AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

04TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant"), pursuant to section 959AK of the Taxes Consolidation Act 1997 as amended ("TCA 1997"), against amended assessments to income tax raised by the Revenue Commissioners ("the Respondent") for the years 2005 to 2013 inclusive in the total amount of €1,399,440. The assessments were raised on the basis that the Respondent believed that the Appellant had undeclared rental income for the years under appeal.

2. The appeal was brought by the Appellant on the grounds, firstly, that the assessments were raised out of time, and secondly, that the Appellant was not a chargeable person. At the hearing of the appeal, the Appellant withdrew these grounds and instead argued that he was entitled to certain allowances and deductions. Some allowances and deductions had been agreed in advance with the Respondent.

Background

3. The Respondent commenced an investigation concerning the Appellant in 2015. In March 2024, the Respondent raised amended assessments on the Appellant for the years 2005 to 2013. The amended assessments stated that the Appellant had the following additional liabilities to income tax:

Year	**Additional Liability €**
2005	90,486
2006	137,356
2007	194,859
2008	203,196
2009	166,359
2010	126,951
2011	143,415

2012	152,495
2013	184,323
Total	**1,399,440**

4. The amended assessments were raised on the basis that the Appellant and his wife had undeclared income from 32 rental properties.

5. On 5 April 2024, the Appellant, via his agent, appealed against the amended assessments to the Commission. Under 'Grounds of Appeal', the Appellant stated the following:

"*The Grounds to be relied on are as follows:*

Preliminary Objection

A. The Appellant asserts the purported assessment herein was raised outside the time prescribed in s.955(2), 959AA and/ or 959 AB and as such is invalid.

B. In the event that the Respondent nonetheless intends to rely on an alleged failure by the Appellant to make a full and true disclosure of a material fact, which is denied, the Appellant asserts that the impugned amendments are invalid by reason of the Respondent's failure to adequately notify the Appellant of reliance by it on any circumstance set out in s. 955(2)(b)(i-v) and/ or 959AA(2) (a)-(e), (insofar as the same were in force in respect of any assessment) in particular that the basis of the amendment was a failure, by the Appellant, to make a full and true disclosure of all material facts.

C. The Appellant specifically asserts and requires to be decided as a preliminary matter, that the Respondent bears the onus of proof in establishing that any returns made by the Appellant want for disclosure in any respect and the Respondent is required to establish in what respect any such want of disclosure is alleged and/ or relied on. For the sake of clarity, the Appellant does not seek to challenge the general legal principle that an Appellant bears the burden of proving that an assessment is wrong/ excessive. The Appellant will submit that the Inspector of Taxes bears a burden of proof of certain discrete issues that arise by operation of law, for example that there has not been a full and true disclosure by the Appellant entitling the Respondent to an extension of the limitation period. It will be submitted that it does not form part of the

burden of proof on Appellants to prove the negative that the Respondent is not entitled to an extension of the limitation period within which to raise/ amend assessments.

D. In circumstances where this appeal relates to Notices of Amended Assessment, the limitation period within which assessments can be raised, may only be extended where the Appellant has failed to make a true and full disclosure, accordingly, the Appellant requires a preliminary determination as to whether the Revenue Commissioners bear the Burden of Proof of establishing that a full and true disclosure was not made by the Appellant. The Appellant contends that the Revenue Commissioner must demonstrate that they can avail of an extension of the limitation period and that in the absence of doing so, the purported amended assessments are invalid. Without prejudice to any other matter or submission that might be made on behalf of the Appellant, it will be expressly contended that the Appellant is entitled to notice and particulars of the facts and information relied on by the Revenue Commissioner in seeking to qualify for an extension of the limitation period.

<u>Grounds</u>

1. There was no receipt, by the Appellant, of any value, income, profit or gain, as the case may be, or otherwise; that was capable of attracting the liability assessed, occurring at the time alleged or at all

2. In the alternative, subject to formal disclosure by the Respondent of the income/ gains relied on in raising the impugned assessments, the income/ gain relied so on, represents income/ gain by third party individuals and/ or companies. By way of illustration only, insofar as the Respondent relied on rental income, the Appellant was not the owner of certain of the properties to which any purported income relates nor was he the person beneficially entitled to such income and accordingly received no income/ gain chargeable to tax.

3. There was no reasonable and/ or genuine belief held by the Inspector of Taxes that any liability exists. In the alternative, the Inspector has failed to use his best judgment as to whether a liability exists.

4. Pursuant to section 959AC of the TCA 1997 (as amended) no information exists which entitles the Revenue Officer in question to raise the impugned assessments. In the alternative, as a function of due process in meeting the assessment, the Respondent ought to make disclosure of all information relied on by it in advance of the hearing of the appeal. Note, it will be submitted that s.959AC(3) is not relevant, the Appellant having made returns, and therefore, the said "information"

referred to in s.959AC either ought to have been set out the particulars of the information and/ or is bound to make formal disclosure of same to the Appellant.

5. Pursuant to section 959AC of the TCA 1997 (as amended) there was no reasonable basis for the Revenue Officer in question not to be satisfied with the sufficiency of the returns filed for the periods the subject of the appeal herein

6. Pursuant to section 959AC of the TCA 1997 (as amended) the Revenue Officer in question had no reasonable grounds for believing that the returns delivered by the Appellant did not contain a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period.

7. The Inspector is estopped from raising and or relying on the purported assessments, the subject of this appeal by reason of the provisions of section 959AA(1) of the TCA 1997

8. Pursuant to the provision of 959 Y the Revenue Officer in question failed to apply his/ her best or any judgment as to the amount that ought to be charged and was charged to the Appellant.

The Appellant asserts the right to production by the Revenue Commissioner of the records relied on by the Inspector in purportedly exercising their best judgment. The Appellant will in due course seek a direction from the Tax Appeal Commission to that effect."

6. These grounds were reiterated and expounded upon in the Appellant's Statement of Case, and in submissions from counsel dated 16 September 2024.

