AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

114TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

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 on behalf of [redacted] ("the Appellant") in relation to Notices of Amended Assessment ("the first amended assessments") to income tax issued by the Revenue Commissioners ("the Respondent") on 22 February 2024, for the years 2009 and 2010 ("the relevant years"). The assessments at issue are in the amounts of €166,775.22 for the year 2009 and €425,630.70 for the year 2010.

2. On 12 November 2024, the Respondent issued two further Notices of Amended Assessment ("the second amended assessments") for the relevant years. The second amended assessments reduced the amount of tax reflected as payable in the first amended assessments to €0.00 ("nil").

3. The Appellant contended that it is the first amended assessments that are the subject of this appeal and the second assessments are not under appeal. However, it was the Respondent's argument that the second amended assessments superseded the first amended assessments, the consequence of which was that the first amended assessments, the subject matter of this appeal, have been "vacated" or "withdrawn", with the underlying tax liability being reduced to nil. Thus, the Respondent contended that *"[t]he assessment which is the subject of the appeal is no longer in being, therefore the appeal is moot*".

4. On 22 March 2024, the Appellant duly appealed the first amended assessments of the Respondent to the Commission by submitting a Notice of Appeal. On 24 May 2024, in accordance with section 949Q TCA 1997, the Appellant and the Respondent each submitted a Statement of Case. Furthermore, on 26 July 2024, in accordance with section 949S TCA 1997, the Appellant submitted an Outline of Arguments and on 26 July 2024, the Respondent submitted its Outline of Arguments, dated 24 July 2024. The Appellant's Outline of Arguments included an expert legal opinion of Quastels LLP, dated 25 July 2024 ("the Appellant's expert opinion").

5. The appeal proceeded by way of a hearing that took place on 28 November 2024. The Appellant was represented by junior counsel and the Respondent was represented by senior counsel.

Background

6. On 20 January 2009, [redacted] ("the company") was incorporated. From 20 January 2009, the company had three members, including the Appellant, and each owned 33.33 per cent of the company.

7. The Appellant subsequently established [redacted] ("company 2") which was incorporated on 20 December 2010. Company 2 replaced the Appellant as a member of the company.

8. The Registrar of Companies for England and Wales indicated that the Appellant was a designated member of the company from the date of incorporation on 20 January 2009 until 22 December 2010, when company 2 replaced the Appellant as a member of the company.

9. On 22 December 2010, the Appellant ceased to be a member of the company, when company 2, a limited company incorporated in Ireland, of which the Appellant was a director and sole shareholder, then became a member.

10. In 2016, the Respondent opened an Aspect Query for income tax in relation to the Appellant. During the course of the audit, the Appellant furnished to the Respondent bank statements which detailed payments that the Appellant had received from the company.

11. During 2009, the Appellant had changed his accounting date from year ended 31 December 2009 to year ended 31 January 2009. The assessable profit included in his tax return for 2009, was calculated based on the financial accounts for the periods 1 February 2008 to 31 December 2008 and 1 January 2009 to 31 January 2009.

12. On 19 November 2010, the Appellant filed an income tax return for 2009. The Appellant's trade, profession or vocation is described as [redacted] with an accounting period of 1 January 2009 to 31 December 2009. The income from the company was omitted from the Appellant's income tax returns for the relevant years.

13. On 19 November 2011, the Appellant filed an income tax return for 2010. The Appellant's trade, profession or vocation was described as [redacted] with an accounting period of 1 January 2009 to 31 January 2010.

14. Based on the financial statements for the company for the period ended 31 March 2010 and for the year ended 31 March 2011, the Respondent's calculation of the Appellant's assessable partnership profits from the company for the relevant years was in the amounts of €316,857 and €773,874, respectively. It was the Respondent's position that the assessable partnership profits, from the company, for the relevant years, in the

amounts of €316,857 and €773,874 respectively, were omitted from the Appellant's income tax returns for the relevant years.

15. Consequently, on 22 February 2024, the first amended assessments for income tax for the relevant years were raised on the Appellant, to include assessable profits, namely the Appellant's share of the partnership profits from the company, in the amounts of €316,857 and €773,874, respectively.

16. The Respondent, having had regard to the Appellant's expert legal opinion as to the status of the company, issued correspondence to the Appellant, dated 11 November 2024, which stated that:

> "*as an opaque entity for Irish tax purposes….S1008 TCA 1997 accordingly did not apply to [the Appellant's] set of circumstances….it would appear that the Amended Assessments for the years 2009 and 2010 dated 22 February 2024 were raised under the incorrect section of the TCA 1997. I have now taken the decision to withdraw the Amended Assessments for the years 2009 and 2010 that are the subject matter of this appeal, and to raise Amended Assessments for 2009 and 2010 charging your drawings from [the company] as income arising from possessions outside the State."*

17. Consequently, on 12 November 2024, the Respondent issued the second amended assessments for the relevant years, reducing the Appellant's tax liabilities to nil.

