AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

32TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the "Commission") as an appeal against Notices of Assessment to income tax and Notices of Amended Assessment to income tax raised by the Revenue Commissioners (from here on referred to as the "Respondent") on 4 July 2019 for the following tax years and amounts:

Tax Year	Amount €
2010	31,694
2011	37,403
2012	37,024
2013	55,486
2014	90,333
2015	27,133

2. The total amount of tax at issue is €279,073.

Background

3. [redacted] (from here on referred to as the "Appellant") is a businessman who was involved in the business of [redacted] for the years 2010 to 2015 inclusive.

4. The Appellant did not submit tax returns to the Respondent for the years 2010, 2011, 2012 and 2013.

5. On 29 March 2017, the Appellant submitted a Form 11 tax return for the year 2014 to the Respondent. The return submitted was a "nil return" meaning that the Appellant returned zero income from any source for that period.

6. On 10 October 2016, the Appellant submitted a Form 11 tax return for the year 2015. The return submitted was a "nil return".

7. On 3 November 2017, the Respondent issued an audit notification letter to the Appellant for income tax and Value Added Tax (from here on referred to as "VAT") for the year 2015.

8. On 15 June 2018, the Respondent informed the Appellant that the scope of the audit had been expanded to include the years 2010, 2011, 2012, 2013 and 2014.

9. On 4 July 2019, the Respondent issued Notices of Assessment to income tax to the Appellant for the years 2010 to 2013 inclusive and in addition issued Notices of Amended Assessment to income tax to the Appellant for the years 2014 and 2015 for the following amounts:

Tax Year	Amount €
2010	31,694
2011	37,403
2012	37,024
2013	55,486
2014	90,333
2015	27,133

10. The Notices of Assessment to income tax and the Notices of Amended Assessment to income tax raised by the Respondent on 4 July 2019 assessed the Appellant to Schedule D income under "[redacted] – *Self*" and under "*Profit from letting Premises – Self*".

11. The Appellant appealed the Notices of Assessment to income tax and the Notices of Amended Assessment to income tax issued by the Respondent on 4 July 2019 by way of Notices of Appeal dated 2 August 2019.

12. In addition, on 4 July 2019 the Respondent issued VAT estimates for the years 2011 to 2015 inclusive to the Appellant. However, notification of the VAT estimates was never issued to the Appellant.

13. On 4 July 2019, the Respondent issued a Final Demand letter to the Appellant for the payment of VAT in respect of the year 2015. The Appellant submitted an appeal in relation to this Final Demand letter to the Commission.

14. On 9 December 2022, the Respondent wrote to the Appellant confirming that, as the estimates to VAT had not been notified to the Appellant, it was undertaking to reverse the estimates to VAT for the years 2011 to 2015 inclusive.

15. The Appellant confirmed at the oral hearing of this appeal that, as a result of the reversal by the Respondent of the estimates to VAT for the years 2011 to 2015 inclusive, he was not pursuing any appeal in relation to the estimates to VAT for the years 2011 to 2015 inclusive.

16. This, therefore, is an appeal against Notices of Assessment to income tax for the years 2010 to 2013 inclusive issued by the Respondent on 4 July 2019 and against Notices of Amended Assessment to income tax for the years 2014 and 2015 issued by the Respondent on 4 July 2019.

17. It is the Appellant's position that, whilst he was operating a business in the years 2010 to 2015 inclusive, that business was registered in Northern Ireland and it is his position that he was resident in Northern Ireland during those years.

18. It is also the Appellant's position that he filed tax returns and made payments to Her (as it was then) Majesty's Revenue and Customs (from here on referred to as the "HMRC") in relation to any income received by him from the business during those years. It is further the Appellant's position that he was not in receipt of rental income for the years 2010 to 2015 inclusive.

19. A part-heard oral hearing of this appeal commenced before a now vacated Commissioner with the hearing dates taking place in December 2024 and January 2025. As a result of the previous Commissioner vacating her position, the provisions of section 949W of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997") applied to this appeal. Section 949AW of the TCA 1997 provides, *inter alia*, that where a Commissioner vacates office where a hearing of an appeal has commenced but is not completed, the appeal shall be reheard by another Commissioner as if the first hearing had not commenced.

