AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

22TACD2026

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 [redacted] ("the Appellant") against an amended statement of liability for the tax year 2024 issued by the Revenue Commissioners ("the Respondent").

2. The issue to be decided in this appeal is the Appellant's entitlement to joint assessment for the tax year 2024.

3. The appeal proceeded by way of a remote hearing held in private.

Background

4. Following their marriage in [redacted], the Appellant and his wife were jointly assessed for income tax purposes up to and including the tax year 2024. The Appellant was nominated as the assessable spouse.

5. Over time, their marriage deteriorated, and the Appellant moved out of the family home in [redacted] 2025 on a permanent basis.

6. In March 2025, the Respondent took the view that the Appellant and his wife had separated on [redacted] [redacted] 2023 in circumstances likely to be permanent.

7. The Respondent concluded that joint assessment was not available from the date of that separation. On that basis, the Respondent issued amended statements of liability to the Appellant for the tax years 2023 and 2024. The amended statement of liability for the tax year 2024 is the subject of this appeal.

8. The Appellant disputes the Respondent's position and maintains that an entitlement to joint assessment remained available until he left the family home on a permanent basis.

9. The Appellant appealed to the Commission on 27 March 2025.

10. The Appellant submitted a notice of appeal and accompanying documentation in support of his appeal. Each party submitted a statement of case, along with an outline of arguments.

Legislation and Guidance

Legislation

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

12. 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."

13. 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."

14. 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.

[…]"

15. 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

16. An extract from the Respondent's website material, 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

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

18. The oral evidence given by the Appellant was consistent with the information contained in his notice of appeal, statement of case and outline of arguments, extracts of which are reproduced below.

19. In addition, the Appellant gave the following oral evidence, incorporating a relevant extract from the transcript of the hearing:

    19.1. On [redacted] 2023, he and his wife began to sleep in separate bedrooms within the family home.

    19.2. *"… right up to the point where I left the home on [redacted] 2025, I was paying all the bills. I paid our jointly held mortgage. I paid our property tax. I paid our utilities bills, both gas and ESB. I paid our internet. I paid our home insurance, life insurance, car tax, car insurance, etc., etc., okay, and my wife took the benefit of that arrangement."*

    19.3. He and his wife are not separated under an order of a court or by deed of separation.

Appellant's submissions

20. The Appellant's notice of appeal, statement of case and outline of arguments contained similar information.

21. For brevity, the Appeal Commissioner ("the Commissioner") has included an extract of the Appellant's outline of arguments, which contains the more detailed background, followed by an extract from the notice of appeal, which sets out the Appellant's core argument.

22. In his outline of arguments, the Appellant submitted as follows:

> "1. *My spouse and I have been jointly assessed since [redacted] by mutual agreement.*
>
> 2. *Although we are now going through a separation, we continued to live together up to the [redacted] 2025. [redacted] we are currently both still married.*
>
> 3. *The joint assessment basis continued to be used with both our knowledge up to a contact my spouse made to [the Respondent] on or around the [redacted] 2025 when she advised we were separated. I had moved out of the family home on [redacted] 2025. This contact was made on foot of a requirement for her to repay an amount of tax which she had received as part of our 2024 tax return.*
>
> 4. *[The Respondent] advised that she told them we were separated since [redacted] 2023. Yet this goes directly against her acceptance of a [tax] refund which was paid to her [by the Respondent] in [redacted] 2025 after I completed a return on a Joint Assessment basis. As it happens - due to [redacted] an incorrect tax refund was paid out to my spouse and I of [redacted] with [redacted] coming to me and [redacted] going to my spouse. I subsequently repaid all of the tax refund as my spouse refused to return her part of the refund. It was this reluctance to repay her refund which prompted her to contact [the Respondent].*
>
> 5. *On the back of my spouse's phone call to [the Respondent on or around [redacted] 2025, [the Respondent has] now reassessed our 2024 return and retrospectively changed my assessment basis to Single Assessment which has left me with a substantial bill of €3,161.37 as they decided to use single assessment for my return removing credits etc which I had as a married person under joint assessment.*

6. *My understanding is that under the [TCA 1997] a husband and wife will continue to be assessed in a tax year as they have previously directed (in this case since [redacted]) 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. Notice was not provided in writing during 2024 by either of us to switch to single assessment. Therefore we should have been assessed on a Joint Assessment basis in 2024. The law here seems quite clear.*

7. *A number of questions arise here as a result of the actions of [the Respondent] such as ;*

   - why did they change the tax basis for 2024 when the required notice in wiring [sic] was not provided?

   - why was the other party involved in this process not contacted before a decision was made ?

   - on what grounds was the decision to change the tax basis made ? It seems [the Respondent] arbitrarily decide that a tax basis can be changed if one party says they do not sleep in the same room in the home. In that case is any married couple who do not sleep in the same room ineligible for a Joint Assessment basis ?

   - if the party who made the 'phone call' had said the were sleeping in a different room in the house for the last [redacted] years – how would that be dealt with or would it just be another subjective decision which takes no account of the other party. It all seems a little hap hazard to me. I can only imagine the type of liability that [the Respondent] might generate then and of course to their advantage – certainly not to the law abiding tax payers [sic] advantage.