18. In replying correspondence dated 12 November 2024, the Appellant stated that:

> "*[an] appeal can be withdrawn if the Appellant chooses to withdraw the appeal (please refer to section 949G, TCA 1997) or agreement is reached between the Revenue Commissioners and the Appellant (please refer to section 949V, TCA 1997). The Appellant has not reached agreement with the Revenue Commissioners and the Appellant does not wish to withdraw its appeal. As such, we are of the understanding, that the Tax Appeals Commission is required to adjudicate and determine the appeal in accordance with the provisions of Part 40A, TCA 1997".*

Legislation and Guidelines

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

20. Section 1007 TCA 1997, Interpretation (Part 43), *inter alia* provides as follows:-:

> *(1) In this Part—*
>
> *"partnership trade" means a trade carried on by 2 or more persons in partnership.*

21. Section 1008 TCA 1997, Separate assessment of partners, *inter alia* provides as follows:-

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

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

(i) set up or commenced at the beginning of the relevant period, or if that partner commenced to be engaged in carrying on the partnership trade at some time in the relevant period other than the beginning of that period, at the time when that partner so commenced, and

(ii) when that partner ceases to be engaged in carrying on the partnership trade either during the relevant period or at the end of that period, permanently discontinued at the time when that partner so ceases, and

(b) that partner had paid the part that partner was liable to bear of any annual payment paid by the partnership.

22. Section 932 TCA 1997, Prohibition on alteration of assessment except on appeal, *inter alia* provided as follows:

Except as provided in Part 41A or otherwise where expressly authorised by the Tax Acts, an assessment to income tax or corporation tax shall not be altered before the time for hearing and determining appeals and then only in cases of assessments appealed against and in accordance with such determination, and if any person makes, causes, or allows to be made in any assessment any unauthorised alteration, that person shall incur a penalty of €60.

23. Section 949J TCA 1997, Valid appeal and references in this Part to acceptance of an appeal, provides as follows:-

(1) For the purposes of this Part, an appeal shall be a valid appeal if –

(a) it is made in relation to an appealable matter, and

(b) any conditions that are required (by the provisions of the Acts relevant to the appeal concerned) to be satisfied, before an appeal may be made, are satisfied before it is made.

(2) References in this Part to an appeal being accepted by the Appeal Commissioners shall be construed as references to their determining that, for the time being (on the facts and information then available to them) –

(a) the appeal is a valid appeal, and

(b) there are no grounds for their invoking section 949N(1)(c) as a basis for not proceeding as subsequently mentioned in this subsection,

and, accordingly, that they should proceed to deal with the appeal.

(3) However, any such determination of the Appeal Commissioners may be reversed by them as and when facts and information become available to them that, in their opinion, warrant that course of action.

(4) Subsection (3) shall not affect the operation of section 949N(3) (provision with regard to finality of Appeal Commissioners' refusal to accept an appeal).

24. Section 949N TCA 1997, Refusal to accept an appeal, provides as follows:-

(1) *Where the Appeal Commissioners –*

(a) are satisfied that an appeal is not a valid appeal,

(b) become aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or

(c) are satisfied that an appeal is without substance or foundation

they shall refuse to accept the appeal.

(2) Where the Appeal Commissioners refuse to accept an appeal, they shall notify the parties in writing accordingly stating the reason for the refusal.

(3) Where, in respect of a refusal on their part to accept an appeal, the Appeal Commissioners declare that their decision in that regard is final, then th decision shall be final and conclusive.

(4) For the avoidance of doubt –

(a) references in the preceding subsections to the Appeal Commissioners' refusing to accept an appeal include references to a member or

members of staff of the Commission, pursuant to authority granted under section 5(2) of the Finance (Tax Appeals) Act 2015, refusing to accept an appeal, and

(b) the Appeal Commissioners may make a declaration under subsection (3) in respect of a foregoing refusal by a member or members of staff to accept an appeal as they may make such declaration in respect of such a refusal on their part.

25. Section 949AK TCA 1997, Determinations in relation to assessments, provides as follows:-

(1) In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that –

(a) an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly,

(b) an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly, or

(c) neither paragraph (a) nor (b) applies, determine that the assessment stand.

(2) If, on an appeal against an assessment that –

(a) assesses an amount that is chargeable to tax, and

(b) charges tax on the amount assessed,

the Appeal Commissioners consider that the appellant is overcharged or, as the case may be, undercharged by the assessment, they may, unless the circumstances of the case otherwise require, give as their determination in the matter a determination solely to the effect that the amount chargeable to tax be reduced or increased.

(3) In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was precluded from making the assessment or the amendment, as case may be, the Acts (within the meaning of section 959A) shall apply as if the assessment or the amendment had not been made and, accordingly, that assessment or amended assessment shall be void.

