AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

215TACD2025

Between

[redacted]

Appellants

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This Determination concerns the appeals to the Tax Appeals Commission ("the Commission") of Dr [redacted] ("the Appellant") of Notices of Amended Assessment to income tax made by the Revenue Commissioners ("the Respondent") for the years 2016 – 2021 ("the years at issue").

2. Under these Notices of Amended Assessment, the Respondent assessed the Appellant as having balances of income tax payable of €10,618 for 2016, €31,310 for 2017, €34,020 for 2018, €33,071 for 2019, €51,335 for 2020 and €27,370 for 2021.

3. This Determination also concerns the appeals of [redacted] Limited ("the Appellant Company"), which is the employer of the Appellant, against Notices of Estimation of Amounts Due for the years at issue and of Notices of Amended Assessment to corporation tax covering the periods 1 May 2017 – 30 April 2018, 1 May 2018 – 30 April 2019, 1 May 2019 – 30 April 2020 and 1 May 2020 to 30 April 2021.

4. Under these Notices of Estimation, the Respondent assessed the Appellant Company as being liable to remit to it under the PAYE system income tax and universal social charge ("USC") in the amounts of €10,618 for 2016, €31,253 for 2017, €41,790 for 2018, €33,069 for 2019, €51,330 for 2020 and €27,370 for 2021.

5. Under these Notices of Amended Assessment to corporation tax, the Respondent assessed the Appellant Company as having balances of corporation tax payable of €8,773 for the year ending 30 April 2018 and €3,868 for the year ending 30 April 2019, and as having made overpayments of €6,079 for the year ending 30 April 2020 and €4,192 for the year ending 30 April 2021.

6. The appeals of the Appellant and the Appellant Company against the Notices of Amended Assessment and Notices of Estimation are made to the Commission under section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997").

7. Three issues fall to be considered by the Appeal Commissioner in determining the appeals of the Appellant and the Appellant Company of the sums assessed by the Respondent pursuant to the Notices of Amended Assessment and Estimation. These issues are:-

   (i) whether certain payments made by the Appellant Company to the Appellant in respect of the cost of accommodation, travel and subsistence constituted

deductible expenditure for the purposes of calculating the Appellant's taxable income and the amount to be remitted to the Respondent under the PAYE system by the Appellant Company;

(ii) whether the Appellant had in the calculation of his taxable income an entitlement in respect of some or all of the years at issue to have a portion of his expenditure on heat, light and internet treated as a deductible expense on the basis of work done remotely; and

(iii) whether certain expenditure by the Appellant Company over the years at issue constituted charitable donations that were deductible for the purposes of calculating its charge to corporation tax.

8. The following is the background relevant to the determination of these issues.

Background

9. The Appellant is a consultant doctor in emergency medicine. At all times relevant to this appeal, the Appellant's permanent place of residence was [redacted] ("the permanent residence").

10. Between the years 2008 – 2011, the Appellant was an employee of the Heath Service Executive ("the HSE"), for which he worked as a consultant in emergency medicine in [redacted] Hospital.

11. In 2011, the Appellant reached the age of retirement for doctors employed by the HSE. Though he then ceased to be the HSE's employee, he continued working in [redacted] Hospital as a locum consultant in emergency medicine until 2022.[1]

12. Over the eleven years that the Appellant worked as a locum consultant in [redacted] Hospital, he was an employee of the Appellant Company. The Appellant Company was incorporated by the Appellant in 2011, with its two directors and shareholders being the Appellant and his spouse.

13. The manner in which the Appellant was engaged to carry out the work of a locum doctor in [redacted] Hospital between the years 2011 – 2022 did not vary and was as follows. The Appellant Company made the services of the Appellant, its employee, available to a company called [redacted] Limited ("the locum agency").

[1] It should be observed that it was an agreed fact that over the period that the Appellant worked as a consultant doctor in [redacted] Hospital, his duties included doing regular clinic work in [redacted] Hospital. The parties did not treat this as being a fact relevant to the determination of the issue arising in this appeal concerning the cost of travel, subsistence and accommodation and the Appeal Commissioner has done likewise.

The locum agency would then enter into an agreement with the HSE for the provision of the Appellant's services for a short period lasting between a week and a month, with the Appellant being given notice in advance of the hours he was to work. Over the period 2011 – 2022, the Appellant was so engaged on a rolling basis as a locum consultant in emergency medicine in [redacted] Hospital.

14. In return for providing the services of the Appellant to the locum agency, the Appellant Company was paid an amount in respect of each period of his engagement, calculated by reference to hourly rates and the number of hours that he worked. The rates in question varied depending on whether the Appellant was working on-site in the hospital, or off-site and 'on call'.

15. Over the the period working in [redacted] Hospital, both as an employee of the HSE and as a locum consultant employed by the Appellant Company, the Appellant rented accommodation in [redacted]. This accommodation was at all times within close proximity of [redacted] Hospital. Over the years at issue, the specific accommodation rented by the Appellant was in [redacted].

16. In their respective appeals of the Notices of Amended Assessment and Notices of Estimation, the Appellant and the Appellant Company seek to have the sums assessed varied on the grounds that part of the income treated as taxable by the Respondent was paid by the Appellant Company to the Appellant so as to reimburse him for travel expenses incurred in making the journey for work between [redacted] and [redacted], for the expense of renting accommodation in [redacted] in close proximity to the hospital and for other subsistence expenses incurred when travelling and on call. The payments made to the Appellant that were so attributable were, it was contended, deductible under section 114 of the TCA 1997 for the purposes of calculating his taxable income.

