



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

159TACD2025

Between



**Appellant**

and

**CRIMINAL ASSETS BUREAU**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [REDACTED] ("the Appellant") in respect of notices of assessment to income tax for the 2011-2019 income tax years ("Notices of Assessment") raised by the Criminal Assets Bureau ("the Respondent") in the total amount of €235,331.
2. The Appellant claims in his Notice of Appeal dated 29 August 2023 that the amounts set out in the Notices of Assessment issued by the Respondent on 26 July 2023 are excessive and do not reflect the actual income details of the Appellant.
3. The Respondent claims the Appellant's assets exceed his known income and accordingly the Appellant has been assessed to income tax on this additional income as claimed in the Notices of Assessment.
4. The appeal opened at the Commission on 30 October 2024 and was adjourned to allow the exchange of information and documentation between the parties and the Commission. The hearing resumed on 28 November 2024 and was heard in full by the Appeal Commissioner ("the Commissioner") and completed on that date.

## Background

5. The Appellant was employed by [REDACTED] ("[REDACTED]") throughout the years 2011-2019 the period the subject of this appeal. The Appellant submits that his wages from his employment with [REDACTED] were paid into his bank account with Irish Permanent/Permanent TSB ("Permanent TSB"). The Appellant submits that from this Permanent TSB bank account he regularly withdrew cash and held it at home to accumulate and later he lodged cash into other bank accounts held by him. In addition, the Appellant submits he received gratuities ("Tips") from residents of the [REDACTED] [REDACTED] where he worked. The Appellant estimates that he received approx. €5,000 per annum in Tips.

## Legislation

6. Section 58 of the Taxes Consolidation Act 1997 ("the TCA 1997"): Charge to tax of profits or gains from unknown or unlawful source states that:

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

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

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

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

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

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

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

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

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

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

*(i) the assessment -*

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

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

*and*

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

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

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

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

## **Evidence**

### *The Appellant – Direct examination*

7. The Appellant stated he opened multiple accounts with multiple financial institutions as he believed a lot of the building societies would merge with a bank and then account holders would be entitled to receive dividends payments. The Appellant further stated he had previously received dividends worth approx. €3,000 when a building society he had an account with changed its status/was taken over by a bank.
8. The Appellant stated that in 2008 the banking crisis happened and he was concerned about the security of the banks. The Appellant further stated that from 2009-2011 instead of leaving his money in his bank accounts he withdrew his wages in cash from his Permanent TSB bank account and he kept the cash at home. The Appellant stated that at *"...one stage I would have had around 90,000 in the house and I said I'll keep that as back-up money in case the banks go bust...."*. The Appellant stated he used to have a lot of cash at home because he used to work with cash all the time as he did not use bank cards *"...that's why I was a cash person. I'm nearly 70-years of age now and I'm from the old stock, cash was the way you worked. You didn't use cards. ...."*.
9. The Appellant stated with the introduction of the €100,000 State banks guarantee he wanted to spread his money to ensure security for his savings. The Appellant further stated he regularly withdrew usually €700 (seven hundred euro) from his Permanent TSB account into which his wages from [REDACTED] were paid and kept the cash at home and over a period of time the cash would accumulate. The Appellant further stated he would then deposit usually €1,000 (one thousand euro) in some of the other bank accounts held by him. The Appellant further stated that his *".....big mistake was, well in hindsight now, that I didn't transfer the money that I was taking out, out of my wages money, if I'd have transferred that I wouldn't have this problem today. Unfortunately, I done it the old way, I took the money out, went over to these banks and put it in, like at a thousand at a time. But most of the transactions that I'd have been taking out of the bank would have been several hundred, you know and then I'd add the other few hundred over two weeks"*.

10. The Appellant stated the Respondent is incorrect in its assessment of his income and profits for the 2011-2019 Income Tax Years and that in any event the Respondent has not at all substantiated its claims and assessments made that the Appellant was in receipt of additional income as per the Notices of Assessment.

