



Between

30TACD2024

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against assessments to income tax raised by the Revenue Commissioners (“the Respondent”) for the years 2005 – 2008 in the total amount of €241,682.
2. In accordance with the provisions of sections 949U and 949AN of the Taxes Consolidation Act 1997 (“TCA 1997”), this appeal is determined without a hearing.

Background

3. The Appellant was one of 31 investors in ██████████ ██████████. The Appellant made the investment in 2005 and claimed interest relief when submitting his income tax returns for the years 2005 to 2008.
4. On 20 December 2010 and 5 January 2011, the Respondent issued notices of amended assessment to income tax against the Appellant as follows:

Year	Amount
2005	€99,663
2006	€77,619
2007	€64,400
2008	€0

5. In issuing the notices of amended assessment, the Respondent sought to disallow the interest relief claimed by the Appellant for those years. The 31 investors appealed against the amended assessments.
6. On 4 December 2018, the Appellant's then agent notified the Commission that it represented all 31 investors in [REDACTED] who had brought appeals to the Commission. It agreed that with the Commission's request that one of the 31 [REDACTED] appeals submitted would act as the lead appeal and the balance of the appeals would act as follower appeals. The correspondence concluded as follows:

"All of the non-lead case appellants, consent to the Appeal Commissioner determining their appeals without holding a hearing in accordance with the provisions of section 949AN TCA 1997".

7. On 15 October 2019, the Commission issued its determination in the lead appeal, 47TACD2019¹. The Commission found in favour of the Respondent on the following two main grounds:
 - 7.1. For the lead appellant to be eligible to the claimed interest relief, he was required to comply with the provisions of section 250 of the TCA 1997. As the lead appellant did not comply with the "part-time director requirement" of that provision, he was deemed ineligible for the interest relief claimed.
 - 7.2. The anti-avoidance provisions of section 817A of the TCA 1997 operated to deny the lead appellant's claim for interest relief. This finding was based largely on the marketing material/Information Memorandum furnished by the promoters to prospective investors, which showed that an investor's return was predominantly

¹ <https://www.taxappeals.ie/en/determinations/47tacd2019-income-tax-anti-avoidance>

generated by the tax relief (for further details see paragraph 120(c) of the determination).

8. Following this determination, the Commission received a request for the case to be stated to the High Court. Subsequently that case stated request was withdrawn by the lead appellant and the Respondent agreed settlement terms with the lead appellant's then agents. These settlement terms were extended to all of the follower appellants.
9. 24 of those 31 appellants concluded settlement negotiations with the Respondent and withdrew their appeals as part of that settlement, while a further 6 appellants were in the process of concluding settlement terms with the Respondent as at 31 August 2021. The Commissioner understands that to date the majority of those appellants concluded settlement negotiations with the Respondent and withdrew their appeals accordingly.
10. The Respondent notified the Commission that it was in settlement discussions with the Appellant in this appeal. However, on 1 March 2023, it notified the Commission that the Respondent had not accepted the settlement offer made by the Appellant. It stated that it had issued three letters to the Appellant and received no reply, and it asked the Commission to determine the appeal under section 949AN of the TCA 1997.
11. On 13 March 2023, the Commission notified both parties that it intended to determine this appeal without a hearing and with regard to the previous determination in 47TACD2019, pursuant to section 949AN. A copy of that determination was attached to the email, and the parties were advised that, if they did not agree to the Commission determining the appeal without a hearing and with regard to the previous determination, they were required to submit reasons within 21 days of the email.
12. The email of 13 March 2023 was issued to the Appellant's agent on record with the Commission. However, the email was returned as undelivered to the Commission. Subsequently, the Respondent notified the Commission that the Appellant had previously informed it that he had changed his representation, and the Respondent provided details of the Appellant's new agent to the Commission.
13. On 22 March 2023, the notification regarding the intention of the Commission to determine the appeal pursuant to section 949AN was reissued to the Appellant's new agent. The notification stated that:

"In adjudicating on and determining your appeal, the Appeal Commissioners consider that a previous determination made by them in a different appeal has raised common or related issues to your appeal. The Appeal Commissioners have decided to have regard to this previous determination in determining your appeal."

A copy of the previous determination in the related appeal is attached to this correspondence.

The Appeal Commissioners intend to adjudicate on your appeal without a hearing, which means that the Appeal Commissioners will decide on the matters under dispute in your appeal based on the information you have already provided to the Tax Appeals Commission and with regard to their determination in the related appeal.

If you do not agree with your appeal being adjudicated on and determined with regard to the previous determination and without a hearing, you can request the Appeal Commissioners to hold a hearing.

You are required within 21 days after the date of this correspondence to submit arguments in relation to why it would not be appropriate to have regard to the previous determination in determining your appeal. You are also required to explain why you consider an appeal hearing is necessary or desirable...

14. There was no response received from the Appellant's agent to the Commission's email. On 3 October 2023, the Respondent requested an update from the Commission, and on 4 October 2023, the Commission emailed both parties to confirm that the appeal would be determined pursuant to section 949AN. No response was received from the Appellant's agent to this email.
15. Consequently, the Commissioner is satisfied that it is appropriate to determine this appeal without a hearing and pursuant to the provisions of section 949AN of the TCA 1997.

