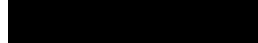




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

78TACD2024



Appellant

and

THE CRIMINAL ASSETS BUREAU

Respondent

Determination

Contents

Introduction	3
Background.....	3
Documentation Presented to the Commission	4
Preliminary Issues.....	7
Appellant	7
Respondent.....	8
Analysis - Preliminary Issues	9
Ruling on Preliminary Issues.....	10
Legislation.....	10
Submissions – Substantive Matter	18
Appellant	18
Respondent.....	20
Material Facts	23
Analysis	24
Determination	27
Appeal	27

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against Notices of Assessment to Income Tax for the years 2002, 2003 and 2005. Those assessments which were issued by the Criminal Assets Bureau (hereinafter “the Respondent”) on 18th May 2016 were as follows:

Year of Assessment	Quantum €
2002	13,266
2003	13,266
2005	<u>12,852</u>
	<u>39,384</u>

2. The hearing of the appeal occurred on 19th March 2024. The Appellant was in attendance and was represented by his agent and taxation advisor. The Respondent was represented by Counsel, its solicitor and three members of its staff.

Background

3. The Appellant registered for income tax in 2002. Following that registration, the Appellant’s then agent submitted the Appellant’s income tax returns for the years 2002 and 2003 on 8th November 2005. In addition, the Appellant’s then agent submitted the Appellant’s 2005 income tax return on 24th April 2007. Those income tax returns disclosed the following amounts and types of income:

Year	Schedule D Income	Schedule E Income
2002	24,324.00	0.00
2003	13,353.00	0.00
2005	5,370.00	13,076.00
Total	43,047.00	13,076.00

4. Following an investigation into the Appellant’s taxation affairs, which included the years 2002, 2003 and 2005 (“the years under appeal”), the Respondent suspected that the Appellant had under-returned his income for the years under appeal.
5. On 18th May 2016, the Respondent issued its Notices of Assessment to the Appellant. Those Notices of Assessment included the following types and amounts of income:

Year	Schedule D Income	Schedule E Income	Tax Payable
2002	42,000.00	0.00	13,266.00
2003	42,000.00	0.00	13,266.00
2005	33,000.00	13,076.00	12,852.00
Total	117,000.00	13,076.00	39,384.00

6. The Appellant submitted his Notice of Appeal to the Commission for the years under appeal on 27th May 2016.
7. Subsequently on 15th February 2017, the Appellant's agent submitted additional tax returns for the Appellant for the years 2002, 2003 and 2005. Those income tax returns disclosed the following sources of income under the headings "PAYE" and "Self-Assessment" (Schedule D income):

Year	Schedule D Income	Schedule E Income
2002	20,800.00	0.00
2003	23,400.00	0.00
2005	15,924.00	13,076.00
Total	60,124.00	13,076.00

Documentation Presented to the Commission

8. Included in the documentation submitted to the Commission was the following:
- 8.1. A copy of the Appellant's Notice of Appeal dated 27th May 2016. This was completed and signed in the name [REDACTED] quoting the PPS number ("PPSN") [REDACTED] ("the Appellant's PPSN"). The grounds of appeal within that form were as follows:
- 8.1.1. [2002 and 2003] – *"Helping father (decd), permanently and totally disabled, by running [REDACTED] for him in return for maintenance."*
- 8.1.2. [2005] – *"Employed by [REDACTED]."*
- 8.2. A letter from the Appellant's doctor. This was dated 4th March 2019 and stated:
- "Ref: [REDACTED] ...
- This is to confirm that the above-named is a patient of this practice since [REDACTED] [REDACTED] He is suffering from Polysubstance abuse for the past several years. He has attended various Rehab programmes and Counselling. He is currently using much less than previously and hopes to be free of same in the future".*

8.3. A copy of a Notice of Assessment for the year ended 31st December 2002 in the name “██████████” dated 1st December 2005. The income shown of that assessment was described as “*Schedule D, casual earnings*”, was in the sum of €24,324 and the tax payable on that assessment was €4,929.10, after the imposition of a 10% surcharge for late submission of that return. The PPSN shown on that assessment was the Appellant’s PPSN.

8.4. A copy of the Appellant’s income tax return using the Appellant’s PPSN for 2002 dated 15th February 2017. This was in the name “██████████”. Under the heading “*Income from trades, professions and vocations*” was the description of a trade “*general handyman*”. The accounting period was for the period 1/1/2002 to 31/12/2002 and the income shown on that form was €20,800. The return also included a claim for “*interest paid in full*” with ██████████. The date the loan was taken out was entered as “*10th August 2001*” and it was described as a “*first ever home loan*”. The interest paid on that home loan was entered as “€8,848”. The return also included an expression of doubt which stated:

“In view of the background of this case, including the ten-year review required by Revenue in 2016, and in the absence of adequate records in respect of the period 01/01/2001 to 31/12/2010 from which accounts could be prepared, of necessity, it was necessary to ascertain ██████████ income from a Capital Reconciliation Statement and a computation of his living expenses in a period commencing sixteen years earlier.”

