AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

72TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against a decision of the Respondent dated 30 September 2025 removing tax credits claimed by the Appellant for the years 2021, 2022, 2023, 2024 and 2025.

2. The total amount of tax under appeal is €5,269.24.

Background

3. The Appellant is a taxpayer who, for the years 2021 to 2025 inclusive was in receipt of tax credits for the payment of maintenance in the annual amount of €2,808.00 for each of those years. The Appellant had been granted tax credits in relation to the payment of his share of the mortgage in the amount of €234.00 per month relating to the former family home which he owned with his former wife in those years. The making of the mortgage payments by the Appellant had been ordered by a Judge of the Circuit Court on [redacted] 2019 on foot of family law proceedings.

4. In September 2025, the Appellant submitted a claim for tax relief on Additional Voluntary Contribution pension payments which he had made for the year 2024 totalling €24,156.09.

5. On 29 September 2025, the Respondent informed the Appellant that he had been selected for a verification check for the years 2021 to 2025 inclusive in relation to his claims for tax relief for maintenance payments and Additional Voluntary Contributions payments for 2024.

6. On 29 September 2025, the Appellant replied to the Respondent enclosing a certificate of payment in relation to the AVC payment for 2024 along with a copy of the Circuit Court Order dated [redacted] 2019. The Appellant also stated:

   "*As you can see, I was ordered to pay a total of €634 split as follows: Maintenance for my daughter* [name redacted] *€200, maintenance for my daughter* [name redacted] *€200 and €234 payment towards the mortgage.*

   The payment for [daughter] *was stopped after she finished her third level education (tax office was informed). The other two payments are continuing. Just under 2 years ago, your office informed me that the payment towards the mortgage did not qualify for tax relief and my tax cert was amended accordingly to pay back the allowance.*"

7. On 30 September 2025, the Respondent wrote to the Appellant stating:

"I have reviewed the policy document… and this can be accepted.

However, regarding the deduction for maintenance, this has been removed from your record for the years 2021-2025 as there is no relief allowable.

The remaining refund should issue shortly."

8. On 30 September 2025, the Appellant responded to the Respondent stating:

   "*As far as I am aware I get tax relief on only the €200 portion of the maintenance payment,*

   Can you please confirm this is the case and will continue?

   Can you also give me an indication as to when I can expect the tax refund on the AVC payment for the 2024 tax year?"

9. On 30 September 2025, the Respondent wrote to the Appellant stating:

   "*As stated previously, there is no relief in respect of maintenance paid in respect of dependent children.*

   Therefore, there is no relief due. I have removed the deduction for maintenance in the years 2021-2025 for the amount of €2,808 (234x12).

   The refund that you have received as a result of the claim to the AVC for 2024 has been offset against the liabilities generated in 2021-2024.

   Therefore, the final refund to you is €4,393.14."

10. On 30 September 2025, the Appellant wrote to the Respondent stating:

    "*If I understand you correctly, the revenue continued to apply some tax relief despite the fact an enquiry was raised and the court documents were furnished in relation to the maintenance payments some time ago.*

    Can you please tell me why the change in circumstances was not implemented until now?

    Also, I was expecting 40% relied on €24,156.09 AVC payment which is €9,662.

    If my information is correct, how is that the deduction is totalling €5,268 leaving me with a final payment of €4,393.14?."

11. On 1 October 2025, the Respondent wrote to the Appellant stating:

"*I have reviewed your file and note that a query was raised regarding maintenance at the end of the 2021 tax year.*

I note that the amount payable in respect of your mortgage was allowed. However, as you have not relinquished this asset to your former spouse, no relief is due in respect of this payment.

Therefore, it has been removed from your file.

The liability which arose from the removal of the deduction for maintenance is as follows:

For the 2024 tax year: €1,235.52

For the 2023 tax year: €1,249.56 and existing liability of €773.24, total for 2023 = €2,022.80

For the 2022 tax year: €1,179.36

For the 2021 tax year: €617,76 and existing liability of €213.80

Total underpayment: €5,269.24

Refund of €9,665.38 less €5,269.24 = €4,393.14."