*The Appellant – Cross examination*

11. On cross examination, the Appellant stated that he withdrew €700.00 (seven hundred euro) in cash mainly from his Permanent TSB account and he would keep that cash at home and he would repeat the same withdrawal the following week and thereafter he would lodge €1,000.00 (one thousand euro) to his other bank account. The Appellant in reply to Counsel stated he would withdraw €700.00 and he would add “.....*the two sevens up and take four out and put one in...*”
12. The Appellant gave very dense and detailed evidence in relation to how he withdrew cash from his Permanent TSB account and then deposited into a number of different financial institutions in differing and non-corresponding cash amounts.

**Submissions**

*The Appellant - Written submissions.*

13. An extract of written submissions made on behalf of the Appellant is set out below

*“The Appellant was issued with tax assessments for the years 2011 to 2019 by the Criminal Assets Bureau. These assessments issued on 26th of July 2023. The total tax at state [sic] is €235,331 including interest and penalties. Following that, the Appellant filed Income Tax Returns for years ended 31 December 2011 to 2019 on 24th of August 2023. Throughout the entire period of these years, the Appellant was employed by [REDACTED] as a maintenance worker in a [REDACTED] with [REDACTED]. The Appellant prepared bank record records from statements that he had in his possession in 2024 from the time period 2011 to 2019. On the basis of these records, he determined that he did not have the extra income as alleged by Criminal Assets Bureau. He subsequently appealed the imposition of assessments for additional income on him and Criminal Assets Bureau provided him with further information of bank accounts which were in his name. The appellant did not have these bank records as he did not think he would be required to produce them many years later. On 9th of October 2024 the Appellant provided the Tax Appeals Commission with all bank records supplied to Criminal Assets Bureau in support of his case. On 29th of October the Criminal Assets Bureau supplied the Appellant with further bank records which had come into their possession, which the Appellant opened during the period 2011 to 2019 but had not kept*

bank statements. At the hearing at the Tax Appeals Commissioner on 30th of October the Appellant asked for further time to consider these bank records which was afforded to him. Subsequently the Appellant has prepared further Bank records and below is a summary of the transactions. There were opening balances in the accounts of €125,603 on 1st January 2011. There were lodgements to the bank accounts which were not accounted for by the Appellant's earnings from [REDACTED] or from inter-bank transfers in the amount of €376,281 in the period 1st January 2011 to 31st December 2019. There were payments from bank accounts which were not subsequently transferred back into other bank accounts in the amount of €523,393. In other words, they were not directly traceable to lodgements. There were more lodgements than withdrawals, the total difference was €147,112. In addition to that, the Appellant would have had to fund his own lifestyle in this period. The Appellant estimates that the overall shortfall has between these sums amounted to €90,000 living expenses for the nine years in question plus €147,112. The Appellant wishes to state that he lived in a Council House throughout this period, and was provided with meals at work during the working week. He had second-hand car in a period which he disposed of some years ago. In the late 1990s the Appellant's mother passed away and left him €50,000 in cash. The Appellant also had settlements from three road traffic accident accidents totalling €26,000. The Appellant received a settlement from his ex-spouse in the amount of €10,000 from the sale of their family home. The Appellant was in receipt of additional income in this period in the form of gratuities from the residents of the apartment block where he worked for [REDACTED]. The Appellant estimates that these gratuities were in order of €5,000 per year. The total amount of these gratuities was €45,000 in the years 2011 to 2019. The Appellant estimates that he owes additional PAYE and Universal Social Charge on these gratuities of €11,429. The Appellant also wishes to point out that there was significant public disquiet about the [sic] safety of bank deposits in the period in question. This led him to withdraw money from some banks and re-lodge the money sometime later to a different bank."

