



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between



02TACD2025

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) to refuse the Appellant’s application that he be assessed for income tax for the year 2022 under joint assessment with his spouse.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

## Background

3. On 14 November 2023 the Appellant advised the Respondent that his spouse had resided in Ireland for 8 days in 2022.
4. On 15 November 2023 the Respondent advised the Appellant that it was not possible for the Appellant and his spouse to be taxed under joint assessment for the year 2022. The Respondent amended the Appellant’s tax record to the status of married separate treatment for the year 2022. The Respondent requested the Appellant to provide details of his spouse’s earnings from the relevant United Kingdom (“UK”) tax authorities with a statement from HMRC confirming the Appellant’s spouse’s total income for UK tax years 2021/2022 and 2022/2023.
5. The Appellant claims he has been unable to obtain information about his spouse and her income in the UK for the relevant periods.
6. On 21 December 2023 the Respondent advised the Appellant that it had processed his Form 12 for the year 2022 as separate treatment and that a Statement of Liability for the year 2022 would issue to him.
7. On 19 January 2024 the Respondent issued a Statement of Liability for the year 2022 to the Appellant with a raised assessment of €2,931.42 against the Appellant.
8. On 17 February 2024 the Appellant submitted his Notice of Appeal to the Commission. The Appellant’s grounds of appeal were as follows:

*“I am appealing against my PAYE underpayment for the year 2022 as I am currently required to repay EUR 2931.41 to Revenue. In [REDACTED], I had gotten married and my spouse spent 2022 studying her [REDACTED] degree in the UK from Jan 2022. During her time spent studying in UK for 2022, I had been financially supporting her with all the rent and the expenses during this time. From my side, I am able to provide this proof of payments to my spouse during this period, if required. During her time spent studying full*

*time in UK, she had only been in Ireland a few days, which was voluntarily disclosed by me to the Revenue, and hence, did not meet the criteria to be treated as a resident. Due to this case, my spouse was deemed not a resident in Ireland in 2022 and Revenue has declared that I'm unable to be jointly assessed and will be taxed as a single individual during the year 2022 even though she was a full time student and not working. Recently, I have received my Statement of liability for the year 2022 and am liable for underpayment due to this previous stated reasoning. In order to reclaim this relief, I was asked to submit a HMRC statement confirming the spouse's total income for UK tax years 2021/2022. Currently, we [REDACTED]. She has returned back to [REDACTED] after her studies in UK in 2023. Along with this and other [REDACTED] [REDACTED] with my spouse, I am currently looking into legal process. Due to above mentioned reasons, I am unable to contact her and request the previously mentioned "HMRC statement". ..... I am currently liable for a sum underpayment of 2931.41EUR to Revenue for the year 2022 even though I had been taking care of my spouse, her rent and other expenses during this period and she was not working. ....".*

9. On 30 April 2024 the Respondent submitted its Statement of Case to the Commission.
10. On 28 May 2024 the Appellant submitted his Statement of Case to the Commission.

### **Legislation**

11. The legislation relevant to this appeal is as follows:

*Section 960C of the TCA1997: Tax to be due and payable to Revenue Commissioners.*

*Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.*

*Section 1017 of the TCA 1997: Assessment of husband in respect of income of both spouses.*

*(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –*

*(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,*

*(b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and*

*(c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.*

*(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.*

*(3) Subject to subsection (4), for a year of assessment prior to the current year of assessment in which this section applies as a consequence of—*

*(a) an election made (including an election deemed to have been duly made) under section 1018,*

*(b) an election made under section 1019(2)(a)(ii), or*

*(c) section 1019(4)(a),*

*a husband or a wife who is not assessed under this section may elect to be so assessed and such election shall apply in place of any earlier election or deemed election for that year of assessment.*

*(4) Subsection (3) shall not apply where the husband or the wife is a chargeable person (within the meaning of section 959A).*

**Section 1018 of the TCA 1997: Election for assessment under section 1017.**

*(1) A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.*

*(2) Where an election is made under subsection (1) in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.*

*(3) Notwithstanding subsections (1) and (2), either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment.*

*(4)(a) A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016.*

*(b) Where a husband or his wife has duly given notice under paragraph (a), that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.*

*Section 1032 of the TCA 1997: Restrictions on certain reliefs.*

*(1) Except where otherwise provided by this section, an individual not resident in the State shall not be entitled to any of the allowances, deductions, reliefs or reductions under the provisions specified in the Table to section 458.*

