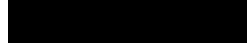




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

128TACD2024



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by [REDACTED] (“the Appellant”) in respect of amended assessments to income tax raised by the Revenue Commissioners (“the Respondent”) for the tax years 2006 – 2013 (“the years under appeal”). The total amount of tax at issue is €304,022.84.
2. The appeal proceeded by way of a hearing on 12 June 2024.

Background

3. The Appellant is a doctor and during the years under appeal was a partner in a medical partnership, [REDACTED] (“the partnership”). The Respondent contended that the income returned by the Appellant in her tax returns did not reflect her share of the partnership profits. The Appellant had also claimed additional deductions in her income tax returns that were not accepted by the Respondent.
4. The Respondent raised the following amended assessments to income tax against the Appellant:

Tax Year	Amount €
2006	42,792.25
2007	63,697.16
2008	60,742.61
2009	38,365.48
2010	23,922.39
2011	22,561.80
2012	18,036.95
2013	33,904.20
Total	304,022.84

5. The amended assessments for 2006 to 2009 were appealed to the Office of the Appeal Commissioners, the predecessor of the Commission, on 4 February 2013. The notice of appeal stated that the legislation involved in the appeal was sections 467 and 1008(2)(i) of the Taxes Consolidation Act 1997 as amended (“TCA 1997”). The points at issue were stated to be “1. *Whether additional deductions claimed by [the Appellant] against her share of partnership profits are allowable.* 2. *Whether [the Appellant] is entitled to an allowance under Sec 467 TCA 1997 in respect of payments made by her to (a) [REDACTED].*” This appeal was given the record number [REDACTED].
6. The amended assessments for 2010 to 2013 were appealed to the Office of the Appeal Commissioners on 22 January 2016. The legislation and points at issue as stated on the notice of appeal were the same as stated on the earlier appeal in respect of 2006 – 2009. This appeal was given the record number [REDACTED]. It was subsequently decided to hear both appeals together. The two appeals are herein described together as “the appeal”.
7. There has been a long and complicated procedural history to the appeal, involving in part the predecessor to the Commission, and an extremely large amount of correspondence has been provided to the Commission over the years. The Commissioner considers that it helpful to set out the following selected events (insofar as he has been able to ascertain them):
 - 7.1. 7 October 2014 - A hearing was held before an Appeal Commissioner (in respect of [REDACTED] only). The matter was adjourned to allow the Appellant put in a written submission.
 - 7.2. 13 August 2018 – the parties were notified that a hearing of the appeal would be held by the Commission on 25 October 2018.
 - 7.3. 16 October 2018 – a request was received from the Appellant’s agent for an adjournment of the hearing.
 - 7.4. 24 October 2018 – a further request from the Appellant’s agent for an adjournment, to allow him to reply to an earlier submission of the Respondent.
 - 7.5. It appears that the hearing went ahead as scheduled, although no stenographer was present. The Commissioner understands that Commissioner O’Mahony adjourned the matter to enable the Appellant to arbitrate a dispute between her and the precedent partner of the former partnership, with bi-monthly updates to be provided to the Commission.

- 7.6. 2019 / 2020 – some updates on the progression of the arbitration were provided to the Commission. The Commission confirmed that the appeals were stayed. It seems that the updates ceased after early 2020.
- 7.7. 20 January 2022 – the Commission asked the Appellant’s agent for an update on the arbitration and stated “*This appeal will be listed for a CMC or hearing depending on the outcome of the update.*”
- 7.8. 25 January 2022 – the Appellant’s agent stated that matters had been delayed as a result of the Covid-19 pandemic. He stated that a settlement offer had been made to the Respondent, and that if it was not accepted “*we will request the Arbitrator to make his Determination.*”
- 7.9. January and March 2022 – the Commission requested further updates from the Appellant.
- 7.10. 3 June 2022 – the Respondent notified the Commission that it could not accept the settlement proposal put forward by the Appellant, and that it was awaiting further details from her.
- 7.11. 30 August 2022 – following further correspondence, the Commission notified the parties that a Case Management Conference (“CMC”) would be held on 12 October 2022 to review the conduct of the appeal to date and to progress matters.
- 7.12. 12 September 2022 – the Appellant’s agent requested an adjournment of the CMC for the purposes of settlement negotiations. He also included a letter from the arbitrator which stated that it was envisaged the arbitration would be heard “*early in 2023*”.
- 7.13. 16 September 2022 – the Respondent stated that settlement negotiations were not ongoing as the Appellant had not provided any calculations to it. It requested that the CMC proceed.
- 7.14. 20 September 2022 – the Commission received a further request from the Appellant’s agent for an adjournment of the CMC, to enable the arbitration to conclude. The request was refused on 22 September 2022.
- 7.15. 12 October 2022 – a remote CMC proceeded as scheduled. The Commissioner made directions for the progression of the appeal.
- 7.16. 1 November 2022 – the Commission notified the parties that the hearing of the appeal would take place on 29 March 2023.

- 7.17. 22 March 2023 – the Appellant’s agent requested an adjournment of the hearing until after 2 May 2023 “*to allow the Arbitrator conclude his Determination*”.
- 7.18. 23 March 2023 – the Commission notified the parties that one final adjournment would be granted until after 2 May 2023 to allow for the arbitration to conclude.
- 7.19. 10 May 2023 – the Appellant’s agent requested a further adjournment as the Appellant was medically unfit to attend a hearing.
- 7.20. 7 July 2023 – the Commission notified the parties that the hearing would take place on 2 October 2023.
- 7.21. 11 September 2023 – the Appellant’s agent requested an adjournment of the hearing as the arbitration had not concluded. The request was refused.
- 7.22. 2 October 2023 – a remote hearing was held. The Appellant was represented by counsel, who applied for an adjournment of the hearing until the arbitration had concluded. Counsel for the Respondent opposed the application, saying it was a delaying tactic. Having heard both counsel, the Commissioner stated that he would reluctantly agree to one final adjournment of the hearing, which would be heard in May or June 2024, and the matter was marked peremptory against the Appellant.
8. The hearing proceeded in the offices of the Commission on 12 June 2024. The Appellant was represented by a relative of hers. The barrister who had previously attended on her behalf was not in attendance. Her agent who acted on her behalf in correspondence attended as a witness. The Respondent was represented by counsel.
9. At the outset of the hearing, the Appellant’s representative applied for an adjournment. He stated that the arbitration had not completed due to a failure on the part of the former precedent partner in the partnership to comply with directions of the arbitrator. The Appellant had told the arbitrator that she was happy for the arbitration to be determined without a hearing but the precedent partner had not responded. Therefore the Appellant would be prejudiced if the hearing of her tax appeal proceeded.
10. Counsel for the Respondent objected to an adjournment. He stated that the matter had been made peremptory against the Appellant on the previous date. The appeal had been going on for a very long time, with the first hearing in 2014, and was adjourned subsequently on a number of occasions. Therefore there could be no prejudice to the Appellant in proceeding. The Respondent did not believe that the arbitration could affect