Legislation

16. Section 949U of the TCA 1997 states that:

“(1) Subject to subsection (3), the Appeal Commissioners shall not be required to adjudicate on a matter under appeal by way of a hearing and may, where they consider it appropriate, adjudicate on the matter solely by way of—

(a) the consideration of a notice of appeal, a statement of case or any other written material provided by a party,

(b) the holding of discussions with a party, or

(c) any other means they consider appropriate.

(2) Where the Appeal Commissioners consider that it is appropriate to adjudicate without a hearing, they shall notify the parties in writing of their intention to do so.

(3) Notwithstanding subsection (1) but subject to section 949AN(3), the Appeal Commissioners shall adjudicate by way of a hearing where a party requests a hearing by notifying the Appeal Commissioners in writing within 21 days after the date of the notification referred to in subsection (2)."

17. Section 949AN of the TCA 1997 states that

"(1) Subject to subsection (2), in adjudicating on and determining an appeal (in this section referred to as a "new appeal"), the Appeal Commissioners may—

(a) have regard to a previous determination made by them in respect of an appeal that raised common or related issues, and

(b) if they consider it appropriate, in the light of such a determination, determine the new appeal without holding a hearing.

(2) Where the Appeal Commissioners wish to act in accordance with subsection (1), they shall—

(a) send a copy of the previous determination referred to in that subsection to the parties in a way that, in so far as it is possible, does not reveal the identity of any person whose affairs were dealt with on a confidential basis during the proceedings concerned (being proceedings that were not held in public),

(b) request that each of the parties submit arguments to them within 21 days after the date of the request in relation to why it would not be appropriate to have regard to the previous determination in determining the new appeal, and

(c) request that each of the parties state whether the party wishes the Appeal Commissioners to hold a hearing and, where a party so wishes, to require that the party explain why such a hearing is considered to be necessary or desirable.

(3) Notwithstanding section 949U, the Appeal Commissioners may determine the appeal without holding a hearing where -

(a) no response is received from a party within the period referred to in subsection (2) (b), or

(b) a response is received but the Appeal Commissioners are not persuaded that it would be appropriate to disregard the previous determination referred to in subsection (1) that it is necessary to hold a hearing to determine the new appeal."

Submissions

18. In the statement of case dated 28 September 2017 submitted to the Commission by the Appellant's then agent, it was stated that, save for the amount of shares subscribed, all of the investors in [REDACTED] "*participated in the investment on identical terms*".
19. As set out above, it was subsequently agreed by the Appellant's then agent that one of the investors would act as lead appellant, and that "*All of the non-lead case appellants, consent to the Appeal Commissioner determining their appeals without holding a hearing in accordance with the provisions of section 949AN TCA 1997*".
20. The determination in 47TACD2019 sets out the submissions of the lead appellant at paragraphs 38 to 45, and the submissions of the Respondent at paragraphs 46 to 57. As the Appellant in this case has accepted that he participated in the [REDACTED] investment on "*identical terms*" to the lead appellant in 47TACD2019, and as there has been no attempt by the Appellant since the issuance of the determination in 47TACD2019 to provide additional submissions or otherwise differentiate his appeal from the lead appeal, the Commissioner simply notes the submissions as set out in 47TACD2019.

Material Facts

21. Having regard to the submissions received from the parties, to the correspondence before him and to the material facts as found by the Commission in 47TACD2019, the Commissioner makes the following findings of material fact:
 - 21.1. The Appellant was one of 31 investors in [REDACTED] [REDACTED]. Bar quantum and timings, all 31 of those investors made identical investments in [REDACTED] on the same terms.
 - 21.2. The investors made their investments in 2005 and claimed interest relief under section 250 of the TCA 1997. Section 250 of the TCA 1997 requires the investor to have been a director (either on a full or part-time basis) of [REDACTED] in order to be eligible for the provided relief.
 - 21.3. The Respondent issued notices of amended assessments to the investors for the years 2005 to 2008 denying them interest relief on the grounds that the investors did not fulfil the conditions necessary for the provided relief under section 250. In respect of the Appellant, the total amount of the amended assessments was €241,682.
 - 21.4. The investors appealed against the amended assessments. Those notices of appeals contained identical grounds of appeal (bar quantum and timings). As

those appeals were identical in nature (bar quantum and timings), the parties agreed that a lead appeal would be selected from the 31 appeals received. The investors' then agent consented to the follower appeals being determined without holding a hearing in accordance with the provisions of section 949AN of the TCA 1997.