12. On 2 October 2025, the Respondent issued P21 Balancing Statements to the Appellant for the tax years 2021, 2022, 2023 and 2024 which confirmed its decision of 30 September 2025.

13. The Appellant submitted a Notice of Appeal to the Commission on 20 October 2025.

14. The oral hearing of this appeal took place on 31 March 2026.

15. At the oral hearing, the Appellant confirmed that he wished for this appeal to be held in private. As a result, the publication of this determination shall be made in a way that, in so far as it is possible, does not reveal the identity of any person whose affairs were dealt with on a confidential basis during the proceedings concerned in compliance with section 949AO(4) of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997").

Legislation and Guidelines

16. The legislation relevant to this appeal is as set out below:

    Section 849 of the TCA 1997 – "*Taxes under care and management of Revenue Commissioners*":

"(1) In this section, "tax" means income tax, corporation tax and capital gains tax.

(2) All duties of tax shall be under the care and management of the Revenue Commissioners.

(3) The Revenue Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for tax in the like and in as full and ample a manner as they are authorised to do in relation to any other duties under their care and management and, unless the Minister for Finance otherwise directs, shall appoint such officers and other persons for collecting, receiving, managing and accounting for any duties of tax as are not required to be appointed by some other authority.

(4) All such appointments shall continue in force, notwithstanding the death, or the ceasing to hold office, of any Revenue Commissioner, and the holders shall have power to execute the duties of their respective offices and to enforce in the execution of those offices all laws and regulations relating to tax in every part of the State.

(5) The Revenue Commissioners may suspend, reduce, discharge or restore, as they see fit, any such officer or person.

(6) Any act or thing required or permitted by this or any other statute to be done by the Revenue Commissioners in relation to tax may be done by any one Revenue Commissioner."

<u>Section 959A of the TCA 1997 – "*Interpretation*":</u>

"…

"chargeable person" means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates;

…"

<u>Section 959B of the TCA 1997 – "*Supplemental interpretation provisions*":</u>

"(1) For the purposes of the meaning assigned to 'chargeable person' in section 959A, it does not include a person—

> *(a) whose only source or sources of income for a tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for this purpose a person who, in addition to such source or sources*

of income, has another source or other sources of income shall be deemed for the tax year to be a person whose only source or sources of income for the tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources, which does not exceed €5,000 in total—

(i) is taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the tax year applicable to those emoluments, or

(ii) is fully taxed at source under section 261,

and, for the purposes of deciding whether such income should be taken into account in determining the amount of tax credits and standard rate cut-off point for the tax year, the Revenue Commissioners may have regard to the amount for that, or any previous, tax year of the income of the person from that other source or those other sources before deductions, losses, allowances and other reliefs,

(b) who for the tax year has been excluded by a Revenue officer from the requirements of Chapter 3 by reason of a notice given under section 959N, or

(c) who is chargeable to tax for the tax year by reason only of section 237, 238 or 239,

but paragraph (a) shall not apply to a person who is a director or, in the case of a person to whom section 1017 or 1031C applies, whose spouse or civil partner is a director (within the meaning of section 116) of a body corporate other than a body corporate which during a period of 3 years ending on 31 December in the tax year—

(i) was not entitled to any assets other than cash on hands, or a sum of money on deposit within the meaning of section 895, not exceeding €130,

(ii) did not carry on a trade, business or other activity including the making of investments, and

(iii) did not pay charges on income within the meaning of section 243."

Section 959AB of the TCA 1997 – "*Persons other than chargeable persons: time limit on Revenue assessment and amended assessments*":

"(1) Subject to the other provisions of this section, a Revenue assessment on a person other than a chargeable person may be made or amended by a Revenue officer at any

time not later than 4 years after the end of the chargeable period to which the assessment relates.

(2) In a case in which emoluments to which subsection (3) applies are received in a year of assessment subsequent to that for which they are assessable, a Revenue assessment on a person other than a chargeable person may be made or amended by a Revenue officer for the year of assessment for which the emoluments are assessable at any time not later than 4 years after the end of the year of assessment in which the emoluments were received.