the tax appeal in any event, as the Respondent had assessed the Appellant on the basis of the partnership accounts.

11. The Commissioner refused the application. He noted that the Appellant stated in 2018 that the dispute with her former precedent partner was going to arbitration, and yet it was still not finalised. The Commissioner had stated on 2 October 2023 that the matter would proceed on the next date, and there had been no objection to that. It seemed to the Commissioner that there was an argument that the appeal, or at least part of it, could potentially be reheard by the Circuit Court, and any developments in the arbitration could be raised at that stage. However, in any event, it did not appear that the arbitration was directly relevant to the matters to be determined in the appeal, and the Commissioner did not accept that the Appellant would be prejudiced by proceeding. On the contrary, the continual delaying of the appeal increased the risk of prejudice.
12. Following the refusal of the adjournment application, the hearing of evidence commenced.

Legislation

13. Section 18 of the TCA 1997 states *inter alia* that

“1. Tax under [Schedule D] shall be charged in respect of –

(a) the annual profits or gains arising or accruing to ...

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere...”

14. Section 81 of the TCA 1997 states *inter alia* that

“(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of –

(a) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession...”

15. Section 253 of the TCA 1997 states *inter alia* that

“(1) This section shall apply to a loan to an individual to defray money applied...

(b) in contributing money to a partnership by means of capital or a premium, or in advancing money to the partnership, where the money contributed or advanced is used wholly and exclusively for the purposes of the trade or profession carried on by the partnership;

[...]

(7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid and tax shall be discharged or repaid accordingly, and such interest shall not be eligible for relief under any provision of the Income Tax Acts apart from this section.”

16. Section 467 of the TCA 1997 stated (as of 1 January 2008) *inter alia* that

“(2) Subject to this section, where an individual for a year of assessment proves –

(a) that throughout the year of assessment either he or she or a relative of the individual was totally incapacitated by physical or mental infirmity, and

(b) that for the year of assessment the individual, or in a case to which section 1017 applies, the individual's spouse, has employed a person (including a person whose services are provided by or through an agency) for the purpose of having care of the individual (being the individual or the individual's relative) who is so incapacitated,

the individual shall, in computing the amount of his or her taxable income, be entitled to a deduction from his or her total income of the lesser of -

(i) the amount ultimately borne by him or her or the individual's spouse in the year of assessment in employing the employed person, and

(ii) €50,000 in respect of each such incapacitated individual.”

17. Section 482 of the TCA 1997 concerns relief for expenditure on significant buildings and gardens. An “*approved building*” for the purposes of relief is as set out hereunder:

“(5) (a) This subsection shall apply to a building in the State which, on application to the [Minister for Arts, Heritage, Gaeltacht and the Islands] and the Revenue Commissioners in that behalf by a person who owns or occupies the building, is determined –

- (i) *by the Minister to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and*
- (ii) *by the Revenue Commissioners to be a building either –*
 - (I) *to which reasonable access is afforded to the public, or*
 - (II) *which is in use as a tourist accommodation facility for at least 6 months in any calendar year (in this subsection referred to as "the required period") including not less than 4 months in the period commencing on the 1st day of May and ending on the 30th day of September in any such year."*

18. Section 959AJ of the TCA 1997 stated (as of 1 January 2013) *inter alia* that

"(3) A person is not entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice."

19. Section 1008 of the TCA 1997 states *inter alia* that

" (1) In the case of a partnership trade, the Income Tax Acts shall, subject to this Part, apply in relation to any partner in the partnership as if for any relevant period –

(a) any profits or gains arising to that partner from the trade and any loss sustained by that partner in the trade were respectively profits or gains of, and loss sustained in, a trade (in this Part referred to as a "several trade") carried on solely by that partner...

(2) (a) (i) For any year or period within the relevant period the amount of the profits or gains arising to any partner from that partner's several trade, or the amount of loss sustained by that partner in that trade, shall for the purposes of subsection (1) be taken to be so much of the full amount of the profits or gains of the partnership trade or, as the case may be, of the full amount of the loss sustained in the partnership trade as would fall to that partner's share on an apportionment of those profits or gains or, as the case may be, of that loss made in accordance with the terms of the partnership agreement as to the sharing of profits and losses.

(ii) Where for any year or period within the relevant period the aggregate of the respective amounts (in this subparagraph referred to as the 'aggregate') of the profits or gains which under subparagraph (i) are taken as arising to each partner in the

partnership is less than the full amount of the profits or gains of the partnership trade for that year or period, then the amount of the difference (in this subparagraph referred to as the 'balance') between that full amount and the aggregate shall for the purposes of subsection (1) be apportioned in full between the partners –

(I) in the ratio which is expressed between the partners in relation to the apportionment of the balance, or

(II) where there is no such ratio expressed –

(A) in the same ratio as the ratio which applies between the respective amounts of the profits or gains which, under subparagraph (i), were taken as arising to each partner, or

(B) where no amount of profits or gains was, under subparagraph (i), taken as arising to any individual partner, in equal shares.”