8.5. A copy of a Notice of Assessment for the year ended 31st December 2003 in the name “██████████” dated 1st December 2005. The income shown of that assessment was described as “*Schedule D, casual earnings*” was in the sum of €13,353 and the tax payable on that assessment was €1,617.55, after the imposition of a 10% surcharge for late submission of that return. The PPSN shown on that assessment was the Appellant’s PPSN.

8.6. A copy of the Appellant’s income tax return for 2003 using the Appellant’s PPSN dated 15th February 2017. This was in the name “██████████”. Under the heading “*Income from trades, professions and vocations*” was the description of a trade “*general handyman*”. The accounting period was for the period 1/1/2003 to 31/12/2003 and the income shown on that form was €23,400. The return also included a claim for “*interest paid in full*”. The interest paid on that home loan was entered as “€7,936”. That return also included an identical expression of doubt as was entered on the 2002 income tax return.

- 8.14. Copy of a [REDACTED] mortgage account in the name "[REDACTED]" for the years under appeal. These statements showed regular monthly repayments to that account in amounts ranging from €976.79 to €1,010.25.

Preliminary Issues

9. At the commencement of the appeal hearing the Appellant stated that he wished to bring two preliminary issues to the Commissioner's attention before proceeding to the substantive issue. The Commissioner acceded to this request and sets out below the Appellant's and the Respondent's submissions in relation to the preliminary issues and his ruling in relation to those issues.

Appellant

10. The Appellant stated that when he registered for Income Tax with the Respondent in 2002, he requested that he be so registered in the name "[REDACTED]" which is his birth name. The Appellant stated that he was registered under this name and under his PPSN which is [REDACTED].
11. The Appellant further stated that when his then taxation agent lodged his first tax returns for the years under appeal, the assessments were issued by the Revenue Commissioners using his correct name "[REDACTED]".
12. However, when the Respondent issued its Notices of Assessment on 18th May 2016 for the years under appeal, while using the Appellant's PPSN, it incorrectly issued those assessments in the name "[REDACTED]" rather than the name "[REDACTED]". The Appellant submitted that owing to this error, it followed that the Notices of Assessment which issued by the Respondent on 18th May 2016 were void.
13. The Appellant further submitted that the Respondent's assessments of 18th May 2016 were incorrectly described in its Booklet of Appeal Documentation as "*Notices of Amended Assessment*" when those assessments were in fact entitled "*Notices of Assessment*". The Appellant submitted that the Respondent's assessments replaced those assessments which issued out following the first submission of the Appellant's income tax returns (on 8th November 2005 and 24th April 2007) and as such, section 924 TCA 1997 required the Respondent's assessments to have been entitled "*Additional First Assessments*". As this had not occurred, the Appellant submitted that the Respondent's Notices of Assessment dated 18th May 2016 were invalid and as such should be refused by the Commissioner.

14. The Appellant stated he noted from the Respondent's Booklet of Appeal Documentation that the Appellant's income tax returns for 2002 and 2003 were no longer available and in place it wished to rely on the assessments which it issued for those years on 1st December 2005. The Appellant also noted that the Appellant's income tax return for 2005 was also not available and in place, the Respondent wished to rely on its Notice of Assessment for that year which issued on 4th May 2007.
15. As the Appellant's original income tax returns for the years under appeal were no longer available, the Appellant submitted that it was not possible for the Respondent to establish whether the Appellant's income tax returns for those years included miscellaneous income within them. As such, the Appellant submitted that the Notices of Assessment issued for the years under appeal on 18th May 2016 should be reduced by the amount of income originally returned by the Appellant in his (first) tax returns submitted for the years under appeal. Those figures, the Appellant submitted, were €24,324 for 2002, €13,350 for 2003 and €5,370 for 2005.
16. In the event that the Commissioner determined that matters regarding the legality of the assessments was a matter for "another court", the Appellant submitted that his appeal should be adjourned so that he could resolve that matter in advance of the substantive appeal hearing.