8. *The subjective decision by [the Respondent] to impose this tax basis without consultation with both parties is completely inequitable and unjust. This decision by some mysterious bureaucrat in [the Respondent's] office to decide that this phone call in the following year of the assessment year in question from one party is enough to make such a severe ruling boggles the mind and as a born and bred Irish citizen and law abiding taxpayer, for nearly [redacted] years I find this treatment repulsive to any sense of fairness. It would seem that [the Respondent has] not considered the principle of Epikeia in any way in this*

matter. In fact quite the opposite – the party most impacted is being actively discriminated against in my opinion."

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

"My argument is that a notice from my spouse to say she is separated does not mean [the Respondent] should retrospectively change my assessment basis which in this case has caused me to have a substantial liability. Bearing in mind you can be separated and still be Jointly Assessed - this seems a very unjust imposition of a new basis for assessment.

I am appealing to [the Commission] for a more just outcome here considering my unblemished tax record over many decades and the arbitrary decision to backdate an assessment basis based on [the Respondent's] view of when the basis change should go ahead. [A]fter all if my spouse had said we were separated since [redacted] - how would that work in terms of a potential liability."

24. The Appellant's oral submissions were consistent with the information contained in his notice of appeal, statement of case and outline of arguments.

Respondent's submissions

25. 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.

26. On the Respondent's view of the facts, the Appellant and his wife separated on [redacted] 2023 in circumstances likely to be permanent. It follows, in the Respondent's submission, that the Appellant is not entitled to joint assessment for the tax year 2024.

Material Facts

27. Having considered the documentation 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:

    27.1. The Appellant and his wife entered into marriage in [redacted].

    27.2. Following their marriage in [redacted], the Appellant and his wife were jointly assessed for income tax purposes up to and including the tax year 2024.

27.3. Over time, their marriage deteriorated. From [redacted] [redacted] 2023, the Appellant and his wife slept in separate bedrooms within the family home, while both continued to reside in the property.

27.4. [redacted], the Appellant received documentation from his wife's legal advisers concerning the formal separation of their marriage.

27.5. On [redacted] 2025, the Appellant left the family home on a permanent basis and has resided elsewhere since that date.

27.6. During the period [redacted] [redacted] 2023 and [redacted] 2025, the Appellant paid the entirety of the mortgage payments on the family home, along with all utility bills, including gas, electricity and broadband, as well as home, life and car insurance premiums and motor tax.

27.7. Since ceasing to reside in the family home on [redacted] 2025, the Appellant has continued to pay the entirety of the mortgage payments on the family home.

27.8. The Appellant and his wife are not divorced, nor are they separated under an order of a court or by deed of separation.

27.9. During 2023, the Appellant and his wife separated in circumstances where their marriage was likely to have broken down irretrievably.

27.10. Neither the Appellant nor his wife gave written notice to withdraw the election for joint assessment in or before the tax year 2024.

27.11. In March 2025, the Respondent determined that the Appellant and his wife were not entitled to be jointly assessed for income tax purposes for the tax year 2024. On that basis, the Respondent assessed the Appellant to additional tax for the tax year 2024, issuing an amended statement of liability dated 25 March 2025.

27.12. The Appellant has not challenged the quantum of additional tax assessed by the Respondent.

27.13. On 27 March 2025, the Appellant appealed to the Commission.

Analysis

Burden of proof

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

29. In the High Court case of *Menolly Homes Ltd v. 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."*

30. 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. …"*

31. 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.

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

The Commissioner's jurisdiction

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

34. 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.

35. The Commission's jurisdiction was considered by the Court of Appeal in the case of *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"), in which 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."*

36. 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."*

37. 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.

38. 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.

39. 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. …"*

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

Substantive issue

41. This appeal concerns whether the Appellant is entitled to be jointly assessed for income tax purposes with his wife for the tax year 2024.

42. 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.

43. 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* [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 *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 wording of the statute itself, viewed in context.

44. The Commissioner is satisfied that the wording of the relevant provisions is simple, in common use, and not ambiguous.

45. 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 required; the wording of the relevant provisions is plain and self-evident, viewed in context.

46. 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"*.

47. 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.

48. Section 1018(4) of the TCA 1997 deems such an election to have been made where it has not been made if “*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.

49. 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.*”

50. 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.

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

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

53. 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.

54. 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)

55. Having considered that provision, 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.

56. Accordingly, as the Commissioner has found as a material finding of fact that neither the Appellant nor his wife gave written notice to withdraw the election for joint assessment in or before the tax year 2024, 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 tax year 2024.

57. 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*".

58. 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.

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

60. 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.

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

"[w]here 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)

62. The Commissioner has found as a material finding of fact that during 2023, the Appellant and his wife separated in circumstances where their marriage was likely to have broken down irretrievably. The Appellant's oral evidence did not persuade the Commissioner to the contrary.

63. It follows that the Appellant's wife was not living with him for any part of the tax year 2024, within the meaning of section 1015(2) of the TCA 1997. Consequently, the Appellant is not entitled to be jointly assessed for income tax purposes with his wife for the tax year 2024. Therefore, the appeal cannot succeed.

64. Finally, as the Appellant has noted in his submissions that a married couple "*can be separated and still be Jointly Assessed*", it is appropriate to note that such an arrangement may arise in circumstances where maintenance payments are being made. However, this does not arise in this appeal.

Determination

65. Having considered the evidence adduced and all the documentation 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 amended statement of liability for the tax year 2024 shall stand.

66. 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.

67. The Commissioner recognises that this determination will 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.

68. The Commissioner acknowledges and appreciates the professional and courteous manner in which both parties conducted this appeal.

Notification

69. 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

70. 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
15 January 2026