7. The appeal was listed for hearing on 14 and 15 January 2025. On 20 December 2024, the Appellant's agent wrote to the Commission, reiterating the Appellant's preliminary objections and requesting directions from the Commissioner prior to the hearing regarding, *inter alia*, the burden of proof. The Respondent did not agree with the Appellant's request for preliminary directions. However, following further correspondence, the hearing was adjourned on consent.

8. On 17 January 2025, the Appellant's agent requested that a case management conference ("CMC") be arranged to discuss, *inter alia*, whether a witness summons should be issued to compel the attendance of the Respondent's Inspector at the hearing, in order so that he could give evidence regarding "*the timing of the formation of the belief that the Appellant had not made a full and true disclosure of material facts"*. In response, the Respondent stated that it saw "*no merit*" in a CMC being held.

9. On 12 February 2025, the Commission provided the parties with the Commissioner's decision on the Appellant's application:

> "*The Commissioner does not consider that the question of the "*formation of a belief*" by the tax inspector, that the Appellant did not make a full and true disclosure, is relevant to this appeal. The jurisdiction of the Commission has been considered in detail by the Court of Appeal in* Lee v Revenue Commissioners *[2021] IECA 18, wherein Murray J stated that the Commission's jurisdiction is focussed on "*the assessment and the charge*". The Commissioner's jurisdiction is limited by statute, and section 955(2)(b)(i) of the TCA 1997 does not make any reference to the formation of a belief by the inspector regarding whether or not a taxpayer has made a full and true disclosure of material facts. Rather, the issue to be determined is whether the Appellant made a full and true disclosure. The Commissioner agrees with the Respondent that any allegation that the inspector did not form a belief, or that such a belief was unreasonable, would not be within the jurisdiction of the Commission to determine and would be a matter for judicial review. He also notes the submission of the Respondent that section 956 is not engaged in this appeal.*
>
> *Consequently, the Commissioner does not consider it necessary to direct the disclosure sought by the Appellant at point 2 of its letter of 17 January 2025, as such disclosure concerned the formation of a belief on the part of the inspector.*
>
> *Regarding the request for a summons for the attendance of [the Respondent's Inspector], the Commissioner considers that the calling of witnesses on behalf of the Respondent is a matter primarily for the Respondent. A taxpayer does not have an absolute right to cross examine a tax inspector;* Menolly Homes v Appeal Commissioner *[2010] IEHC 49. Any argument that there has been a deficiency of evidence can of course be made at the hearing of the appeal. However, the Commissioner does not consider that the Appellant has demonstrated that the presence of [the Inspector] is necessary for a fair hearing of the appeal, and therefore the request for the issuance of a witness summons is refused.*
>
> *Furthermore, the Commissioner is satisfied that a CMC is not required in this appeal. He considers that any matters arising can be addressed at the hearing. In so concluding, he reminds the parties that the appeal process is* "an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*", as per* Menolly Homes*, and that the Commission is required to act without undue formality , and is entitled to take a flexible approach to procedural matters, as per section 949H of the TCA 1997.*

Therefore, the parties are directed to notify the Commission of their availability between April and June to attend a three-day hearing. Such notification should be provided no later than 14 days from today's date. Please be advised that the Commissioner will direct that all materials and documents upon which the parties wish to rely should be exchanged no later than 21 days before the hearing date."

10. The appeal was rescheduled for hearing on 28 – 30 July 2025. On 22 July 2025, the Appellant's agent sought an adjournment, on the basis that the Appellant's counsel was unavailable due to an ongoing criminal trial. Following further correspondence, the Commissioner agreed to a final adjournment of the hearing. As part of that correspondence, the Appellant's agent stated that its intended witness, [redacted], had analysed "*all banking records giving rise to the income the subject of the assessments*", and that a schedule would be provided showing "*all receipts and outgoings in relation to the assets that have generated the income the subject of the appeal.*" No reference to the previously stated Grounds of Appeal was included in this correspondence. A schedule was provided to the Commission and the Respondent.

11. The hearing proceeded on 1 October 2025. At the commencement, counsel for the Appellant stated that some claimed deductions and allowances had been agreed, and it was therefore agreed that the assessments should be reduced. In response to the Commissioner, counsel stated that the Appellant was no longer relying on the arguments that the amended assessments were raised outside of time, or that the Appellant was not a chargeable person. He stated that there was not agreement regarding some claimed allowances and deductions, and that the appeal would now concern these matters. In response, Senior Counsel stated that the Respondent was objecting to the admission of a new ground of appeal. The Appellant's counsel stated that it was not accepted that these matters constituted a new ground, but that if they did, he would apply to have it allowed.

12. The submissions of counsel on whether the Appellant was precluded from arguing he was entitled to additional deductions/allowances by section 949I(6) of the TCA 1997 are set out in more detail below. In his ruling, the Commissioner stated that he was not convinced that the Appellant satisfied the requirements of section 949I(6). However, he stated that, as the parties and witnesses were present, it would be preferable to hear all of the evidence *de bene esse* and then deal with the matter fully in the determination of the appeal.

Legislation

13. Section 97 of the TCA 1997 states *inter alia* that:

> "*(1) Subject to this Chapter, the amount of the profits or gains arising in any year shall for the purposes of Case V of Schedule D be computed as follows:*
>
> *(a) the amount of any rent shall be taken to be the gross amount of that rent before any deduction for income tax;*
>
> *(b) the amount of the profits or gains arising in any year shall be the aggregate of the surpluses computed in accordance with paragraph (c), reduced by the aggregate of the deficiencies as so computed;*
>
> *(c) the amount of the surplus or deficiency in respect of each rent or in respect of the total receipts from easements shall be computed by making the deductions authorised by subsection (2) from the rent or total receipts from easements, as the case may be, to which the person chargeable becomes entitled in any year.*
>
> *(2) The deductions authorised by this subsection shall be deductions by reference to any or all of the following matters…*
>
> *(d) the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature;*
>
> *(e) interest on borrowed money employed in the purchase, improvement or repair of the premises."*