Respondent

17. The Respondent stated that the Appellant's preliminary issues were neither included in writing in advance of the appeal hearing nor in his Notice of Appeal and as such should be refused by the Commissioner.
18. In the event that the Commissioner did not adapt this course of action, the Respondent submitted that the legality of the assessments was not a matter for consideration by the Commissioner. The Respondent noted in any event that the Appellant filed his own taxation returns in the name of "██████████" on 15th February 2017 and also completed his Notice of Appeal in the same name. As such, the Respondent submitted that nothing turned on these events as the Appellant was entitled to use different surnames if so minded provided he used the same PPS number in engaging with the Respondent, which he had.
19. Turning to the Appellant's submissions that the Respondent's Notices of Assessment should be reduced down by the amount of income included in his originally submitted income tax returns, the Respondent stated that it did not understand these submissions. However, insofar as the Appellant submitted that the assessable figures on the

Respondent's issued Notices of Assessment were overstated, the Respondent submitted that this was not relevant as a preliminary issue as it concerned the substantive matter under appeal. Furthermore, the Respondent submitted that as the Appellant had appealed the assessments then it was irrelevant whether those assessments were "Notices of Assessment" or "Amended Notices of Assessment" and the Appellant's submissions were an attempt to delay matters further.

Analysis - Preliminary Issues

20. The Commissioner informed the Appellant that he was unable to offer advice in relation to his appeal. However, to facilitate the conduct of the appeal hearing, the Commissioner informed the Appellant that any submissions relevant to the quantum under appeal were a matter for the substantive hearing. The Commissioner further explained that as the Appellant had been provided with a copy of bank statements and analysis from the Respondent, it was for the Appellant to demonstrate that the income derived from that documentation was not taxable income but rather came from some other verifiable source. The Commissioner informed the Appellant that he would not be taxed twice on the same income since the Respondent's assessments replaced rather than supplemented those assessments which issued when he submitted his (first) tax returns for the years under appeal.
21. Regarding the alleged incorrect surname on the Respondent's assessments, the Commissioner informed the Appellant that the tax returns submitted by his tax agent in 2017 and the Notice of Appeal were both completed in the name [REDACTED] [REDACTED]" using the Appellant's PPSN and as such nothing turned on this alleged error. The Commissioner also noted that the Appellant was present at his appeal hearing.
22. Furthermore, while the Appellant submitted that the assessments issued by the Respondent were incorrectly described and did not comply with the provisions of section 924 TCA 1997, the Commissioner advised that his jurisdiction did not extend to the "validity of the assessments" but only to the "quantum" of those assessments.
23. The Commissioner advised the Appellant that this was so, as was held by Murray J. in *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*") as follows:

"20. The issue is, first and foremost, one of statutory construction. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to

enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.

[...]

31...Read together the provisions strongly suggest what is envisaged by s. 933 and the supporting legislative scheme is an appeal against an assessment alone directed solely to whether the Inspector has properly reflected the statutory charge to tax in the assessment itself, with the Appeal Commissioners abating, reducing, letting stand or indeed increasing the assessment as appropriate in the light of the facts and law found relevant to that inquiry

[...]

64... 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.”

24. While the judgment in *Lee* was concerned with the predecessor to the Commission, and the relevant statutory provisions applying in that case, the Commissioner is satisfied that the same principles apply in this instance.

Ruling on Preliminary Issues

25. In accordance with *Lee*, the Commissioner found that the Appellant’s submissions regarding the alleged use of his incorrect surname and those submissions which concerned section 924 TCA 1997 are not matters within the Commission’s jurisdiction and must be refused. The Commissioner also found that any submissions regarding the quantum of the Respondent’s assessments were required to be made during the course of the substantive hearing.
26. Following notification of the Commissioner’s findings on the preliminary issues, the Appellant stated that he wished to continue the hearing of the substantive matter under appeal. The appeal proceeded on this basis.

Legislation

27. The following legislation is relevant to the Appellant’s appeal:

Section 18 TCA 1997 – Schedule D

(1) The Schedule referred to as Schedule D is as follows:

SCHEDULE D

1. *Tax under this Schedule 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,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

...

in each case for every one euro of the annual amount of the profits or gains.

2. *Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of paragraph 1 be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule.*

(2) *Tax under Schedule D shall be charged under the following Cases:*

Case I — Tax in respect of—

(a) any trade;

...

(3) *This section is without prejudice to any other provision of the Income Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases mentioned in subsection (2), and tax so directed to be charged shall be charged accordingly.*

Section 58 TCA 1997 – Charge to tax of profits or gains from unknown or unlawful source.

(1) *Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made—*

(a) the source from which those profits or gains arose was not known to the inspector,

(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or

(c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.