(3) The emoluments to which this subsection applies are—

> *(a) emoluments within the meaning of section 112(2), including any payments chargeable to tax by virtue of section 123 and any sums which by virtue of Chapter 3 of Part 5 are to be treated as perquisites of a person's office or employment, being emoluments, payments or sums other than those taken into account in an assessment to income tax for the year of assessment in which they are received and, for the purposes of subsection (2)—*
>
> > *(i) any such payment shall, notwithstanding anything in section 123(4), be treated as having been received at the time it was actually received, and*
> >
> > *(ii) any such sums which are not actually paid to that person shall be treated as having been received at the time when the relevant expenses were incurred or are treated for the purposes of Chapter 3 of Part 5 as having been incurred,*
> >
> > *and*
>
> *(b) a gain realised by the exercise of, or by the assignment or release of, a right on or after 1 January 2024 which is chargeable to tax by virtue of section 128.*

(4) Nothing in this section affects the operation of section 811, 811A, 811C or 811D."

<u>Section 960H of the TCA 1997 – "*Offset between taxes*":</u>

"(1) In this section—

"claim" means a claim that gives rise to either or both a repayment of tax and a payment of interest payable in respect of such a repayment and includes part of such a claim;

“liability” means any tax due and payable which is unpaid and includes any tax estimated to be due and payable;

“overpayment” means a payment or remittance (including part of such a payment or remittance) which is in excess of the amount of the liability against which it is credited.

(2) Where the Collector-General is satisfied that a person has not complied with the obligations imposed on the person in relation to either or both—

(a) the payment of tax that is due and payable, and

(b) the delivery of returns required to be made,

then the Collector-General may, in a case where a repayment is due to the person in respect of a claim or overpayment—

(i) where paragraph (a) applies, or where paragraphs (a) and (b) apply, instead of making the repayment, set the amount of the repayment against any liability, and

(ii) where paragraph (b) only applies, withhold making the repayment until such time as the returns required to be delivered have been delivered.

(3) (a)Where a person (referred to in this subsection as the “first-mentioned person”) has assigned, transferred or sold a right to a claim or overpayment to another person (referred to in this subsection as the “second-mentioned person”) and subsection (2)(a) applies, then the Collector-General shall, in a case where a repayment would have been due to the first-mentioned person in respect of the claim or overpayment if he or she had not assigned, transferred or sold his or her right to the claim or overpayment, instead of making the repayment to the second-mentioned person, set that claim or over-payment against tax that is due and payable by that first-mentioned person.

(b) Where the first-mentioned person and the second-mentioned person are connected persons within the meaning of section 10, then the balance, if any, of the repayment referred to in paragraph (a) shall be set against tax due and payable by the second-mentioned person.

(4) Where the Collector-General has set or withheld a repayment by virtue of subsection (2) or (3), then he or she shall give notice in writing to that effect to the person or persons concerned and, where subsection (2)(ii) applies, interest shall not

be payable under any provision of the Acts from the date of such notice in respect of any repayment so withheld.

(5) The Revenue Commissioners may make regulations for the purpose of giving effect to this section and, without prejudice to the generality of the foregoing, such regulations may provide for the order of priority of the liabilities to tax against which any claim or overpayment is to be set in accordance with subsection (2) or (3) or both.

(6) Every regulation made under this section is to be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

(7) The Taxes (Offset of Repayments) Regulations 2002 (S.I. No. 471 of 2002) shall have effect as if they were made under subsection (5) and had complied with subsection (6).”

Section 1025 of the TCA 1997 – “*Maintenance in Case of Separated Spouses*”:

“(1) In this section—

“maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

(a) the dissolution or annulment of a marriage, or

(b) such separation of the parties to a marriage as is referred to in section 1015(2),

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to relief under section 465.

(2) (a) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the

marriage for the benefit of his or her child, or for the benefit of the other party to the marriage, being payments—

(i) which are made at a time when the wife is not living with the husband,

(ii) the making of which is legally enforceable, and

(iii) which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur—

(I) the maintenance arrangement is replaced by another maintenance arrangement or is varied, and

(II) both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(b) For the purposes of this section and of section 1026 but subject to paragraph (c), a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(d) for the purposes of section 465(6), the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that other party on the maintenance of the child.