20. The Appellant suffers from ill-health and the dates and structure of the oral hearing was agreed by the Commissioner with the parties at a Case Management Conference which took place on 28 February 2025 following which the following agreed directions in relation to the conduct of the hearing were issued by the Commissioner:

    20.1. In circumstances of the former Commissioner vacating her position, and where the oral hearing of this appeal commenced in front of the former Commissioner ending with the Appellant being under cross-examination, the oral hearing of this

appeal shall be reheard by Commissioner O'Driscoll as if the first hearing had not commenced pursuant to the provisions of section 949AW of the Taxes Consolidation Act 1997;

20.2. The hearing dates of 14 and 18 March 2025 which were scheduled for the continuation of the oral hearing in front of former Commissioner were vacated;

20.3. New hearing dates for the hearing of this appeal were scheduled as follows:

20.3.1. Remotely on 14 July 2025 for a half day commencing at 10:30;

20.3.2. Remotely on 16 July 2025 for a half day commencing at 10:30;

20.3.3. Remotely on 18 July 2025 for a half day commencing at 10:30;

20.3.4. Remotely on 22 July 2025 for a half day commencing at 10:30;

20.3.5. In person on 23 July 2025 for a full day commencing at 10:30;

20.3.6. In person on 24 July 2025 for a full day commencing at 10:30.

20.4. The Appellant's legal representatives were to take instructions from the Appellant as to whether he wished to deliver his evidence-in-chief orally or whether he wished to deliver his evidence-in-chief by way of a Witness Statement pursuant to the provisions of section 949AC of the Taxes Consolidation Act 1997 and was directed to inform the Respondent and the Commission as to his preference.

20.5. In circumstances where the Appellant was to deliver his evidence-in-chief by way of a Witness Statement, the following hearing dates for this appeal were to apply:

20.5.1. Remotely on 14 July 2025 for a half day commencing at 10:30 and finishing at 13:00;

20.5.2. Remotely on 16 July 2025 for a half day commencing at 10:30 and finishing at 13:00;

20.5.3. In person on 17 July 2025 for a full day commencing at 10:30;

20.5.4. In person on 18 July 2025 for a full day commencing at 10:30;

20.5.5. In person on 22 July 2025 for a full day commencing at 10:30.

20.6. The Appellant was to be facilitated with remote attendance for the entirety of the oral hearing.

20.7. Any direction made by the former Commissioner in relation to a restriction on the Appellant's legal representatives consulting with him by virtue of the fact that he was under cross-examination was vacated.

21. The Appellant subsequently indicated to the Commissioner that he wished to proceed to deliver his direct evidence by way of Witness Statement.

22. The oral hearing of this appeal took place remotely over four days on 14 July 2025, 15 July 2025, 16 July 2025 and 30 July 2025. The change of hearing dates occurred in circumstances where the Appellant had medical appointments which he was required to attend and where the parties and the Commissioner agreed the change in dates to accommodate the Appellant.

23. Both parties were represented by Counsel and instructing solicitors at the oral hearing.

Legislation and Guidelines

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

Section 18 of the TCA 1997 – "*Schedule D*":

"(1) The Schedule referred to as Schedule D is as follows:

Schedule D

1. Tax under this Schedule shall be charged in respect of -

(a) the annual profits or gains arising or accruing to -

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains.

2. Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of paragraph 1 be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule.

(2) Tax under Schedule D shall be charged under the following Cases:

Case I - Tax in respect of -

(a) any trade;

(b) profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns -

(i) quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,

(ii) mines of coal, tin, lead, copper, pyrites, iron and other mines, and

(iii) ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of any lands, tenements or hereditaments;

Case II - Tax in respect of any profession not contained in any other Schedule;

Case III - Tax in respect of -

(a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or

whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Case V of Schedule D;

(b) all discounts;

(c) profits on securities bearing interest payable out of the public revenue other than those charged under Schedule C;

(d) interest on any securities issued, or deemed within the meaning of section 36 to be issued, under the authority of the Minister for Finance, in cases where such interest is paid without deduction of tax;

(e) income arising from securities outside the State except such income as is charged under Schedule C;

(f) income arising from possessions outside the State except, in the case of income from an office or employment (including any amount which would be chargeable to tax in respect of any sum received or benefit derived from the office or employment if the profits or gains from the office or employment were chargeable to tax under Schedule E), so much of that income as is attributable to the performance in the State of the duties of that office or employment;

Case IV - Tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule;

Case V - Tax in respect of any rent in respect of any premises or any receipts in respect of any easement;

and subject to and in accordance with the provisions of the Income Tax Acts applicable to those Cases respectively.

(3) This section is without prejudice to any other provision of the Income Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases mentioned in subsection (2), and tax so directed to be charged shall be charged accordingly."

Section 65 of the TCA 1997 – "*Cases I and II: basis of assessment*":

"(1) Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment.