*(2) Where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that he or she –*

*(a) is a citizen of Ireland,*

*(b) is resident outside the State for the sake or on account of his or her health or the health of a member of his or her family resident with him or her or because of some physical infirmity or disease in himself or herself or any such member of his or her family, and that previous to such residence outside the State he or she was resident in the State,*

*(c) is a citizen, subject or national of another Member State of the European Communities, or of the United Kingdom, or of a country of which the citizens, subjects or nationals are for the time being exempted by an order under section 10 of the Aliens Act, 1935, from any provision of, or of an aliens order under, that Act, or*

*(d) is a person to whom one of the paragraphs (a) to (e) of the proviso to section 24 of the Finance Act, 1920, applied in respect of the year ending on the 5th day of April, 1935, or any previous year of assessment,*

*then, subsection (1) shall not apply to that individual, but the amount of any allowance, deduction or other benefit mentioned in that subsection shall, in the case of that individual, be reduced to an amount which bears the same proportion to the total amount of that allowance, deduction or other benefit as the portion of his or her income subject to Irish income tax bears to his or her total income from all sources (including income not subject to Irish income tax).*

*(3) Notwithstanding subsection (2), where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that the individual is a resident of another Member State of the European Communities or of the United Kingdom and that the proportion which the portion of the individual's income subject to Irish income tax bears to the individual's total income from all sources (including income not subject to Irish income tax) is 75 per cent or greater, subsection (1) or, as the case may be, subsection (2) shall not apply to that individual and he or she shall be entitled to the allowance, deduction or other benefit mentioned in subsection (1).*

## **Submissions**

### *The Appellant's submissions*

12. The Appeal Commissioner ("the Commissioner") sets out hereunder an extract of the Appellant's submissions from his Statement of Case:

*"Dispute: My P21 Balancing statement for Year 2022 shows Euros 2931.42 Underpayment charged by Revenue reason being my spouse non-resident in year 2022 and requesting income statement from HMRC for tax years 2021 / 2022 and 2022/2023*

*Facts: We got married in [REDACTED] on [REDACTED], my only requirement was to live in Ireland as this is my home since I moved in [REDACTED] at the age of [REDACTED], had it discussed before marriage and she accepted would live with me in Ireland after marriage. Post marriage [REDACTED] with this regard as she wanted to move to UK immediately, study over there for which she needed me to spend. I was [REDACTED]*

*[REDACTED]. In Jan 2022 - My spouse took a course at [REDACTED] [REDACTED] without my knowledge. Still in an effort to retain this marriage I visited [REDACTED] often.*

*She was only in Ireland at below dates:*

████████████████████ for IRP card renewal

████████████████████

████████████████████

I do confirm she was full time student during her stay in ██████████ in 2022-2023 and I have been supporting her for all her expenses till May 2023, making bank transfer from my Revolut bank to my spouse Revolut bank (Bank statement / Transaction attached to the email as proof)

2022 - Euros 8570 GBP 15

2023 - Euros 3700.00 GBP 210 transferred

All I have is her student ID ██████████ at the ██████████ and her ██████████ Passport ██████████.

████████████████████

██████████ with no prior information to me, so left with no other option I have decided to process legally here in Jan 2025 which would again be a substantial financial burden on me.

Her current residential address in ██████████ I am unsure as at the time of marriage they were in an address which is different to the address on her passport and back in 2022 when my ██████████ visited ██████████ her ██████████ were again at a different address.

I have contacted Department of Justice and Immigration Officer at ██████████ Garda Office informing my current situation (Proof can be provided on request). At this uncertain situation it's not possible to request an income statement from HMRC as I wouldn't be provided due to data protection reasons. But I do strongly believe I meet the requirements for married tax credit as she would be my spouse till legal separation and all above said facts are true to my knowledge."