(2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) or charged to tax by virtue of or following any investigation by any body (in this subsection referred to as "the body") established by or under statute or by the Government, the purpose or one of the principal purposes of which is—

(a) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the purposes mentioned in paragraphs (a) and (b),

shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as "miscellaneous income", and in respect of such profits and gains so assessed—

(i) the assessment—

(I) may be made solely in the name of the body, and

(II) shall not be discharged by the Appeal Commissioners or by a court by reason only of the fact that the income should apart from this section have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity,

and

(I) the tax charged in the assessment may be demanded solely in the name of the body, and

(II) on payment to it of the tax so demanded, the body shall issue a receipt in its name and shall forthwith—

(A) lodge the tax paid to the General Account of the Revenue Commissioners in the Central Bank of Ireland, and

(B) transmit to the Collector-General particulars of the tax assessed and payment received in respect of that tax.

Section 924 TCA 1997 – Additional Assessments

(1) (a) Where the inspector discovers that—

(i) any properties or profits chargeable to income tax have been omitted from the first assessments,

(ii) a person chargeable—

(I) has not delivered any statement,

(II) has not delivered a full and proper statement,

(III) has not been assessed to income tax, or

(IV) has been undercharged in the first assessments, or

(iii) a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement or relief not authorised by the Income Tax Acts,

then, where the tax is chargeable under Schedule D, E or F, the inspector shall make an additional first assessment.

(b) Any additional first assessment made by the inspector in accordance with paragraph (a) shall be subject to appeal and other proceedings as in the case of a first assessment.

(2) (a) In this subsection, “neglect” means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the Income Tax Acts; but a person shall be deemed not to have failed to do anything required to be done within a limited time if such person did it within such further time, if any, as the Revenue Commissioners or officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, such person shall

be deemed not to have failed to do it if such person did it without unreasonable delay after the excuse had ceased.

(b) Subject to paragraph (c) and any other provision allowing a longer period in any class of case, an assessment or an additional first assessment may be made at any time not later than 10 years after the end of the year to which the assessment relates.

(c) In a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to income tax, an assessment or an additional first assessment may be made at any time for any year for which by reason of the fraud or neglect income tax would otherwise be lost to the Exchequer.

(d) (i) In a case in which emoluments to which this subparagraph applies are received in a year of assessment subsequent to that for which they are assessable, paragraph (b) shall apply in the case of assessments or additional first assessments in respect of the emoluments subject to the substitution of a reference to the end of the year of assessment in which the emoluments were received for the reference to the end of the year to which the assessment relates.

(ii) The emoluments to which subparagraph (i) applies are emoluments within the meaning of section 112 (2), including any payments chargeable to tax by virtue of section 123 and any sums which by virtue of Chapter 3 of Part 5 are to be treated as perquisites of a person's office or employment, being emoluments, payments or sums other than those taken into account in an assessment to income tax for the year of assessment in which they are received, and for the purposes of this paragraph—

(I) any such payment shall, notwithstanding anything in section 123 (4), be treated as having been received at the time it was actually received, and

(II) any such sums which are not actually paid to that person shall be treated as having been received at the time when the relevant expenses were incurred or are treated for the purposes of Chapter 3 of Part 5 as having been incurred.

(e) An objection to the making of any assessment or additional first assessment on the ground that the time limited for the making of that assessment has expired shall only be made on appeal against the assessment.

- (3) *Any assessments not made at the time when the first assessments are made shall as soon as they are made be added to the first assessments by means of separate forms of assessment.*

Section 959AA TCA 1997 –

Chargeable persons: time limit on assessment made or amended by Revenue officer.

- (1) *Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period—*

- (a) an assessment for that period, or*
- (b) an amendment of an assessment for that period,*

shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

- (i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and*
- (ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,*
by reason of any matter contained in the return.

- (2) *Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period—*

(a) where the return for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period,

(b) to give effect to—

- (i) a determination of an appeal against an assessment,*
- (ii) a determination of an appeal, other than one made against an assessment, that affects the amount of tax charged by the assessment, or*
- (iii) an agreement within the meaning of section 949V.*

(c) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(d) to correct an error in calculation in the assessment, or

(e) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

...

Section 959AD TCA 1997 - Chargeable persons and other persons: Revenue assessment and amendment of assessments where there is fraud or neglect.

(1) In this section ‘neglect’ means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the Acts.

(2) For the purposes of subsection (1), a person shall be deemed not to have failed to do anything required to be done within a limited time if the person did it within such further time, if any, as the Revenue Commissioners or Revenue officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, the person shall be deemed not to have failed to do it if the person did it without unreasonable delay after the excuse had ceased.

(3) Notwithstanding sections 959AA and 959AB, where a Revenue officer has reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of a person in connection with or in relation to tax due for a chargeable period, a Revenue officer may, at any time, make a Revenue assessment on that person for the chargeable period.

(4) An assessment to which this section applies shall be made by a Revenue officer in such sum as, according to the best of the officer’s judgment, ought to be charged on the person involved.