(2) Where in the case of any trade or profession it has been customary to make up accounts—

(a) if only one account was made up to a date within the year of assessment and that account was for a period of one year, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year of assessment;

(b) if an account, other than an account to which paragraph (a) applies, was made up to a date in the year of assessment, or if more accounts than one were made up to dates in the year of assessment, the profits or gains of the year ending on that date or on the last of those dates, as the case may be, shall be taken to be the profits or gains of the year of assessment;

(c) in any other case, the profits or gains of the year of assessment shall be determined in accordance with subsection (1).

(3) Where the profits or gains of a year of assessment have been computed on the basis of a period in accordance with paragraph (b) or (c) of subsection (2) and the profits of the corresponding period relating to the preceding year of assessment exceed the profits or gains charged to income tax for that year, then, notwithstanding anything to the contrary in section 66(2), the profits of that corresponding period shall be taken to be the profits or gains of that preceding year of assessment and the assessment shall be amended accordingly.

(3A) As respects the year of assessment 2001, subsection (2) shall apply as if in both paragraph (a) and paragraph (b) of that subsection "74 per cent of the profits or gains of the year ending on that date" were substituted for "the profits or gains of the year ending on that date".

(3B) For the purposes of subsection (2)(a), an account made up for a period of one year to a date falling in the period from 1 January 2002 to 5 April 2002 shall, in addition to being an account made up to a date in the year of assessment 2002, be deemed to be an account for a period of one year made up to a date within the year of assessment 2001, and the corresponding period in relation to the year of assessment 2000-2001 for the purposes of subsection (3) shall be determined accordingly.

(3C) Notwithstanding subsection (3), where the profits or gains of the year of assessment 2001 have been taken to be the full amount of the profits or gains of that year of assessment in accordance with subsection (2)(c), and the full amount of the profits or gains of the year of assessment 2000-2001 exceed the profits or gains

charged to income tax for that year of assessment, then, the profits or gains of the year of assessment 2000-2001 shall be taken to be the full amount of the profits or gains of that year of assessment and the assessment shall be amended accordingly.

(3D) Notwithstanding subsection (3), where the profits or gains of a period of one year ending in the year of assessment 2002 have been taken to be the profits or gains of that year of assessment in accordance with subsection (2)(b), and the profits or gains charged to income tax for the year of assessment 2001 are less than 74 per cent of the profits or gains of the corresponding period relating to the year of assessment 2001, then, the profits or gains of the year of assessment 2001 shall be taken to be 74 per cent of the profits or gains of that corresponding period and the assessment shall be amended accordingly.

(3E) For the purposes of subsection (3D), where, apart from this subsection, a period (in this subsection referred to as the "relevant period") would not be treated as the corresponding period relating to the year of assessment 2001 by virtue of the fact that the relevant period ends on a date falling in the period from 1 January 2001 to 5 April 2001, the relevant period shall, notwithstanding any other provision of the Income Tax Acts, be treated as the corresponding period relating to that year of assessment.

(3F) Notwithstanding subsection (3), where the profits or gains of the year of assessment 2002 have been taken to be the full amount of the profits or gains of that year of assessment in accordance with subsection (2)(c), and the full amount of the profits or gains of the year of assessment 2001 exceed the profits or gains charged to income tax for that year of assessment, then, the profits or gains of the year of assessment 2001 shall be taken to be the full amount of the profits or gains of that year of assessment and the assessment shall be amended accordingly.

(4) In the case of the death of a person who, if he or she had not died, would under this section have become chargeable to income tax for any year of assessment, the tax which would have been so chargeable shall be assessed and charged on such person's executors or administrators, and shall be a debt due from and payable out of such person's estate.

Section 75 of the TCA 1997 – "*Case V: basis of assessment*":

"Without prejudice to any other provision of the Income Tax Acts, the profits or gains arising from—

(a) any rent in respect of any premises, and

(b) any receipts in respect of any easement,

shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule; but such rent or such receipts shall not include any payments to which section 104 applies.

(2) Profits or gains chargeable under Case V of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and subsection (3) shall apply accordingly.

(3) Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment.

(4) Neither this section nor section 97 or 384 shall apply to a case in which the rent reserved under a lease (including, in the case of a lease granted on or after the 6th day of April, 1963, the duration of which does not exceed 50 years, an appropriate sum in respect of any premium payable under the lease) is insufficient, taking one year with another, to defray the cost to the lessor of fulfilling such lessor's obligations under the lease and of meeting any expense of maintenance, repairs, insurance and management of the premises subject to the lease which falls to be borne by such lessor.

