AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

104TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This determination concerns an appeal to the Tax Appeals Commission ("the Commission") by the Appellant against a statement of liability for the tax year 2021 ("the Relevant Year") issued by the Respondent.

2. The issue to be decided in this appeal is the Appellant's entitlement to joint assessment for the Relevant Year.

3. At the outset, the Appeal Commissioner ("the Commissioner") wishes to acknowledge the personal and sensitive nature of the matters related to this appeal.

4. The appeal proceeded by way of a remote hearing held in private. The Appellant appeared without legal representation, and the Respondent was represented by two of its officers.

Background

5. The Appellant and his former wife were jointly assessed for income tax purposes, with the Appellant nominated as the assessable spouse.

6. Over time, their marriage deteriorated, and in [redacted] 2020, the Appellant became aware that his former wife was having an affair.

7. [redacted] 2021, the Appellant's former wife left the family home on a permanent basis and has resided elsewhere since then.

8. Their marriage ended in divorce in 2024.

9. In [redacted] 2025, having taken the view that the Appellant and his former wife had separated in [redacted] 2020 in circumstances likely to be permanent, the Respondent concluded that joint assessment was not available for the Relevant Year. On that basis, the Respondent issued a statement of liability to the Appellant for the Relevant Year. That statement of liability is the subject of this appeal.

10. The Appellant disputes the Respondent's position and maintains that an entitlement to joint assessment remained available for the Relevant Year.

11. The Appellant submitted a notice of appeal, and each party provided a statement of case. The Respondent also submitted an outline of arguments in advance of the hearing.

Legislation and Guidance

Legislation

12. The legislation relevant to the substantive issue in this appeal is set out below.

13. Section 1015(2) of the Taxes Consolidation Act, 1997, as amended ("the TCA 1997") states that:

> *"A wife shall be treated for income tax purposes as living with her husband unless either -*
>
> *(a) they are separated under an order of a court of competent jurisdiction or by deed of separation, or*
>
> *(b) they are in fact separated in such circumstances that the separation is likely to be permanent."*

14. Section 1016 of the TCA 1997 states that:

> *"(1) Subject to subsection (2), in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.*
>
> *(2) Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment."*

15. Section 1017 of the TCA 1997 provides, among other things, as follows:

> *"(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment -*
>
> *(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,*
>
> *…*

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

[…]"

16. Section 1018 of the TCA 1997 states that:

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

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

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

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

(b) Where a husband or his wife has duly given notice under paragraph (a), that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which

the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector."

The Respondent's published guidance

17. An extract from material published on the Respondent's website, which does not have force of law, is as follows:

    *"**Year of separation, divorce or dissolution of civil partnership***

    How you are taxed in the year you separate will depend on how you were taxed when you were married or in a civil partnership. Any change in tax status applies from the date of separation, and not from the date you notify Revenue that you are separated.

    …

    Joint assessment

    If you were the assessable spouse or nominated civil partner, you will be taxed on:

    - *all your income for the full year*

    and

    - *your former spouse or civil partner's income up to the date of separation.*

    […]" (Emphasis in original)

Evidence and Submissions

Appellant's oral evidence

18. The Appellant gave sworn oral testimony on factual matters at the hearing.

19. The Appellant's oral evidence included the following, incorporating a relevant extract from the transcript of the hearing:

    19.1. In [redacted] 2020, he became aware that his wife at the time was having an affair.

    19.2. Addressing the impact of his discovery of the affair on the marriage, he stated as follows:

    "Oh, it ended there and then. As soon as I found out that this was going on, in my head it had ended. [redacted] *when I found out, yes, in my*

head, I knew, well, listen, I don't think there's any recovery from that but she stayed in the house after that, you know.

…

… to be fair, in my mind, once I found out that that was happening, I believe that was the end of it. There was no coming back from that in my mind. [redacted]*"*

19.3. The Appellant's former wife, to whom he was then married, moved out of the family home [redacted] 2021.

Appellant's submissions

20. In the grounds of his notice of appeal, the Appellant stated, among other things, as follows:

"…

My marriage status was changed to single from 2020. This is not correct, we were still living together in a relationship. I have presented [the Respondent] with documents showing [redacted] *divorce in 2024.*

[redacted]*"*

21. In his statement of case, the Appellant submitted as follows:

"[The Respondent] claim[s] that my marital status changed to single on [redacted] *2020. I have asked for evidence regarding this change is [sic] status and the source of this specific date, but it has not been furnished or communicated by [the Respondent].*

My marital status did Not change in 2020.