14. Section 268(2A) of the TCA 1997 (as at 31 January 2007) defined a "qualifying hospital" as *inter alia* the following:

> *"(a) is a private hospital (within the meaning of the Health Insurance Act, 1994 (Minimum Benefits) Regulations, 1996 (S.I. No. 83 of 1996))…*
>
> *(c) has the capacity to provide and normally provides medical and surgical services to persons every day of the year,*
>
> *(d) has the capacity to provide –*
>
> *(i) out-patient services and accommodation on an overnight basis of not less than 70 in-patient beds, or*

(ii) day-case and out-patient medical and surgical services and accommodation for such services of not less than 40 beds,

(e) contains an operating theatre or theatres and related on-site diagnostic and therapeutic facilities,

(f) contains facilities to provide not less than 5 of the following services:

(i) accident and emergency,

(ii) cardiology and vascular,

(iii) eye, ear, nose and throat,

(iv) gastroenterology,

(v) geriatrics,

(vi) haematology,

(vii) maternity,

(viii) medical,

(ix) neurology,

(x) oncology,

(xi) orthopaedic,

(xii) respiratory,

(xiii) rheumatology,

(xiv) paediatric, and

(xv) mental health services (within the meaning of the Mental Health Act 2001)…"

15. Section 372AP of the TCA 1997 provides for certain reliefs for lessors. A "qualifying premises" for the purposes of section 372AP is defined in section 372AM.

16. Section 949I(6) of the TCA 1997 states that:

"*A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice*."

17. Section 6(2) of the Finance (Tax Appeals) Act 2015 ("the 2015 Act") states *inter alia* that:

"*Without prejudice to the generality of subsection (1), the Commissioners shall perform the following functions in relation to the Taxation Acts… (l) doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants*."

Evidence

[redacted]

18. The witness was called on behalf of the Appellant. He stated that he was a qualified accountant but had never practised as such. He stated that he had never previously carried out any analysis of rental income for tax purposes, but was familiar with the provisions of Schedule D, Case V of the TCA 1997. Counsel for the Appellant stated that the witness would provide "*professional evidence arising from a review rather than expert opinion evidence*", and therefore was a witness as to fact.

19. The witness stated that his original instructions were to carry out an analysis of [redacted], a former company that was connected to the Appellant. He stated that he was provided with bank statements and copies of cheque stubs. He stated that, where possible, he identified rents received in respect of the rental properties connected to the Appellant. He stated that he identified a total gross rental income for the years under appeal of €3,035,211, with a net rental income of €2.94 million.

20. He stated that he had calculated total expenses of €1.229 million, whereas €846,144 had been agreed with the Respondent. He stated that he identified records from a [redacted], whom he understood to be managing some of the rental properties on behalf of the Appellant. Similarly, there was a company called [redacted] that he understood managed twelve rental properties. He said that he assumed that the relationship between the property managers and the Appellant was one of customer and supplier. He stated that he did not receive books of prime entry showing rental income, and instead relied on bank account statements.

21. He stated that he understood that the property managers collected rents and commissioned repairs and refurbishments of the various properties. They also paid expenses such as waste collection. He stated that he identified total interest on bank loans paid in the amount of €332,694 for the years 2005, 2006 and 2007. He stated that, regarding repairs and maintenance expenses, he worked off the cheque stubs. He stated that some expenses appeared to be personal to the Appellant and were excluded from his calculations.

22. He stated that he did not include capital expenditure under his tabulation for repairs and maintenance. He stated that there were some "*big items*" such as kitchen and floor replacements, but that he did not consider these to constitute capital expenses. He identified insurance expenses by reference to the bank statements. He carried out a reconciliation of cheque-stubs with bank statements. If he could not identify an expense, he excluded it. He stated that he identified over 7,500 individual transactions.

23. He was asked about a letter from [redacted] dated [redacted] to the Appellant which stated that the Appellant had invested in the Beacon Hospital development in the amount of €284,000, and was therefore entitled to capital allowances. The witness had no involvement in this investment.

24. The witness stated that he did not identify individual tenants but noticed that there were payments received from the Department of Social Protection. He stated that he did not know on what basis the payments were made. Having reviewed his notes, he stated that the total amount received from the Department of Social Protection between 2005 and 2013 was €761,700.75.

25. On cross examination, the witness stated that he believed he was both giving evidence as to facts and proffering opinions for the benefit of the Commissioner. He had never given evidence in a tax appeal previously. He stated that he was instructed in the matter in early 2025, and was not told at that stage that it concerned a tax appeal. He stated that he was given three boxes of bank statements, cheque stubs and receipts. He did not have any instructions in writing. He had previously engaged the Appellant's agent to file his own business accounts.

26. He stated that he considered himself to be a "professional fact witness", which meant that "*I can bring my professional qualifications and my years and years of experience to bear on the numbers.*" He stated that he could stand over the figures that he had put before the Commission. However, he could not verify the expenditure that the property managers had claimed back because he had not seen the "*source documents*". He had seen some invoices from [redacted] but had seen none from [redacted]. He stated that the expenses claimed were deducted from the rental income received, and the net amounts were then sent to the Appellant (or his wife). He did not know to which account of the Appellant the monies were sent.

27. The witness stated that he did not speak to the property managers. He did not see any bank statements from [redacted]. He was asked about notations on some of the bank statements belonging to the Appellant, and stated that he did not know who had made them. He stated that where the notation indicated that income received came

from a particular rental property, he took that notation at face value. He stated that he did not know who had written the cheque stubs that he was provided with. He accepted that he could not verify that the cheque stub entries were accurate and truthful. He accepted that he had relied on the statements from the property managers ([redacted]) and had added up the amounts stated thereon.

28. Regarding the claimed deduction for the investment in the Beacon Hospital, the witness stated that he had carried out a calculation regarding the allowance, and was not in a position to establish that the Appellant had in fact made the investment. He stated that he did not speak to the Appellant about it. He stated that he was offering an opinion, based on the letter from [redacted] that the Appellant was entitled to the allowance.