(4) In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was not precluded from making the assessment or the amendment, the case may be, that assessment or amended assessment shall stand, but this is without prejudice to the Appeal Commissioners making a determination in relation to that assessment or amended assessment on foot of an appeal on grounds other than those referred to in section 959AF(2).

26. Section 950 TCA 1997, Interpretation (Part 41), *inter alia* provides as follows:-

(1) In this Part, except where the context otherwise requires –

"appeal" means an appeal under section 933 or, as respects capital gains tax, an appeal under section 945;

"assessment" means an assessment to tax made under the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts, as the case may be;

……..

"determination of the appeal" means a determination by the Appeal Commissioners under section 933(4), and includes an agreement referred to in section 933(3) and an assessment becoming final and conclusive by virtue of section 933(6);

……..

27. Section 955 TCA 1997, Amendment of and time limit for assessments, *inter alia* provides as follows:-

(1) Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

(2) (a) 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, an

assessment for that period or an amendment of such an assessment shall not be made 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.

(b) Nothing in this subsection shall prevent the amendment of an assessment–

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii) to give effect to a determination on any appeal against an assessment,

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

(iv) to correct an error in calculation, or

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

and tax shall be paid or repaid (notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made) where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804(3).

(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine –

(a) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(b) that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4) (a) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(b) This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question.

……..

Submissions

Appellant's submissions

28. The Commissioner sets out hereunder a summary of the submissions made by counsel for the Appellant both at the hearing of the appeal and in the documentation submitted, in particular, the Appellant's submissions entitled "Supplemental Outline Skeleton Arguments" furnished on behalf of the Appellant:-

    28.1. It is the appeals against the first amended assessments, dated 22 February 2024, that the Commissioner must now determine. On 25 April 2024, the appeals were accepted by the Commission as being valid appeals, and the appeals were progressed to hearing, in accordance with section 949 TCA 1997. Furthermore,

on 1 August 2024, the Commission notified the parties that the appeals were listed for hearing on 28 and 29 November 2024, in accordance with section 949X TCA 1997.

28.2. Reference was made to Part 40A TCA 1997 and the Finance (Tax Appeals) Act 2015, which it was submitted sets out the jurisdiction of the Commission. The appeals submitted by the Appellant were accepted as valid appeals. The Commissioner has not decided at any stage, that the appeals are no longer valid or have been dismissed.

28.3. Reference was made to section 949J TCA 1997 which sets out what constitutes a valid appeal. It was submitted that if an appeal is accepted as a valid appeal, it should remain valid, unless section 949J(3) TCA 1997 applies.

28.4. Reference was made to section 949N(1) TCA 1997 which provides that the Commissioner shall refuse to accept an appeal, if the Commissioner is satisfied that an appeal is without foundation or substance or subsequently becomes aware of that position. It was submitted that it is important that if the Commissioner becomes aware of that position, then the Commissioner is obliged to notify the parties in writing and to provide the reasons for such a decision. In addition, it was submitted that the Commissioner is required to state whether such a decision is final. The Commissioner has not written to the parties in accordance with section 949N(2) TCA 1997 in this appeal.

28.5. It was submitted that the Commissioner, having accepted the appeal as being valid, must conclude the appeal in one of four ways, namely: (1) the appeals are withdrawn by the Appellant; (2) an agreement is reached between the parties in relation to the appeals; (3) the appeals are dismissed by the Commissioner; (4) the appeals are determined by the Commissioner.

28.6. Reference was made to section 949G(1) TCA 1997, which provides that the Appellant may withdraw an appeal at any time, but that has not occurred herein. Reference was made to section 949G(3)(a) TCA 1997, which provides that where a settlement is reached between the parties, the appeal is treated as being dismissed. However, it was submitted that there has been no settlement reached between the parties in relation to this appeal.

28.7. Reference was made to section 949AV TCA 1997 which sets out a number of circumstances wherein an appeal may be dismissed, such as where an appellant fails to comply with certain directions, which has not arisen in this appeal.

Therefore, where an appeal is not withdrawn by an appellant or is not dismissed by the Commissioner, the inevitable outcome is that the appeal must be determined by the Commissioner.

28.8. Reference was made to section 949G(5) TCA 1997 which states that where an appeal is dismissed or is treated as dismissed, the Commissioner is not required to make a determination. Thus, if an appeal is not dismissed or is not treated as dismissed, the Commissioner must make a determination. Therefore, in this appeal, the Commissioner must proceed to make a determination in relation to the appeal against the first amended assessments.

28.9. It was submitted that the appeal was made on the basis that section 1008 TCA 1997 had no application to the Appellant. In circumstances where the Respondent is in agreement that the basis upon which the first amended assessments were issued was not correct, the first amended assessments should be reduced to nil.

28.10. Reference was made to the decision of the High Court in *Quigley v. Revenue Commissioners & Another* [2023] IEHC 244. It was submitted that the Commissioner must also act in accordance with the principles of fair procedures and constitutional justice, including the European Convention on Human Rights and European law principles.

