AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

228TACD2025

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against as an appeal against a Notice of Amended Assessment for the tax year 2024 issued by the Revenue Commissioners (from here on referred to as the "Respondent") on 21 January 2025.

2. The amount of tax in dispute is €23,811.81.

Background

3. [redacted] (from here on referred to as the "Appellant") was, in 2024, a Pay as You Earn (from here on referred to as "PAYE") employee, a former member of An Garda Síochána entitled to an occupational pension and was also in receipt of payment from the Department of Social Protection.

4. The Appellant was a member of An Garda Síochána between [redacted] and [redacted].

5. The Appellant became entitled to an occupational pension in relation to his former employment with An Garda Síochána when he turned 60 on [redacted] 2019.

6. The Appellant applied for his pension entitlements in relation to his former employment with An Garda Síochána in 2024 and received the following payments in October 2024 totalling €59,382.27 in relation to arrears in his pension entitlements for the years 2019 to 2024 inclusive:

   6.1. 2019 - €8,913.15

   6.2. 2020 - €9,822.90

   6.3. 2021 - €9,994.38

   6.4. 2022 - €10,466.44

   6.5. 2023 - €10,796.40

   6.6. 2024 - €9,389.00

7. The arrears payments were taxed on the Appellant's payslip as Schedule E emoluments received in 2024.

8. On 15 January 2025, the Appellant submitted tax returns to the Respondent in relation to the years 2019 to 2024 inclusive which listed the arrears in pension entitlements as income received in those years.

9. As a result, the income tax return submitted by the Appellant in relation to 2024 contained a self-assessed overpayment of €19,472.33.

10. On 21 January 2025, the Respondent issued a Notice of Amended Assessment to income tax for the year 2024 to the Appellant which contained pension payments of €61,743 for the entirety of the year 2024 to include the pension arrears payments of €59,382.27 as Schedule E income.

11. The Notice of Amended Assessment to income tax for the year 2024 assessed the Appellant to an overpayment of income tax of €4,328.51 and a refund of the assessed overpayment was paid to the Appellant on 21 January 2025.

12. The Appellant submitted a Notice of Appeal to the Commission on 28 January 2025 contesting the Notice of Amended Assessment to income tax for the year 2024 issued by the Respondent on 21 January 2025.

13. On 23 April 2025, the Commission wrote to the parties informing them of the Commissioner's intention to determine this appeal without an oral hearing pursuant to the provisions of section 949U of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997").

14. On 1 May 2025, the Appellant consented to the determination of this appeal without an oral hearing pursuant to the provisions of section 949U of the TCA1997.

15. On 14 May 2025, the Respondent consented to the determination of this appeal without an oral hearing pursuant to the provisions of section 949U of the TCA1997.

16. This appeal has, therefore, been determined without an oral hearing pursuant to the provisions of section 949U of the TCA 1997.

Legislation and Guidelines

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

Section 112 of the TCA 1997 – "*Basis of assessment, persons chargeable and extent of charge*" (as in force from 1 January 2018 – onwards):

> *"(1) 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.

(2) (a)In this section, "emoluments" means anything assessable to income tax under Schedule E.

(b)Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of subsection (1):

(i)if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii)if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

(3) Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment.

(4) Where emoluments chargeable under Schedule E arise in the year of assessment 2017, and those emoluments are also chargeable to income tax in accordance with subsection (3) for the year of assessment 2018 or a subsequent year of assessment, the amount of the emoluments chargeable to income tax for the year of assessment 2017 shall, on a claim being made by the person so chargeable, be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment.

(5) Where a person dies and emoluments are due to be paid to that deceased person, the payment of such emoluments shall be deemed to have been made to the deceased person immediately prior to death.

(6) (a)In this subsection, 'proprietary director' has the same meaning as it has in section 472.

(b)Subsection (3) shall not apply to -

(i)emoluments paid directly or indirectly by a body corporate (or by any person who is connected (within the meaning of section 10) with the body corporate) to a proprietary director of the body corporate, or

(ii)emoluments in respect of which a notification has issued under section 984(1)."

Submissions

Appellant's Submissions

18. The Appellant submitted the following ground of appeal in his Notice of Appeal:

"I wish to appeal the above referenced Notice of Amended Assessment Income Tax for the year ending 31 December 2024.

From conversations I had with the various agencies involved it would appear that the circumstances which lead to this are somewhat unique.

I was a member of An Garda Síochána from [redacted] to [redacted] when I resigned.

My wife recently suggested to me that I might be due a pension and gratuity in line with all public servants.