Evidence

██████████ – *The Appellant*

20. In her evidence, the Appellant stated that she had been in the partnership since ██████. In ██████ the precedent partner in the partnership ██████████, told her that the partnership was finished, however they subsequently decided to continue with the partnership. She stated that she had a bad relationship with the precedent partner until she left the partnership in ██████. She said she was bullied by the precedent partner. She was told in ██████ that if she did not borrow money she would be replaced.
21. She said there were irregularities in the partnership accounts. She was required to sign a personal guarantee but the other partners were not. The Appellant was fully committed to medicine and just wanted to do her job. She later discovered that her withholding tax was being taken by the precedent partner. When she left the partnership in ██████ she realised that she had been left with a shortfall in her pension.
22. Regarding the application for relief under section 467 of the TCA 1997, she said that ██████ and ██████████ looked after two invalided people, ██████████ and ██████████.
23. On cross examination, she agreed that the first partnership agreement was from ██████ and that the profits were split 50/50 from ██████. She said that the partnership accountants were ██████████, and that the precedent partner dealt with them. She said she would be sent the partnership accounts and given 24 hours to sign and return them. She

accepted she signed them but said she was not given time to consider them. She said she did not raise any issue about this with her solicitor, [REDACTED]

24. She said there was a subsequent partnership agreement in [REDACTED] when two additional doctors joined the partnership. She confirmed she signed the new agreement. She agreed that she did not raise any issues with the accounts at the time, and that she *"just went along with it"*. She said that the partnership had professional negligence insurance.
25. She said that her withholding tax was *"interfered with"* before the years under appeal but that *"was just an example of what went on in the practice."* She said that she thought the withholding tax issue was rectified for the years under appeal. She agreed that she deducted expenses after receiving the partnership income.
26. Regarding the section 467 application, she was asked if she provided medical certificates regarding the two invalidated persons, and she said she did. It was put to her that only one report was provided in respect of [REDACTED], and she said that she believed that medical reports were provided but could not point to them. She could not point to any bank account details in relation to payment. She accepted that she did not register as an employer.
27. She was referred to a letter from the Respondent dated 24 August 2012 which stated that it required medical certificates in respect of [REDACTED] to confirm that they were totally incapacitated. In response the Appellant said *"We weren't able to get that, I remember that now."* She was told that the Respondent had no evidence of payments made exclusively for the care of [REDACTED]. She replied that payments were made for the purpose of care.
28. She was asked about a legal bill from [REDACTED] for work incurred prior to [REDACTED] in the amount of €272,000. She said that was in respect of two claims against her. She was repeatedly asked if she paid that money to him and she replied that *"All I know is he did the work, the work was done."* After a number of questions she stated that *"I presume we did [i.e. pay the bill]."* She agreed that she had professional indemnity insurance and said that she did not use it because she did not want the premiums to go up.
29. She was asked about her claim for heritage house relief, and it was put to her that she never applied to the Respondent for it: *"Okay, so we didn't."* Regarding the claim for relief under section 253, it was put to her by counsel that it was not raised in her notice of appeal. She stated that the loan was taken out for a primary care building in [REDACTED]. It was put to her that no interest was paid between 2006 and 2013, which she did not deny but stated *"They gave me a huge bill."*

30. She was asked about a claim for administrative expenses in the amount of €15,548 paid to [REDACTED] for matters such as opening doors and answering the phone in a surgery in her own house. It was put to her that she was not required under the [REDACTED] partnership agreement to have a surgery at home. She agreed this was the case, and said she just had the occasional person coming to her house from [REDACTED] onwards.
31. She agreed that she had not provided alternative accounts for the partnership to those provided by the partnership accountants.
32. On re-examination, she said that the precedent partner received the accounts from the accountant. She said there were two claims for negligence against her which [REDACTED] defended on her behalf. She said she was successful in defending the claims. In response to a question from the Commissioner, she stated that she did not get her legal costs paid.
33. She was pointed to a cheque paid by her to [REDACTED], [REDACTED], in the amount of €66,717. She said that this was paid as part of the legal fees. She was asked about the ill-health of [REDACTED] and she stated that he was not capable of independent living. She said that the carers lived in the same house as [REDACTED].
34. She was asked about the loan incurred by her regarding the [REDACTED] facility, and she stated that properties held by her were disposed of to pay the debt. It was put to her that one property was sold in [REDACTED] 2019 and another was sold in [REDACTED] 2022. She agreed and said she did not get any money from the sales.

[REDACTED] – *Appellant's agent*

35. The Appellant's representative stated that [REDACTED] was the original accountant for the partnership until [REDACTED] when it changed to [REDACTED]. He stated that the witness was attending as a witness to fact. However, the witness proceeded to give his opinion on how the partnership accounts were treated by [REDACTED]. In response to the Commissioner, he agreed that he did not draw up the partnership accounts for the years under appeal.
36. The Commissioner explained that the witness could not give expert evidence on how [REDACTED] performed its role. The Appellant's representative asked the witness about alleged discrepancies regarding the Appellant's withholding tax but counsel for the Respondent interjected to say that there was no evidence to support the allegation, and that the Appellant in her evidence had said there were no difficulties with her withholding tax for the years under appeal.

37. There were some additional questions about the treatment of the partnership accounts by [REDACTED]. The Commissioner is satisfied that the witness was not in a position to provide expert evidence, as someone who had represented the Appellant throughout the appeal process before the Commission, and therefore the Commissioner cannot and does not have any regard to the witness's comments on [REDACTED] treatment of the partnership accounts.

[REDACTED] – *Appellant's witness regarding interest payments*

38. [REDACTED] was an accountant who had prepared a schedule of what he stated were interest payments made by the Appellant on the loan taken out by her in order to develop the centre in [REDACTED]. He stated that the total interest on the loans between 2008 and 2018 was €705,000, and between 2008 and 2013/4 was €547 (the Commissioner understood this to mean €547,000). He calculated that €330,000 could be available for offset by the Appellant. He stated that *"there was the disposal of two lots of assets and there was a payment of 90,000 recently."*

39. In response to the Commissioner, the witness stated that he performed the calculations within the last year. On cross examination, the witness stated that he considered the entirety of the payment of €90,000 to constitute interest, but accepted he had no evidence to support that assumption. He stated that he assumed that all of the monies received for the two assets constituted interest payments. He agreed that the payments were made in 2024 and that no interest was paid in the periods from 2006 onwards. He said that accounts were paid on an accrual basis.