28.11. It was submitted that in order to protect the Appellant's position and to ensure that the first amended assessments, raised on the basis of section 1008 TCA 1997, would not be reissued by the Respondent, a final determination from the Commissioner was required. The Appellant would like finality to these appeals via a determination of the Commissioner. It was submitted that the fact that the second amended assessments issued, does not prevent the Commissioner from fulfilling her statutory obligations in relation to the appeal of the first amended assessments.

28.12. Reference was made to a number of paragraphs from the decision of the Court of Appeal in *Kenny Lee v The Revenue Commissioners* [2021] IECA 18 ("the *Lee* decision"). It was submitted that fair procedures is at the heart of the Commissioner's role and any reasonable person would not regard the actions of the Respondent as constituting fair procedures.

28.13. It was submitted that it was accepted that section 932 TCA 1997 has no application and that the Respondent is entitled to raise an assessment at any time. However, it was submitted that the second amended assessments do not

supersede the first amended assessments. The Appellant has a separate right of appeal in relation to the second amended assessments if, for arguments sake, the second amended assessments were not set to nil.

28.14. It was submitted that it would be a dangerous precedent to set that the Respondent, eight months into the appeal process, would be entitled to undo the appeal.

Respondent's submissions

29. The Commissioner sets out hereunder a summary of the submissions made by counsel for the Respondent both at the hearing of the appeal and in the documentation submitted:-

29.1. The Respondent submitted that it does not understand what objection the Appellant has nor what the Appellant was seeking to achieve, with his insistence that the Commissioner has jurisdiction herein and that a determination should be made in relation to what in law, are now non-existent assessments to tax, on the basis that the assessments are now reduced to zero, when the Respondent issued the second amended assessments.

29.2. The Respondent submitted that it had conceded that it was incorrect in raising the first amended assessments and the Respondent conceded that the company was not carrying out or conducting a partnership trade for the purposes of section 1008 TCA 1997. The Respondent submitted that there was therefore no liability on the part of the Appellant to income tax pursuant to section 1008 TCA 1997.

29.3. It was submitted that the tax assessed under the first amended assessments has been reduced to nil and that had the effect of amending the first amended assessments. Therefore, the second amended assessments have superseded the first amended assessments. It was submitted that an appeal cannot now be progressed, where there was no matter in respect of which the Appellant can be aggrieved. This was so, because the basis upon which the Appellant appealed against the first amended assessments was conceded and the first amended assessments have been reduced to nil, following the second amended assessments being issued.

29.4. Consequently, it was submitted that the Commissioner has no jurisdiction herein, because if the second amended assessments superseded the first amended assessments, then the first amended assessments no longer exist. It was submitted that there was no tax in respect of which the Commissioner can

exercise her jurisdiction to either increase the tax, reduce the tax, or let stand the tax assessed. Reference was made to the *Lee* decision and the Commissioner's jurisdiction.

29.5. It was submitted that by issuing the second amended assessments, the Respondent was conceding this appeal. However, it was not seeking in any way to usurp the jurisdiction of the Commission. It was submitted that the first occasion which the Respondent had an opportunity to explore the issues pertinent to this appeal, namely whether the company was an entity that should be subject to the partnership charging provisions in the Tax Acts, was when the Appellant's Outline of Arguments was filed, which had an expert opinion on foreign law annexed to it.

29.6. It was submitted that this was the first occasion that the actual nature of the entity became apparent to the Respondent. It was submitted that it was not explained by the Appellant in the Appellant's Notice of Appeal or the Appellant's Statement of Case. Whilst there were assertions made that section 1008 TCA 1997 did not apply to the Appellant, there was no explanation or indication as to why that was so.

29.7. As a matter of law, there is now no substance or foundation to this appeal within the meaning of section 949N TCA 1997.

29.8. It was submitted that on 11 November 2024, the Respondent contacted the Commission to state that it had "*made the decision to withdraw the assessments upon which this Appeal was raised, and the Appellant has been notified accordingly. As the assessments underlying this Appeal have been withdrawn, I would respectfully ask that your file in respect of this Appeal is closed*".

29.9. It was submitted that the first amended assessments that are the subject matter of this appeal have been "vacated" and the underlying tax liability was reduced to nil. On this basis, it is not clear to the Respondent what determination could issue from the Commissioner in respect of the first amended assessments, the subject of this appeal.

29.10. It was stated that references to the words "withdrawal" or "vacation" of an assessment are the normal colloquial usage of words, rather than statutory terms. It was submitted that, technically, this was the means by which the Respondent withdraws or vacates an assessment, by amending the assessment, and the Respondent was entitled to do so whilst a matter is under appeal.

29.11. For the relevant years, section 955 TCA 1997 was applicable and provided that:

"*an inspector may at any time amend an assessment…notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions….*".

This enables an inspector to make such further amendments to assessments as the inspector considers necessary.

