeal; any new assessment could only be considered by way of a new appeal.

27. Therefore, the Commissioner was satisfied that there was no basis for granting an appeal based on the making of new returns by the Appellant. In passing, he noted that, while not making any determination on the issue, it seemed that the new returns would be likely to fall foul of section 959V of the TCA 1997 and sections 77A and 99(4) of the VATCA 2010, as they were made outside of the four year time limit and, based on the Appellant's agent's claim that they would reduce the amount of outstanding tax, were analogous to a claim for a refund.

28. Finally, the Commissioner noted that the logical consequence of the Appellant's argument, that an adjournment should be granted because a new return had been filed, was that at any stage an appellant could seek to postpone a hearing before the Commission by way of filing a new return on the eve of the hearing, and furthermore that this could potentially be done on any number of occasions. The Commissioner considered that this could not be correct, and noted that no authority had been put forward by the Appellant's agent to support his argument. The Appellant's new return had been filed without notice to the Respondent or the Commission. The Commissioner can only conclude that it was filed in an attempt to frustrate the holding of the hearing in the appeal. Section 949X(2) grants a

discretion to an Appeal Commissioner to grant an adjournment "*for such a period as they think fit*." There is no automatic entitlement to an adjournment. In the circumstances, the Commissioner had no hesitation in rejecting the request for an adjournment on the ground sought.

29. In respect of the second ground, the Commissioner considered that no prejudice had been established by the Appellant in being provided with the booklet of additional documents shortly before the hearing, such that would merit the granting of an adjournment. His agent's argument for seeking an adjournment appeared to rest on the bare fact that the booklet had been provided to him on the morning of the hearing. Counsel for the Respondent advised that the documents were mainly the Appellant's own documents that had been obtained by the Respondent in the course of its investigation. The Commissioner was satisfied that the Appellant was on notice of the Respondent's case since, at the very latest, the submission of the Respondent's OoA in August 2022, and there was nothing preventing him preparing his case in advance of the hearing. Furthermore, the documents contained in the additional booklet were referenced in the index to the Respondent's OoA, and consequently the Appellant could have requested them in advance if he believed they were vital to him preparing his case.

30. More fundamentally, the Commissioner considered it difficult to understand how the Appellant could possibly have been prejudiced by the provision of the additional documentation, in circumstances where he was apparently unwilling to give any evidence at all. Therefore, there would not have been an opportunity for the Appellant to comment on the documents or respond to any questions that the Respondent might have in respect of them, and as a result it seems to the Commissioner that the Appellant's complaints about receiving the booklet before the hearing were essentially moot.

31. Finally, the Commissioner notes again the repeated pattern of non-engagement by the Appellant with the Commission prior to the hearing herein. Counsel for the Respondent submitted that a similar pattern of non-engagement had occurred during the Respondent's investigations of the Appellant's affairs. In her letter to the Commission enclosing the additional booklet, the Respondent's solicitor wrote that "*I have had no contact from the Appellant Agent to date. I will have copies of all booklets for the Appellant Agent on the 20th*." The Commissioner considers that the Appellant is not entitled to fail to engage with the appeal's process before the Commission, and then on the morning of the hearing claim that he has been unfairly treated by the submission of a booklet of additional documentation, in circumstances where he was on notice of the Respondent's arguments (which included an index of the additional documentation) for approximately six months.

32. Consequently, the application for an adjournment of the hearing was refused. As set out above, no evidence was provided by the Appellant to demonstrate that the assessments raised by the Respondent were incorrect. Therefore, it necessarily follows that the appeal cannot succeed.

33. Finally, the Commissioner notes the Respondent's (preliminary) argument that the Appellant was not entitled to appeal the assessment to income tax for 2016 as his return had been filed but the tax not paid. The Commissioner did not understand the Appellant to be disputing that the relevant tax was unpaid; instead his agent referred back to his contention that the new returns superseded the previous ones. Section 959AH(1) precludes any right of appeal against an assessment until such time as a return is filed and the relevant tax and interest paid. Therefore, the Commissioner finds that there is no valid appeal against the 2016 assessment to income tax before him.

Determination

34. In the circumstances, and based on a review of the facts and a consideration of the submissions and material provided by both parties, the Commissioner is satisfied that the Respondent's assessments to income tax for 2014, 2015 and 2016, and to VAT for 2014 to 2017, as against the Appellant, stand. The appeal is unsuccessful.

35. The appeal is hereby determined in accordance with section 949AK of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Simon Noone
Appeal Commissioner
09 March 2023