(5) Section 96 shall apply for the interpretation of this section as it applies for the interpretation of Chapter 8 of this Part."

Section 819 of the TCA 1997 – "*Residence*":

"(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State -

(a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or

(b) at any one time or several times -

(i) in the year of assessment, and

(ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days on which the individual was present in the State in the

preceding year of assessment) in the aggregate amounting to 280 days or more.

(2) Notwithstanding subsection (1)(b), where for a year of assessment an individual is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days -

(a) the individual shall not be resident in the State for the year of assessment, and

(b) no account shall be taken of the period for the purposes of the aggregate mentioned in subsection (1)(b).

(3) (a) Notwithstanding subsections (1) and (2), an individual -

(i) who is not resident in the State for a year of assessment, and

(ii) to whom paragraph (b) applies,

may at any time elect to be treated as resident in the State for that year and, where an individual so elects, the individual shall for the purposes of the Acts be deemed to be resident in the State for that year.

(b) This paragraph shall apply to an individual who satisfies an authorised officer that the individual is in the State -

(i) with the intention, and

(ii) in such circumstances,

that the individual will be resident in the State for the following year of assessment.

(4) For the purposes of this section -

(a) as respects the year of assessment 2008 and previous years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day, and

(b) as respects the year of assessment 2009 and subsequent years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at any time during that day."

Section 820 of the TCA 1997 – "*Ordinary residence*":

"(1) For the purposes of the Acts, an individual shall be ordinarily resident in the State for a year of assessment if the individual has been resident in the State for each of the 3 years of assessment preceding that year.

(2) An individual ordinarily resident in the State shall not for the purposes of the Acts cease to be ordinarily resident in the State for a year of assessment unless the individual has not been resident in the State in each of the 3 years of assessment preceding that year."

Section 821 of the TCA 1997 – "*Application of section 17 and 18(1) and Chapter 1 of Part 3*":

"(1) Where an individual is not resident but is ordinarily resident in the State, sections 17 and 18(1) and Chapter 1 of Part 3 shall apply as if the individual were resident in the State; but this section shall not apply in respect of—

(a) the income of an individual derived from one or more of the following—

(i) a trade or profession, no part of which is carried on in the State, and

(ii) an office or employment, all the duties of which are performed outside the State, and

(b) other income of an individual which in any year of assessment does not exceed €3,810.

(2) In determining for the purposes of subsection (1) whether the duties of an office or employment are performed outside the State, any duties performed in the State, the performance of which is merely incidental to the performance of the duties of the office or employment outside the State, shall be treated as having been performed outside the State."

Section 959Y of the TCA 1997 – "*Chargeable persons and other persons: assessment made or amended by Revenue officer*"

"(1) Subject to the provisions of this Chapter, a Revenue officer may at any time—

(a) make a Revenue assessment on a person for a chargeable period in such amount as, according to the officer's best judgment, ought to be charged on the person,

(b) amend a Revenue assessment on, or a self assessment in relation to, a person for a chargeable period in such manner as he or she considers necessary, notwithstanding that—

(i) tax may have been paid or repaid in respect of the assessment, or

(ii) the assessment may have been amended on a previous occasion or on previous occasions.

(2) For the purpose of making an assessment on or in relation to a chargeable person for a chargeable period or for the purpose of amending such an assessment, a Revenue officer—

(a) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(b) may assess any amount of income, profits or gains or, as the case may be, chargeable gains, or allow any allowance, deduction, relief or tax credit by reference to such statement or particular.

(3) The amendment of an assessment by a Revenue officer does not preclude that Revenue officer or any other Revenue officer from further amending the assessment in such manner as he or she considers necessary.

(4) (a) Where any amount of income, profits or gains or, as the case may be, chargeable gains is omitted from, or not properly reflected in, an assessment for a chargeable period or the tax stated in an assessment is less than the tax payable by the chargeable person for the chargeable period, then a Revenue officer may make such amendments to the assessment as are necessary to ensure that the assessment includes the correct amount or to ensure that the tax stated in the assessment is equal to the tax payable by the chargeable person for the chargeable period.

(b) For the purposes of paragraph (a), the amendment of an assessment by a Revenue officer may include the addition of an amount of income, profits or gains or, as the case may be, chargeable gains that is not reflected in the assessment."

Section 959AA of the TCA 1997 – "*Chargeable persons: time limit on assessment made or amended by Revenue officer.*"

"(1) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period—

(a) an assessment for that period, or

(b) an amendment of an assessment for that period,

shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(2) Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period—

(a) where the return for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period,

(b) to give effect to—

(i) a determination of an appeal against an assessment,

(ii) a determination of an appeal, other than one made against an assessment, that affects the amount of tax charged by the assessment, or

(iii) an agreement within the meaning of section 949V.