The net result is that I was due a pension and gratuity form my 60th birthday on [redacted] 2019 which was paid to me in October 2024. A welcome sum and the payment included arrears of pension for the years 2019 to 2024.

The arrears of pension was taxed on a Week 1 basis and no relief given for previous years resulting in income tax deduction of €23,769.45 and PRSI of €1,200.67.

Following enquiries made with Revenue I was advised to submit Form 11 for the years 2015 to 2023 which have been submitted and accepted.

In the Form 11 for 2019 and subsequent years An Garda Síochána was listed correctly as an employer with no payments showing. I entered the payments into the respective columns as set out it the schedule of arrears as provided by the National Shared

Services Office. As I have been in receipt of social welfare payments for a lengthy period I had an excess of tax credits. Where my income exceeded the income tax threshold, I paid the income tax due for the relevant years, submitted and receipted.

I therefore respectfully suggest that the income from my Garda Pension for the years 2019 – 2023 have been accounted for and income tax paid where income tax was due and I should only be liable for income tax and PRSI on my 2024 income from my Garda Pension in addition to payments made to me from Social Welfare and my former employer [redacted].

By my calculations my taxable income for 2024 is.

My 2024 income is:

2024 [redacted] *5,070*

Garda Pension 11,377.8

Invalidity Pension 9,856.2

Partial Capacity Benefit 1,959.65

Total 28,263.65

My calculation of taxable income is:

Total Income 2024	*28,263.65*
Income Tax chargeable at standard rate 28,263.65 at 20%	*5,652.73*
Less total Panel 5	*3,995*
Tax payable	*1,657.73*
Tax Charged for this period	*25,469.54*
Amount of Tax overpaid	*23,811.81*

The figures supplied by DSP include Fuel Allowance and Household Benefits package which are not taxable according to Citizens Information. I assume there will also be a reduction in the amount of PRSI charged.

I look forward to your review of this matter and the resultant outcome."

19. The Appellant submitted the following in his Statement of Case:

"This appeal relates to taxation of arrears of pension payments and the manner in which almost 6 years of arrears of pension payments were taxed on a week 1 basis resulting in, in my opinion, a substantial overpayment of Income tax.

I was a member of An Garda Síochána from [redacted] *until I resigned in* [redacted]*.*

I was unaware that I was entitled to a Pension and Gratuity from my 60th birthday, [redacted]*, 2019.*

Garda pensions are administered by the National Shared Services Office (NSSO).

On receipt of my first pension payment dated 31st October 2024, which included my Gratuity and arrears of pension payments for the years 2019, 2020, 2021, 2022, 2023 and 2024 up to October of that year. These arrears of payments were taxed on a Week 1 basis resulting in a substantial deduction of Income Tax.

Payments

Gratuity	*€29,035.94*
Gratuity Ded Sp/Ch	*€ -10,341.38*
Gratuity Ded Main	*€ -12,070.63*
Pension	*€ 952.05*
Pension Arrears	*€59,382.30*
Transport Allow	*€450.23*

Deductions

Description	*This Period*	*Year to Date*
USC	*€1,200.67*	*€1,200.67*
PAYE	*€ 3,769.45*	*€23,769.45*

Had I been in full time employment for the relevant years, 2019 to 2024 with an income of say €60.000 I would reason, fair enough to the deductions and thank you very much for the extra income.

I submit that I should be given the opportunity to have income tax calculated in accordance with my income in the relevant years 2019 to 2024.

In 2017, I was diagnosed with a life ending condition, [redacted] which resulted on my inability to work, thereby restricting my income to payments from the Department of Social Protection which, for income tax purposes, left me with an excess of tax credits for each of the relevant years of my pension arrears.

Whilst reviewing my options as to how best to pursue this claim, NSSO offered no advice, Revenue will sort it and bar reluctantly issuing a statement of arrears by year were of little help. The Revenue help line could offer no direction as they had not come across this issue before. I submitted a "My Enquiries" to Revenue and was told to submit Form 11 for the years in question.

In completing Form 11 for the year 2019 An Garda Síochána was listed as an employer and I duly included the amount of payment received as per schedule from NSSO from An Garda Síochána in 2019.

I did likewise for the years 2020, 2021, 2022, 2023 and 2024.

In the relevant period from 2013 to 2024 I included my pension payments from An Garda Síochána in my returns in Form 11 and, where my income exceeded my personal tax credits, the appropriate Income Tax was paid to and receipted by Revenue.

My submission is that, as I have accounted for my Pension Payments in the relevant tax returns for the years 2019 to 2023 the only taxable income left is the arrears of pension for 2024 ie. €9,389.00 and Transport of €69.92 rather than the Taxable Pay of €60,784.58 I was assessed on resulting in deductions of €23,769.45 in PAYE and USC of €1,200.67.