29. Regarding the section 23 allowances being claimed by the Appellant, the witness stated that he was not a tax expert. However, he believed that there was a significant amount of money received from the Department of Social Protection and "*I would have thought that there had to be some qualification to get that money*." He accepted that he had taken the documents and statements provided to him at face value. On re-examination, the witness confirmed that the total value of other expenses identified by him, excluding the bank interest, was €50,976.

Submissions

30. While the parties had previously provided written submissions, these were effectively rendered irrelevant by the change in the Appellant's position on the morning of the hearing. Therefore, the Commissioner has focused on the oral submissions of counsel for the purposes of this determination.

Appellant

31. Regarding whether or not section 949I(6) of the TCA 1997 precluded the Appellant from arguing that he was entitled to further deductions/allowances above those agreed with the Respondent, counsel confirmed that the Appellant was withdrawing his preliminary grounds of appeal, i.e. Grounds A-D, as set out in his notice of appeal. He contended that Grounds 3 and 8 were sufficient to allow him to argue for the additional allowances/expenses, on the basis that the Respondent's inspector had not exercised best judgment when raising the amended assessments. Therefore, he was not required to add an additional or new ground of appeal.

32. In the alternative, it was submitted that the agreed figures compelled the Commissioner to reduce the assessments, and therefore the question of allowances/expenses arose as

something that needed to be considered in respect of the revised quantum to be applied. Furthermore, there was an obligation on the Commission to act in accordance with fair procedures and in line with the right of access to the courts under the European Convention of Human Rights ("ECHR").

33. Counsel referred to certain authorities, including 26TACD2024, which showed that the Commission could seek further information regarding an appellant's earnings after a hearing had concluded. It was open to the Commissioner herein to seek relevant information.

34. In response to questions from the Commissioner, counsel confirmed that the Appellant was chargeable to tax, and that the argument that the amended assessments had been raised out of time was not being pursued. He accepted that the grounds of appeal had "*migrated*" to a pure calculation regarding quantum. He stated that, if an additional ground of appeal was required to be added, it should be in the following terms:

> "*The assessment should be reduced by reason of the Appellant's entitlement to allowance, refund, deduction, credit and/or repayment.*"[1]

35. In response to a query as to why this additional ground could not have been included in the notice of appeal, counsel stated that there was a history to these proceedings, including a previous appeal and production orders raised pursuant to section 902. He further stated that "*So the preliminary objections that are set out in the Notice of Appeal essentially precluded an alternative factual scenario as such…*"

36. In reply to the Respondent, counsel stated that there was no admission of under-declaration of tax by the Appellant. The question that previously arose was whether there was chargeability in the hands of directors of struck-off companies. In further submissions, and in response to a suggestion from the Commissioner that section 6 of the 2015 Act might be relevant, counsel stated that there was a statutory imperative that appeals be dealt with fairly. If there was any tension between section 949I(6) of the TCA 1997, and section 6 of the 2015 Act, precedence had to be given to fairness. If the Respondent was prejudiced by the introduction of a new ground of appeal, that could be cured by an adjournment. It was necessary to interpret section 949I(6) in a manner consistent with the ECHR.

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[1] This determination uses the words expenses/deductions/allowances interchangeably. This is due, *inter alia*, to the lack of specificity of the claims alleged by the Appellant. For the avoidance of doubt, the use of one, some, or all of the words "expenses", "deduction", "allowances", or any combination of same, should be understood to encompass the entirety of the Appellant's claims, unless stated otherwise.

37. Regarding the claim for additional allowances/deductions, counsel stated that there were three allowances claimed that would reduce the Appellant's liability. The first was the mortgage interest relief claimed in the amount of €332,694. There was uncontroverted evidence regarding the calculation of this sum from both the evidence of [redacted] and the interest certificates. This relief arose under section 97(2)(e) of the TCA 1997. There were also capital allowances claimed under section 23, as well as relief arising from the Appellant's investment in the Beacon Hospital development under section 268(2A).

38. In respect of the private hospital relief, the Appellant was not seeking to rely on [redacted] as an expert witness. The Appellant was relying on the contents of the documentation as being proof of the truth of their contents. It was for the Commissioner to review the documentation, but it could be taken that it was not seriously in dispute that the Beacon Hospital was a qualifying hospital, and the Commissioner could take 'judicial notice' of such fact.

39. In respect of the mortgage relief claimed, section 97(2I) provided that it was necessary to demonstrate compliance with the registration requirements of the Residential Tenancies Board ("RTB") in order to claim under section 97(2)(e). It did not apply to the claim for 2005. Section 97(2K) was introduced in 2015 and requires registration with the RTB. There was a *lucana* in the position prior to 2015, but there was evidence of receipt of payments by the Appellant from the Department of Social Protection, which gave rise to an irresistible inference that somebody was in receipt of a rent supplement payment.

40. It was anticipated that the Respondent would object to the claims for allowances on the basis of the four year rule set out in section 865 of the TCA 1997. However, section 865B(4) created an exception where an assessment had been raised by the Respondent outside of the four year period. Further, section 865 referred to a "repayment" of tax, which did not align with what was being claimed herein. However, the Commission had previously interpreted the provision to include claims for relief. While the Respondent might claim that the Appellant had not made a valid claim, the appropriate forum to assert an entitlement in the context of an appeal was the Commission. Authorities relevant to this matter included 161TACD2022 and 01TACD2025.

41. Regarding the claim for section 23-type relief, the relevant provision was section 372AP of the TCA 1997. There was a similar provision regarding compliance with the RTB, so the arguments regarding mortgage interest relief could be considered together. Relief could be appropriated over seven years from when the building was first used.

42. Regarding the additional expenses set out by [redacted] for maintenance and wear and tear, the witness had relied on the relevant documentary evidence. The quantum claimed

was €50,976. The chief impediment to allowing the claim for mortgage interest relief was the question of compliance with the Residential Tenancies Act 2004, but there was alternative circumstantial evidence demonstrating compliance.