(5) In the circumstances referred to in subsection (3), a Revenue officer may, at any time, amend a Revenue assessment on, or a self-assessment in relation to, a person for a chargeable period in such manner as the officer considers necessary.

Section 959P TCA 1997 – Expression of Doubt

(1) In this section—

“law” means one or more provisions of the Acts;

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

- (a) sets out full details of the facts and circumstances of the matter,*
- (b) specifies the doubt, the basis for the doubt and the law giving rise to the doubt,*
- (c) identifies the amount of tax in doubt in respect of the chargeable period to which the expression of doubt relates,*
- (d) lists or identifies the supporting documentation that is being submitted to the appropriate inspector in relation to the matter, and*
- (e) is clearly identified as a letter of expression of doubt for the purposes of this section,*

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

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

- (a) give rise to a liability to tax by that person, or*
- (b) affect that person’s liability to tax or entitlement to an allowance, deduction, relief or tax credit,*

then, the chargeable person may—

- (i) prepare the return for the chargeable period to the best of that person’s belief as to the correct application of the law to the matter, and deliver the return to the Collector-General,*
- (ii) include a letter of expression of doubt with the return, and*
- (iii) submit supporting documentation to the appropriate inspector in relation to the matter.*

(3) This section applies only if—

- (a) the return referred to in subsection (2) is delivered to the Collector-General, and*
- (b) the documentation referred to in paragraph (iii) of that subsection is delivered to the appropriate inspector,*

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

Submissions – Substantive Matter

Appellant

28. The Appellant stated that he dropped out of second-level education after his first year and worked with his father in his father's [REDACTED] businesses. [REDACTED] the Appellant advised that he found work as a self-employed handyman. The Appellant stated that he developed an addiction to drugs when he was 14 or 15 and had undergone a lot of treatment for that addiction during the years under appeal.
29. The Appellant further stated that the only property he owned was a [REDACTED] home which he bought in [REDACTED] with the help of his father and a mortgage of €187,186 which accounted for the full value of that property.
30. [REDACTED]. He stated that he was incarcerated for possessing controlled drugs in [REDACTED] and was released from prison in [REDACTED]. [REDACTED] the Appellant stated that “*out of the blue*” he was served with the assessments by the Respondent in May 2016.
31. The Appellant submitted that upon receipt of the Respondent’s Notices of Assessment he contacted his father’s accountant who submitted the first tax returns on his behalf and submitted the Notice of Appeal to the Commission.
32. The Appellant submitted that owing to dealing with “*life on the outside*”, the break-up of his relationship and the death of his father, he was unable to engage with the appeal to the best of his ability. The Appellant also stated that he was unable to locate his personal papers for the years under appeal as such documentation was removed from his residence while he was incarcerated which further hampered his ability to engage with the Respondent on his appeal.
33. The Appellant submitted as the Revenue Commissioner’s Charter of Rights¹ undertakes to “*collect no more than the correct amount of tax or duty*” and that the Respondent is required to conform to the “*highest principles of professional public service*” then in issuing the assessments in the manner which it did, having regard to the Appellant’s personal circumstances, it breached its own guidelines.

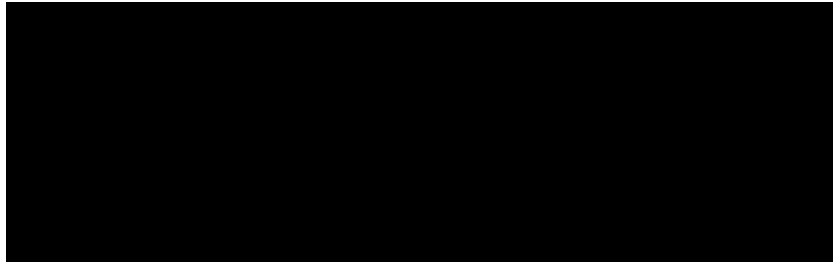
¹ <https://www.revenue.ie/en/corporate/information-about-revenue/customer-service/customer-charter/consistency-equity-and-confidentiality.aspx>