(c) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(d) to correct an error in calculation in the assessment, or

(e) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid (notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made) where appropriate in accordance with any such amendment.

(2A) Notwithstanding subsection (1), section 959AB(1) and any limitation in the Acts on the time within which a claim for relief from tax is required to be made, a Revenue officer may, at any time, make or amend an assessment for a chargeable period to give effect to a mutual agreement reached, under an arrangement having the force of law by virtue of section 826(1), between the competent authority of the State and a competent authority of another jurisdiction and tax shall be paid or repaid (notwithstanding any limitation in section 865(4) on the time within which a claim for repayment of tax is required to be made) where appropriate in accordance with any such assessment or amended assessment.

(3) Nothing in this section affects the operation of section 804(3), 811, 811A, 811C, 811D or 1048."

Section 959AC of the TCA 1997 – "*Chargeable persons: Revenue assessment and amendment of assessments in absence of return, etc."*

"(1) In this section 'information' includes information received from a member of the Garda Síochána.

(2) Notwithstanding section 959AA, where in relation to a chargeable person—

(a) the person fails to deliver a return for a chargeable period,

(b) a Revenue officer is not satisfied with the sufficiency of a return delivered by the person having regard to any information received in that regard, or

(c) a Revenue officer has reasonable grounds for believing that a return delivered by the person does not contain a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period,

then a Revenue officer may, at any time, make a Revenue assessment on the chargeable person for the chargeable period in such sum as, according to the best of the officer's judgment, ought to be charged on that person.

(3) Where a Revenue officer makes a Revenue assessment on a chargeable person under this section in the event of the failure of the person to deliver a return, it shall not

be necessary to set out in the notice of assessment any particulars other than the amount of tax payable by the person for the chargeable period on the basis on that assessment.

(4) In any of the circumstances referred to in subsection (2), a Revenue officer may, at any time, amend a Revenue assessment on, or a self assessment in relation to, a chargeable person for the chargeable period involved in such manner as the officer considers necessary."

Preliminary Issues

25. Early in the oral hearing, it was indicated to the Commissioner that both the Appellant and the Respondent wished to make applications in relation to the conduct of the hearing as follows:

    25.1. The Appellant wished to make an application for his cross examination to be conducted in person;

    25.2. The Appellant wished to make an application for the amendment of his Grounds of Appeal;

    25.3. The Respondent wished for the Commissioner to issue a ruling in relation to the use in this oral hearing by the Respondent of the transcript which was created during the part-heard oral hearing in December 2024 and January 2025.

Application by the Appellant for his cross examination to be conducted in person

26. Counsel on behalf of the Appellant made an application for his cross examination to be conducted in person. No reason for this application was put forward and the Respondent opposed the application.

27. Having considered the submissions made by both parties in this regard, the Commissioner refused the application on the basis that:

    27.1. Considerable care in relation to the listing of the hearing, taking into account the Appellant's health difficulties, had been taken during the Case Management Conference with the agreement of the parties. The reason that the hearing was listed to take place remotely for the first days was specifically to accommodate the Appellant's evidence, both direct and indirect, being given remotely.

    27.2. The Commissioner had an obligation to ensure the efficient running and progression of the hearing.

Application by the Appellant to amend his Grounds of Appeal

28. The Grounds of Appeal in these appeals were identified in the Notices of Appeal submitted by the Appellant as follows:

    "*I am appealing based on a number of* [sic]

    1. *The audit was invalid based on 2015 audit being completed and confirmation I had no liability (witnessed by my Accountant).*
    2. *Fabricated document used to expand audit (attached).*
    3. *My previous compliance.*
    4. *My UK company which operated 2012-2015.*
    5. *No evidence I let any property or record receiving for* [sic] *rent.*
    6. *Clear impropriety in the audit and surrounding events.*
    7. *Previous assessments which were withdrawn. Copy attached."*

29. Counsel on behalf of the Appellant confirmed that the Appellant would not be pursuing any ground of appeal which fell outside of the Commissioner's jurisdiction.

30. An application was made to amend the Grounds of Appeal to include the following:

    30.1. The amounts in the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect.

    30.2. The Appellant was not resident in Ireland during the years 2010 to 2015 inclusive.

    30.3. The Notices of Assessment and Notices of Amended Assessment were raised out of time.

31. The bases for this application were:

    31.1. At the time of submitting the Notices of Appeal, the Appellant was not legally advised and he submitted the Notices of Appeal without the benefit of professional advice. He was therefore, it was submitted, not in position to know that grounds of appeal that the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect and that they were raised out of time were grounds which he should have included in the Notices of Appeal.