43. Finally, counsel stated again that there was no admission of under-declaration of tax by the Appellant. Any allegation of dishonesty against the Appellant had to be particularised, pitilessly and with clarity. In reply to the Respondent, counsel stated that there was no authority for the proposition that the only way the Appellant could prove his case was by way of oral testimony. There was documentary evidence of the allowances claimed. The Appellant was entitled to raise his claims before the Commission. Regarding the mortgage relief claimed, on the preponderance of evidence it could be found that the interest certificates related to mortgages on the properties. It was conspicuous that the Respondent had not actually alleged that the claims were statute-barred.

Respondent

44. Regarding whether the Appellant was precluded by section 949I(6) from contending that he was entitled to additional allowances/deductions, counsel stated that no evidence had been provided by the Appellant as to why he could not reasonably have stated this ground in his notice of appeal. The Appellant had filed tax returns for each of the years under appeal. In respect of three of the years, he stated that he had zero rental properties. In respect of the other years, he stated that he had one. He had originally declared a total of €56,000 in rental income during the years under appeal. He now accepted that the headline figure for rental income ought to have been €3.035 million.

45. The approach of the Appellant had been to challenge the Respondent in the steps it took to investigate the matter, but not to put forward any positive case of his own. The notice of appeal made clear that there were two issues under appeal: whether the Respondent was entitled to make the assessments outside of the four year period, and whether the inspector was entitled to conclude that the Appellant had additional income. There was no reference to “deduction”, “relief” or “abatement”, and it would have been contradictory for the Appellant to have included such terms, given he claimed that he had no income to set such reliefs against.

46. If the Appellant made the investments and incurred the expenditure now claimed, that was a question of fact that he knew and could have asserted in his notice of appeal. If there was a good reason as to why he could not have reasonably done so, he could have given evidence on oath to explain his position. But there was no evidence to support any

application under section 949I(6), which was fatal to the Appellant's claim. Grounds 3 and 8 of the Appellant's grounds of appeal bore no relationship to the matters now alleged.

47. The case law relied on by the Appellant did not aid his case. There was no provision which allowed a taxpayer to add new grounds of appeal on the basis of a concession that he had under-declared his income. In further submissions, counsel stated that there was no tension between section 949I(6) and section 6 of the 2015 Act. Section 949I(6) was a specific requirement, and the requirement of section 6 to establish the correct liability to tax was to be done within the framework of section 949I(6). The requirements of section 6 were set out in general terms, and it was a maxim of statutory interpretation that specific provisions take precedence over general ones (*generalia specialibus non derogant*). There was nothing unconstitutional or unfair about this, it was just the operation of a balanced system.

48. Regarding the Appellant's claim that he was entitled to additional deductions/allowances, the overarching point was that no claim of any kind had been made by him before, during or after the raising of the amended assessments. The Commission was not a proxy for making claims for relief that bypassed the Respondent. Section 459(3) of the TCA 1997 required that any such claim had to be made in writing to the Respondent. This was not a case where a claim was precluded by way of section 865, but rather one where no claim had been made at all.

49. Furthermore, there was not sufficient evidence before the Commission to support any of the claims for relief being asserted by the Appellant. [redacted] could not speak to the facts that the Appellant was required to establish in order to succeed. He had no direct knowledge of the expenses, he had no direct knowledge of the Beacon Hospital, and he had no direct knowledge of the capital allowances. The Appellant would have been in the best position to speak to these matters but had chosen not to give evidence.

50. The deductions which are provided for in section 97 are defined by streams of rent. However, it had not been shown what expenses were claimed in relation to each rental stream. It had also not been shown that the expenses were necessarily incurred in the trade. Nobody had given evidence or provided any primary document showing that the expenses had been incurred by the Appellant necessarily in the course of the trade in respect of specific rents.

51. Regarding the claim for interest payments, it was a requirement that the interest was on money borrowed for the purposes of purchase, improvement or repair of the premises. No evidence had been provided to demonstrate that this requirement was satisfied. [redacted] accepted that he had not asked any questions. The Appellant had provided no

evidence himself. The question of compliance with the requirements of the RTB was subsidiary to the core proof which was missing.

52. Regarding the claim for investment relief, there was no evidence to establish any entitlement to such relief. There could be no 'judicial notice' that the Beacon Hospital is not just a private hospital but also a qualifying hospital; that was a matter for evidence that had not been provided. The Appellant had not indicated the full amount of income against which the asserted entitlement was supposed to be claimed against. None of the letters submitted came close to meeting the burden of proof.

53. It was unclear what the claimed section 23 relief concerned. No building or premises had been identified, and no evidence had been provided in respect of the requirements of the relief. It was not open to the Commissioner to find that the Appellant was entitled to the relief when it was not known how much was claimed, when, and in respect of which properties. The attempt to claim this relief was audacious and was done to try and justify the assertion that the Appellant's remaining liability to tax could be wiped out by the invocation of various reliefs.

Material Facts

54. Having read the documentation submitted, and having listened to the evidence and submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:

    54.1. The Respondent commenced an investigation concerning the Appellant in 2015. In March 2024, the Respondent raised amended assessments on the Appellant for the years 2005 to 2013 inclusive, which stated that the Appellant had a total additional liability to income tax for the years in question of €1,339,440. The amended assessments were raised on the basis that the Appellant and his wife had undeclared income from 32 rental properties.

    54.2. On 5 April 2024, the Appellant, via his agent, appealed against the amended assessments to the Commission. While there were a number of grounds of appeal set out in the Appellant's notice of appeal, there were in effect two substantive grounds: (1) that the Respondent had impermissibly raised the amended assessments out of time; and (2) that the Appellant was not a chargeable person and/or that any rental income accrued was not taxable in his hands.

    54.3. No other grounds of appeal were set out in the Appellant's notice of appeal, nor were any other grounds mentioned in the Appellant's Statement of Case or in submissions received from his counsel dated 16 September 2024.