In 2020 I was still married and in a relationship with my x-wife. [redacted] *we were still living together and in a relationship.*

My x-wife left the home and ended the relationship in [redacted] *2021. After this time, we engaged in a legal separation.*

I became [redacted] *divorced in 2024[.]"*

Respondent's submissions

22. The Respondent's position is that joint assessment is available only where a married couple is living together within the meaning of section 1015 of the TCA 1997.

23. On the Respondent's view of the facts, the Appellant and his former wife separated in [redacted] 2020 in circumstances likely to be permanent. It follows, in the Respondent's submission, that the Appellant is not entitled to joint assessment for the Relevant Year.

Material Facts

24. Having considered the material submitted, and having heard the Appellant's evidence and the submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:

    24.1. The Appellant and his former wife entered into marriage before the Relevant Year.

    24.2. Following their marriage, the Appellant and his former wife were jointly assessed for income tax purposes. The Appellant was nominated as the assessable spouse.

    24.3. Over time, their marriage deteriorated.

    24.4. In [redacted] 2020, the Appellant became aware that his former wife was having an affair.

    24.5. The Appellant acknowledged that, in his view, the discovery of the affair marked the end of the relationship.

    24.6. [redacted] 2021, the Appellant's former wife left the family home on a permanent basis and has resided elsewhere since then.

    24.7. Their marriage ended in divorce in 2024.

    24.8. Neither the Appellant nor his former wife gave written notice to withdraw the election for joint assessment in or before the Relevant Year.

Analysis

Burden of proof

25. The burden of proof in this appeal rests on the Appellant to establish that the tax assessed is not payable.

26. In *Menolly Homes Ltd v. The Appeal Commissioners and Anor.* [2010] IEHC 49 (*"Menolly Homes"*) Charleton J. stated at paragraph 22, among other things, that:

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

27. Additionally, in *Hanrahan v. The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated, among other things, 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. …"*

28. This appeal concerns the correct interpretation of the legislation governing the income tax treatment of married, separated and divorced persons contained in Part 44 of the TCA 1997 and its application to the facts of this appeal.

29. The standard of proof applicable in this appeal is the balance of probabilities.

The Commissioner's jurisdiction

30. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. It is independent of the Respondent.

31. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

32. The Court of Appeal's judgment in *Lee v. The Revenue Commissioners* [2021] IECA 18 ("*Lee*") is authoritative as to the Commission's jurisdiction. In *Lee*, Murray J. stated at paragraph 20, among other things, that:

> *"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by [the TCA 1997], and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of [the TCA 1997] or must arise by necessary implication from the terms of that legislation."*

33. While *Lee* concerned assessments raised before the enactment of the Finance (Tax Appeals) Act 2015, and the statutory analysis was therefore based on the older legislation, Part 40 of the TCA 1997, the overarching analysis of Murray J. is applicable to Part 40A of the TCA 1997. This was confirmed in *Express Motor Assessors Limited (in liquidation) v. The Revenue Commissioners* [2021] IEHC 420 ("*Express Motor Assessors Limited*").

34. In *Express Motor Assessors Limited*, Stack J. stated at paragraph 32, among other things, that:

> *"The jurisdiction being exercised by the Appeals Commissioner under s.949AK and 949AL [of the TCA 1997], therefore, does not appear to differ in substance from that considered by the Court of Appeal in [Lee], and that judgment is therefore applicable to this case."*

35. The Commissioner refers further to *Lee*, wherein Murray J. stated at paragraph 76:

> *"The jurisdiction of the Appeal Commissioners … under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal … is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of [the TCA 1997] may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in*

relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the Respondent has] acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

36. It follows from the judgment in *Lee* that the Commissioner does not have jurisdiction to adjudicate upon, among other things, allegations of unfairness in this appeal.

37. It is also useful to cite paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* as follows:

    "Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. …"

38. In this appeal, the Commissioner's role is confined to considering whether the statement of liability in dispute correctly charges the Appellant to tax in accordance with the provisions of the TCA 1997.

Substantive issue

39. This appeal concerns whether the Appellant is entitled to be jointly assessed for income tax purposes with his former wife for the Relevant Year.

40. In considering the substantive issue in this appeal, consistent with the judgment in *Hanrahan*, the Commissioner is required to apply the appropriate canons of construction in interpreting the relevant legislative provisions governing joint assessment.

41. It is clear from the line of recent authority, including the Supreme Court judgments in *The People (DPP) v. Brown* [2018] IESC 67 ("*Brown*"), *Dunnes Stores v. The Revenue Commissioners and Ors.* [2019] IESC 50 *("Dunnes")*, *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60 ("*Bookfinders*"), *Heather Hill Management Company CLG and Anor. v. An Bord Pleanála* [2022] IESC 43 *("Heather Hill")* and the Court of Appeal judgment in *Hanrahan*, that the starting point of an interpretative exercise in an appeal of this nature is to consider the ordinary and natural meaning of the legislative wording itself, viewed in context.