29.12. It was submitted that it is clear from the wording of section 955(1) TCA 1997 that the issuing of an amended assessment, amends an earlier assessment. Thus, the earlier assessment ceases to exist, because it has been amended and the tax then becomes payable or repayable, as the case may, under the amended assessment and to permit the earlier assessment to continue to be effective and operative, would render the whole system unworkable.

29.13. It was stated that section 955 TCA 1997 is clear that an amended assessment amends the earlier assessment, and the amended assessment is conclusive as to what tax is payable or repayable. The first amended assessment which was the subject of this appeal was no longer in being, therefore the appeal was now moot. Thus, the Commissioner has no jurisdiction to make a determination in relation to an assessment which was no longer in existence.

29.14. Reference was made to section 949J TCA 1997 and a valid appeal. As the first amended assessments, the subject matter of the appeal have been withdrawn, the appeal no longer comprises a valid appeal in accordance with section 949J TCA 1997, as there was no longer an "appealable matter".

29.15. Reference was made to sections 949N(1)(b) and (c) TCA 1997 which provide that where the Commissioner becomes aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or is satisfied that an appeal is without substance or foundation, the Commissioner shall refuse to accept the appeal. Section 949N(1) TCA 1997 clearly applies to this set of circumstances.

29.16. It was submitted that the procedural requirement in section 949N(2) TCA 1997 wherein it states that, where the Commissioner refuses to accept an appeal, the Commissioner should notify the parties in writing, stating the reason for the refusal, was not fatal to the exercise of the Commissioner's jurisdiction under section 949N TCA 1997.

29.17. In relation to the Commissioner's functions, section 6(2)(l) Finance (Tax Appeals) Act 2015 states that the Commissioner shall perform the following functions:

"*Doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants*".

29.18. The Respondent has endeavoured to resolve the dispute herein, by conceding the appeal. It was submitted that there was an overriding obligation under the Finance (Tax Appeals) Act 2015 to facilitate the parties resolving the disputes between them and the Commissioner should determine that this appeal was no longer a valid appeal.

29.19. It was submitted that the Commissioner's powers are to reduce, increase or determine that an assessment to tax shall stand, in accordance with section 949AK TCA 1997. Moreover, in accordance with section 949AM TCA 1997, there is an obligation on the Respondent to issue an amended assessment to give effect to that determination. However, in this appeal, the Respondent has already issued the amended assessment reducing the tax to nil, thus the Commissioner has no jurisdiction in this appeal.

29.20. It was submitted that there was no breach of fair procedures herein and no rights of the Appellant were prejudiced as a consequence of the Respondent's request that the appeal be closed by the Commission. The first amended assessment, against which the appeal was brought, was reduced to nil. Consequently, there was no valid appeal before the Commissioner and the Commissioner's jurisdiction was not engaged any further, in relation to this appeal.

Material Facts

30. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

30.1. On 22 February 2024, the Respondent raised the first amended assessments for the relevant years, in the amounts of €166,775.22 and €425,630.70 respectively.

30.2. On 12 November 2024, the Respondent issued the second amended assessments for the relevant years, in the amounts of €0.00 ("nil").

Analysis

Burden of proof

31. The appropriate starting point for the 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 the High Court decision in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 at paragraph 22, Charleton J. stated 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*".

32. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he stated that:

> "*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…"*

33. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments of the High Court, for example in *McNamara v Revenue Commissioners* [2023] IEHC 15 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

34. However, it is notable that when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"). At paragraphs 97-98, the Court of Appeal held that:

> "*97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake……..*
>
> *98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the* correct interpretation……."

Statutory interpretation

35. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders Limited v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

> "*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*
>
> > *(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
> >
> > *(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*
> >
> > *(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
> >
> > *(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*
> >
> > *(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*
> >
> > *(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what*

otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.""*

36. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

37. Furthermore, the Commissioner is mindful of the recent decision in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 ("*Heather Hill")* and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner is mindful of the *dictum* of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he stated that:

"It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed".

38. The *dictum* of Murray J. in *Heather Hill* was considered and approved by the Court of Appeal in the decision in *Hanrahan*. The Court of Appeal noted that the trial judge had cited and relied on the approach to the interpretation of taxation legislation that Murray J. in the Court of Appeal identified in the decision of *Used Car Importers Ireland Ltd. v Minister for Finance* [2020] IECA 298. Murray J., when considering the provision at issue, at paragraph 162 of the judgment stated that:

"[it] falls to be construed in accordance with well-established principle. The Court is concerned to ascertain the intention of the legislature having regard to the language used in the Act but bearing in mind the overall purpose and context of the statute."

39. The purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the Court or Tribunal is to seek to ascertain the meaning of the words. The general principles of statutory interpretation are tools used for clear understanding of a statutory provision. It is only if, after that process has been concluded, a Court or Tribunal is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language

Preliminary issue

40. Counsel for the Appellant confirmed that the appeal before the Commissioner was in relation to the first amended assessments and that the appeal had been listed for hearing in accordance with section 949X TCA 1997, in relation to the first amended assessments only.