(5) *(a) Subsections (1) and (2) of section 459 and section 460 shall apply to a deduction under subsection (3)(c) as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to section 458.*

(b) Subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28 shall, with any necessary modifications, apply in relation to a deduction under subsection (3)(c).”

<u>Section 1026 of the TCA 1997 – *“Separated and divorced persons: adaptation of provisions relating to married persons.”*</u>*:*

“(1) Where a payment to which section 1025 applies is made in a year of assessment by a party to a marriage (being a marriage which has not been dissolved or annulled) and both parties to the marriage are resident in the State for that year, section 1018 shall apply in relation to the parties to the marriage for that year of assessment as if—

(a) in subsection (1) of that section “, where the wife is living with the husband,” were deleted, and

(b) subsection (4) of that section were deleted.

(2) Where by virtue of subsection (1) the parties to a marriage elect as provided for in section 1018(1), then, as respects any year of assessment for which the election has effect—

(a) subject to subsection (1) and paragraphs (b) and (c), the Income Tax Acts shall apply in the case of the parties to the marriage as they apply in the case of a husband and wife who have elected under section 1018(1) and whose election has effect for that year of assessment,

(b) the total income or incomes of the parties to the marriage shall be computed for the purposes of the Income Tax Acts as if any payments to which section 1025 applies made in that year of assessment by one party to the marriage for the benefit of the other party to the marriage had not been made, and

(c) income tax shall be assessed, charged and recovered on the total income or incomes of the parties to the marriage as if an application under section 1023 had been made by one of the parties and that application had effect for that year of assessment.

(3) Notwithstanding subsection (1), where a payment to which section 1025 applies is made in a year of assessment by a spouse who is a party to a marriage, that has been dissolved, for the benefit of the other spouse, and—

(a) the dissolution was under either—

(i) section 5 of the Family Law (Divorce) Act, 1996, or

(ii) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State,

(b) both spouses are resident in the State for tax purposes for that year of assessment, and

(c) neither spouse has entered into another marriage or a civil partnership,

then, subsections (1) and (2) shall, with any necessary modifications, apply in relation to the spouses for that year of assessment as if their marriage had not been dissolved."

Submissions

Appellant

17. The following is a summary of the submissions made by the Appellant.

18. In his Notice of Appeal, the Appellant relied on the following grounds of appeal:

"I hereby set out the following facts and grounds of appeal in relation to the Revenue's decision to withhold the sum of €5,269.24, which was otherwise due to me as a result of an Additional Voluntary Contribution (AVC) made to my pension plan in 2025.

Background

1. *Between 2014 and 2020, I claimed tax relief in respect of maintenance payments made to my former spouse, in the amount of €634 per month. These payments were made directly to, and for the benefit of, my ex-wife.*
2. *At the final divorce hearing, the Court issued an Order altering the allocation of these payments. The maintenance obligation of €634 per month was restructured as follows:*

    - *€400 payable for the benefit of my two daughters; and*
    - *€234 payable directly to the mortgage company in respect of the mortgage on the residence occupied by my former spouse.*

As a result of this reallocation, I was no longer entitled to claim tax relief in respect of the maintenance payments.

3. *In 2021, I duly notified the Tax Office of the revised arrangements and furnished them with a copy of the Court Order.*
4. *Notwithstanding this notification, the Tax Office, for reasons unknown to me, continued to grant tax relief on the €234 mortgage payment element of the revised maintenance arrangement, perhaps on the mistaken assumption that this payment was made directly for the benefit of my former spouse.*
5. *In 2025, following the submission of an AVC payment to my pension scheme, an assessment was conducted by the Revenue Commissioners. During this process, the earlier administrative error made by the Tax Office in 2021 was identified.*
6. *As a result, the Revenue determined that I had incorrectly received maintenance relief for the preceding four years and consequently withheld €5,269.24 from the tax relief otherwise due to me under the AVC contribution.*