    31.2. The ground of non-residency was alluded to in ground 4 in the Notices of Appeal "*My UK company which operated 2012-2015.*".

32. Counsel on behalf of the Respondent indicated that the Respondent had no difficulty with allowing the Grounds of Appeal to be amended to reflect the grounds that the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect or to reflect the ground that the Appellant was not resident in Ireland in the years 2010 to 2015 inclusive. This was on the basis that, the Appellant had previously indicated his intention to make the application and there was no prejudice to the Respondent in those grounds being admitted.

33. As a result, the Commissioner directed that the Grounds of Appeal be amended to reflect the following grounds:

    33.1. The amounts in the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect.

    33.2. The Appellant was not resident in Ireland during the years 2010 to 2015 inclusive.

34. Counsel on behalf of the Respondent objected to a ground of appeal in relation to the Notices of Assessment and Notices of Amended Assessment being raised out of time being admitted. This was on the basis that no notification had been given to the Respondent that the Appellant intended to seek to include this ground of appeal and that the Respondent would be prejudiced by the late inclusion of it.

35. The Commissioner considered that it was appropriate to allow the time-limit ground of appeal to be admitted on the basis that, as set out in *Lee v Revenue Commissioners* [2021] IECA 18 (from here on referred to as "*Lee*") at paragraph 64, the jurisdiction of a Commissioner in an appeal is focused on the assessment and the charge.

36. As a result, the Commissioner directed that the Grounds of Appeal be amended to reflect the following ground:

    36.1. The Notices of Assessment and Notices of Amended Assessment were raised out of time.

Application by the Respondent

37. Following the commencement of cross examination of the Appellant, an issue arose as to the contents of a book of bank statements which had been submitted to the Commissioner by the Appellant in advance of this oral hearing. The book of bank statements submitted differed from a previous book which the Appellant had submitted in advance of the previous oral hearing in front of the vacated Commissioner in that it

omitted to include bank statements relating to [redacted], a limited company which the Appellant incorporated in January 2011 in Northern Ireland.

38. The Respondent indicated that it wished to rely on the previous book of bank statements and, in particular, on the omitted bank statements along with the transcript of the previous oral hearing when cross examining the Appellant in this oral hearing. In particular, the Respondent indicated, it wished to cross examine the Appellant on previous inconsistent statements in relation to the bank statements and other matters which the Appellant had made during the previous oral hearing.

39. The Respondent indicated that it wished for the Commissioner to issue a ruling in relation to the use the transcript which was created during the previous oral hearing in December 2024 and January 2025.

40. It was the Respondent's position that the right to an effective cross-examination is a constitutional right which has been acknowledged by the Courts. In that regard, the Commissioner was referred to Chapter 3 Section E of *McGrath, Evidence, 3rd Ed. 2020* which stated the following:

> *"**3-93***
>
> *Cross-examination is considered to be of pivotal importance in the trial process. Wigmore has described cross-examination as "the greatest legal engine ever invented for the discovery of truth". That view was echoed by Hardiman J in Maguire v Ardagh,[1] who extolled the value of cross-examination as a truth eliciting process:*
>
> > *"Where a person is accused on the basis of false statements of fact, or denied his civil or constitutional rights on the same basis, cross-examination of the perpetrators of these falsehoods is the great weapon available to him for his own vindication. Falsehoods may arise through deliberate calculated perjury (as in the case of Parnell) through misapprehension, through incomplete knowledge, through bias or prejudice, through failure of memory or delusion. In some cases a witness may not be aware that his evidence is false. A witness may be telling the literal truth but refrain, or be compelled to refrain, from giving a context which puts it in a completely different light. And a witness called to prove a fact favourable to one side may have a great deal of information which he is not invited to give in evidence, favourable to the other party."[2]*

[1] [2002] IESC 21
[2] *Ibid* at paragraph 168

169. In Re Haughey cited above, it was said by Chief Justice O'Dhálaigh at page 264:-

> *"In proceedings before any tribunal where a party to the proceedings is on risk of having his good name, or his person or property, or any of his personal rights jeopardised, the proceedings may be correctly classed as proceedings which may affect his rights, and in compliance with the Constitution the State, either by its enactments or through the Courts, must outlaw any procedures which will restrict or prevent the party concerned from vindicating these rights"*