17. The Appellant Company also incurred expenditure over the years at issue that was attributable to the transportation of hospital equipment from Ireland to [redacted]. This equipment, which was previously in use in hospitals run by the HSE and remained in working order even after it had ceased to be so used, was transported to [redacted] so that it could be used for the care of patients in a hospital located in the city of [redacted], which was run by the Catholic Archdiocese of [redacted]. In the appealed assessments to corporation tax, the Respondent refused to treat the Appellant Company's expenditure on the transport of this equipment to [redacted] as deductible. As noted above, the Appellant Company seeks in this appeal to have this expenditure so treated and the sums assessed in the Notices of Amended Assessment to corporation tax abated as a consequence.

18. Finally, the Appellant Company incurred expenditure over the years at issue in relation to medical treatment provided in Ireland to a now deceased person by the name of Mr [redacted]. Again, the Appellant Company is of the view that this expenditure should be deductible for the purpose of calculating the Appellant Company's profits and thus its charge to corporation tax.

19. Further information relating to the expenditure of the Appellant Company on the transportation of the medical equipment to [redacted] and for the care and treatment given to Mr [redacted] is set out in the following part of this Determination covering the evidence of the Appellant.

Evidence of the Appellant

20. The Appellant began his evidence by stating that he and his family had begun residing at the permanent residence in [redacted] in 2008.

21. The Appellant gave evidence that at the end of the same year he commenced working as a permanent, HSE-employed, consultant in [redacted] Hospital. This permanent employment came to an end upon his reaching the age of 65 in 2011.

22. The Appellant said that he began renting a residence in [redacted] in 2008. He said that he did so on the grounds that [redacted] Hospital required all emergency doctors on call to be able to arrive at the hospital within twelve minutes of being called. Moreover, he considered that, whatever about the demands of the hospital, his duty of care as a doctor to patients needing emergency care necessitated his being in [redacted] rather than [redacted]. In his evidence, the Appellant emphasised that his role in [redacted] Hospital was one involving a high level of responsibility. In this respect, he stated "*When I am on call I take control of everything that happens in the Emergency Department because I am responsible."* He then said "*So it goes without saying that you have to be near to your place of work."*

23. The Appellant said that on the cessation in 2011 of his employment with the HSE in [redacted] Hospital, he commenced working in the same hospital as a locum consultant.

24. The Appellant said that in the course of working as a locum consultant in [redacted] Hospital, he had asked the hospital's HR Manager whether it would pay his expenses arising from traveling from [redacted] for work and staying nearby the hospital in [redacted]. The Appellant said that after a lengthy period of delay, the HR manager told him that he should raise the matter with the locum agency with which the Appellant Company had contracted to provide his services to the hospital. Having done as was suggested, the Appellant said that the locum agency did not arrange for his expenses to be reimbursed

to either him or the Appellant Company. The Appellant said that instead the locum agency informed him that the best course open to him was to "*deduct* [expenditure on travel and subsistence] *from my gross pay before I calculate my tax.*"

25. On the subject of his pay as a locum consultant, the Appellant said that the Appellant Company, of which he was an employee, director and shareholder, received €90 per hour when he was on duty on-site in the hospital. When off-site and 'on call', the Appellant Company received €30 per hour from [redacted] Hospital. The Appellant observed that to his knowledge other locum consultants were paid considerably more than this for the provision of their services.

26. The Appellant also gave evidence that other locum consultants had accommodation provided to them directly by [redacted] Hospital. He said that this involved the hospital booking and paying for rooms for these locum consultants in either [redacted] Hotel or the [redacted] Hotel. The Appellant said that he did not receive such treatment.

27. The Appellant then gave evidence that permanent HSE-employed consultants had certain streams of income open to them as a consequence of their positions that were not open to locum consultants such as himself. In this respect he identified, in particular, fees obtainable from the drafting of medico-legal reports. The Appellant said that when he worked in [redacted] Hospital as an employee of the HSE, he had drafted and been paid for these medico-legal reports on a regular basis.

28. In cross-examination, the Appellant was asked whether when employed by the HSE as a consultant in [redacted] Hospital he paid for his own accommodation and subsistence. In answer to this he said:-

> "[…] *yes, I paid rent myself… I paid rent myself because my private residence was in* [redacted] *and when I am* [in [redacted]] *I paid rent myself, but that was my choice because I made enough money from the medio-legal, and so on, to pay the rent, and so on.*"

29. The Appellant then said:-

> "*When you are a full-time consultant you get some perks, extras, you know that help you to cover these things and keep going.*"

30. Counsel for the Respondent put it to the Appellant in cross-examination that over the years at issue the Appellant Company was receiving income, excluding VAT charged, of approximately €180,000 - €190,000 per annum. The Appellant agreed that this was so.

31. The Appellant gave evidence that the fact that he was engaged to work as a locum consultant in [redacted] Hospital only for short individual periods that rolled over meant that he did not feel secure in his position. Because of this, he rented the accommodation in [redacted] for the entirety of his time as a locum. He said that had he been employed in this capacity on a longer-term basis, he would have purchased a property in [redacted] in which to reside when on call. This would, he observed, have been more financially beneficial to him than renting.

32. The Appellant also gave evidence in connection with the question of his claimed entitlement to deduct expenses related to light, heat and internet arising from remote or 'e-working' done. He said that he came to carry out remote work over the years at issue as an off-site locum consultant for [redacted] Hospital. In carrying out this role, the Appellant was contactable by phone to give medical advice, but was not required to attend that hospital.