13. Further submissions made by the Appellant on the 10 July 2024 stated inter alia that:

"With reference to document "Document 2\_██████████" submitted by Revenue, I wish to submit below further material as evidence from my side:

As stated in my Statement Of Case Form, my spouse visited Ireland and stayed with me at the below dates:

████████████████████ For Irish Residence Permit card renewal with Stamp 4 valid till June ██████████





1.1 Section 960C of the Taxes Consolidation Act (TCA) 1997

1.2 Section 1017 TCA 1997

1.3 Section 1032 TCA 1997

## 2. Outline of relevant facts

*The Appellant originally contacted the Respondent on 7 September 2021 to inform the Respondent that he was recently married.*

*The Appellant subsequently contacted the Respondent via the National PAYE Helpline on 9 December 2021 to confirm that his spouse moved to Ireland permanently in 2021. The record of the Appellant was updated to joint assessment in advance of the 2022 tax year following confirmation from the Appellant that his spouse had moved permanently to Ireland.*

*The Appellant sent a message to the Respondent on 11 December 2021, confirming that his spouse was now fully resident in Ireland in advance of 2022 tax year. The Respondent replied to the Appellant on 11 December 2022 confirming joint assessment would be applied to the record of the Appellant for 2022.*

*The Appellant submitted a PAYE income tax return for 2022 on 19 October 2023, in which he confirmed his spouse was non-resident in Ireland for 2022 and was resident in the United Kingdom for that period. The Appellant sent a message to the Respondent on 19 October 2023 confirming the submission of his 2022 income tax return, during which time he provided the UK tax ID number of his spouse.*

*The Respondent replied to the Appellant on 14 November 2023 and sought clarification from the Appellant of his spouse's residency status for 2022. The Appellant replied on 14 November 2023, confirming that his spouse had only resided in Ireland for 8 days in 2022.*

*On foot of this information the Respondent replied to the Appellant on 15 November 2023, and noted as his spouse was non-resident in 2022 and 2023, it was not possible for them to be taxed under joint assessment for these periods. Accordingly, the record of the Appellant was amended to married separate treatment for the periods in question. The Respondent advised the Appellant that he would be able to avail of married tax credits for 2022 once the relevant information was provided. The Respondent requested that the Appellant provide details of his spouse's earnings from the relevant United Kingdom tax authorities. It was further noted for this relief to be applied for tax year 2022, a HMRC statement confirming the Appellants spouse's total income for UK tax years 2021/2022*

*and 2022/2023 was required. To date the Appellant has not provided the requested information to the Respondent.*

*The Appellant confirmed to the Respondent on 20 November 2023 that his spouse had finished her study in the United Kingdom in 2023. The Respondent confirmed to the Appellant on 21 December 2023 that his 2022 income tax return had been processed as a single individual (separate treatment).*

*The Appellant appealed this decision to the Tax Appeals Commission in February 2024. On receipt of the appeal, the Respondent wrote to the Appellant noting "Under Section 1032 of the Taxes Consolidation Act (TCA) 1997 you may be entitled to apply for Non-Resident Aggregation Relief at the end of each relevant tax year. The relief determines the portion of Married Rate Band and Tax Credits that may be due in the relevant year and is based on yours and your spouse's total income from all sources. In order for us to amend your record for 2022 we require details of your spouse's income in the UK for tax years 2021/2022 and 2022/2023. Without this information no amendments can be made to your record for this period".*

*The Respondent has since spoken with the Appellant by phone on 19 March 2024, during which time the Appellant confirmed he would keep the Respondent updated on his progress in retrieving the requested information to amend his record for 2022.*

*Section 1017 of the TCA 1997 allows, where a wife is living with her husband, for the married couple to elect that the husband be assessed not only on his own, but also on his wife's income. In this case, the Appellant and his spouse were married, but living apart for the period 2022, therefore joint assessment cannot apply.*

### *3. Relevant case law*

*Menolly Homes Ltd v Appeal Commissioners and Revenue Commissioners: [2010] ITR 75 states that 'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer' (para. 22). The onus, therefore, is on the Appellant to show that the Respondent has misapplied the legislation with regard to the tax treatment applied to his record for 2022.*

*In Income Tax Law, 2009, at page 172, para. 2.205, Judge, while referring to Bolands Limited v Revenue Commissioners 1 ITR 34 states that the burden of proof falls on "he who asserts", i.e. it generally falls on the taxpayer appellant who asserts the assessment is excessive. Furthermore, in the case of MacEachern v Carr [1996] STC 282, it was observed that one of the reasons the onus is justified is because it is only the taxpayer who has access to the full facts relating to his personal tax situation. In this case, the*

*Respondent is unable to apply married tax credits to the record of the Appellant for 2022 in the absence of requested documentation relating to the UK income of his spouse for that period.”*

### **Material Facts**

15. Having considered and assessed the documentation submitted by the parties in this appeal, the Appeal Commissioner (“the Commissioner”) makes the following findings of material fact:

15.1. On 14 November 2023 the Appellant advised the Respondent that his spouse resided in Ireland for 8 days in 2022.

15.2. On 15 November 2023 the Respondent advised the Appellant that it was not possible for the Appellant and his spouse to be taxed under joint assessment rules for the year 2022. The Respondent amended the Appellant’s tax record to married separate treatment for the year 2022.