[REDACTED] – *Appellant's [REDACTED] solicitor*

40. [REDACTED] stated that he acted as solicitor for the Appellant and raised a bill in [REDACTED] when he was retiring. The bill related to work done for many years. He stated that the bill was agreed in 2006. In 2007, the Appellant waived taxation of the bill and paid the witness €66,717, which he paid to the Respondent on his own behalf.

41. On cross examination, the witness stated that he represented the Appellant from [REDACTED] until [REDACTED]. The [REDACTED] bill was the only bill he issued, and spanned all of the period. It was put to him that recovery for some of that time would have been statute-barred, and he replied that the Appellant was entitled to challenge it under the Statute of Limitations.

42. The witness stated that there were two medical negligence cases and that he retained senior counsel in each. Both senior counsel worked *pro bono* but he charged [REDACTED] professional fees of €272,250. He said that the cases related to 1999/2000. They did not go to hearing but there was a lot of investigative work. He accepted that some of the work

sounded like private investigative work but stated that “*I charged for my time.*” When counsel said that he found the situation incredulous, the witness stated that “*It may be but it is true.*” He stated that he did not instruct junior counsel. He did not seek an order for costs. Both cases ended after he raised notices for particulars. The partnership’s insurers wanted to defend the cases but he advised the Appellant not to instruct them. When it was put to him that he had charged ██████████ €272,250 to have the matters struck out at the notices for particulars stage, he stated that he went against the advice of counsel.

43. He stated that the payment received from the Appellant went straight to the Respondent. He received it in 2007, and it was allocated by him to an income tax return for 1999/2000. It was put to him that he had taken money from ██████████ to pay his taxes. He stated that the bill was owed to him and accrued to him in 2007.

Submissions

Appellant

44. In written submissions, the Appellant’s agent stated that the partnership accounts were unreliable and should not have been used by the Respondent when raising the amended assessments. He stated that withholding tax was misallocated by the Respondent. The Appellant’s pension fund was left short €175,903. The partnership’s accountants had failed in their duty to the Appellant. Funds were misallocated to the precedent partner which the Appellant had been taxed upon. The partnership was not lawful and invalid and the accounts were therefore invalid.
45. Regarding carer’s allowance, the Appellant made payments to ██████████ from 2006, and part of the reimbursement comprised repayments of ██████████ loan to AIB in respect of a property in ██████████ in the sum of €2276 per month. The carers were not under the control of the Appellant and did not have fixed hours of work and no pension or holiday entitlements. Therefore they were not employees of the Appellant and should instead be considered as agents.
46. Regarding the deductions for administrative assistance, the Appellant had a surgery at her house. The administrative assistant was necessary to open doors and answer the telephone until the surgery closed in ██████████. The house was also a heritage house and the administrative assistant welcomed tourists to the house.
47. Regarding legal costs, the Appellant’s ██████████ legal firm acted for the partnership from ██████████ but ceased acting in 2001/02 when issues with withholding tax credits being

misallocated from the Appellant to the precedent partner became known. The firm issued a bill to the Appellant in [REDACTED] in respect of a number of matters, including in particular two medical negligence cases. She declined professional indemnity insurance as she did not want to settle the cases. The Appellant requested the bill to be taxed. In default of taxation, the bill was compromised in 2006, whereby an agreement was reached to pay the amount in instalments over six years.

48. Regarding investment loss, the Appellant was required to invest in a new medical centre in [REDACTED]. She borrowed to invest, and incurred interest on the loan. A receiver was appointed by the bank, and properties belonging to the Appellant were sold at a loss. Amended returns had been filed claiming interest charged by the bank in 2008 comprising €204,802, leaving overpaid tax for the year of €49,755.
49. In oral submissions, the Appellant's representative stated that in evidence the Appellant stated she was told in [REDACTED] that the partnership was finished. She found out in 2001 and 2002 that the precedent partner was retaining most of the withholding tax even though the accounts were showing a 50/50 split. She later discovered that the pension fund was being misallocated. Therefore the Respondent could not rely on the partnership accounts.
50. Regarding the claim for carer's allowance, the determination in 01TACD2019 was very relevant. In that case, the Appeals Commissioner ruled that the taxpayer was entitled to full tax relief on maintenance payments even though the taxpayer retained an interest in related property. In this appeal, the Appellant was making mortgage payments towards a property being used to provide care for [REDACTED].
51. Regarding the section 253 claim, the Appellant was obliged to invest in the development. The interest charged on the loan was a deductible expense, and the interest charged totalled €705,085. It would be unfair to limit her relief to those years when repayments were made. Regarding the heritage house claim, the Appellant had contacted the Respondent who did not come out and inspect the house. Regarding the claim for administrative assistance, the total amount paid was €46,000. In reply to the Respondent, it was stated that a medical certificate for [REDACTED] was submitted.

Respondent

52. In written submissions, the Respondent stated that the Appellant entered into a partnership agreement in [REDACTED] which was superseded in [REDACTED]. The income returned by the Appellant on her income tax returns did not reflect her share of the profits of the partnership as reflected in the accounts.

53. The Appellant made further deductions from her partnership share of the profits, which was in contravention of section 1008 of the TCA 1997. All deductions should be taken from income, not subsequently from profits. To seek to alter the accounts after the allocation of profits would alter the entire accounts and profit allocation of the partnership and would be contrary to the principles of commercial accountancy.
54. If the accounts were incorrect, this was a matter between the partners. The Respondent was entitled to rely upon the declared profits of the partnership when assessing the Appellant to tax. The expenses claimed were not allowed as they were not incurred wholly and exclusively for the purposes of trade. The Appellant had failed to provide the necessary documentation to obtain relief under section 467 (carer's allowance).
55. In oral submissions, counsel stated that the deductions sought by the Appellant were outside the terms of the partnership agreement. The Appellant accepted that she did not carry on a surgery in her house from [REDACTED] onwards, apart from the odd ad hoc caller. A medical certificate had been provided in respect of [REDACTED] but not in respect of [REDACTED]. Furthermore there was no evidence of employment.
56. The Appellant agreed in her evidence that there was no issue with withholding tax from 2006 onwards. The claim for house relief (section 482) did not comply with the legislation as the Appellant accepted she had not applied to the Respondent. Regarding the section 253 relief, this had not been raised in the notice of appeal, and was not raised until 2023, so was out of time. In any event, there was no evidence of interest being paid. The claim for legal costs lacked credibility. The payment by the Appellant to [REDACTED] in 2007 did not mean it was for legal costs.