41. Nevertheless, the Commissioner notes that on 12 November 2024, the Respondent issued the second amended assessments which it contended "withdrew", "vacated" or "superseded" the first amended assessments. Hence, it argued that this appeal was now moot and consequently, the Commissioner did not have jurisdiction to issue a

determination in relation to the appeal, in circumstances where the Respondent has assessed the Appellant to nil tax, as set out in the second amended assessments.

42. The Commissioner is satisfied that this preliminary matter must be addressed before considering any substantive arguments in this appeal. However, the only substantive argument in this appeal was that section 1008 TCA 1997 does not apply to the Appellant, which the Respondent indicated was accepted, as evidenced by it issuing the second amended assessments, reducing the tax due by the Appellant to nil. In that regard, the Commissioner notes that counsel for the Respondent submitted that:

> "*the Respondent has conceded that it was incorrect in raising the first amended assessments and have conceded that the company was not carrying out or conducting a partnership trade for the purposes of Section 1008 TCA 1997. Thus, there is no liability on the part of the Appellant to tax on foot of the charge to tax under Section 1008 TCA 1997*".

43. The Commissioner is satisfied that the question that arises herein, is whether the second amended assessments "withdrew", "vacated" or "superseded" the first amended assessments, thus denying the Commissioner jurisdiction to determine the appeal in relation to the first amended assessments, when the tax due was subsequently now assessed by the Respondent at nil.

44. It is important to set out initially that the Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A TCA 1997.

45. The Commission's jurisdiction was considered by the Court of Appeal in the *Lee* decision where Murray J. opined that:

> "*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*".

46. Section 949J TCA 1997 provides that an appeal shall be valid if "*it is made in relation to an appealable matter*". Section 949A TCA 1997 defines an "appealable matter" as "*any matter in respect of which an appeal is authorised by the Acts*".

47. Therefore, in order for an appeal to be valid, it must be a matter in respect of which an appeal is authorised by the Tax Acts. The Commissioner does not have a general or residual power to hear appeals into matters where no appeal is authorised by the Tax Acts. The Commissioner accepted this appeal as being a valid appeal, in relation to an appealable matter, and the appeal process proceeded to a hearing of the appeal, in accordance with section 949X TCA 1997. The question now arises as to the enduring validity of this appeal.

48. The Commissioner has considered the submission by counsel for the Appellant that there are four ways to conclude an appeal, in circumstances where the Commissioner has accepted the appeal as being valid, namely that:

    (1) the appeals are withdrawn by the Appellant;

    (2) an agreement is reached between the parties in relation to the appeals;

    (3) the appeals are dismissed by the Commissioner; or,

    (4) the appeals are determined by the Commissioner.

49. However, the Commissioner is satisfied that it is open to the Commissioner to conclude the appeal in five ways, the fifth being that the appeal was no longer a valid appeal in accordance with section 949J TCA 1997 and that the Commissioner should refuse to accept the appeal, in accordance with section 949N TCA 1997.

Withdrawal

50. The Commissioner is satisfied that this appeal was not withdrawn by the Appellant in accordance with section 949G(1) TCA 1997 nor has an agreement been reached between the parties before the Commissioner issued a determination, in accordance with section 949G(3)(a) TCA 1997, to permit the Commissioner to treat the appeal as being withdrawn. Counsel for the Respondent posited that it had done its best to settle the appeal, prior to the hearing of the appeal, by conceding that section 1008 TCA 1997 did not apply to the Appellant herein, the consequence of which was that it issued the second amended assessments, prior to the hearing of the appeal, reflecting that the tax now due by the Appellant was nil.

51. Furthermore, the Commissioner was directed by counsel for the Respondent to her functions which are set out in accordance with section 6 of the Finance (Tax Appeals) Act 2015, in particular, subsection (2)(l) which states that the Commissioner in her functions shall do "*all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the*

correct liability to tax of appellants". The Commissioner accepts that as a correct statement of her functions.

52. The Commissioner notes the Appellant's submission that where an appeal was not withdrawn by an Appellant or where an appeal was not treated as being dismissed by the Commissioner, the inevitable outcome was that the appeal must be determined by the Commissioner. The Commissioner does not accept that submission and as set out in paragraph 48 of this Determination, the Commissioner considers that it is open to her to give consideration to refusing to accept the appeal, in accordance with section 949N TCA 1997.

53. However, it is clear from the facts of this appeal, that the appeal has not been withdrawn by the Appellant nor has it been treated as being dismissed by the Commissioner.