15.3. The Respondent requested the Appellant to provide details of his spouse's earnings from the relevant UK tax authorities with a statement from HMRC confirming the Appellant’s spouse’s total income for UK tax years 2021/2022 and 2022/2023. The Appellant has not provided the information to the Respondent.

15.4. On 21 December 2023 the Respondent advised the Appellant that it had processed his Form 12 for the year 2022 as separate treatment.

15.5. On 19 January 2024 the Respondent issued a Statement of Liability for the year 2022 to the Appellant with an assessed liability of €2,931.42.

### **Analysis**

16. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49 (“*Menolly*”), wherein at paragraph 22, Charleton, J. stated:

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.*

17. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly*, wherein Charleton, J. stated:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

18. The Commission is a statutory entity and must operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee v The Revenue Commissioners* [2021] IECA 18, wherein Murray, J. stated at paragraph 76:

*"The jurisdiction of the Appeal Commissioners ..... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."*

19. Section 1017(1) of the TCA 1997 provides that where in the case of a husband and wife an election is made under section 1018 of the TCA 1997 to be assessed to tax it has effect for a year of assessment and the husband shall be assessed and charged to income tax, not only in respect of his total income for that year, but also in respect of his wife's total income for any part of that year of assessment during which she is living with him. Section 1017(1) of the TCA 1997 provides that for joint assessment rules to apply the wife must be living with her husband.
20. The Appellant advised the Respondent that his wife was resident in the State for only 8 days in 2022. On receipt of this information the Respondent re-designated the Appellant's tax treatment status from married joint assessment to married separate treatment.

21. Further to the provisions of section 1017(1) of the TCA 1997 and the Appellant's wife's period of residence in the State in the year 2022 the Appellant was not entitled under the legislation to tax treatment status of married joint assessment for the year 2022.
22. Section 1032 of the TCA 1997 provides inter alia that applicants may qualify for Non-Resident Aggregation Relief at the end of each relevant tax year subject to compliance with the requirements of the section. The Non-Resident Aggregation Relief determines the portion of Married Rate Band and Tax Credits that may be due in the relevant year and is based on an applicant's and their spouse's total income from all sources and in order to qualify for the relief details of all income have to be provided to the Respondent.
23. Section 1032(3) of the TCA 1997 provides that notwithstanding subsection (2), where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that the individual is a resident of another Member State of the European Communities or of the UK and that the proportion which the portion of the individual's income subject to Irish income tax bears to the individual's total income from all sources (including income not subject to Irish income tax) is 75 per cent or greater, subsection (1) or, as the case may be, subsection (2) shall not apply to that individual and he or she shall be entitled to the allowance, deduction or other benefit mentioned in the subsection.
24. The Respondent made requests to the Appellant that he submit to it details of his spouse's income in the UK for tax years 2021/2022 and 2022/2023 and that without this information no amendments could be made to his tax record and treatment status, there could be no application of the benefit of the Non-Resident Aggregation Relief for the year 2022. The Appellant submits that he has been unable to obtain information about his spouse and her income in the UK for the relevant periods. Accordingly, there has been no compliance and/or satisfaction with this requirement in order for the Non-Resident Aggregation Relief to be applied to the Appellant for the year 2022.

### **Determination**

25. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent acted in accordance with the legislation in refusing the Appellant's request that he be assessed for income tax for the year 2022 under joint assessment with his spouse.
26. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent acted in accordance with the legislation in refusing to apply the Non-Resident Aggregation Relief in the treatment of the Appellant's tax affairs.

27. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful and the decision of the Respondent in the Statement of Liability for the year 2022 shall further to the provisions of section 949AL(1) of the TCA 1997 shall stand.
28. The Commissioner acknowledges that the Appellant was within his rights to appeal the Respondent's decision and to have clarity of his legal rights. The Commissioner understands that the Appellant may be disappointed with the outcome of his appeal.
29. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

30. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(1) 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**

31. 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.



Leonora B. Doyle  
Appeal Commissioner  
17 October 2024