54.4. The appeal was listed for hearing on 14 and 15 January 2025, but was adjourned and subsequently relisted for hearing on 28 – 30 July 2025. This later hearing date was also subsequently vacated and the hearing adjourned. In correspondence concerning the Appellant's application for an adjournment of the July hearing, his agent made reference to the Appellant's witness providing a schedule showing "*all receipts and outgoings in relation to the assets that have generated the income the subject of the appeal.*" No reference was made to the matters previously set out in the grounds of appeal, nor was there any reference to any application to amend or supplement the grounds of appeal.

54.5. The hearing of the appeal took place on 1 October 2025. At the hearing, counsel for the Appellant stated that the Appellant was no longer relying on the arguments that the Respondent had raised the amended assessments out of time, or that the Appellant was not a chargeable person and/or did not have additional rental income that was liable to tax. Instead, he stated that certain figures had been agreed with the Respondent, including the total additional rental income received by the Appellant, and certain deductions and allowances claimed by him.

54.6. The parties agreed that the total gross rental income received by the Appellant from 2005 to 2013 inclusive was €3,035,211. The agreed total net rental income was €2,944,700. The agreed total expenses incurred by the Appellant was €846,144.

54.7. The Appellant sought to claim relief for additional expenses allegedly incurred by him. He claimed mortgage interest relief of €332,694 allegedly accrued during the years of 2005, 2006 and 2007. He claimed capital allowances on an alleged investment in the Beacon Hospital development of €284,000. He claimed alleged expenditure on non-capital maintenance of his rental properties in the amount of €50,976. He also claimed "section 23-type" relief pursuant to section 372AP.

54.8. The Appellant had not specified in his notice of appeal any grounds of appeal that concerned his alleged entitlement to claim deductions/expenses/allowances against rental income received by him. There was no evidence provided by him as to why he could not have reasonably stated such a ground or grounds. In the circumstances, there was no basis on which the Commissioner could possibly conclude that such a ground or grounds could not reasonably have been stated in the Appellant's notice of appeal.

54.9. Even if the Appellant had been entitled to argue the new ground(s) of appeal, there was insufficient evidence to support any of the claimed additional

deductions/reliefs. The Appellant did not give evidence in support of his own appeal. There was no evidence to show that any of the bank loans had been employed in the purchase, improvement or repair of any of the rental properties. There was insufficient evidence to show that the Appellant had made the investment in the Beacon Hospital development, or that the hospital was a "qualifying hospital" for the purposes of the relief claimed. There was no direct evidence that any of the alleged expenditure on non-capital wear and tear had been incurred, and even if it had been incurred, whether it had been incurred by the Appellant. There were no premises identified against which the "section-23 type" relief was allegedly claimed.

Analysis

55. The burden of proof rests on the Appellant to show that the amended assessments raised by the Respondent against him were incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), Charleton J stated at paragraph 22 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.*"

56. However, it is common case that the amended assessments should be reduced by reference to the amounts of rental income and allowable expenses agreed by the parties immediately prior to the hearing of the appeal. Therefore, the Respondent will have to amend and reduce the amended assessments on the basis of the following agreed figures: Total gross rent of €3,035,211; total net rent of €2,944,700; total expenses of €846,144. The figures were broken down for each year under appeal on a document handed in at the hearing named "Exhibit 2.b Schedule of Agreed Allowable Expenses".

57. The Appellant sought to claim additional deductions/expenses over and above those agreed with the Respondent. The question(s) remaining for determination is whether the Appellant is precluded from seeking to claim the additional deductions/expenses by reason of section 949I(6), and if not so precluded, whether he has succeeded in demonstrating his entitlement to the deductions/expenses claimed.

Whether Appellant is precluded by section 949I(6) from seeking to claim additional expenses/deductions

58. The Respondent objected to the Appellant's attempt to claim additional expenses/deductions on the basis that he had not included any such ground of appeal in his notice of appeal, and that any such ground could have been reasonably stated by him

in the said notice. The Appellant contended that Grounds 3 and 8 of his grounds of appeal were sufficient to allow him to include a claim for additional expenses/deductions. If the Commissioner did not agree, the Appellant asked that a new ground of appeal be added: "*The assessment should be reduced by reason of the Appellant's entitlement to allowance, refund, deduction, credit and/or repayment.*"

59. The relevant provision of the TCA 1997 is section 949I(6). Section 949I is titled "Notice of Appeal", and subsection (6) states that:

> "*A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice*."

60. It can be seen that this provision is in mandatory terms, and prohibits an appellant from relying on any ground of appeal not specified in the notice of appeal unless the Commissioner is satisfied that such ground could not reasonably have been stated in the notice.

61. Grounds 3 and 8 of the Appellant's notice of appeal were in similar terms, and in essence alleged that the Respondent's inspector did not use "best judgment" when raising the amended assessment on the Appellant. Ground 3 states that:

> "*There was no reasonable and/ or genuine belief held by the Inspector of Taxes that any liability exists. In the alternative, the Inspector has failed to use his best judgment as to whether a liability exists*."

62. Ground 8 states that:

> "*Pursuant to the provision of 959 Y the Revenue Officer in question failed to apply his/ her best or any judgment as to the amount that ought to be charged and was charged to the Appellant*."

63. The Commissioner is satisfied that neither of these grounds could reasonably be understood to encompass a claim for additional deductions/expenses. There is no reference to any claim for allowances, expenses, deductions, claims or repayments of tax. The grounds are extremely vague and do not specify in what respect the Respondent allegedly failed to use its "best judgment" when raising the assessments[2]. While a ground of appeal does not have to be particularly detailed, it must make clear to the

[2] The Commissioner is not having regard to the first sentence of Ground 3, which is clearly concerned with the "preliminary objection" raised by the Appellant and addressed in the Background section above.

Commissioner, and the Respondent, what is being sought by an appellant. There is simply no way that any reasonable observer could read either Ground 3 or Ground 8 and understand that the Appellant was seeking to claim allowances/expenses against rental income.