My figures suggest what in my opinion is the income tax I should have paid,

Total Income 2024	*28,263.65*
Income Tax chargeable at standard rate 28,263.65 at 20%	*5,652.73*
Less total Panel 5	*3,995*
Tax payable	*1,657.73*

Tax Charged for this period
25,469.54

Amount of Tax overpaid	*23,811.81*

I received a refund of €4,328.51 on 21st January leaving, again in my opinion an overcharge of €19,483.30."

20. The Appellant submitted the following in response to the Respondent's Statement of Case:

"Additional Information re Revenue Statement of Case

Prior to entering into this process, I had little knowledge of Taxation Laws or the workings of the Revenue Commissioners. I have however many years' experience in prosecuting Road Traffic and Criminal offences through the District and Circuit Courts and am well aware of the need for absolute clarity required in referencing a Statute for a case to succeed.

A Statute must be referenced by its full title, the year of enactments and reference made to amendments, if any, to the Principal Act or the relevant Section.

I wish to make the following submission.

I am of the opinion that the case as presented by the Revenue Commissioners Statement of Case has erred in law and, therefore, Ultra Vires for the following reasons.

The Statutory provision to be relied upon as quoted by The Revenue Commissioners is "Section 112 of TCA 1997" (no amendments)

Having carried out an extensive trawl of the Irish Statute Book online http://www.irishstatutebook.ie under the search parameters of the "TCA 1997" as quoted by The Revenue Commissioners, does not return any documents.

There is no Statute listed on the Irish Statute Book with the title of "TCA 1997", it does not in law exist.

Therefore, in my opinion, as the legal basis on which The Revenue Commissioners are objecting to this application for repayment of income tax deducted in October 2024 does not exist, this claim should be allowed.

This income has been accounted for in the relevant years 2019 to 2023 as I had an excess of tax credits, and where tax was due in a relevant year, the amount due was paid to and receipted by the Revenue Commissioners

The TCA in the alleged legislation "Section 112 of TCA 1997" is an acronym. To see how an acronym can be interpreted I refer you to the current series of advertisements for the body known by its acronym FBD.

Should the Tax Appeals Commissioner still consider that "Section 112 TCA 1997" could possibly construe a Statute, it could well be interpreted as the patrons sitting in Section 112 of Croke Park in 1997 when Kerry beat Mayo having a "Terrific Craic Altogether" aka "Section 112 TCA 1997" which is any one of an endless number of interpretations of "Section 112 TCA 1997"

I also submit that the referenced content of a section of Statute as quoted by the Revenue Commissioners in its Revenue Statement of Case does not appear in the 1997 Act and is, in fact, due to numerous amendments to the Principal Act. This is not referenced within the "Section 112 of TCA 1997".

From an examination of what could possibly be the Principal Act, it contains a mere 2 paragraphs and does not contain a Section 112 (3) and the quoted "legislation" is at variance with the un amended Statute.

On the basis alone of the numerous serious legislative flaws cited, the Revenue Statement of Case, as presented by the Revenue Commissioners has erred in law, is Ultra Vires, should be disregarded and this appeal allowed.

I look forward to your favourable ruling."

Respondent's Submissions

21. The Respondent submitted the following "Outline of Relevant Facts" in its Statement of Case:

"The Appellant filed their 2024 Income Tax return on 15 January 2025 and self-assessed a tax overpayment of €19,472.33. The Appellant is appealing the tax treatment of pension arrears he received in 2024 in respect of an An Garda Síochána pension.

In his Notice of Appeal, the Appellant advised that he was a member of An Garda Síochána from [redacted] *to* [redacted] *and only became aware in 2024 that he had been entitled to a pension from this employment from 2019. In 2024, the Appellant received an amount of €61,743.72 in respect of this pension and this amount included arrears for the period from 2019 to 2024.*

The Appellant received a breakdown of the arrears he received for each of the years and is seeking to declare these arrears as income in their respective years and not just

2024. The Appellant has filed income tax returns for the years 2019 to 2024 and has included the arrears as income in each of the relevant years.

Revenue has amended the Appellant's 2024 Income Tax return to declare the employment pension, including arrears, as 2024 income… Section 112 of Taxes Consolidation Acts 1997 states;

…"

Material Facts

22. The material facts are not in dispute in this appeal and the Commissioner accepts the following as material facts:

23. The Appellant was, in 2024, a PAYE employee, a former member of An Garda Síochána entitled to an occupational pension and was also in receipt of payment from the Department of Social Protection.