33. Under cross-examination, it was put to the Appellant that though it was accepted that he had done remote locum work for [redacted] Hospital, he had already been allowed a deduction in the amended assessments under appeal relating to expenditure incurred in the years at issue on his household utilities. It was put to the Appellant that the deduction allowed by the Respondent was 10 per cent of such expenditure. The Appellant did not contradict this.

34. The Appellant also gave evidence in relation to the third matter at issue, namely the expenditure by the Appellant Company claimed to constitute deductible charitable donations. Of these items of expenditure, one related to payments made to the Hermitage Clinic. The Appellant said that these payments were made in respect of the care provided to a person called Mr [redacted], who was his brother-in-law, godfather to his son and a resident of [redacted]. The Appellant explained that, in the course of visiting Ireland, Mr [redacted] had a fall that caused him to suffer great pain. He said that it was decided that the Appellant Company would pay for Mr[redacted]'s treatment in the Hermitage Clinic. This payment being "*for humanitarian purposes",* the Appellant said that he received advice that it was deductible for the purposes of calculating the Appellant Company's charge to corporation tax.

35. The Appellant also gave evidence regarding the expenditure connected with the transportation of medical equipment to [redacted]. He said that he had identified that certain important items of equipment in use in hospitals in Ireland were being decommissioned from use by the HSE on account of their age. He said that some of this equipment remained in good working order notwithstanding its having been decommissioned. The

Appellant said he had decided as an act of charity to take this equipment from the HSE and, by means of the Appellant Company, pay for its haulage and shipping to [redacted]. After the equipment arrived in [redacted], it was then transported by persons who were not paid by the Appellant Company to a Catholic missionary hospital named [redacted] Specialist Hospital, located in the city of [redacted]. The Appellant said that this hospital had great need for the equipment transported and its eventual arrival at [redacted] Specialist Hospital had a positive impact on the care that was offered to its patients.

Legislation

36. Section 112 of the TCA 1997, relating to the charging of income tax under Schedule E, is entitled "*Basis of assessment, persons chargeable and extent of charge".* Subsection (1) therein provides:-

> *"Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment."*

37. Section 114 of the TCA 1997 is entitled "*General rule as to deductions"* and relates specifically to the deductibility of sums in the nature of expenses incurred by persons earning Schedule E income. It provides:-

> *"Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."*

38. Section 117 of the TCA 1997 is entitled "*Expenses allowances"* and provides at subsection 1 therein that:-

> "*Subject to this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of section 112 as a perquisite of the office or employment of that director or employee and included in the emoluments of*

that office or employment assessable to income tax accordingly; but nothing in this subsection shall prevent a claim for a deduction being made under section 114 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment."

39. Section 848A of the TCA 1997 is entitled "*Donations to Approved Bodies".* Section 848A(2) provides:-

"*Where it is proved to the satisfaction of the Revenue Commissioners that a person has made a relevant donation the provisions of subsection (4) or (9), as the case may be, shall apply*."

40. Under section 848A(4) of the TCA 1997:-

"*Where a company makes a relevant donation in any accounting period and claims relief from tax by reference thereto, the amount thereof shall, for the purposes of corporation tax, be treated as—*

(a) a deductible trading expense of a trade carried on by the company in, or

(b) an expense of management deductible in computing the total profits of the company for,

that accounting period."

41. Under section 848A(1) of the TCA 1997, "*relevant donation"* is defined as:-

"[…] *a donation which satisfies the requirements of subsection (3) and takes the form of the payment or the donation, as the case may be, by a person (in this section referred to as the "donor") of either or both—*

(i) a sum or sums of money, and

(ii) designated securities, valued at their market value at the time the donation is made,

amounting to, in aggregate, at least €250 to an approved body […]"

42. Under section 848A(1) of the TCA 1997, "*approved body means a body specified in Part 1 of Schedule 26A."* At the relevant time, Part 1 of Schedule 26A specified the following bodies:-

"1. A body approved for education in the arts in accordance with Part 2.

2. A body approved as an eligible charity in accordance with Part 3.

3. An institution of higher education within the meaning of section 1 of the Higher Education Authority Act 1971, or any body established for the sole purpose of raising funds for such an institution.

4. An institution in the State in receipt of public funding which provides courses to which a scheme approved by the Minister for Education and Science under the Local Authorities (Higher Education Grants Acts, 1968 to 1992), applies or any body established for the sole purpose of raising funds for such an institution.

5. An institute of higher education which provides courses which are validated by the Qualifications and Quality Assurance Authority of Ireland under the Qualifications and Quality Assurance (Education and Training) Act 2012.

6. An institution or other body which provides primary education up to the end of sixth standard, based on a programme prescribed or approved by the Minister for Education and Science.

7. An institution or other body which provides post-primary education up to the level of either or both the Junior Certificate and the Leaving Certificate based on a programme prescribed or approved by the Minister for Education and Science.

8. A body to which section 209 applies which is a body for the promotion of the observance of the Universal Declaration of Human Rights or the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or both the promotion of the observance of that Declaration and the implementation of that Convention."

Submissions

Appellant

43. Legal submission on behalf of the Appellants was made by their solicitor. She began by accepting that the burden of proving factual matters at issue in the appeal rested with the Appellants. She submitted that the facts proved were sufficient for them to succeed in their case that the sums assessed by the Respondent under the Notices of Amended Assessment and Notices of Estimation were in error.