Grounds of Appeal

I hereby appeal the Revenue's decision on the following grounds:

1. *Administrative Error (2021): The Tax Office failed to remove the maintenance tax relief in 2021 despite my explicit notification and submission of the relevant Court Order.*
2. *Unauthorised Reclassification: The Tax Office, without consultation or legal basis, unilaterally applied tax relief to the mortgage portion of the divorce settlement, contrary to the terms of the Court Order and the applicable tax regulations.*
3. *Unlawful Withholding of Funds: The Revenue subsequently retained €5,269.24, being monies lawfully due to me, without my consent or prior notice, as an offset against a relief which had been continued in error by the Tax Office.*

Relief Sought

I respectfully request that the Revenue Commissioners review and reverse their decision to withhold €5,269.24, recognising that the error originated from the Tax Office's failure to correctly implement the revised maintenance arrangements notified in 2021."

19. In his Statement of Case, the Appellant submitted the following:

“I hereby lodge a formal Notice of Appeal, pursuant to Part 40A of the Taxes Consolidation Act 1997, against the decision of the Revenue Commissioners to withhold the sum of €5,269.24, being tax relief arising from an Additional Voluntary Contribution (AVC) made by me in the year 2025.

This appeal is made within the meaning of section 949, which provides a right of appeal in respect of Revenue decisions on claims for relief or repayment, and in accordance with the Tax Appeals Commission’s “Notice of Appeal” requirements.

1. Decision Being Appealed

The decision appealed is Revenue’s determination, notified to me on October 2025, to:

retrospectively disallow maintenance-related tax relief that Revenue continued to apply after 2021, and

withhold €5,269.24—the tax relief otherwise due to me in 2025 on foot of my pension AVC—to offset what Revenue describes as “relief granted in error” in prior years.

2. Background Facts

Between 2014 and 2020, I correctly claimed tax relief on maintenance payments of €634 per month made directly to my former spouse.

At the final divorce hearing, the Court issued a binding Court Order reallocating the €634 obligation into:

€400 per month: maintenance for the benefit of my two daughters, and

€234 per month: payable directly to the mortgage provider in respect of the house occupied by my former spouse.

In 2021, I notified Revenue in person and in writing of the revised arrangements and furnished a copy of the Court Order.

Under the revised Order, the €234 payment was determined by the Revenue to be “for the benefit of the former spouse” within the meaning of the maintenance relief rules.

Tax relief on €400 was removed and the Revenue continued to grant tax relief on the €234 monthly amount for 2021–2024.

In 2025, after submitting an AVC payment, Revenue carried out a review during which they determined that their original determination of tax relief was an oversight. They then:

disallowed the relief retrospectively, and withheld €5,269.24 from the AVC-related relief due to me.

3. Grounds of Appeal

I appeal Revenue's decision on the following grounds:

Ground 1 — Administrative Error by Revenue (2021)

In 2021, I complied fully with my statutory obligations by notifying Revenue of the revised maintenance structure and by supplying the Court Order. Revenue, however, either failed to update their records and continued to grant relief incorrectly or correctly applied relief but made an incorrect determination during their review in 2025.

Under Part 40A TCA 1997, I am entitled to appeal a decision arising from such an administrative failure. Revenue's subsequent attempt to recoup its own error by withholding unrelated AVC relief is improper and inequitable.

Ground 2 — Incorrect Characterisation of the €234 Payment

Revenue misapplied the maintenance relief rules by continuing to treat the €234 payment as a payment for the benefit of my former spouse in 2021, despite the clear and binding terms of the Court Order. Otherwise, the Revenue misapplied the relief rules during their review of my tax affairs in 2025 by contradicting their original characterisation.

This constitutes a misapplication of tax law, specifically the rules governing; qualifying maintenance payments, and the distinction between spousal maintenance and child/mortgage-related payments.

Revenue's unilateral reclassification, in contradiction of a court determination, was without legal basis.