24. The Appellant was a member of An Garda Síochána between [redacted] and [redacted].

25. The Appellant became entitled to an occupational pension in relation to his former employment with An Garda Síochána when he turned 60 on [redacted] 2019.

26. The Appellant applied for his pension entitlements in relation to his former employment with An Garda Síochána in 2024 and received the following payments in October 2024 totalling €59,382.27 in relation to arrears in his pension entitlements for the years 2019 to 2024 inclusive:

    26.1. 2019 - €8,913.15

    26.2. 2020 - €9,822.90

    26.3. 2021 - €9,994.38

    26.4. 2022 - €10,466.44

    26.5. 2023 - €10,796.40

    26.6. 2024 - €9,389.00

27. The arrears payments in relation to the occupational pension were taxed as Schedule E emoluments received in 2024.

28. On 15 January 2025, the Appellant submitted tax returns to the Respondent in relation to the years 2019 to 2024 inclusive which listed the arrears in pension entitlements as income received in those years.

29. As a result, the income tax return submitted by the Appellant in relation to 2024 contained a self-assessed overpayment of €19,472.33.

30. On 21 January 2025, the Respondent issued a Notice of Amended Assessment to income tax for the year 2024 to the Appellant which contained pension payments of €61,743 for the entirety of the year 2024 to include the pension arrears payments of €59,382.27 as Schedule E income.

31. The Notice of Amended Assessment to income tax for the year 2024 assessed the Appellant to an overpayment of income tax of €4,328.51 and a refund of the overpayment was paid to the Appellant on 21 January 2025.

32. The Appellant submitted a Notice of Appeal to the Commission on 28 January 2025 contesting the Notice of Amended Assessment to income tax for the year 2024 issued by the Respondent on 21 January 2025.

Analysis

33. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 (from here on referred to as "*Menolly"*), the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

    "*This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable*."

34. The standard of proof is the balance of probabilities.

35. Section 112 of the TCA 1997 is the basis for the charge to income tax for employees under what is known as "*Schedule E*" and is entitled "*Basis of assessment, persons chargeable and extent of charge*". Section 112(1) of the TCA 1997 provides that:

    "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."

36. It is not in dispute between the parties, and the Commissioner has found as a material fact, that the Appellant was in receipt of payments in relation to his occupational pension

entitlements in 2024. These payment were, therefore, subject to income tax under Schedule E as set out in section 112(1) of the TCA 1997.

37. The Commissioner notes that prior to the commencement of the Finance Act 2017, section 112 of the TCA 1997 provided that tax was to be computed on the amount of income "*for the year of assessment*". This had been the legal position for many years and was examined in *Bedford v BH*, [1968] IR 320, when Kenny J, held in the context of an arrears payment made to a company director that tax deducted under the PAYE system was assessable in the "*year of assessment*" to which it was attributable. This was so even if the payment was received in a subsequent tax year. This meant that, prior to 1 January 2018, arrears payments were assessed to income tax in the year in which they were earned, not in the year in which they were received.

38. Section 112(3) of the TCA 1997 commenced on 1 January 2018 and provides that:

> *"Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment."*

39. The provisions of section 112(3) of the TCA 1997 are clear and establish that income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment "*shall*" be computed on the amount of the emoluments paid to the person in the year of assessment.

40. It is not in dispute between the parties, and the Commissioner has found as a material fact, that the Appellant received arrears payments totalling €59,382.27 in October 2024 in relation to his occupational pension.

41. As a result, the Commissioner must find that the arrears payments received in October 2024 by the Appellant in relation to his occupational pension are subject to income tax in the year 2024 and not in the years to which they relate.

42. This is an unfortunate situation where the Appellant delayed in applying for his occupational pension to which he became entitled on [redacted] 2019. As a result, the payment of the arrears of occupational pension to which the Appellant was entitled was made to him in October 2024.

43. The use of the word "*shall*" as set out in section 112(3) of the TCA 1997, indicates an absence of discretion in the application of this provision. The wording of the provision

does not provide for extenuating circumstances in which the arrears payments of occupational pension received by the Appellant in October 2024 for the years 2019 to 2023 inclusive may be taxed in those years.