64. Even taking a most expansive interpretation of the grounds, the Commissioner considers that they could not be understood to include a claim for allowances/expenses. This is because, as correctly stated by Senior Counsel for the Respondent, the appeal was brought on the basis (*inter alia*) that the Appellant did not have any additional rental income. Therefore, it would have been wholly illogical to argue that he had expenses to put against income that he claimed did not exist.

65. Therefore, the Commissioner does not accept the Appellant's contention that Grounds 3 and/or 8 are sufficient to allow him to claim for additional expenses/allowances. For completion, the Commissioner is satisfied that none of the other grounds of appeal are sufficient to allow a claim for additional expenses/allowances. Consequently, the Appellant is precluded from so doing, unless he comes within the saver provision of section 949I(6); i.e. that the Commissioner is satisfied that the ground claiming additional expenses/deductions could not reasonably have been stated in the notice of appeal.

66. No evidence was provided by the Appellant as to why he could not reasonably have stated the additional ground in his notice of appeal. In response to a question from the Commissioner, counsel for the Appellant stated that "*So the preliminary objections that are set out in the Notice of Appeal essentially precluded an alternative factual scenario as such…*"

67. It was of course open to the Appellant to raise any grounds of appeal he wished. However, the Commissioner agrees with the Respondent that the Appellant must have been aware of the expenses/allowances now claimed by him, as he had (allegedly) incurred them at the time the notice of appeal was lodged. The Appellant was entitled to argue that the Respondent was precluded from raising the assessments, and/or that he was not a chargeable person. However, he is not entitled to change his position entirely on the morning of the hearing by dropping the grounds of appeal stated in his notice, and instead raising a wholly new one that has no logical connection to what he had previously contended.

68. Consequently, the Commissioner is satisfied that the Appellant has not demonstrated that he could not reasonably have stated the new ground in his notice of appeal. Rather, the opposite is the case; he clearly could have stated that he had an entitlement to additional

allowances/expenses, but chose not to do so. Therefore, pursuant to section 949I(6), he is not entitled to seek to rely on this additional ground at this stage of the appeal process.

69. The authorities opened by the Appellant's counsel do not aid his case. Determination 26TACD2024[3] did not address section 949I(6) at all, but rather referred to the decision of a previous Commissioner to hold a CMC to ascertain additional information. Section 6 of the 2015 Act was referenced by the Commissioner and subsequently relied upon by counsel for the Appellant. However, the Commissioner agrees with the submission of counsel for the Respondent that the function of the Commissioner to establish "*the correct liability to tax of appellants*" must be understood in the context of the appellate framework set out in Part 40A of the TCA 1997, and does not override the provisions of section 949I(6). The Commissioner's role is limited to interpreting and applying the relevant legislation. Any argument that a particular statutory provision is unconstitutional or in breach of the ECHR is not one that the Commission can consider.

70. Furthermore, the Commissioner does not accept the Appellant's argument that, because it was agreed that the amended assessments should be reduced, this in effect opened up the question of whether he was entitled to further deductions. The Commissioner is limited to considering whether an assessment correctly charges the taxpayer in accordance with the relevant provisions of the TCA 1997; *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is not entitled to "look behind" the partial settlement of the parties to, in effect, disapply relevant provisions of the TCA 1997.

71. Finally, for completion, the Commissioner referred in the hearing to a determination of his where he did allow an additional ground of appeal to be added at the hearing. This was determination 33TACD2025, which considered a scenario similar to that considered by the courts in *Revenue Commissioners v Karshan (Midlands) Ltd t/a Domino's Pizza*. As the appeal in that case was brought while the litigation was ongoing, the Commissioner considered that the legal position was uncertain until finally clarified by the Supreme Court, and that it would therefore be unfair to prevent the appellant in that case from raising a new ground of appeal. The Commissioner is satisfied that there is no similar legal uncertainty in respect of the appeal herein, and therefore this appeal is clearly distinguishable from the circumstances considered in 33TACD2025.

72. In conclusion, the Commissioner is satisfied that the Appellant is precluded by section 949I(6) from contending that he is entitled to additional expenses/deductions beyond those agreed with the Respondent. Consequently, while the amended assessments are

[3] This was opened at the hearing using the unredacted version of the determination.

to be reduced by reason of the agreement between the parties, the remaining aspects of the appeal are refused.

Whether Appellant established his entitlement to additional expenses/deductions/allowances

73. While the Commissioner has found that the Appellant is precluded from claiming additional expenses/deductions beyond those agreed with the Respondent, he will briefly consider whether the Appellant otherwise succeeded in establishing that he was entitled to additional deductions/allowances for the years under appeal.

74. Oral evidence on behalf of the Appellant was provided by [redacted], a qualified accountant who was retained on behalf of the Appellant to review his accounts and the accounts of an associated company. While [redacted] seemed to be of the view that he was capable of being simultaneously both a factual and an expert witness, the Appellant's counsel confirmed that he was being proffered as a witness of fact and this is the light in which his evidence has been considered and assessed by the Commissioner.

75. It was a notable element of this appeal that the Appellant himself, while present at the hearing, did not give oral evidence. There is no legislative requirement that an appellant give evidence in support of his own appeal. However, it is unusual that an appellant would not do so, particularly in circumstances such as pertained herein, where the witness called on behalf of the Appellant admitted that he did not have first hand knowledge of any of the matters asserted by the Appellant. The Commissioner is satisfied that the evidence adduced on behalf of the Appellant was wholly insufficient to establish his entitlement to the reliefs claimed.

76. The bulk of [redacted] evidence concerned the expenditure allegedly incurred on the Appellant's behalf on the maintenance of his rental properties. [redacted] calculated that a total of €50,976 was incurred by property managers ([redacted] on behalf of the Appellant. However, he accepted that he had not spoken to the property managers, had not verified that the alleged works had been carried out, and could not verify the alleged expenditure. The Commissioner is satisfied that[redacted] evidence in respect of this alleged expenditure was wholly hearsay and did not establish that the works had been carried out, or if they had been, that the Appellant himself had incurred the expenditure. Therefore, this alleged claim is unsuccessful.