Ground 3 — Unlawful Withholding of Repayment / Relief

The withholding of €5,269.24, being tax relief arising from a 2025 AVC, represents an attempt by Revenue to retrospectively correct its own internal error by depriving me of relief to which I am lawfully entitled for the year 2025.

This constitutes a "decision" within the meaning of section 949 TCA 1997, against which I am entitled to appeal.

I respectfully submit that Revenue should have corrected its own administrative mistake without penalising me and without withholding monies unrelated to the original claimed relief.

4. Relief Sought

I respectfully request that the Tax Appeals Commission:

Set aside Revenue's decision to withhold €5,269.24;

Direct Revenue to release the full amount of AVC-related tax relief due to me for 2025;

Confirm that the granting of relief between 2021–2024 was correct and if it should continue.

Confirm that if there was an over-granting of relief in 2021, it was caused by Revenue's failure to act on the information and court documentation supplied by me;

Confirm that I should not be penalised for a Revenue-originated administrative error.

6. Declaration

I hereby declare that the information provided in this appeal is true and accurate to the best of my knowledge."

20. At the oral hearing, the Appellant submitted that he accepts that he is not entitled to relief on the €234 per month payments which he made in relation to the mortgage on the former family home which he remains a co-owner of.

21. The issue for the Appellant, he stated, is whether the Respondent is entitled to retrospectively recover tax for earlier years in circumstances where he made a full and complete disclosure in 2021 and again in 2022 in relation to his mortgage payments by providing the Respondent with a copy of the [redacted] 2019 Court Order.

22. It is the Appellant's position that the Respondent's actions have led to an incorrect treatment of his tax affairs.

Respondent

23. The following is a summary of the submissions made by the Respondent.

24. The Respondent submitted that on 31 July 2015 the Appellant had sought and received maintenance tax relief on payments to his former spouse in the amount of €634 per month. This relief was carried forward to subsequent years.

25. On 8 January 2022, the Respondent submitted, the Appellant had contacted the Respondent to advise that his daughter was no longer dependent and seeking to reduce his maintenance relief claim to €434 per month going forward. On 11 January 2022 the Respondent advised the Appellant that he was not entitled to relief on maintenance payments made in relation to dependent children and advised him that he would continue to receive relief in relation to the payment of €234 per month.

26. It was submitted that the decision to grant and continue relief on the €234 per month payment in relation to the Appellant's mortgage was an error on the part of the Respondent and was allowed incorrectly as tax relief is not available in relation to court ordered mortgage payments for property which a taxpayer is the owner of.

27. It was submitted that, in circumstances where it has been established that tax relief in relation to the mortgage payments had been granted in error, the Respondent had offset the outstanding liabilities to income tax for the years 2021 to 2024 against the refund due to the Appellant in relation to his Additional Voluntary Contribution payments for 2024 in accordance with the provisions of section 849 of the TCA 1997.

28. The Respondent submitted that, in recognition of the error made, the decision of September 2025 to disallow the credits previously granted to the Respondent in relation to the monthly mortgage payments was made without the imposition of interest or penalties.

29. In addition, it was submitted that, in recognition of the fact that the Appellant had informed the Respondent in 2021/2022 about the Circuit Court order, the Respondent had not disallowed the reliefs which had been claimed and granted in error in the years prior to 2021.

Material Facts

30. The material facts are not at issue in this appeal and the Commissioner accepts the following as material facts:

    30.1. The Appellant is a taxpayer who, for the years 2021 to 2025 inclusive was in receipt of tax credits for the payment of maintenance in the annual amount of €2,808.00 for each of those years. The Appellant had been granted tax credits in relation to the payment of his share of the mortgage in the amount of €234.00 per month relating to the former family home which he owned with his former wife in those years. The making of the mortgage payments by the Appellant had been ordered by a Judge of the Circuit Court on [redacted] 2019 on foot of family law proceedings.

30.2. In September 2025, the Appellant submitted a claim for tax relief on Additional Voluntary Contribution pension payments which he had made for the year 2024 totalling €24,156.09.