*The Appellant - Oral submissions on behalf of the Appellant*

14. It was submitted on behalf of the Appellant that the Appellant operated numerous bank accounts and his wages were paid into an account he held with Permanent TSB. It was further submitted that the volume of transactions and the amounts involved appear large but one must consider that the Appellant's wages were lodged into his bank account and the other transactions were made therefrom. It was further submitted that the Appellant did not keep copies of all bank statements and he has not been in a position to get copies of bank statements from financial institutions beyond a certain period because the

financial institutions have a cut-off date for how far they can go back. It was further submitted that there is nothing wrong with the Appellant conducting multiple transactions on his own accounts. It was further submitted that the volume of the transactions is given context by the banking crisis. It was submitted that despite the State banks guarantee there was considerable public disquiet as to whether their money was safe in the banks and that was the root cause of the volume of the Appellant's transactions. It was further submitted that the Appellant worked with [REDACTED] and he received Tips from residents of the [REDACTED] where he worked and the Appellant estimates the Tips amounted to approx. €5,000 per annum.

#### *The Respondent - Written submissions*

15. An extract of the Respondent's submissions is set out below:

*"1. The income and expenditure of the Appellant exceeded his declared means for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 ("the relevant years"). Accordingly, the Appellant has been assessed to income tax for each of the relevant years.*

*2. By Notices of Assessment dated 26 July 2023 the Appellant was charged and assessed to additional income under Schedule D, Case IV, miscellaneous income, in accordance with section 58 of the Taxes Consolidation Act, 1997 ("TCA"). The assessments of additional income for the relevant years were in the following amounts:*

*Year*

	<i>Miscellaneous Income</i>	<i>Income Tax Liability.</i>
<i>2011</i>	<i>€23,000</i>	<i>€12,789</i>
<i>2012</i>	<i>€50,000</i>	<i>€28,556</i>
<i>2013</i>	<i>€116,000</i>	<i>€66,608</i>
<i>2014</i>	<i>€66,000</i>	<i>€37,752</i>
<i>2015</i>	<i>€47,500</i>	<i>€26,645</i>
<i>2016</i>	<i>€40,500</i>	<i>€22,234</i>
<i>2017</i>	<i>€22,000</i>	<i>€11,859</i>
<i>2018</i>	<i>€28,500</i>	<i>€15,283</i>
<i>2019</i>	<i>€22,500</i>	<i>€13,605</i>

*3. The income tax liability includes a 10% surcharge for late filing.*



4. By Notice of Appeal dated 29 August 2023, the Appellant has purported to appeal these assessments. The sole ground of appeal is that he was “not in receipt of the additional income” in those years.

.....

#### THE RELEVANT INCOME

6. In the relevant years the Appellant was employed by [REDACTED] (“[REDACTED]”) and was paid as a PAYE worker by [REDACTED]. His salary in 2011 was €32,177. It rose incrementally in each relevant year, except 2013 in which it was static, and by 2019 was €37,003.

7. The Appellant operated 20 bank accounts in the relevant years. An analysis of the Appellant’s bank accounts was carried out. Substantial unexplained lodgements in the relevant years, in the total amount of €421,552, in cash and cheques, were identified. These lodgements are in addition to his salary payments from [REDACTED]. The Appellant has not been able to explain these lodgements. The unexplained lodgements have been treated by the Respondent as miscellaneous income from an unknown source.

8. The total amount of income in unexplained lodgements per relevant year is as set out in the table in paragraph 2 above.

9. The Appellant was therefore assessed to income tax on the income comprised in the unexplained lodgements to his 20 bank accounts in the relevant years.”

#### *The Respondent - Oral submissions on behalf of the Respondent*

16. Counsel for the Respondent submitted that the statements for the Appellant’s bank accounts before the Commission show repeated cash lodgements and transfers across numerous accounts involving multiple cash lodgements and movements. Counsel submitted that the amounts involved in these transactions are not supported by the declared and verifiable earnings/wages received by the Appellant from his employment with [REDACTED]. Counsel for the Respondent submitted that the Appellant’s testimony and evidence as to how he was able to withdraw cash from his bank account and subsequently lodge large amounts into other accounts without any explanation and/or evidence of where the additional income/cash came from were not credible.
17. Counsel for the Respondent submitted that the legislative basis for the Respondent’s claims are the provisions of section 58 of the TCA 1997 which provides that a taxpayer shall be assessed on miscellaneous or unexplained income.