44. With respect to the claimed entitlement to deductions relating to the cost of accommodation, travel and subsistence, the Appellants' solicitor pointed to the evidence of the Appellant that he had only ever been engaged to work in [redacted] Hospital for short individual periods, rather than on a long-term contract, and that his entitlement

to the reimbursement of travel, subsistence and accommodation expenses had never been agreed with either the locum agency or [redacted] Hospital. These facts, it was submitted, meant that it had been necessary for the Appellant to suffer the cost of travel, subsistence and accommodation himself and for the Appellant Company then to cover those costs for him. The Appellants' solicitor also pointed to the requirement that the Appellant had to be within twelve minutes' journey of [redacted] Hospital when on call. This factor, in particular, distinguished the Appellant's circumstances from those present in the case *Ricketts v Colquhoun,* [1924] 10 TC 11*,* cited by the Respondent in support of its refusal to allow deductions for accommodation, travel and subsistence.[2] The Appellants' solicitor submitted that, as a consequence of the need to be close by the hospital while on call, "[the Appellant] *couldn't be living in his family home in* [redacted]*…Therefore, his subsistence by staying in rented accommodation in* [redacted] *was in the performance of the duties of the hospital, was in furtherance of the objectives of the hospital."*

45. The Appellants' solicitor also pointed to the evidence given that locum consultants other than the Appellant had their accommodation costs covered by [redacted] Hospital. This, she said, supported the proposition that what the Appellant had incurred were deductible expenses. The Appellants' solicitor then made the point that in opting to rent a property rather than stay in hotel rooms, the Appellant was "*prudent in the way in which the money was used".*

46. The solicitor for the Appellants then addressed the question of the money expended by the Appellant Company on the transportation of hospital equipment to [redacted]. She said, in the first instance, that it was important to bear in mind that in taking this equipment, the Appellant Company was saving the HSE the cost of having to store or destroy it. It was also submitted on the Appellant Company's behalf that the companies that were paid to transport the hospital equipment to [redacted] were Irish and, therefore, paid corporation tax in respect of the income that they received from the Appellant Company. Not permitting the Appellant to treat this expenditure as a deductible business expense would be unjust in circumstances where the Respondent would in effect be receiving corporation tax on the double, namely from the Appellant Company and from the transportation companies paid by it.

47. With regard to the specific requirements of section 848A of the TCA 1997, the Appellants' solicitor recognised that relief under this provision was limited to donations made to "*approved bodies"* enumerated in Schedule 26A to the legislation. She said, however,

[2] The facts of this case are summarised hereunder in this Determination.

that the Catholic Archdiocese of [redacted], which operates the missionary hospital in question, "*follows the Catholic Church, which is a recognised charity here* […]*".* For this reason, the Appellants' solicitor submitted that the Appellant Company's expenditure relating to the transportation of the hospital equipment should be deemed by the Appeal Commission to fall within the scope of section 848A of the TCA 1997.

48. Regarding the expenditure on the treatment given to Mr [redacted], the Appellant's brother-in-law, by the Appellant Company, the Appellants' solicitor submitted:-

> "[The Appellant Company] *can spend their money as they wish and which they have done with* [the care of [redacted]]. *They stated it was for charitable purposes. They've paid consultants in the hospital. The consultants in the hospital that treated* [[redacted]] *will be paying taxes on that income as well. So what our argument is, is that* [the Respondent] *is seeking income* [tax] *from two sides for the same amount of money."*

49. No legal submissions were made on behalf of the Appellant in relation to the question of his entitlement to deductions arising from any remote working done over the years at issue.

Respondent

50. Counsel for the Respondent began his submissions by stating that the Respondent was not calling into question any of the evidence of fact given by the Appellant.

51. Counsel for the Respondent then dealt with the question of the Appellant's entitlement to deduct expenditure laid out on travel and subsistence. He submitted, first of all, that it was worth bearing in mind that in this case, it was the Appellant Company, and not the Appellant, that had a contractual agreement with the locum agency to make available to it the services of a locum consultant. In line with this, it was the Appellant Company that was paid by the locum agency for the provision to it of the Appellant's services, at pre-agreed rates that depended on whether the Appellant was working on-site in the emergency department or off-site and on call. The Appellant, in turn, received pay as an employee from his own company. This was a structure that the Appellant had adopted of his own volition, and a consequence of the chosen structure was that the scope of what constituted a deductible expense was governed by the "general rules" prescribed under section 114 of the TCA 1997.

52. Counsel for the Respondent touched briefly on the evidence given by the Appellant to the effect that other consultants had hotel accommodation provided and paid for by the HSE.

He said that, in so far as this was of any relevance to the issues arising, such payments to consultants would in his view constitute the provision of a benefit-in-kind, taxable as such.

53. Returning to the matter in fact at issue in the appeals before the Appeal Commissioner, counsel for the Respondent turned to section 112 of the TCA 1997. This, he observed, required that income tax under Schedule E be charged in respect of "*salaries, fees, wages, perquisites or profits"* arising from a person's holding of an office or employment.

54. Counsel for the Respondent then turned to section 114 of the TCA 1997, which sets out the general rule as to what constitutes an expense incurred by the holder of an office or employment that is deductible when calculating taxable income. Counsel for the Respondent highlighted that this provides that only expenses which such a person is *"necessarily obliged"* to incur "*wholly, exclusively and necessarily in the performance of* [their] *duties"* are deductible.