44. The Commissioner notes that the Appellant has made various observations in his submissions which relate to the manner in which the Respondent has handled this matter, in particular in relation to the manner in which the Respondent referred to legislation in its Statement of Case. It is important to note that the functions of an Appeal Commissioner are set out in section 6 of the Finance (Tax Appeals) Act 2015 (from here in referred to as the “2015 Act”) and include (1) the functions assigned to them by the 2015 Act and the Taxation Acts and (2) the performance of the following functions in relation to the Taxation Acts:

> “(a) deciding whether or not to accept an appeal,
>
> (b) deciding whether to declare, under section 949N(3) (inserted by section 34) of the Act of 1997, that a refusal to accept an appeal is final,
>
> (c) deciding on the appropriate procedure to be adopted in relation to an adjudication of an appeal,
>
> (d) giving directions to the parties to an appeal,
>
> (e) fixing dates, times and places for the hearing of appeals,
>
> (f) hearing an appeal where the Commissioners have decided that a hearing is the appropriate method of adjudicating on the appeal,
>
> (g) determining appeals,
>
> (h) providing written determinations,
>
> (i) publishing determinations,
>
> (j) stating and signing cases stated for the opinion of the High Court, and
>
> (l) 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.”

45. In addition, the Commissioner notes the scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, namely; *Lee v Revenue Commissioners* [2021] IECA 18 (from here on referred to as “*Lee*”), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] IR

626*, Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *The State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

46. Murray J in *Lee* held as follows:

> "*From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment.*"[1]

47. In addition, the Commissioner notes that at paragraph 12 of *Menolly*, Charleton J 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…"*

48. In addition to the above, in the recent judgment in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only where it stated 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…"*

[1] At paragraph 64

49. The facts of this appeal are not in dispute. Therefore, as a result of the above, the role of the Commissioner is to focus on the assessment and the charge to tax as set out in the TCA 1997.

50. In considering this appeal, the Commissioner has had regard to the decision of Nolan J in *O'Sullivan v The Revenue Commissioners* [2024] IEHC 611, where he stated at paragraph 108 that "*……..submissions are not evidence, they are simply submissions. If it were otherwise, then each and every challenge to any determination of an administrative body or court, placing reliance upon submissions, so as to form the basis of an appeal, would give rise to legal chaos*."

51. The Commissioner notes that the Statement of Case submitted by the Respondent is not evidence, it is written summary of the factual and legal points which the Respondent seeks to raise in this appeal. A similar situation arises for the submissions made by the Appellant. Even if the Commissioner is incorrect in this view, whilst the Respondent's Statement of Case refers to "*Section 112 of TCA 1997*" in the section "*Statutory provisions to be relied upon*", the Commissioner notes that the Respondent in the section "*Outline of Relevant Facts*" refers to "*Section 112 of the Taxes Consolidation Act 1997*".

52. In addition, the Commissioner notes that the Appellant has submitted that "*From an examination of what could possibly be the Principal Act, it contains a mere 2 paragraphs and does not contain a Section 112 (3) and the quoted "legislation" is at variance with the un amended Statute*." The Appellant is incorrect in this submission. Whilst the Commissioner appreciates that the legislation relating to tax is lengthy and complex, it has been amended on numerous occasions. Section 112(3) of the TCA 1997 was inserted by virtue of the commencement of section 77 of the Finance Act 2017 which is entitled "PAYE Modernisation" and which amended section 112 of the TCA 1997 by inserting, amongst other things, subsection (3) of that section. Section 112(3) commenced from 1 January 2018 and has been in force since that date.

53. In *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 K.B. 64 at page 71, Rowlatt J set out principles for interpreting taxation legislation on the basis that the statute must clearly impose the obligation.

> *". . . in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. <u>There is no equity about a tax</u>. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." (emphasis added)*

54. This was reiterated by Charleton J in *Menolly Homes* when he stated at paragraph 12 of his judgment:

> *"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…"*

55. As a result of the above, in considering this appeal, the Commissioner is restricted to considering and interpreting the charge to tax as contained in section 112 of the TCA 1997 as it applies to the facts of the Appellant's appeal. The Commissioner is not permitted to allow considerations of equity to influence her determination.

Determination

56. For the reasons set out above, the Commissioner determines that the Appellant has not discharged the burden of proof to establish that the Notice of Amended Assessment to income tax for the year 2024 issued by the Respondent on 21 January 2025 was incorrect.

57. As a result, the Commissioner determines that the Appellant has not succeeded in his appeal and determines that the Notice of Amended Assessment to income tax for the year 2024 issued by the Respondent on 21 January 2025 shall stand.

58. The Commissioner notes that the overpayment of tax in the amount of €4,328.51 contained in the Notice of Amended Assessment to income tax for the year 2024 issued by the Respondent on 21 January 2025 has been repaid to the Appellant.

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

Notification

60. 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

61. 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.

Clare O'Driscoll
Appeal Commissioner
15 August 2025