Material Facts

57. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:
 - 57.1. The Appellant is a medical practitioner. She entered into a partnership agreement for a medical practice in [REDACTED]. She entered into a further partnership agreement in [REDACTED]. The partnership ended at some point after the years under appeal.
 - 57.2. The Appellant's original assessment to income tax for 2006 stated that her income from her medical practice was €147,683. The partnership accounts for 2006 stated that her share of the profits was €217,665. The Respondent raised an amended assessment, which showed a balance of tax owed of €42,792.25.

- 57.3. The Appellant's income tax return for 2007 stated that her profits were €64,356. The partnership accounts stated that her share of the profits was €163,335. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €28,108. Her amended assessment to income tax showed a balance payable of €63,697.16.
- 57.4. The Appellant's income tax return for 2008 stated that her profits were €129,738. The partnership accounts stated that she had profits of €220,281. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €27,715. Her amended assessment to income tax showed a balance payable of €60,742.61.
- 57.5. The Appellant's income tax return for 2009 stated that her profits were €146,026. The partnership accounts showed she had profits of €210,439. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €25,000. Her amended assessment to income tax showed a balance payable of €38,365.48.
- 57.6. The Appellant's income tax return for 2010 stated that her profits were €133,531. The partnership accounts stated that she had profits of €164,146. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €33,467. Her amended assessment to income tax showed a balance payable of €23,922.39.
- 57.7. The Appellant's income tax return for 2011 stated that her profits were €160,406. The partnership accounts stated that she had profits of €169,284. The Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €29,916 and losses for "heritage house" in the amount of €11,975, and her amended assessment to income tax showed a balance payable of €22,561.80.
- 57.8. The Appellant's income tax return for 2012 stated that her profits were €153,876. The partnership accounts stated that she had profits of €161,536. The Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €15,260 and losses for "heritage house" in the amount of €10,930. Her amended assessment to income tax showed a balance payable of €18,036.95.
- 57.9. The Appellant's income tax return for 2013 stated that her profits were €105,388. The partnership accounts stated that she had profits of €155,397. The

Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €15,620. Her amended assessment to income tax showed a balance payable of €33,904.20.

- 57.10. The amended assessments for 2006 to 2009 were appealed to the Office of the Appeal Commissioners, the predecessor of the Commission, on 4 February 2013. The amended assessments for 2010 to 2013 were appealed to the Office of the Appeal Commissioners on 22 January 2016.
- 57.11. While the Appellant contended that the partnership was invalid and the Respondent could not rely upon the partnership accounts, she had not provided alternative accounts for the years under appeal. She did not demonstrate that her share of the profits for each year as stated in the accounts was incorrect, nor did she show that she did not in fact receive the amounts as stated on the accounts.
- 57.12. There was no problem or issue with the treatment of the Appellant's withholding tax by the partnership for the years under appeal.
- 57.13. No clear calculations were provided to explain the differences between the Appellant's profits as stated in the partnership accounts and as returned by her in her income tax returns.
- 57.14. There was a lack of clarity regarding how the claimed deductions were applied by the Appellant in her income tax returns. It was not clear to what extent the difference in stated profits between the partnership accounts and her tax returns was as a result of the application of additional deductions, or was because the profits as stated in the partnership accounts were simply not carried across to the income tax returns.
- 57.15. The Appellant had not registered as an employer of the two individuals who she stated provided care to two incapacitated relatives and had not provided evidence of payments to them as employees, or deduction of relevant employee taxes or PRSI. The two individuals did not provide care by or through an agency. Therefore they were not employees, and were not employed by the Appellant, either directly or through an agency.
- 57.16. The Appellant's house, [REDACTED], had not been determined to be an "*approved building*" by the Respondent under section 482 of the TCA 1997.

57.17. The Appellant only occasionally treated patients in her home surgery, located in her house, from [REDACTED] onwards. Therefore, it was not necessary to retain [REDACTED] as an administrative assistant during the years under appeal.

57.18. The payment of €66,717 by the Appellant to [REDACTED] in 2007 was not for the purpose of paying legal costs owed by her to him.

57.19. The claim for relief on interest paid on a loan relating to the partnership, under section 253, was not made before 2022. There was no interest on the loan paid by the Appellant during the years under appeal.

Analysis

58. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to raise the amended assessments to income tax against her. In the High Court case of *Menolly Homes Ltd 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 Appellant's income tax returns and amended assessments

59. The Appellant's income tax return for 2006 was not provided to the Commissioner, but her original assessment stated that her income from her medical practice was €147,683. The partnership accounts for 2006 stated that her share of the profits was €217,665. The Respondent raised an amended assessment, which showed a balance of tax owed of €42,792.25.

60. The Appellant's income tax return for 2007 stated that her profits were €64,356. The partnership accounts stated that her share of the profits was €163,335. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €28,108. Her amended assessment to income tax showed a balance payable of €63,697.16.

61. The Appellant's income tax return for 2008 stated that her profits were €129,738. The partnership accounts stated that she had profits of €220,281. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €27,715. Her amended assessment to income tax showed a balance payable of €60,742.61.

62. The Appellant's income tax return for 2009 stated that her profits were €146,026. The partnership accounts showed she had profits of €210,439. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €25,000. Her amended assessment to income tax showed a balance payable of €38,365.48.
63. The Appellant's income tax return for 2010 stated that her profits were €133,531. The partnership accounts stated that she had profits of €164,146. The Respondent amended her income tax return and disallowed a deduction for carer's allowance in the amount of €33,467. Her amended assessment to income tax showed a balance payable of €23,922.39.
64. The Appellant's income tax return for 2011 stated that her profits were €160,406. The partnership accounts stated that she had profits of €169,284. The Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €29,916 and losses for "heritage house" in the amount of €11,975, and her amended assessment to income tax showed a balance payable of €22,561.80.
65. The Appellant's income tax return for 2012 stated that her profits were €153,876. The partnership accounts stated that she had profits of €161,536. The Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €15,260 and losses for "heritage house" in the amount of €10,930. Her amended assessment to income tax showed a balance payable of €18,036.95.
66. The Appellant's income tax return for 2013 stated that her profits were €105,388. The partnership accounts stated that she had profits of €155,397. The Respondent amended her income tax return and also disallowed a deduction for carer's allowance in the amount of €15,620. Her amended assessment to income tax showed a balance payable of €33,904.20.