Agreement

54. Section 949V(1) TCA 1997 defines an agreement as meaning "*an agreement by way of settlement of the matter under appeal*". Furthermore, subsection (2) states that *"[w]here, before a hearing is held, the parties come to an agreement with each other, whether in writing or otherwise, an appeal shall be treated as having been withdrawn*". The Commissioner is satisfied that subsection (2) has no application in this appeal, as there was no agreement by the Appellant with the Respondent before a hearing was held. Consequently, there was no agreement with each other, as to the settlement of the matter under appeal, prior to the hearing of the appeals, to permit the Commissioner to treat the appeal as being withdrawn.

55. Whilst the Commissioner acknowledges that the Respondent took steps to try and resolve this appeal prior to the hearing, and may have anticipated that its actions would have resulted in the Appellant withdrawing its appeal, that has not occurred in this appeal. As the Respondent is no doubt aware, the Commissioner must interpret the statute having regard to the plain and ordinary meaning of the words in context. Hence, the Commissioner cannot find that there has been a settlement or agreement between the parties herein, based on the Respondent's actions, having regard to the plain and ordinary meaning of the words.

Dismissal

56. Section 949AV TCA 1997 sets out a number of circumstances where an appeal can be dismissed by the Commissioner, where the Appellant fails to comply with certain directions. The Commissioner is satisfied that none of those circumstances arise herein.

Determination

57. The Respondent argued that as the first amended assessments, the subject matter of the appeal, have been "withdrawn" or "vacated", the appeal no longer comprises a valid appeal in accordance with section 949J TCA 1997, as there is no longer an "appealable matter". Counsel for the Respondent submitted that the second amended assessments "superseded" the first amended assessments.

58. Counsel for the Respondent directed the Commissioner to the provisions of section 955(1) TCA 1997 which provides a right of amendment to an assessment and which states that "*Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended."*

59. The Commissioner notes the use of the words "alterations" or "additions" and "amended". The Commissioner notes the absence of the words "supersede" or "vacate" or "withdraw". The Commissioner does not accept that section 955(1) TCA 1997 has the effect of erasing a previous assessment, but rather, permits changes to be made to an assessment by an inspector. The reason for this is that having regard to the principles of statutory interpretation, the section does not on a literal interpretation provide for a displacement of a previous assessment. The Commissioner is satisfied that section 955 TCA 1997 is not ambiguous and that the words are plain and their meaning is self-evident. Therefore, the section can be interpreted having regard to the plain and ordinary meaning of the words, in context.

60. Therefore, the Commissioner is satisfied that the only assessments under appeal herein are the first amended assessments as the second amended assessments have not displaced the first amended assessments. The Commissioner is satisfied that if a decision is made by the Respondent to raise further assessments in relation to matters that are under appeal, an appellant would have a separate right of appeal to the latter assessments also. This is not an uncommon occurrence. The Respondent may issue the amended assessments under a different section of the TCA or may have cause to increase or decrease the tax due. However, those assessments are of their own right appealable to the Commission. In practice, it may be that the Commissioner is asked to place a stay on an appeal, in accordance with section 949W TCA 1997, to allow all

assessments to be dealt with together or alternatively, the parties at the hearing of the appeal in relation to the initial assessments may agree that the amount of tax at issue is an increased or decreased amount and thus, the Commissioner should work from that number. It is important to note, that if the Commissioner makes a determination, then the Respondent may issue further assessments in accordance with section 949AM TCA 1997, thus amending the assessments again.

61. In this particular appeal, the Respondent reduced the tax payable to nil by issuing the second amended assessments. Thus, the amount of tax due and owing by the Appellant has been amended by the Respondent. The Commissioner is satisfied that had the second amended assessments been reduced to an amount other than nil, then it appears to the Commissioner that there would be no question, but that the Commissioner had jurisdiction to hear and determine the appeal of the first amended assessments.

62. Thus, the Commissioner is satisfied that she has jurisdiction to proceed to determine the appeal on the basis that the first amended assessments remained under appeal, despite the issuing of the second amended assessments, which have a separate right of appeal, and that it would be remiss of her to base her jurisdiction on the amount of tax due by an appellant, which in this appeal is now at nil. The Commissioner considers that the first amended assessments remain "live" assessments until such time as an appeal is withdrawn by an Appellant, refused or treated as dismissed by the Commissioner. Therefore, the Commissioner has jurisdiction to proceed to consider the facts of this appeal, which in turn will lead her to consider whether this appeal should be refused.

Refusal

63. The Commissioner is satisfied that it is open to her to consider the application of section 949N TCA 1997 and that the administrative step that the Appellant raises is no bar to her exercising her jurisdiction under this provision. Section 949J(2) TCA 1997 provides that references to an appeal being accepted by the Commissioner, are references to the Commissioner determining that for "*the time being*" the appeal is a valid appeal and there are no grounds for invoking section 949N(1)(c) TCA 1997 as a basis for not proceeding at that time. Moreover, section 949J(3) TCA 1997 provides that any such decision by the Commissioner may be reversed as and when facts and information become available to the Commissioner that, warrant that course of action.