30.3. On 29 September 2025, the Respondent informed the Appellant that he had been selected for a verification check for the years 2021 to 2015 inclusive in relation to his claim for tax relief in relation to maintenance payments and in relation to a claim for relief in relation to the Additional Voluntary Contributions payments for 2024.

30.4. On 29 September 2025, the Appellant replied to the Respondent enclosing a certificate of payment in relation to the AVC payment for 2024 along with a copy of the Circuit Court Order dated [redacted] 2019. The Appellant also stated:

> "*As you can see, I was ordered to pay a total of €634 split as follows: Maintenance for my daughter* [name redacted] *€200, maintenance for my daughter* [name redacted] *€200 and €234 payment towards the mortgage.*
>
> *The payment for* [daughter] *was stopped after she finished her third level education (tax office was informed). The other two payments are continuing. Just under 2 years ago, your office informed me that the payment towards the mortgage did not qualify for tax relief and my tax cert was amended accordingly to pay back the allowance.*"

30.5. On 30 September 2025, the Respondent wrote to the Appellant stating:

> *"I have reviewed the policy document… and this can be accepted.*
>
> *However, regarding the deduction for maintenance, this has been removed from your record for the years 2021-2025 as there is no relief allowable.*
>
> *The remaining refund should issue shortly."*

30.6. On 30 September 2025, the Appellant responded to the Respondent stating:

> "*As far as I am aware I get tax relief on only the €200 portion of the maintenance payment,*
>
> *Can you please confirm this is the case and will continue?*
>
> *Can you also give me an indication as to when I can expect the tax refund on the AVC payment for the 2024 tax year?"*

30.7. On 30 September 2025, the Respondent wrote to the Appellant stating:

"*As stated previously, there is no relief in respect of maintenance paid in respect of dependent children.*

Therefore, there is no relief due. I have removed the deduction for maintenance in the years 2021-2025 for the amount of €2,808 (234x12).

The refund that you have received as a result of the claim to the AVC for 2024 has been offset against the liabilities generated in 2021-2024.

Therefore, the final refund to you is €4,393.14."

30.8. On 30 September 2025, the Appellant wrote to the Respondent stating:

"*If I understand you correctly, the revenue continued to apply some tax relief despite the fact an enquiry was raised and the court documents were furnished in relation to the maintenance payments some time ago.*

Can you please tell me why the change in circumstances was not implemented until now?

Also, I was expecting 40% relied on €24,156.09 AVC payment which is €9,662.

If my information is correct, how is that the deduction is totalling €5,268 leaving me with a final payment of €4,393.14?."

30.9. On 1 October 2025, the Respondent wrote to the Appellant stating:

"*I have reviewed your file and note that a query was raised regarding maintenance at the end of the 2021 tax year.*

I note that the amount payable in respect of your mortgage was allowed. However, as you have not relinquished this asset to your former spouse, no relief is due in respect of this payment.

Therefore, it has been removed from your file.

The liability which arose from the removal of the deduction for maintenance is as follows:

For the 2024 tax year: €1,235.52

For the 2023 tax year: €1,249.56 and existing liability of €773.24, total for 2023 = €2,022.80

For the 2022 tax year: €1,179.36

For the 2021 tax year: €617,76 and existing liability of €213.80

Total underpayment: €5,269.24

Refund of €9,665.38 less €5,269.24 = €4,393.14."

30.10. On 2 October 2025, the Respondent issued P21 Balancing Statements to the Appellant for the tax years 2021, 2022, 2023 and 2024 which confirmed its decision of 1 October 2025.

Analysis

31. It is long established that, in appeals against assessments to tax, the burden of proof rests on the taxpayer. Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168 at paragraph 50 stated that:

"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self-assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter

would have to be or have been in the knowledge and in the power procurement and control of the applicant."

32. Charleton J. confirmed that the burden of proof rests on appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 when he stated at paragraph 22:

    "*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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable*."

33. The Commissioner has considered the evidence adduced, the submissions made and the documentation submitted on behalf of both parties in this appeal.