77. The Appellant sought to claim mortgage interest relief of €332,694 allegedly accrued during the years of 2005, 2006 and 2007. Counsel for the Appellant did not open any interest certificates to the Commissioner, but invited the Commissioner to peruse the documentation submitted for the hearing and satisfy himself as to the Appellant's

entitlement. The Commissioner has looked through the four boxes of documents submitted and has not been able to identify any interest certificates. He has identified numerous debits on copy bank statements for the Appellant and his wife for home loan payments, but considers that such entries are by themselves insufficient to identify interest payments on specified qualifying loans.

78. In any event, it is a requirement of section 97(2)(e) of the TCA 1997, which provides for mortgage interest relief on rental properties, that the interest should accrue on money borrowed "*in the purchase, improvement or repair of the premises*." No evidence at all was provided to satisfy this requirement. Nor were the properties to which the loans related specified. Presumably the Appellant would have been in a position to provide this evidence, but he did not do so. While counsel for the Appellant made relatively detailed submissions on the requirements for compliance with the Residential Tenancies Act 1997, the Commissioner agrees with counsel for the Respondent that this was a subsidiary issue, and that the Appellant failed to establish his entitlement to the relief irrespective of the issues regarding the RTB.

79. The alleged entitlement to "section 23-type" relief under section 372AP of the TCA 1997 was extremely vague and unclear. The Commissioner was not even advised as to which premises the alleged entitlement applied. Section 372AM of the TCA 1997 sets out the definition of a "qualifying premises". The Commissioner does not intend to set out this definition; however, it is immediately clear that it is a basic prerequisite that the premises against which the relief is claimed be identified. This was not done in this appeal. It is, frankly, unacceptable to seek to invoke a claim for relief before the Commission in such a vague and unintelligible manner.

80. The final relief claimed was in respect of the alleged investment in the Beacon Hospital development. Counsel for the Appellant attempted to get [redacted] to speak to documentation submitted in this regard, but [redacted] accepted that he had had no involvement in the Appellant's investment. The documents included a letter from [redacted] dated [redacted] to the Appellant and his wife which stated that "*we are now writing to confirm that the final payment for your Beacon investment of €284,000.38 was debited from your* [redacted] *account…*" and went on to state that he would be entitled to capital allowances of €1,234,142 over 7 years.

81. No other evidence showing that the investment was made was adduced, such as bank statements. Nor did anyone from [redacted] give evidence to confirm that the investment had been made or otherwise confirm the truth of the contents of the letter. Again, the Commissioner would have expected that the Appellant could have given

evidence confirming his investment, but he did not do so. In the circumstances, the Commissioner is not satisfied that the Appellant met the burden of proving he made the investment as claimed.

82. Furthermore, capital allowances are only available in respect of a "qualifying hospital" as defined by section 268(2A) of the TCA 1997. This definition is partly set out in the Legislation section above, and it can be seen that it is lengthy and detailed. Counsel for the Appellant invited the Commissioner to take 'judicial notice' that the Beacon Hospital is a qualifying hospital.

83. The Commissioner notes that the Court of Appeal has recently confirmed that "*It is expected that fact finders apply their common sense and knowledge of life to evidence they hear so as to assess it having regard to submissions made in relation to the particular facts*."[4] Certainly, the Commissioner has no difficulty accepting that the Beacon Hospital is a private hospital. However, he considers the question of whether or not it is a "qualifying hospital" pursuant to section 268(2A) to be something clearly requiring evidence. No oral evidence to support this aspect of the claim was provided. As part of the bundle of documentation submitted, the Commissioner notes that there is an opinion from [redacted] dated 6 July 2005 which provides that, in [redacted] view, the Beacon was a "qualifying hospital". However, this opinion is no more than that, and cannot by itself constitute sufficient evidence to prove that the Beacon Hospital was a "qualifying hospital". The Commissioner considers that some oral evidence, whether from the Appellant himself, or from the author of the [redacted] opinion, or some other relevant witness, would have been required in order to meet the evidential burden on the Appellant. In the absence of any such evidence, the Commissioner must conclude that the burden has not been met.

Conclusion

84. The Commissioner notes that the parties have agreed that the amended assessments should be further amended and reduced to reflect the matters agreed between them. Of the remaining issues, the Commissioner is satisfied that the Appellant is precluded from contending that he is entitled to additional expenses/deductions. Even if he was not so precluded, he has failed to establish his entitlement to the additional expenses/deductions claimed.

[4] *GP v A Judge of the District Court* [2025] IECA 191, paragraph 21

Determination

85. In the circumstances and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner finds that the amended assessments to income tax for the years 2005 to 2013 inclusive should be amended to account for the agreed additional income and allowable expenses as set out in the Appellant's Exhibit 2.b "Schedule of Agreed Allowable Expenses". More particularly as follows:

    - For 2005, gross rent of €162,420, net rent of €154,278, and total expenses of €94,016.
    - For 2006, gross rent of €276,670, net rent of €263,368, and total expenses of €94,016.
    - For 2007, gross rent of €427,880, net rent of €405,123, and total expenses of €94,016.
    - For 2008, gross rent of €447,081, net rent of €426,149, and total expenses of €94,016.
    - For 2009, gross rent of €369,338, net rent of €352,010, and total expenses of €94,016.
    - For 2010, gross rent of €220,367, net rent of €215,717, and total expenses of €94,016.
    - For 2011, gross rent of €348,710, net rent of €346,910, and total expenses of €94,016.
    - For 2012, gross rent of €417,473, net rent of €417,473, and total expenses of €94,016.
    - For 2013, gross rent of €365,272, net rent of €363,672, and total expenses of €94,016.

86. The Appellant's claim for additional allowances/expenses/deductions, over and above those agreed with the Respondent, is refused.

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

Notification

88. 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

89. 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.

Simon Noone
Appeal Commissioner
05 January 2026

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.