64. Section 949N(1) TCA 1997 provides that where the Commissioner is satisfied that an appeal is not a valid appeal or becomes aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or is satisfied that an appeal is without substance or foundation, the Commissioner shall refuse to accept the appeal.

Section 949N(1) of the TCA 1997 provides in mandatory terms that where an Appeal Commissioner is satisfied that an appeal is invalid, they "shall refuse to accept the appeal".

65. Accordingly, it is open to the Commissioner to consider this section. The Commissioner notes that the Respondent posited that the appeal was now moot and that the Commissioner should proceed to refuse to accept the appeal under section 949N TCA 1997. However, the Commissioner is not satisfied that the appeal is not a valid appeal herein for the reasons set out above, namely that the second amended assessments have not superseded the first amended assessments, but what has occurred is that the Respondent has amended the amount of tax due on foot of the first amended assessments to nil.

66. Whilst the Commissioner considers that there may be an argument that the appeal now lacks substance or foundation, in circumstances where the amount of tax at issue is now nil, the Commissioner has found on balance having regard to the submissions of the parties that the Commissioner in this appeal should not refuse the appeal, but should proceed to determine the matter.

67. The Commissioner notes that the Respondent has conceded that it was incorrect in raising the first amended assessments, on the basis that the company was not carrying out or conducting a partnership trade for the purposes of section 1008 TCA 1997 and thus, the Appellant had no liability to income tax in accordance with section 1008 TCA 1997.

68. The Commissioner is satisfied that in this particular appeal she can exercise her jurisdiction to formally determine that the first amended assessments under appeal be reduced to nil, on the basis of the Respondent's submission, the net effect of which is that rather than there being only an administrative decision of the Respondent that the tax due by the Appellant is nil, the Appellant has a determination in respect of this appeal.

69. As stated the Commissioner considers this an unusual scenario whereby the Appellant requested the Commissioner to exercise her jurisdiction to reduce the first amended assessments to nil, despite the Appellant being in receipt of the second amended assessments reflecting that amount. However, the infrequency of such an action, does not mean that the Commissioner cannot exercise her jurisdiction.

Conclusion

70. Therefore, having regard to the facts of this appeal, the Commissioner is satisfied that the second amended assessments have not "superseded" or "vacated" or "withdrawn"

the first amended assessments. What the second amended assessments have done is altered the amount of tax due by he Appellant, but they do not alter the fundamental position that the first amended assessments are under appeal herein.

71. The Commissioner is not satisfied that the reduction in the amount of those assessments to nil renders the appeal invalid nor does it deprive the Commissioner of her jurisdiction in respect of determining the appeal. The Commissioner's jurisdiction is to reduce, increase or let stand the amount of tax and the Commissioner highlighted that to the Appellant, that her jurisdiction in that regard was not constrained in this appeal by the fact that the second assessments were reduced to nil.

72. What the decision of the Respondent does is provide the Commissioner with a basis to accept the short submission of the Respondent that the tax, as set out in the first amended assessments, should be reduced to nil.

73. As stated, this is an usual scenario the tax having been reduced to nil, yet the Appellant remained of the view that the Commissioner should proceed to determine the appeal and reduce the assessments to nil, despite the Respondent agreeing that the tax due was nil and it proceeding to issue amended assessments reflecting that decision. In any tax appeal, valuable resources of the State are directed to resolving tax disputes. Herein, it appears to the Commissioner that the Respondent focused its mind to achieving a resolution before the hearing of the appeal commenced, but that the Appellant was insistent on the matter being formally determined by the Commissioner. In that regard the Commissioner notes the Appellant's submission that "*what he has asked the Commission to do is to copper fasten that position*".

74. Finally, it should be noted that the Commission does not have a supervisory jurisdiction over the conduct of the Respondent. In this regard, the Commissioner refers to the recent *dictum* of Mr Justice Quinn in the judgment in *Browne v the Revenue Commissioners* [2024] IEHC 258, wherein Quinn J., when referring to an Appeal Commissioner's jurisdiction and the well-established principles as set out in the *Lee* decision, at paragraph 20 stated that:

> "*In other words, this jurisprudence explains how the function of the Appeal Commissioners is essentially restricted to enquiring into and making findings as to issues of fact and law relevant to the statutory charge to tax and they do not have any quasi inherent powers to declare any aspect of the process or outcome of the Revenue Commissioners void or invalid, akin to the powers the High Court might have in a judicial review hearing*".

75. The Commission's jurisdiction is limited to focussing on "*the assessment and the charge*", as stated by Murray J. at paragraph 64 of the Court of Appeal's judgment in the *Lee* decision. The Commissioner does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts.

Determination

76. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has succeeded. Hence, the first amended assessments the subject matter of this appeal, in the amounts of €166,775.22 for the year 2009 and €425,630.70 for the year 2010, shall be reduced to nil.

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

Notification

78. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

79. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Claire Millrine
Appeal Commissioner
11 March 2025

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.