34. Section 1025 and section 1026 of the TCA 1997 provide that a person making maintenance payments to a separated or former spouse pursuant to either a maintenance arrangement or a court order shall, if he or she makes a claim in the manner prescribed by the Income Tax Acts, be entitled to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

35. There is no dispute between the parties, and the Appellant accepts, that no tax relief is available for either child maintenance payments or for mortgage payments for property which a taxpayer is the owner of.

36. The dispute which has arisen is whether the Respondent is entitled to remove the previously granted tax relief in relation to the mortgage payments in circumstances where, in 2021/2022 the Appellant made a full and true disclosure of the contents of the [redacted] 2019 Circuit Court order, and in circumstances where the Respondent continued to grant tax relief to the Appellant in relation to the mortgage payments in error.

37. The Commissioner notes that the Appellant did not make an active claim for the tax credit after 2021/2022 when he submitted the Circuit Court order to the Respondent. There is no suggestion that the Appellant was knowingly attempting to claim a tax relief which was not available to him. The Respondent has admitted that the tax relief was granted to the Appellant in error.

38. Section 959A of the TCA 1997 defines a "*chargeable person*" as meaning "*…as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates*".

39. Section 959B of the TCA 1997 clarifies that a "*chargeable person*" does not mean a person:

"(a) whose only source or sources of income for a tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for this purpose a person who, in addition to such source or sources of income, has another source or other sources of income shall be deemed for the tax year to be a person whose only source or sources of income for the tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources, which does not exceed €5,000 in total—

(i) is taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the tax year applicable to those emoluments, or

(ii) is fully taxed at source under section 261,

and, for the purposes of deciding whether such income should be taken into account in determining the amount of tax credits and standard rate cut-off point for the tax year, the Revenue Commissioners may have regard to the amount for that, or any previous, tax year of the income of the person from that other source or those other sources before deductions, losses, allowances and other reliefs,

…"

40. Emoluments for the purposes of part 42 of the TCA 1997 are defined in section 983 of the TCA 1997 as meaning "*anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments*".

41. The Appellant's sole income in the years 2021 to 2024 inclusive was that relating to a emoluments, that is to say, relating position of employment. The Appellant was, therefore, not a chargeable person in the years 2021 to 2024 inclusive.

42. Section 959AB(1) of the TCA 1997 provides that:

"Subject to the other provisions of this section, a Revenue assessment on a person other than a chargeable person may be made or amended by a Revenue officer at any time not later than 4 years after the end of the chargeable period to which the assessment relates."

43. The P21 Balancing Statements for the years 2021 to 2024 inclusive were raised by the Respondent on 2 October 2025, that is to say within 4 years of the end of the tax years 2021 to 2024 inclusive.

44. As there is no dispute between the parties, and as the Appellant accepts, that no tax relief is available for either child maintenance payments or for mortgage payments for property which a taxpayer is the owner of and as the contested P21 Balancing Statements for the years 2021 to 2024 inclusive were raised by the Respondent within 4 years of the end of the tax years 2021 to 2024 inclusive, the Commissioner must find that the Appellant has not discharged the burden of proof to establish that the decision of the Respondent of 30 September 2025 to remove the tax credits was incorrect.

45. The Commissioner further notes that the Respondent has removed the tax credit for 2025. As a result of the above, the Commissioner must find that the Appellant is not entitled to a tax credit in relation to the mortgage payment which he made in 2025 pursuant to the [redacted] 2019 Circuit Court Order.

46. In relation to the method of collection of the liabilities to tax which arose as a result of the Respondent's decision of 30 September 2025, the Commissioner notes that section 960H of the TCA 1997 permits the offsetting of refunds due to taxpayers against liabilities to tax of taxpayers.

Determination

47. The Commissioner determines that the Appellant has not succeeded in showing that the Respondent's decision of 30 September 2025 withdrawing tax credits for the years 2021 to 2025 was incorrect. The Respondent's decision of 30 September 2025 shall therefore stand.

48. This is an unfortunate situation. The matter arose as a result of the erroneous granting of a tax relief to the Appellant. There is no suggestion that the Appellant did anything wrong. The Appellant was correct to bring this appeal.

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

Notification

50. 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

51. 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
19 May 2026