3-94

Given that effective cross-examination depends on the availability of material to challenge a witness's account and credibility,[3] the right to cross-examine underpins procedural protections such as disclosure of materials that can be used for the purpose of cross-examination[4] and access by an expert to a plaintiff or complainant to conduct an assessment.[5] Concerns about attenuation of the right to cross-examine also subtend the hearsay rule.[6]

Constitutional Basis of Right to Cross-Examine

3-95

Given the importance of cross-examination to the trial process, it is unsurprising that the right to cross-examine is considered to be a fundamental procedural right in this jurisdiction, constitutionally guaranteed in both civil and criminal cases. In State (Healy) v Donoghue,[7] Gannon J stated that, among the procedural rights enjoyed by an accused by virtue of Art. 38.1, was a right "to hear and test by examination the evidence

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[3] *Maguire v Ardagh [2002] 1 IR 385* at 705; *O'Callaghan v Mahon [2005] IESC 9 at [71], [2006] 2 IR 32* at 65–66; *Vattekaden v DPP [2016] IECA 205* at [24]. See also *Redmond v Ireland [2015] IESC 98, [2015] 4 IR 84, [2016] 1 ILRM 301*.

[4] See *People (DPP) v GK, unreported, Court of Criminal Appeal, 6 June 2002*; *O'Callaghan v Mahon [2005] IESC 9, [2006] 2 IR 32*; *O'Callaghan v Mahon [2007] IESC 17, [2008] 2 IR 514*; *Murphy v Flood [2010] IESC 21 at [206], [2010] 3 IR 136* at 196. In the first *O'Callaghan* case, Hardiman J said (at [68], 65) that, to deprive the applicant of access to previous statements by a witness, "would be to hamper and possibly to subvert his ability to cross-examine". See also *JF v DPP [2005] IESC 24, [2005] 2 IR 174*; *PG v DPP [2006] IESC 19, [2007] 3 IR39*; *Vattekaden v DPP [2016] IECA 205*; *LM v A Judge of the District Court [2019] IEHC 542* at [37]. Cf. *A.P. v Minister for Justice and Equality [2019] IESC 47, [2019] 2 ILRM 377*.

[5] *JF v DPP [2005] IESC 24 at [25], [2005] 2 IR 174* at 183.

[6] *Borges v Medical Council [2004] IESC 9 at [33], [2004] 1 IR 103 at 105, [2004] 2 ILRM 81* at 92.

[7] *[1976] IR 325* at 335. See also *People (DPP) v Kelleher [2016] IECA 277* at [9], where Sheehan J described the ability to effectively cross-examine witnesses called to give evidence against him as a key aspect of an accused's person's right to a fair trial. This statement was cited with approval in *People (DPP) v FC [2017] IECA 287* at [9].

offered by or on behalf of his accuser".[8] *Subsequently, in Donnelly v Ireland,*[9] *Hamilton CJ described the right to cross-examine as an "essential ingredient in the concept of fair procedures".*[10] *In The Criminal Law (Jurisdiction) Bill, 1975,*[11] *O'Higgins CJ summarised the position by saying that:*

> *"An opportunity to cross-examine on behalf of the accused any witness called against him is fundamental to a trial in due course of law and the taking of evidence for production at such trial without such an opportunity would be contrary to the Constitution."*[12]

3-96

The right to cross-examine also enjoys constitutional protection in civil cases by virtue of the guarantee of the personal rights of the citizen contained in Art.40.3. Delivering the judgment of the Supreme Court in Re Haughey,[13] *Ó Dálaigh CJ stated that Art.40.3 "is a guarantee to the citizen of basic fairness of procedures" which required, inter alia, that the defendant in that case "be allowed to cross-examine, by counsel, his accuser or accusers".*[14] *Again, in Donnelly v Ireland,*[15] *Hamilton CJ stated that:*

> *"the central concern of the requirements of due process and fair procedures is the same, that is to ensure the fairness of the trial of an accused person. This undoubtedly involves the rigorous testing by cross-examination of the evidence against him or her."*[16]

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[8] *See also per O'Higgins CJ in the Supreme Court who stated ([1976] IR 325 at 349) that: "the words 'due course of law' in Article 38 make it mandatory that every criminal trial shall be conducted in accordance with the concept of justice, that the procedures applied shall be fair, and that the person accused will be afforded every opportunity to defend himself."*

[9] *[1998] 1 IR 321 at 350, [1998] 1 ILRM 401* at 413.

[10] See also *Melton Enterprises Ltd v Censorship of Publications Board [2004] 1 ILRM 260* at 274.

[11] *[1977] IR 129* at 154.