55. What this meant for the purposes of the Appellant's claim was, submitted counsel for the Respondent, apparent from judgment of the House of Lords in *Ricketts v Colquhoun,* [1924] 10 TC 118. This case, which involved an analysis of a general rule for deductions in England and Wales in effect identical to section 112 of the TCA 1997, concerned the refusal to allow the travel and accommodation expenses of a London-based barrister who held the office of Recorder in the city of Portsmouth. The basis upon which the Recorder's claim was refused was set out in the judgment of Lord Cave at page 5, in a passage quoted by counsel for the Respondent in submission:-

> "*Passing now to the claim to deduct the hotel expenses at Portsmouth, this claim must depend upon the latter part of Rule 9, which allows the deduction of money, other than travelling expenses, expended 'wholly, exclusively and necessarily in the performance of the said duties'. In considering the meaning of those words it is to be remembered that a decision in favour of the appellant would operate in favour, not only of Recorders, but of any holder of an office or employment of profit who is liable to be assessed under Sch E, and would or might enable every holder of such a position to deduct his living expenses while away from his home. It seems to me that the words quoted, which are confined to expenses incurred in the performance of the duties of the office, and are further limited in operation by the emphatic qualification that they must be wholly, exclusively and necessarily so incurred, do not cover such a claim. A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work, so that he must find board and lodging away from home, that*

is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance.

I permit myself one further observation. Your Lordships may think it would not be unreasonable that a barrister, who accepts the honourable position of Recorder, often at a pecuniary loss to himself, should be credited in his assessment with the amount expended by him in going to and from the place of his employment, and possibly also – though as to this there may be more doubt – with his reasonable living expenses while he is detained there, or, in the alternative, that the responsible authorities should fix the salary attaching to the office at a sum sufficient to cover those expenses; but, however that may be, no such opinion can affect the present appeal. This House has only to construe the rule as it stands and, for the reasons that I have given, the rule does not avail the appellant."

56. Counsel for the Respondent submitted that the fact that the Appellant had his permanent residence with his family in [redacted] despite working in [redacted] was because of a choice that he had made based on his own personal circumstances. It was this choice, counsel said, that meant that the Appellant had to find a second place at which to reside while working during the week in [redacted] Hospital. Counsel submitted that the fact that the Appellant was required to live in close proximity to the hospital did not change this. He was not, in other words, obliged by his employment to maintain his residence in [redacted]. There was nothing to prevent him from having his primary residence instead within a distance of [redacted] Hospital close enough to bring it within the twelve-minute journey time referred to in his evidence.

57. In legal submission, counsel for the Respondent anticipated an argument that in being 'on call' off-site the Appellant was performing his duties even while resting in the [redacted] property and that, in order to perform this duty, he was "necessarily obliged" to rent the [redacted] premises. Counsel for the Respondent submitted that were the Appeal Commissioner to make any finding along these lines, such a finding would be in error. The Appellant was not obliged as a matter of necessity to, as he put it, "rest his head" in the [redacted] property. This precluded the cost incurred in renting it being a deductible expense under section 114 of the TCA 1997. In support of this submission, counsel for the Respondent referred the Appeal Commissioner to the judgment of the High Court of England and Wales in *Miners v Atkinson* [1997] STC 58

58. Counsel for the Respondent briefly addressed the Appellant's argument that the assessments under appeal should be reduced to take into account deductions on the cost of heat, light and internet allowable as a consequence of his carrying out of remote work.

59. Counsel for the Respondent said that this should not be allowed for a number of reasons. Firstly, counsel said that there was no dispute that the Respondent had already allowed the Appellant a deduction for the years at issue in respect of 10 per cent of the cost of his home utilities as a consequence of the fact that the Appellant Company's registered address was the permanent residence. This was, counsel submitted, a bar on the Appellant claiming a separate deduction in relation to the cost of the aforementioned utilities arising from his remote working. Furthermore, counsel for the Respondent made the point that the Appellant had not provided evidence as to how many days per annum he was working on a remote basis as a locum consultant for [redacted] Hospital. Counsel for the Respondent submitted that the Appellant therefore had not met the burden of proving his entitlement to the relief claimed.

60. Lastly, counsel for the Respondent addressed the deduction claims made in respect of sums that the Appellant Company had expended on (a) the care of Mr [redacted] and (b) the transportation of medical equipment to [redacted]. Counsel for the Respondent submitted that it was clear that these items of expenditure did not constitute deductible trading expenses. Nor, he said, were they deductible as charitable donations made "*to an approved body"* within the meaning of section 848A of the TCA 1997.

61. In relation to the expenditure on the hospital equipment, counsel for the Respondent made the point that it is a mandatory requirement of the charitable donations scheme that the donation in question be made to an "approved body" enumerated in Schedule 26A to the TCA 1997. Counsel for the Respondent submitted that [redacted] Hospital and/or the Archdiocese of [redacted] were not such bodies. Counsel sought to emphasise that the Respondent was not suggesting that the expenditure incurred by the Appellant Company was anything other than for a worthy cause. He said, however, that it simply did not fall within the parameters of section 848A of the TCA 1997 and therefore could not be treated as a deductible expense.

62. Likewise, the expenditure by the Appellant Company on the care given to Mr [redacted] could not be treated as a deductible expense under the same legislation.

Material Facts

63. The facts material to the determination of this appeal were as follows:-

- the Appellant is a consultant medical doctor, who practices in emergency medicine;
- in 2008, the Appellant commenced working in [redacted] Hospital as a consultant in emergency medicine;
- from 2008 – 2011, the Appellant was employed directly by the HSE working as a consultant in emergency medicine in [redacted] Hospital;
- from 2011 – 2022, the Appellant worked as a locum consultant doctor in emergency medicine in [redacted] Hospital;
- the Appellant Company is a limited liability company, the two directors and shareholders of which are the Appellant and his spouse;
- the Appellant is the sole employee of the Appellant Company;
- over the period 2011 – 2022, the Appellant, as employee of the Appellant Company, was engaged by the locum agency to work as a locum consultant in [redacted] Hospital;
- in return for the Appellant Company making available the services of the Appellant, the locum agency made payments to the Appellant Company;
- these payments were calculated by reference to hourly rates, which varied depending on whether the Appellant was on duty on-site in [redacted] Hospital or off-site but on call;
- over the years at issue in this appeal, the rates at question were €90 per hour when the Appellant was on duty on-site in [redacted] Hospital and €30 per hour when the Appellant was away from [redacted] Hospital but on call;
- in carrying out work as a locum consultant in emergency medicine, it was required of the Appellant/the Appellant Company that the Appellant be within twelve minutes' journey of [redacted] Hospital when on call but off-site;
- since 2008 the Appellant's permanent place of residence has been [redacted];
- the Appellant resides at this address with his family;
- over the period in which the Appellant worked as consultant in [redacted] Hospital, whether as an employee of the HSE or as a locum, the Appellant stayed in rented accommodation in [redacted] when off-site but on call;