Whether Respondent entitled to rely on partnership accounts

67. It can be seen by the above précis of the Appellant's tax returns, and the subsequent amendments applied by the Respondent, that for each year under appeal, there was a difference between the Appellant's share of the partnership profits as stated in the partnership accounts, and her profits as stated on her income tax returns. The Appellant did not deny this, but argued that the partnership was invalid because of the actions of the precedent partner and that therefore the Respondent should not have had regard to the accounts.

68. In submissions, the Appellant's representative argued that the partnership should be treated as invalid from [REDACTED]. However, the difficulty the Appellant faces in this regard is that she did not remove herself from the partnership at this stage, despite apparently being in receipt of legal advice from [REDACTED]. Moreover, she signed a new partnership agreement in [REDACTED] and did not leave the partnership until after the years under appeal.
69. Furthermore, while not accepting the partnership accounts prepared by the partnership's accountants, the Commissioner is satisfied that the Appellant did not demonstrate that her share of the profits for each year as stated in the accounts was incorrect, nor did she show that she did not in fact receive the amounts as stated on the accounts. While the Appellant's written submissions made repeated reference to alleged issues with how the precedent partner dealt with her withholding tax, in her evidence the Appellant stated that these issues predated the years under appeal and were rectified by 2006. Therefore, the Commissioner does not consider these alleged issues to be relevant to this appeal.
70. It was clear that the Appellant felt very aggrieved towards the precedent partner in the former partnership, and as discussed above there have been arbitration proceedings ongoing between them for a number of years. In coming to this determination, the Commissioner wishes to make clear that he makes no finding in respect of the Appellant's allegations against the precedent partner *per se*, i.e. insofar as it concerns the relationship between them and is the subject of the arbitration proceedings.
71. The Commissioner's role in this appeal is to determine if the Appellant has shown that the Respondent was wrong to (*inter alia*) rely on the partnership accounts. On the basis of the evidence before him, the Commissioner is satisfied that the Appellant has not demonstrated that the Respondent acted wrongly in this regard. While unhappy with the partnership accounts, the Appellant had not provided alternative accounts to the Respondent. Nor had she explained why the profits as stated in her income tax returns were lower than those as stated in the partnership accounts. No calculations were provided to the Commissioner to explain the discrepancies, which appeared to the Commissioner to be arbitrary in nature.
72. In the absence of alternative accounts, the Commissioner is satisfied that the Respondent was entitled to rely on the partnership accounts and to amend the Appellant's income tax returns accordingly. The Commissioner considers that the Appellant's dispute with the former precedent partner is a matter between themselves. The existence of that dispute does not mean that the Respondent was precluded from relying on the partnership accounts and was, in effect, obliged to accept the profits as stated on the Appellant's tax

returns, which were not properly explained and calculated, and which consequently appeared to the Commissioner to be arbitrary.

Deductions claimed by the Appellant

73. In its submissions, the Respondent stated that the Appellant had sought to make deductions from her share of the partnership profits, in contravention of section 1008 of the TCA 1997. In *Cronin (Inspector of Taxes) v Cork and County Property Co Ltd* [1986] IR 559, Griffin J stated that

“The method of computation of the balance of profits and gains for tax purposes has been considered in a number of cases. The passage most frequently cited is that of Lord President Clyde in Whimster and Co. v. The Commissioners of Inland Revenue (1925) 12 T.C. 813, at p. 823:—

‘In computing the balance of profits and gains for the purposes of Income Tax, or for the purposes of Excess Profits Duty, two general and fundamental commonplaces have always to be kept in mind. In the first place, the profits of any particular year or accounting period must be taken to consist of the difference between the receipts from the trade or business during such year or accounting period and the expenditure laid out to earn those receipts. In the second place, the account of profit and loss to be made up for the purpose of ascertaining that difference must be framed consistently with the ordinary principles of commercial accounting, so far as applicable, and in conformity with the rules of the Income Tax Act, or of that Act as modified by the provisions and schedules of the Acts regulating Excess Profits Duty, as the case may be. For example, the ordinary principles of commercial accounting require that in the profit and loss account of a merchant's or manufacturer's business the values of the stock-in-trade at the beginning and at the end of the period covered by the account should be entered at cost or market price, whichever is the lower: although there is nothing about this in the taxing statutes.’”

74. The Commissioner agrees that all qualifying expenses arising out of the Appellant's medical practice should have been deducted prior to the calculation of the partnership profits, and that it is not in accordance with the principles of commercial accountancy to seek to make further deductions for such expenses from the calculated profits. Having said that, it is not clear to the Commissioner what additional deductions were applied by the Appellant in her income tax returns. As explained above, no calculations for the profits as stated on her returns have been put before the Commissioner, and therefore the extent to which the profits have been reduced by claimed deductions, or simply because the

profits as stated on the partnership accounts have not been carried across to the returns, is unclear. The returns do include certain deductions (carer's allowance and heritage house allowance) which the Commissioner is satisfied did not arise in the course of the Appellant's practice, and he therefore considers that it was not incorrect of the Appellant to include them after the partnership profits had been calculated (but that is not to say that the deductions were correctly *claimed*, which is discussed below).

75. Notwithstanding the lack of clarity regarding how the deductions have been applied by the Appellant, the lack of clear calculations showing the amounts deducted, and indeed whether all of the deductions were applied prior to the raising of the amended assessments or in the context of the subsequent appeal, the Commissioner considers it appropriate to address each of the claimed deductions separately.