42. Applying the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*, the Commissioner is satisfied that no further rules of

interpretation are necessary; the meaning of the relevant provisions is plain and self-evident, viewed in context.

43. Section 1016 of the TCA 1997 provides that married couples are assessed to income tax as if they were not married, unless an election for joint assessment under section 1018 of the TCA 1997 has been made, or is deemed to have been made, and *"has effect in relation to a husband and wife for a year of assessment"*.

44. Section 1018(1) of the TCA 1997 provides that "*[a] husband and his wife, where the wife is living with the husband*" may elect to be jointly assessed.

45. Section 1018(4) of the TCA 1997 deems such an election to have been made "*where the wife is living with the husband*", unless the husband or wife gives notice in writing that they wish to be assessed to tax as a single person.

46. In accordance with section 1015(2) of the TCA 1997, a wife is treated as living with her husband unless they are separated under an order of a court or by deed of separation, or "*they are in fact separated in such circumstances that the separation is likely to be permanent.*"

47. In accordance with section 1017 of the TCA 1997, where an election under section 1018 of the TCA 1997 *"has effect for a year of assessment"*, a married couple is jointly assessed for income tax for that tax year, with the husband as the assessable spouse.

48. In the present appeal, it is not in dispute that the Appellant and his former wife made, or were deemed to have made, an election for joint assessment following their marriage, with the Appellant nominated as the assessable spouse.

49. In accordance with section 1018(2) of the TCA 1997, that election continued to have effect for each subsequent tax year.

50. Having regard to the Appellant's submissions, it is appropriate to address whether an election for joint assessment can be withdrawn retrospectively by a husband or his wife.

51. Section 1018(3) of the TCA 1997 states that:

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

52. Having considered that provision, the Commissioner is satisfied that the withdrawal of an election for joint assessment cannot have effect for a tax year preceding the year in which written notice of withdrawal is given.

53. Accordingly, as the Commissioner has found that neither the Appellant nor his former wife gave written notice to withdraw the election for joint assessment in or before the Relevant Year, it follows that the election cannot be withdrawn by either of them for that tax year. However, that conclusion does not of itself confer an entitlement to joint assessment for the Relevant Year.

54. It is clear from the wording of section 1018(1) of the TCA 1997 that an election for joint assessment is available only "*where the wife is living with the husband*".

55. As noted above, section 1018(2) of the TCA 1997 provides that the election continues to have effect for each subsequent tax year following the first tax year in which it is made.

56. On the proper construction of that provision, a married couple living together is not required to make an election for joint assessment for each subsequent tax year.

57. The Commissioner is satisfied that the provision does not operate so as to allow a husband and wife, though formerly living together, who are no longer living together within the meaning of section 1015(2) of the TCA 1997 to be jointly assessed for income tax purposes.

58. The Commissioner's view on this point is consistent with section 1017(1) of the TCA 1997. It provides, among other things, that:

> *"Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –*
>
> *(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any)* ***for any part of that year of assessment during which she is living with him****, …"* (Emphasis added)

59. The following material findings of fact are relevant to determining whether the Appellant and his former wife were living together for any part of the Relevant Year:

59.1. Over time, their marriage deteriorated.

59.2. In [redacted] 2020, the Appellant became aware that his former wife was having an affair.

59.3. The Appellant acknowledged that, in his view, the discovery of the affair marked the end of the relationship.

59.4. [redacted] 2021, the Appellant's former wife left the family home on a permanent basis and has resided elsewhere since then.

60. Those findings lead the Commissioner to conclude that during 2020, the Appellant and his former wife separated in circumstances where their marriage was likely to have broken down irretrievably.

61. It follows that the Appellant's former wife was not living with him for any part of the Relevant Year, within the meaning of section 1015(2) of the TCA 1997 as they were *"in fact separated in such circumstances that the separation [was] likely to be permanent."*

62. Consequently, the Appellant is not entitled to be jointly assessed for income tax purposes with his former wife for the Relevant Year. Therefore, the appeal cannot succeed.

Determination

63. Having considered the evidence adduced and all the material submitted by the parties, for the reasons set out above, the Commissioner determines that the Appellant has not shown that the tax assessed is not payable. Accordingly, the statement of liability for the Relevant Year shall stand.

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

65. The Commissioner recognises that this determination may be disappointing for the Appellant and is empathetic to the personal circumstances described on appeal. The Commissioner is, however, bound to apply the provisions of the legislation.

Notification

66. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular sections 949AJ(5) and 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

67. 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 Walsh
Appeal Commissioner
14 July 2026