- over the years at issue in this appeal, the accommodation rented by the Appellant was at [redacted];
- when not on-site or on call, the Appellant returned to his permanent residence in [redacted];
- over the years at issue, the Appellant carried out remote locum work in [redacted] Hospital;
- over the years at issue, the Appellant Company incurred expenditure on the transportation of medical equipment from Ireland to [redacted];
- the purpose of the transportation was so that the medical equipment be used in the [redacted] Hospital in [redacted], [redacted];
- [redacted] Hospital is run by the Catholic Archdiocese of [redacted];
- over the years at issue, the Appellant Company paid for the medical treatment of the Appellant's brother-in-law, Mr [redacted], in the Hermitage Clinic, Dublin.

Analysis

64. It is necessary at this point to state that in exercising their function, an Appeal Commissioner of the Commission is bound to follow relevant legislation that has been passed by the Oireachtas and made into law. An Appeal Commissioner has no power to depart from or disapply legislation in individual cases on the grounds of fairness or equity. That this is so as a matter of law is clear from the judgment of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18. There, the Court examined the nature of an Appeal Commissioner's function in detail and held that, in the context of an appeal of an assessment, their task was confined to quantifying the correct amount of tax owed, if any, by reference to the terms of relevant statute.

65. In performing this function, the Appeal Commissioner notes that the proper method of statutory interpretation has been set out in a variety of judgments of the courts, most recently in cases such as *Perrigo Pharma International DAC v McNamara & Ors* [2020] IEHC 152 and *Heather Hill DAC v An Bord Pleanála* [2022] IESC 43. For the purposes of this Determination, it is sufficient to observe that, as Murray J made clear in his judgment for the Supreme Court in *Heather Hill v An Bord Pleanála*, the primary tool for interpreting the meaning of legislation is the plain meaning of the wording used, taken in context.

The deductions claimed in respect of accommodation, travel and subsistence

66. This brings the Appeal Commissioner to the first of the three issues to be addressed in this Determination, namely whether the accommodation and travel and subsistence expenses of the Appellant were deductible. The test for deductibility in relation to Schedule E earnings is that the employee in question must have been "*necessarily obliged*" to have incurred expenses laid out "*wholly, exclusively and necessarily in the performance of* [their] *duties".* At page 7 of *Ricketts v Colquhoun,* Lord Blanesburgh gave the following analysis of the general rule for deductions under Schedule E then in force in the England and Wales, which rule mirrors that prescribed under section 114 of the TCA 1997:-

> "[…] *the language of the rule points to the expenses with which it is concerned being confined to those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties, to expenses imposed ex necessitate of his office and to such expenses only. It says: 'If the holder of an office' – the words, be it observed, are not 'If the holder of an office' – 'is obliged to incur expenses in the performance of the duties of the office' – the duties again are not the duties of his office. In other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective: the deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."*

67. As noted already, in *Ricketts v Colquhoun* the House of Lords held that the travel and subsistence expenses of a London-based barrister occupying the part-time position of Recorder in Portsmouth were not deductible. The court did so on the basis, *inter alia*, that it was his choice to live elsewhere than the location of the position that he held. Another person who took up the same position and who chose to live closer to Portsmouth might not have found it necessary to seek accommodation separate from their normal residence and incur travel costs. For this reason, the court in *Ricketts v Colquhoun* held that it could not be said as a matter of objective fact that the Recorder was "*necessarily obliged"* by the duties of his office to incur the travel and subsistence costs in question. The need for expenditure on travel and accommodation instead arose from his own personal or subjective requirements. As a consequence of this, the expenditure could not be treated as deductible in calculating his taxable income.

68. In *Taylor v Provan,* [1974] 1 All ER 1201, the House of Lords, referencing *Ricketts v Colquhoun,* observed that it had long been established in that jurisdiction that the expenses of getting to and from one's normal place of work was not a deductible expense. It is true, however, that the same court also found in *Pook v Owen,* [1970] AC 244 that

the cost incurred by a GP in travelling 15 miles from his regular surgery in Fishguard, Wales, to a hospital in Haverfordwest, where he was employed part-time to be on "stand-by duty" as an obstetrician and anaesthetist, was deductible. That court did so, however, in circumstances where it had been found as a fact that the position of stand-by obstetrician and anaesthetist for Haverfordwest hospital required that the doctor in question carry out his role in two locations, firstly in his surgery in Fishguard and, secondly, in the hospital. Thus, it was held by a majority in the House of Lords that the doctor was both necessarily obliged by his role to make the journey of 15 miles and performing that role when so doing.