- 21.5. The hearing of the lead appeal took place over 4 days in 2019. The determination in the lead appeal, 47TACD2019, issued on 15 October 2019.
- 21.6. The determination in 47TACD2019 found in favour of the Respondent on the basis, *inter alia*, that the lead appellant did not comply with the requirements of section 250 of the TCA 1997, and that the anti-avoidance provisions of section 817A of the TCA 1997 applied to deny the claim for interest relief. Consequently, it was determined that the amended assessments raised against the lead appellant stood.
- 21.7. The lead appellant requested the Commission to state and sign a case to the High Court in respect of 47TACD2019. The request was subsequently withdrawn and the Respondent entered into a settlement agreement with the lead appellant. The terms of the settlement agreement were applied to all of the follower appellants.
- 21.8. The Appellant in this appeal had previously stated, via his agent, that he participated in the [REDACTED] investment on "*identical terms*" to the lead appellant in 47TACD2019, and that he consented to the Commission determining his appeal pursuant to section 949AN of the TCA 1997.
- 21.9. The Appellant entered into settlement negotiations with the Respondent. However, the negotiations were unsuccessful and on 1 March 2023, the Respondent requested the Commission to determine the appeal pursuant to section 949AN of the TCA 1997.
- 21.10. On 13 March 2023, the Commission notified both parties that it intended to determine this appeal without a hearing and with regard to the previous determination in 47TACD2019, pursuant to section 949AN. The notification to the Appellant was issued to his agent on record with the Commission.
- 21.11. The email of 13 March 2023 to the Appellant's agent was returned to the Commission as undelivered. The Respondent subsequently notified the Commission that the Appellant had previously advised it that he had changed his representation.

21.12. On 22 March 2023, the notification regarding the intention of the Commission to determine the appeal pursuant to section 949AN was reissued to the Appellant's new agent. The notification enclosed the determination in 47TACD2019, and notified the Appellant's agent that if it disagreed with the intention to determine the appeal without a hearing and having regard to the determination in 47TACD2019, it should provide reasons to the Commission within 21 days of the notice. No reply was provided to the Commission.

21.13. Consequently, the determination in 47TACD2019 should apply *mutatis mutandis* to the Appellant, and it is found that the Appellant did not comply with the requirements of section 250 of the TCA 1997, and that the provisions of section 817A of the TCA 1997 apply to deny the claim for interest relief.

Analysis

22. The burden of proof in this appeal rests on the Appellant, who must show that the amended assessments raised by the Respondent were incorrect. 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.*”
23. As set out herein, the Appellant was one of 31 investors in [REDACTED]. It was accepted by the Appellant that all of the investors participated on “*identical terms*”, and it was agreed by the 31 investors that there should be one lead appeal and that the follower appeals would have their appeals determined pursuant to section 949AN of the TCA 1997. The determination in the lead appeal issued on 15 October 2019 and determined that the amended assessments in that appeal should stand.
24. Section 949AN of the TCA 1997 permits the Commission, in appeals raising “*common or related*” issues, to “*have regard*” to a previous determination made by it. In accordance with that provision and to aide efficiency, it is the practice of the Commission, where a number of similar appeals present, to request the parties to select a “lead appeal” with the balance of the related appeals being treated as “follower appeals”.
25. While the determination of the Commission is binding in the lead appeal (subject to stating a case to the High Court on a point of law or seeking for the Commission's decision to be judicially reviewed), the position of the follower appeals is different. As such, the follower appellants may accept the decision in the lead appeal or may seek to differentiate its

appeal from the facts in the lead appeal. In the event of this course of action being adapted by an appellant, the appellant is entitled to avail of its right to a hearing during which the Commission will ordinarily hear evidence or submissions on how that appellant's appeal differs from the lead appeal. In the event of the appellant being successful in its submissions, the Commission will issue a "modified" determination in respect of that appeal which will set out how the facts differ from the lead appeal and the effect those differences have on the overall decision.

26. In this appeal, the parties were notified by the Commission that it was intended to determine the matter pursuant to section 949AN, and they were notified that, if they did not agree, they should submit arguments as to why regard should not be had to the determination in 47TACD2019 and as to why a hearing was necessary. The notification issued to the parties on 13 March 2023, and it was reissued to the Appellant's new agent on 22 March 2023.
27. No response was received from the Appellant or his agent to the notification. The Commissioner considers that it is incumbent on the Appellant to demonstrate how his case differs from the lead appeal, in order for it to be possible that a modified determination could issue in this appeal. However, as no submissions have been made by the Appellant, the Commissioner is satisfied that it is appropriate and necessary to apply the determination in 47TACD2019, *mutatis mutandis*, to the Appellant.
28. Therefore, the Commissioner finds that the Appellant was not entitled to the interest relief claimed for the years 2005 to 2008, on the grounds, *inter alia*, that
 - 28.1. For the Appellant to be eligible to the claimed interest relief, he was required to comply with the provisions of section 250 of the TCA 1997. As the Appellant did not comply with the "part-time director requirement" of that provision, he is deemed ineligible for the interest relief claimed.
 - 28.2. The anti-avoidance provisions of section 817A of the TCA 1997 operate to deny the Appellant's claim for interest relief.
29. Consequently, it is determined that the appeal is not successful.

Determination

30. 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 Appellant has not demonstrated how his appeal should be differentiated from the

determination in 47TACD2019. Therefore, the amended assessments to income tax for the years 2005 to 2008 in the total amount of €241,682 stand.

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

Notification

32. 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

33. 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.



Simon Noone
Appeal Commissioner
11 December 2023