34. The Appellant further submitted that the failure of the Respondent to make contact with him or to provide him with adequate time to engage professional representation was insufficient to enable him to prepare and submit his Notice of Appeal to the Commission.
35. The Appellant submitted that the quantum of assessable income included in the Respondent's Notices of Assessment was excessive and as such, was not prepared in accordance with the Respondent's "best judgment" as required under section 959AD (4) TCA 1997. Furthermore, the Appellant submitted that those assessments did not comply with established jurisprudence.
36. In support of this position, the Appellant opened the case of *Menolly Homes v Appeal Commissioners & Anor* [2010] IEHC 49 ("*Menolly Homes*") at paragraph 12, where Charleton J stated:
- "Revenue law has no equity. Taxation does not arise through a civic responsibility but through legislation". Tax is not payable unless the circumstances of the liability are defined, and the rate measured by statute..." [Emphasis added]*
37. In further support of this position, the Appellant opened *Lee* where it was held at paragraph 64:
- "...of whether the assessment properly reflects the statutory charge to tax having regard to the provisions of the TCA...That is why the Court in *Aspin v Estill* framed the powers of the equivalent tribunal in that jurisdiction as directed to whether the assessment has been properly prepared in accordance with the applicable statutes." [Emphasis added]*
38. The Appellant stated that his new agent prepared the second set of tax returns, for the years under appeal, submitted on his behalf in 2017. The Appellant submitted as those tax returns were completed with reference to a "capital reconciliation" which reflected the Appellant's true financial position, then those returns represented "best judgment" of the Appellant's correct taxation liabilities. The Appellant submitted that owing to this position and as the Respondent had refused to meet with him in advance of the appeal hearing to agree his taxation liability, then the Commissioner should compute the taxation liabilities owing by the Appellant with reference to the figures returned by the Appellant in his second "set" of tax returns for the years under appeal.
39. Furthermore, as the Appellant signed a statutory declaration stating that the figures entered on those tax returns were correct, and as the Respondent had not established that the Appellant had completed those returns in a fraudulent or negligent manner, the Appellant submitted that this further supported his submissions that the figures on his

second set of tax returns should be the figures relied upon by the Commissioner in determining his appeal.

Respondent

40. The Respondent stated during the course of its investigation into the Appellant's taxation affairs it became aware that the Appellant maintained the following bank accounts for the years under appeal.



41. The Respondent further noted during the course of its investigation, that the Appellant lodged the following amounts into his various bank accounts:

Year	Bank Lodgements
2002	22,081.58
2003	30,553.50
2005	33,497.58
Total	86,132.66

42. In noting that the Appellant did not draw any social welfare income during the years under appeal, the Respondent analysed the Appellant's bank accounts for the years under appeal. This analysis disclosed that the Appellant's income on his tax returns was lower than that required to support the amount lodged into his bank accounts and his lifestyle.
43. In 2002, the Respondent noted that the Appellant returned income on his tax return which disclosed that his income for 2002 was €24,324. Subsequently, an amended tax return was filed with the Appellant's appeal dated 15 February 2017 and the Appellant declared €20,800 net profit. The Respondent further noted that within the Appellant's Notice of Appeal he submitted that he ran [REDACTED] for his father in return for maintenance in 2002. Having analysed the bank accounts for 2002, the Respondent noted that the Appellant withdrew the sum of €23,563 from [REDACTED] of which €18,509 related to direct debit repayments on the Appellant's mortgage. As no cash withdrawals were made from the Appellant's bank account in 2002, the Respondent submitted that the Appellant had under-returned his income for 2002 and as such it

calculated that the Appellant's income for 2002 should have been €42,000 which was the amount it estimated was necessary for the Appellant to fund his lifestyle for that year.

44. In 2003, the Respondent noted that the Appellant returned income on his tax return which disclosed that his income for 2003 was €13,353. Subsequently, an amended tax return was later filed with the Appellant's appeal dated 15 February 2017 and the Appellant declared €23,400 net profit. The Respondent further noted that within the Appellant's Notice of Appeal he submitted that he ran [REDACTED] for his father in return for maintenance in 2003. Having analysed the bank accounts for 2003, the Respondent noted that the Appellant withdrew the sum of €30,327 from [REDACTED] which €29,556 related to direct debit repayments on the Appellant's mortgage. As no cash withdrawals were made from the Appellant's bank account in 2003, the Respondent submitted that the Appellant had under-returned his income for 2003 and as such it calculated that the Appellant's income for 2002 should have been €42,000 which was the amount it estimated was necessary for the Appellant to fund his lifestyle for that year.
45. In 2005, the Respondent noted that the Appellant returned income on his tax return which disclosed that his income for 2005 was €18,446, which consisted of Schedule D income of €5,370 and PAYE income of €13,076. Subsequently, an amended tax return was later filed and the Appellant declared the same PAYE income but amended the Schedule D income from €5,370 to €15,924. The Respondent further noted that within the Appellant's Notice of Appeal he submitted that he was an employee of [REDACTED]. but despite making regular mortgage repayments did not make any cash withdrawals from his bank account. In allowing for the PAYE income received in 2005, the Respondent estimated that the Appellant would have required Schedule E income of €33,000 to fund his lifestyle for that year.
46. The Respondent submitted that in the context of tax appeals, the burden of proof is on the Appellant to show that he does not owe the disputed tax. As held in *Menolly Homes* by Charlton J:
- "This reversal of the burden of proof onto the taxpayer is common to all forms of taxation appeals in Ireland." and "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."*
47. Furthermore, the Respondent submitted that as the Appellant is subject to tax on a self-assessment basis the responsibility to establish that the tax the Appellant says is due is

actually due rests with him only. As was held in paragraph 168 of *TJ v Criminal Assets Bureau* [2008] IEHC 168:

"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 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 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...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."