69. Explaining the logic of *Pook v Owen,* Lord Simon made the following statement at page 221 of the subsequent judgment of the House of Lords in *Taylor v Provan*:-

> "*Applying the rule in Ricketts v Colquhoun [1926] AC 1— i.e., that the obligation to incur the expenses of travelling in question must arise out of the nature of the office or employment itself, and not out of the circumstances of the particular person appointed to the office or employed under the contract of employment—two different classes of travelling expenses readily come to mind. The first is where the office or employment is of itself inherently an itinerant one. Examples are various sorts of inspectorate (say of weights and measures or to check stock) or commercial travel or supervision of duties carried out by local subordinates. In such cases the taxpayer may well be travelling in the performance of the duties of the office or employment from the moment of his leaving home to the moment of his return there—a visit to any head office might well be purely incidental or fortuitous. The second class of case is where the taxpayer has two places of work and is required by the nature of his office or employment to travel from one to the other. The classic example (until the situation was governed by allowances) was the Member of the House of Commons: he was necessarily obliged to perform part of the duties of his office at Westminster and part in his constituency; so that travel between the two was an obligation arising by the nature of the office itself, and not by the circumstances of the particular Member—even though it may be assumed that, in the eyes of his electorate, he was the best person to be elected to the office. Another example might be a managing clerk of a solicitor who has offices in adjacent towns: the cost of travel from home to either would not be a deductible expense, since it would be an obligation arising out of his personal circumstances, having chosen to live where he has; but the travelling between the two offices would be an obligation arising by the very nature of the employment itself*.

In my view, Dr Owen in Pook v Owen was held to fall into this second category; and this was the ratio decidendi of the case. The rule in Ricketts v Colquhoun could therefore be applied without disqualifying Dr. Owen's travelling expenses; so that Ricketts v Colquhoun was distinguishable."

70. Though the judgments in *Ricketts v Colquhoun* and *Taylor v Provan* are those of a foreign court and are in no way binding, the Appeal Commissioner considers the principles expressed therein in relation to the general rule for deductions in force in that jurisdiction to accurately reflect the principles governing the scope of section 114 of the TCA 1997.

71. The first condition for deduction is that the holder of an office or employment be "*necessarily obliged*" by the duties of that office or employment to incur an expense out of their own emoluments. In the analysis of whether the Appellant was so obliged to expend money on travel, subsistence and accommodation, the Appeal Commissioner finds, first of all, that the evidence indicates clearly that the Appellant's normal place of work over the years at issue was [redacted] Hospital. While the individual periods of his engagement may have been short-term, they rolled over for what was in effect a continuous period of 11 years. Moreover, this directly followed a period of approximately three years during which the Appellant occupied the same role as a consultant in emergency medicine on a permanent basis as a HSE employee.

72. In his evidence, the Appellant emphasised that as a locum consultant on call, he was obliged at all times to be within 12 minutes' journey of [redacted] Hospital. This, his solicitor submitted in legal argument, meant that the Appellant was necessarily obliged by the terms of his employment to incur the cost of travel, subsistence and accommodation. The Appeal Commissioner cannot agree with this submission. As was the case with the Recorder in *Ricketts v Colquhoun,* there was nothing to prevent the Appellant from having his permanent residence within such proximity of his normal workplace, [redacted] Hospital, that the expense of alternative accommodation would be obviated. That he lived in [redacted], and thus had to source alternative accommodation in [redacted], was a decision personal to him.

73. The above of course constitutes no criticism of the Appellant. In his evidence, he made clear that he made his decision regarding his residence in the best interests of his family. However, for the purposes of establishing the entitlement to deduction under section 114 of the TCA 1997, this means the reason for incurring the expense of accommodation was personal to the Appellant and did not flow from the objective requirements of the job itself. This excludes the expense incurred by the Appellant on accommodation being one that is deductible. As such, any reimbursement of such expense by the Appellant Company

has, pursuant to section 117 of the TCA 1997, to be treated as a perquisite chargeable to income tax under section 112 of the same legislation.

74. The same analysis applies in relation to the Appellant's incurring of the expenses of travelling between [redacted] and [redacted]. The Appellant was not, in his capacity as employee of the Appellant Company acting as a locum consultant in emergency medicine in [redacted] Hospital, required to perform work in [redacted] and [redacted]. He was thus not necessarily obliged by his duties to incur the expense of travel from one to the other. Nor did the travel in question constitute the actual performance of the role of consultant doctor, as might travel constitute a part of the performance of the role of a travelling salesperson. As a consequence, the circumstances identified by Lord Simon in *Taylor v Provan* in which the expense of travel to a workplace might be deductible are not present in this instance.

75. For these reasons, the submission made on behalf of the Appellants that the sums assessed under the Notices of Amended Assessment and Notices of Estimation should be abated on the basis of deductible expenses arising from accommodation, travel and subsistence must fail.

76. Lastly in respect of this issue arising in the appeals, the Appeal Commissioner wishes to re-emphasise that the scope of his jurisdiction is to decide the matter by applying the law to the facts found. The Appeal Commissioner cannot take into consideration matters such as the purported treatment of other persons, such as the treatment of other locum doctors in relation to their accommodation expenses, or of permanent consultants who might benefit from streams of income not open to the Appellant as a locum doctor. Submissions on such matters raise questions of fairness and equity that are unconnected to the proper interpretation of the section 114 of the TCA 1997 and therefore fall outside the jurisdiction of the Appeal Commissioner to determine. In making the above findings to the effect that the accommodation, travel and subsistence expenses of the Appellant are not deductible, the Appeal Commissioner has not had regard to these matters, but rather the matters addressed in the preceding paragraphs of this Determination.

The deduction claimed in respect of 'e-work' or 'remote work'

77. The second issue to determine concerns whether the Appellant was entitled to deduct expenditure, calculated at €3.20 per day, incurred in respect of light, heat and internet when carrying out "e-work" or "remote work" from home in [redacted] as a locum doctor for [redacted] Hospital.