Carer's allowance – section 467

76. The Appellant claimed deductions for carer's allowance pursuant to section 467 of the TCA 1997 in each of the income tax returns submitted by her for the years under appeal. She stated that two of her family members, [REDACTED], acted as carers for two incapacitated individuals, [REDACTED] and [REDACTED]. In her submissions, it was argued that mortgage payments in respect of a property comprised part of the payments and should be allowed as a deduction.
77. The Respondent stated that the Appellant had not met the requirements set out in section 467. It accepted that a medical certificate had been provided for [REDACTED], but stated that none was provided in respect of [REDACTED]. The Appellant stated that she believed a certificate had been provided. However, she accepted that she had not registered as an employer regarding the two carers.
78. In the Respondent's Guidance Note on section 467¹ (which dates from 2018, but the Commissioner is satisfied that the relevant provision is materially the same as that under consideration herein), it is stated that

“Where an individual employs the carer directly, he/she has certain obligations as an employer, including registering as an employer and making income tax, USC and PRSI deductions from the wages paid to the carer.”

The Commissioner is satisfied that the Appellant did not register as an employer for the two carers, and no evidence was provided that she made the appropriate deductions for tax etc. from any payments made to them. Furthermore, no clear evidence of payments,

¹ Tax and Duty Manual Part 15-01-20 <<https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-15/15-01-20-20190808123310.pdf>>

such as payslips or bank statements, was provided. In all the circumstances, the Commissioner was not satisfied that the Appellant employed the carers herself.

79. In her written submissions, it was accepted that the Appellant was not an employer but it was suggested that an *“Agency [was] engaged”*. No evidence that the carers were employed by an agency (as opposed to directly by the Appellant) was provided. Insofar as the submissions conflated “agency” with “agent”, as in a relationship of principal and agent, the Commissioner is satisfied that the reference in section 467(2) to *“a person who services are provided by or through an agency”* clearly concerns carers employed through third-party agencies providing such services, rather than relating to the wider concept of a principal/agent relationship. This is reflected in the Respondent’s Guidance Note, which discusses *“If the services of the carer are provided by or through an agency or other commercial entity and the carer is paid by the agency or commercial entity...”*
80. Therefore, the Commissioner finds that the carers were not employed, either by the Appellant directly or via a third-party agency. Finally, the Commissioner does not accept that, even if the carers were “employed” as required by section 467, the Appellant would be entitled to claim deductions for mortgage payments under the allowance. Section 467(2) provides for an allowance for *“the amount ultimately borne ... in employing the employed person”*, which does not include other expenses such as mortgage payments. The Commission’s determination in 01TACD2019, which the Appellant sought to rely on, did not concern section 467 but spousal maintenance payments under section 1025 of the TCA 1997 and therefore is not relevant to this appeal.
81. Consequently, as the Commissioner finds that the carers of the incapacitated individuals were not employees, either of the Appellant or of a third-party agency engaged by her, he is satisfied that the Appellant did not satisfy the requirements of section 467 of the TCA 1997, and the Respondent was correct to refuse her claims for deductions.

Heritage house – section 482

82. The Appellant’s income tax returns for 2011 and 2012 claimed deductions for losses arising from the designation of the Appellant’s house, [REDACTED], as a heritage house. While it does not appear on the relevant tax returns, in the course of the appeal the Appellant submitted contended “heritage house expenditure” for 2006 to 2009. It is not clear to the Commissioner whether the contended sums were deducted from the Appellant’s partnership profits in order to arrive at the amount of income stated on her returns. If they were deducted, the Commissioner is satisfied that they were done so incorrectly, as these were not expenses that could be said to arise from her medical practice.

83. During her cross-examination, the Appellant accepted that there had not been an application to the Respondent for her house to be classified as coming within the scope of section 482 of the TCA 1997. Section 482(5) provides that an “*approved building*” for the purposes of the relief must be determined by, *inter alia*, the Respondent:

“to be a building either –

(I) to which reasonable access is afforded to the public, or

(II) which is in use as a tourist accommodation facility for at least 6 months in any calendar year (in this subsection referred to as “the required period”) including not less than 4 months in the period commencing on the 1st day of May and ending on the 30th day of September in any such year.”

84. It is uncontroverted in this instance that the Appellant’s house was not so determined by the Respondent. In submissions, her representative sought to blame the Respondent for this, contending that it failed to view the house despite an invitation to do so. The Commissioner notes that there was no evidence provided to support this contention. In any event, the Commissioner cannot consider any alleged failing on the part of the Respondent to visit the house. His role is limited to considering whether the legal test for the granting of the relief has been met; see *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is satisfied that, as the Respondent did not make the determination required under section 482(5) for the Appellant’s house to be classified as an “*approved building*”, therefore the Respondent was correct to disallow the Appellant’s claim for relief under the section.

Administrative assistant – section 81

85. The Appellant had claimed deductions for payments to an ‘administrative assistant’ who helped with her work in her surgery in her own home, i.e. separate from the partnership’s surgery. Again, it was not clear to the Commissioner whether these deductions had been applied to the partnership profits to reduce the amount of profits stated on her income tax returns. At the end of the hearing, the Appellant’s representative handed up a list of payments between 2008 and 2011 which were stated to be to the administrative assistant ‘[REDACTED]’ in the total amount of €46,595.

86. In submissions, the Appellant argued that it was a requirement of the partnership agreement that she retain her home surgery. The Commissioner notes that there is what appears to be a signed, but undated, addendum to the [REDACTED] partnership agreement which stated that the partners “*shall maintain their house surgery within 1 mile of the main surgery premises at [REDACTED].*” The Commissioner further notes that,

according to Google Maps, the Appellant's house, [REDACTED], is [REDACTED] miles from [REDACTED], and therefore it does not appear that this was in strict compliance with the term of the addition to the partnership agreement.

87. In any event, the Commissioner considers significant the following evidence of the Appellant under cross examination:

“Q. When would you say you stopped carrying on the surgery?”

A. I didn't have to have one there after, it would be, I suppose, after [REDACTED] you know, I didn't need to have it after that time but I still kept it going. I had it there. After the way I had been treated in [REDACTED] I always wanted to have a surgery in the house just in case, you know, so it was maintained. I didn't have an actual surgery session as such, no I didn't.