48. The Respondent submitted that as the Appellant failed to produce any evidence that the disputed taxation was not due or excessive, then his appeal must fail and its assessments be upheld. Furthermore, in response to assertions made by the Appellant in his Outline of Arguments, that the assessments were made "out of the blue", the Respondent submitted that such submission does not form the basis of an "appealable matter" for the purposes of section 949A TCA 1997 and therefore, are not matters to be taken into account by the Commission in accordance with Part 40A of the TCA. The Respondent further submitted that the same position prevailed regarding any purported breach of its Charter of Rights for Taxpayers, which in any event, were denied by the Respondent.

Material Facts

49. The Commissioner finds the following material facts:

- 49.1. On 8th November 2005, the Appellant's then agent filed income tax returns for the Appellant for the years 2002 and 2003. Those income tax returns disclosed that the Appellant's total income for those years was the sums of €24,324 and €13,353 respectively.
- 49.2. No financial statements or other documentation was provided to the Commission to ascertain how the figures entered on the tax returns for 2002 and 2003 were derived.
- 49.3. On 24th April 2007, the Appellant's then agent filed an income tax return for the Appellant for the year 2005. That income tax return disclosed that the Appellant's total income for that year was €18,446 which comprised of Schedule D income of €5,370 and PAYE income of €13,076.
- 49.4. No financial statements or other documentation was provided to the Commission to ascertain how the figures entered on the 2005 tax return were derived.
- 49.5. In or around 2016, the Respondent conducted an investigation into the Appellant's taxation affairs. During the course of that investigation, the Respondent obtained bank statements from four bank accounts owned or relevant to the Appellant. The Respondent analysed those bank statements and provided the Commission with its analysis of lodgements and withdrawals into those bank accounts.
- 49.6. That schedule of lodgements and withdrawals was compared to the income figures returned on the Appellant's submitted taxation returns for the years under appeal. The comparison revealed that the Appellant's income for the years under appeal was not sufficient to support the lodgements and withdrawals into the bank accounts owned or relevant to the Appellant and to support amounts necessary to fund the Appellant's lifestyle.
- 49.7. Following analysis, the Respondent estimated the Appellant's income for the years under appeal as €42,000 for 2002, €42,000 for 2003 and €46,076 for 2005 (which for 2005 included the PAYE income of €13,076).
- 49.8. The Respondent issued Notices of Assessment to the Appellant on 18th May 2016 which reflected the income tax due on the amounts it had estimated the Appellant's income to be for the years under appeal. The calculated taxation due

on those assessments was €13,266 for 2002, €13,266 for 2003 and €12,852 for 2005.

- 49.9. On 15th February 2017, the Appellant's agent submitted tax returns to the Respondent. Those tax returns disclosed the Appellant's income as €20,800 for 2002, €23,400 for 2003 and €29,000 for 2005 (which for 2005 included the PAYE income of €13,076).
- 49.10. Those tax returns contained an "expression of doubt".
- 49.11. Within his submissions, the Appellant stated that the figures entered on those tax returns submitted on 15th February 2017 were derived from a "capital reconciliation".
- 49.12. No capital reconciliation or other supporting documentation or information was provided to the Commission.
- 49.13. The Appellant claimed mortgage interest relief within his tax returns for the years under appeal. No supporting documentation was provided to the Commission in respect of these claims.

Analysis

50. The appropriate starting point for analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example, in *Menolly Homes* where Charleton J. held at paragraph 22: -

"The burden of proof in this appeal process is ... 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."

51. This burden of proof was reiterated in the recent High Court case of *O'Sullivan v Revenue Commissioners* [2021] IEHC 118, ("*O'Sullivan*") where Sanfey J. held at paragraph 90:

"...The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer's position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position..."