78. It is first necessary to state that the Appellant did not in the appeal hearing provide evidence as to the numbers of days in the years at issue that he carried out this work. To this extent the Appeal Commissioner finds that he has failed to satisfy the burden of proof that rests with him in accordance with *Menolly Homes v Revenue Commissioners* [2010] IEHC 49 to prove the facts necessary to ground his claim for such deductions. Even were this not the case however, it is apparent that the Appellant is not in a position to claim a deduction in respect of such expenses in circumstances where it was not in dispute that in respect of the years at issue the Respondent has already allowed the Appellant to deduct 10 per cent of his utility bills on the basis of home working. This would appear to the Appeal Commissioner to be sufficient to cover any costs arising in respect of light, heat and internet from the need to work remotely for [redacted] Hospital and the allowance of a deduction of €3.20 per day would therefore constitute double recompense for any expense incurred in this context.

The deductions claimed to be charitable donations

79. The third issue concerns expenditure of the Appellant Company made in respect (a) of the medical treatment of Mr[redacted] and (b) of the transport of medical equipment to [redacted]. The Appellant Company seeks to claim these as deductible for the purposes of calculating its profits chargeable to corporation tax on the grounds that they constitute charitable donations.

80. The Appeal Commissioner finds that neither of these items of expenditure are deductible. The provision governing the deduction of charitable donations is section 848A of the TCA 1997. Under subsection (1) of this provision, a deductible "*relevant donation"* must be one that is in the form of *"a sum or sums of money"* or "*quoted securities".* Secondly, it must be made to an "*approved body"* enumerated in Schedule 26A to the TCA 1997. It is clear from the wording of the provision that these are mandatory conditions and neither have been met.

81. Firstly, in relation to the expenditure relating to the shipping of hospital equipment, this did not constitute a donation to [redacted] hospital in the form of either a sum of money or quoted securities. Rather, in his own evidence the Appellant said that the Appellant Company paid money to haulage and shipping companies, which of course were never suggested to constitute prescribed charities, which then arranged the transport of the equipment to [redacted]. After this point, the goods were transported to the hospital in an operation not paid for by the Appellant Company. While paying for the shipping of the hospital equipment to [redacted] was without question a worthy endeavour on the part of the Appellant Company, it does not amount to a donation of the kind that is

required under section 848A of the TCA 1997 and therefore cannot be treated as deductible.

82. Secondly, the expenditure in question was not made to "*approved bodies"* enumerated in Schedule 26A. From the evidence given by the Appellant it would appear that the expenditure relating to Mr [redacted] was paid to the Hermitage Clinic. The Appeal Commissioner does not consider that money paid to a hospital in the settlement of fees owed in respect of the treatment of a patient can constitute a "*donation"* to that hospital. Rather, it is consideration given in return for a service provided, in this case a service provided to a third party. However, even if the Appeal Commissioner is wrong in so concluding, it does not appear that the Hermitage Clinic is itself an approved body capable of receiving approved donation. No submission was in fact ever made on behalf of the Appellant in this appeal to the effect that it was. Instead, it was submitted that the deduction claimed should in any event be allowed as tax would have been paid by the Hermitage Clinic as recipient of the payments in relation to the treatment of Mr [redacted]. This is not a valid basis for allowing the deduction and would involve the Appeal Commissioner not just ignoring the express terms of section 848A of the TCA 1997, but also exercising an equitable jurisdiction that he has already held in this Determination he does not possess.

83. Returning to the expenditure on the transport of the hospital equipment, even if arranging the transport of hospital equipment constituted a donation made in a form prescribed by section 848A, and the Appeal Commissioner has held already that it does not, the Archdiocese of [redacted] is not a body of a kind specified in Part 1 of Schedule 26A of the TCA 1997. For this reason also, the submission that the expenditure should be treated as being a charitable donation, deductible under section 848A of the TCA 1997, must be found to be in error and must fail.

84. As a consequence of all of the foregoing, the Appeal Commissioner finds that the Notices of Assessment to income tax and corporation tax and the Notices of Estimation under appeal are correct and are to stand.

Determination

85. The Appeal Commissioner finds that the Notices of Assessment to income tax and corporation tax and the Notices of Estimation under appeal, made in respect of the Appellant and the Appellant Company are correct and are therefore found to stand. The Appeal Commissioner does so on the grounds that deductions claimed by the Appellant,

said to arise from the expenses of travel and subsistence, remote working and charitable donations, are not deductible as a matter of law.

86. In relation to the Notices of Assessment to income tax for the years 2016 – 2021, the Appellant's balances of tax payable found to stand are €10,618 for 2016, €31,310 for 2017, €34,020 for 2018, €33,071 for 2019, €51,335 for 2020 and €27,370 for 2021.

87. In relation to the Notices of Estimation of Amounts Due, the amounts of income tax, PRSI, universal social charge and local property tax found to be due by the Appellant Company are €10,618 for 2016, €31,253 for 2017, €41,790 for 2018, €33,069 for 2019, €51,330 for 2020 and €27,370 for 2021.

88. In relation to the Notices of Assessment to corporation tax, the sums assessed that are found to stand are underpayments of €8,773 for the year ending 30 April 2018 and €3,868 for the year ending 30 April 2019 and having overpayments in the amount of overpayments of €6,079 for the year ending 30 April 2020 and €4,192 for the year ending 30 April 2021.

89. These appeals are determined in accordance with Part 40A of the TCA 1997 and in particular sections 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

90. 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

91. 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.

Conor O’Higgins
Appeal Commissioner
29 July 2025