18. Counsel for the Respondent submitted that the Appellant bears the onus of proof and that in the context of tax appeals, the burden of proof to show that an appellant is entitled to the relief claimed falls on the taxpayer. Counsel for the Respondent submitted that this accords with the general law in civil cases that the burden of proof falls on he who asserts. Counsel for the Respondent further submitted that this onus may be justified on the basis that only the taxpayer has access to the full facts relating to his personal tax situation.
19. Counsel for the Respondent submitted that the Appellant is subject to tax on a self-assessment basis and the responsibility to establish that the tax the Appellant says is due rests with the Appellant only.

### **Material Facts**

20. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:
  - 20.1. during the period 2011-2019 the Appellant was an employee of [REDACTED] and his annual salary from [REDACTED] was in the range of €32,177 to €37,003 and his salary was paid into his bank account with Permanent TSB;
  - 20.2. during the period 2011-2019 the Appellant operated numerous other bank accounts;
  - 20.3. during the period 2011-2019 in addition to the Appellant's salary payments there were additional payments made to some other of the Appellant's accounts in the amount of €421,552;
  - 20.4. the Appellant did not provide evidence of the source of the additional lodgements made to his bank accounts.

### **Analysis**

21. 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 of the TCA 1997. In this regard, the jurisdiction of a Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:

*"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”.*

22. The Commissioner refers further to *Lee*, 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.”*

23. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

*“ ..... Applying the rationale of the jurisprudence summarise and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...”*

24. 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".*

25. The Commissioner also refers to paragraph 12 of the 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..."*

26. The Commissioner refers to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, ("*Doorley*"), in which Kennedy C.J. stated:

*".....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 applicable."*

27. Further the Commissioner refers to *Doorley* at page 765 in which Kennedy C.J. stated:

*"The duty of the Court, as it appears to me, is to reject any a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms on the alleged subject of taxation".*

28. Further the Commissioner refers to *Doorley* in which Kennedy C.J. stated:

*"For no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to acts of parliament so far as they can be applied without violating the proper character of taxing acts to which I have referred."*

29. All material submitted to the Commission has been assessed by the Commissioner before making this determination.

30. In the Notice of Appeal an objection was made that the Respondent had not disclosed to the Appellant all the information which should have been included in the Notices of Assessment. The Commissioner adjourned the appeal hearing to a later date to allow the exchange of material. It is noted that no objection was raised on behalf of the Appellant to the hearing proceeding on the later hearing date. Accordingly, the

Commissioner is satisfied that she does not need to consider this matter as raised in the Notice of Appeal in this determination.

31. The Commissioner's role in this appeal is to determine if the Appellant has shown that the Respondent was not entitled to raise the Notices of Assessment against the Appellant.
32. The Commissioner notes the Appellant's submissions are that he withdrew cash on a regular basis from his bank account with Permanent TSB into which his wages were paid and he allowed the cash to accumulate and from that cash store he then made lodgements of larger amounts to his other bank accounts and these lodgements were greater in amount than the total of the cash withdrawals made.
33. The Commissioner notes that the Appellant despite obtaining the benefit of professional tax/accountancy representation regarding this appeal did not submit any documentary supports and/or evidence to show how he was able to make lodgements to his bank accounts in the amount of €421,552 when his annual salary from [REDACTED] was in the range of €32,177 to €37,003.
34. For the reasons set out above the Commissioner is satisfied that the Appellant has not met the burden of proof in establishing that the Respondent was not entitled to raise the Notices of Assessment. The Commissioner finds having assessed all before the Commission that the Appellant's appeal is unsuccessful.

### **Determination**

35. The Commissioner determines that the Respondent was entitled to raise the Notices of Assessment and further to the provisions of section 949AK (1)(c) of the TCA 1997 that the amounts raised in the Notices of Assessment shall stand.
36. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

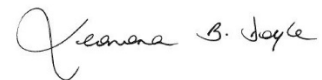
### **Notification**

37. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication

and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

38. 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  
1 April 2025