52. The Commissioner notes the Appellant's submissions in which he stated following his incarceration that he was unable to obtain documentation necessary for him to "engage" with his appeal and that he prepared his income workings based on a "capital reconciliation".
53. While the Appellant's agent was an official previously in the employ of the Respondent, during the course of the appeal hearing he informed the Commissioner that he was unfamiliar with appeal hearings before the Commission. For this reason, the Commissioner explained to the Appellant's agent the format of the hearing and the benefits or otherwise of calling the Appellant as a witness in support of his appeal. The Commissioner also gave multiple breaks to the Appellant's agent to enable him to consider and discuss matters with the Appellant.
54. Following such consultation, the Appellant's agent informed the Commissioner that he did not want to call the Appellant as a witness and proceeded with his substantive submissions. Following those submissions, the Commissioner asked the Appellant's agent if he was finished making his submissions. When the Appellant's agent confirmed that he was, the Commissioner informed the Appellant's agent that the Respondent would proceed with its submissions, following which he would be entitled to make further submissions which were confined to those points raised within the Respondent's submissions.
55. When the Respondent's Counsel finished her submissions, the Appellant's agent proceeded to make further submissions which were not confined to those points raised within the Respondent's submissions. In addition, the Appellant's agent sought, at that stage, to introduce workings which supported the "capital reconciliation" analysis which he had prepared.
56. Following objections from the Respondent's Counsel to the presentation of those points and the provision of the capital reconciliation schedule, the Commissioner held that such information could not be provided in the Appellant's agent's closing submissions.
57. In coming to that finding, the Commissioner noted the longevity of the Appellant's appeal, that the Appellant's agent had been presented with an opportunity to agree the booklets of appeal documents with the Respondent, but chose not to so do and that the Respondent was not given the opportunity to substantiate the capital reconciliation workings. Furthermore, the Commissioner noted that the Appellant's agent could have requested a copy of the bank statements and workings obtained and prepared by the Respondent to assist with the Appellant's appeal but for reasons unknown apparently chose not to adapt that course of action.

58. As the Commissioner was provided with no workings by the Appellant to dispute the figures prepared by the Respondent it follows that those figures must be upheld by the Commissioner subject to them complying with the provisions of section 959AD (4) TCA 1997. While the Commissioner notes from the Appellant's submissions that he signed a "statutory declaration" on the tax returns for the years under appeal on 15th February 2017, to the effect that the figures included within those returns were "correct", from an evidential perspective and in further noting that the figures contained within those returns contradicted figures in earlier returns submitted by the Appellant for the same years as those under appeal, the Commissioner holds in line with *Menolly Homes* and *O'Sullivan* that his determination must be grounded on some verifiable figures.
59. Section 959AD (4) TCA 1997 imposes an obligation on the Respondent to utilise "*best judgment*" in determining the amount of taxation that "*ought to be charged on the person involved*".
60. In accordance with those provisions, the Commissioner has examined the documentation and workings provided by the Respondent to substantiate the quantum of income contained within its Notices of Assessment which it issued on 18^h May 2016. The Commissioner notes from those workings that the Respondent obtained copies of the bank accounts which the Appellant had an interest in for the periods under appeal and summarised the transactions into those bank accounts before analysing the lodgements and withdrawals into and from those accounts. In noting that the Appellant did not withdraw sufficient cash from those bank accounts to fund his lifestyle and factoring in the payments made by the Appellant on his home mortgage and other outgoings, the Respondent calculated its estimate of what it considered the Appellant's correct income was for the years under appeal and issued its assessments accordingly. This seems logical to the Commissioner and in compliance with the provisions of section 959AD (4) TCA 1997.
61. Following this examination and in noting no documentary evidence was provided to the Commissioner to dispute the Respondent's figures the Commissioner finds as a material fact that the provisions of section 959AD (4) TCA 1997 have been complied with by the Respondent. Furthermore, the Commissioner notes absent any supporting documentation, that the Appellant's claims for mortgage interest relief for the years under appeal must be refused.
62. While the Appellant included "expressions of doubt" within his tax returns submitted on 15th February 2017, the Commissioner finds as those tax returns were the "second set" of returns submitted by the Appellant, he is unable to consider those expressions of doubt

as they do not comply with the provisions of section 959P (3) TCA 1997. That provision requires the expression of doubt to have been made on or before the specified return date for the chargeable period involved. It follows that as the Appellant's expressions of doubt were not included within that timeframe then they do not comply with the provisions of section 959P (3) TCA 1997 and must accordingly be refused.

Determination

63. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the relevant tax is not payable.
64. In the circumstances and based on a review of the facts and consideration of the documentary evidence and submissions of the parties, the Commissioner determines that the Respondent's Notices of Assessment which it issued on 18th May 2016 in the sum of €39,384 are upheld without variation.
65. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal. The Commissioner acknowledges the Appellant's agent's attempts to assist the Appellant with his appeal.
66. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

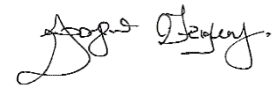
Notification

67. 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

68. 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.



Andrew Feighery

Appeal Commissioner

26th April 2024