Q. You weren't operating it really after [REDACTED] you just had the odd.

A. Correct, you would see an occasional person, that is all.

Q. Very occasionally.

A. Yes, an occasional person would come in, it happened occasionally.”

88. The test for deductions for professional expenses under section 81(2) is that the expenses were “*wholly and exclusively laid out or expended for the purposes of the trade or profession.*” The Commissioner is satisfied that the monies paid out to the Appellant's ‘administrative assistant’ could not have been “wholly and exclusively” expended for the purposes of her medical profession, because her own evidence was that from [REDACTED] she only saw the occasional patient in her home surgery. Therefore, the Commissioner does not consider that it was necessary to retain an assistant to provide administrative support for the surgery, and he is not satisfied that the expenditure claimed meets the test under section 81 of the TCA 1997.

89. In her written submissions, the Appellant stated that the administrative assistant was [REDACTED], who was stated in the hearing to be the Appellant's [REDACTED]. In this regard, the Commissioner notes that section 81(2) specifically disallows:

“(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession...”

90. Also in the written submissions, it was contended that [REDACTED] provided assistance in the context of the Appellant's house as a ‘heritage house’ open to the public. The

Commissioner notes that the Appellant did not provide oral evidence regarding this at the hearing. However, he has already found that the Appellant was not entitled to deductions under section 482. He is also not satisfied that the Appellant has shown that, even if she was entitled in principle to claim for administrative assistance in that regard, the role of her [REDACTED] was necessary for that purpose so that the monies paid to [REDACTED] were “wholly and exclusively” expended for his role in making the ‘heritage house’ open to the public. Indeed, it does not seem possible that they could have been, when it appears that the bulk of his contended assistance allegedly related to the upkeep of the surgery.

91. In all the circumstances, therefore, the Commissioner is satisfied that the Appellant has not demonstrated that the monies paid out to the ‘administrative assistant’ were wholly and exclusively expended for the purposes of her trade or profession, and therefore the Respondent was correct to disallow the claimed deductions.

Legal costs – section 81

92. The Appellant had claimed legal costs allegedly incurred by her in the course of her profession, and in this regard reference was made to a bill of costs dated [REDACTED] in the amount of €272,250 from [REDACTED] [REDACTED], who was a solicitor.
93. Again, the test to be met by the Appellant is that provided for in section 81(2): “*wholly and exclusively laid out or expended for the purposes of the trade or profession.*” The Commissioner found the evidence proffered by and on behalf of the Appellant to be wholly unconvincing in this regard.
94. During cross examination, the Appellant stated that the bill was raised in respect of two medical negligence cases brought against her. However, she had earlier confirmed that the partnership had medical negligence indemnity coverage, so why it was allegedly decided she should take on the considerable risk of defending the cases personally was never adequately explained. Furthermore, the Appellant appeared markedly reluctant to state that she ever paid the bill raised by [REDACTED]. Following repeated questioning from counsel for the Respondent, she said that “*I presume we did*” pay the bill. On re-examination, her attention was drawn to a cheque drawn on her account in July 2007 in the amount of €66,717.95 which was made payable to [REDACTED], and she agreed with the suggestion that this was in part-payment for the legal fees.
95. The Appellant’s [REDACTED] also gave evidence. He stated that the bill was the only one he sent to the Appellant for legal work done by him for her from [REDACTED] until [REDACTED]. He agreed that she could have sought to rely on the statute of limitations to challenge the bill. He

said that he defended two medical negligence cases on her behalf, and that senior counsel in both matters acted *pro bono*.

96. The Commissioner found the evidence of the Appellant's ██████ to lack credibility. He considered that the explanation for the alleged bill in ██████ to be unclear and unconvincing. In particular, he considered the following evidence regarding the two negligence cases – that senior counsel in both negligence cases acted *pro bono*, that both matters were struck out after notices for particulars were raised, and that he then did not seek costs but instead charged the Appellant, ██████ €272,250 in legal fees – to be preposterous, and the Commissioner rejects this evidence.
97. The Commissioner notes that the only evidence of payment from the Appellant to ██████ was the 2007 cheque for €66,717.95, and therefore he considers that he claim under this heading is, at its height, limited to this sum. However, for the reasons set out above, the Commissioner is wholly unconvinced by the evidence put forward by and on behalf of the Appellant, and therefore he does not accept the contention that the payment from the Appellant to ██████ was wholly and exclusively for legal fees. Consequently, the Commissioner finds that the Respondent was correct to disallow the claimed deductions.

Interest relief – section 253

98. The Appellant claimed relief for interest allegedly paid by her on a loan taken out for the purposes of the partnership. The Respondent objected to the Commission accepting this claim, as it was not included on the notices of appeal. Indeed, in a letter dated 6 June 2024, the Appellant's agent stated that the claim for interest relief was set out in correspondence commencing 16 June 2022.
99. The Commissioner is satisfied that this claim is therefore invalid. Section 959AJ(3) of the TCA 1997 stated, as of 1 January 2013, *inter alia* that
- “(3) A person is not entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice.”*
100. Similar provisions pre-dated (section 957) and post-date (section 949I) the above provision. The Commissioner is satisfied that there was no reasonable basis put forward by the Appellant as to why the claim for relief was not included in her notices of appeal, and therefore she is not entitled to rely on it herein.

101. In any event, even if the ground was accepted, it is clear that it could not be successfully made out. This is because the Appellant's witness, [REDACTED], agreed that the repayments towards the loan were made in 2024, and that no repayments were made during the years under appeal. Section 253(7) provides *inter alia* that

“(7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid...”
(emphasis added)

102. Therefore, relief is only available for years in which interest is actually paid. There is no basis for contending, as the Appellant's witness did, that the relief could be applied in some way retrospectively. Consequently, the Commissioner is satisfied that the claimed deduction was properly disallowed by the Respondent.

Conclusion

103. In conclusion, the Commissioner is not satisfied that the Appellant has met the burden of proving that the Respondent should not have had regard to the partnership accounts when raising the amended assessments, or that she was entitled to any of the deductions claimed by her for the years under appeal. Consequently, the appeal is unsuccessful.

Determination

104. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that the amended assessments to income tax raised by the Respondent for the years 2006 to 2013 inclusive stand.

105. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

106. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

107. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

108. This notification is without prejudice to any possible right of appeal to the Circuit Court under section 942 of the TCA 1997. For the avoidance of doubt, the Commission cannot provide any opinion or advice as to whether any such right is available.



Simon Noone
Appeal Commissioner
26 July 2024