[12] See also *Redmond v Ireland [2015] IESC 98 at [11]-[13], [2015] 4 IR 84 at 90–93, [2016] 1 ILRM 301* at 305–307.

[13] *[1971] IR 217* at 264.

[14] See also *Oates v Browne [2016] IESC 7 at [28–31], [2016] 1 IR 481* at 501–502; *Borges v Medical Council [2004] IESC 9, [2004] 1 IR 103, [2004] 2 ILRM 81* at 90. Cf. *Kiely v Minister for Social Welfare (No.2) [1977] IR 267* at 281, where Henchy J stated that it was a breach of natural and constitutional justice "if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross examination".
See further *Lyons v Longford Westmeath Education and Training Board [2017] IEHC 272* at [96].
However, a right to cross-examine only arises where essential facts are in controversy: *McElvaney v The Standards in Public Office Commission [2019] IEHC 633* at [45].

[15] *[1998] 1 IR 321, [1998] 1 ILRM 401*.

[16] *[1998] 1 IR 321 at 356, [1998] 1 ILRM 401* at 418–419. See also *Murray v Commission to Inquire into Child Abuse [2004] 2 IR 222* at 304–305; *CJ v Judge Seamus Hughes [2016] IEHC 157* at [13]; *EE v Child and Family Agency [2016] IEHC 777*; *TR v Child and Family Agency [2017] IEHC 595*; *FA v Child and Family Agency*

…

3-98

The constitutional position is reinforced by the position under the European Convention on Human Rights, Art.6(3)(d) of which stipulates that an accused has "the right to examine or have examined witnesses against him". In Kostowski v The Netherlands,[17] *it was held by the European Court of Human Rights that an accused must be afforded an adequate and proper opportunity to question and challenge a witness giving evidence against him.*

3-99

It follows that a party to civil proceedings is entitled to cross-examine any witness called by an adverse party unless there is a statutory curtailment of the right to cross-examine.[18]

Objectives of Cross-Examination

3-100

Cross-examination of a witness called by a party is carried out by the other parties in the proceedings and has two main objectives: (i) to elicit evidence from the witness in relation to the facts in issue which is favourable to the cross-examining party; and (ii) to cast doubt upon the veracity, accuracy, or reliability of the evidence given by the witness.[19]

[2018] IEHC 806 (right to cross-examine adult complainant in respect of allegations of sexual abuse made to Tusla).

[17] *(1990) 12 EHRR 434*.

[18] See *DS v Minister for Health and Children [2005] IEHC 58*, where O'Neill J held that the respondent was entitled to cross-examine the applicant on an appeal from a decision of the Hepatitis C Compensation Tribunal even though cross-examination at a hearing before the Tribunal was prohibited by statute. Given that cross-examination was a constitutionally protected right, he was unable to hold that it had been excluded in circumstances where the relevant statutory provisions were silent as to whether cross-examination was available on an appeal. See also *W (A Child) (Cross-examination) [2010] EWCA Civ 1449, [2011] 1 FLR 1979*, where it was held that a failure to provide the opportunity for cross-examination will ordinarily cause any subsequent court order to be quashed. See further *KL v Judge Ní Chondúin [2015] IEHC 617* at [40]. However, the full panoply of fair procedure entitlements including cross-examination may not be required outside of court proceedings (*McKelvey v Iarnród Éireann Irish Rail [2019] IESC 79* at [16], *Shatter v Guerin [2019] IESC 9*).

[19] *O'Brien v Moriarty [2016] IESC 36 at [50], [2016] 3 IR 501* at 519. See *Director of Corporate Enforcement v Seymour [2006] IEHC 369* at [7] where the second of these two objectives was identified by O'Donovan J. See also *People (DPP) v PR [2020] IECA 68* at [86]. In light of these objectives, an application for judicial review of the decision of the Moriarty tribunal to prohibit the cross-examination of an expert was refused in *O'Brien v Moriarty [2016] IESC 36 at [53], [2016] 3 IR 501* at 520 in circumstances where the expert in question gave evidence favourable to the applicant.

3-101

With regard to the first objective, a cross-examining party is entitled to question a witness on any fact in issue or matter relevant to a fact in issue and is not restricted to the evidence given by the witness during examination-in-chief. As for the second objective, there are a number of methods by which a cross-examining party may seek to undermine the credibility of a witness and/or the veracity, accuracy or reliability of the evidence given by him or her.

The cross-examining party can question the witness on any errors, contradictions or inconsistencies in the evidence given by the witness and any previous inconsistent statements made by him or her. The party may also question the witness as to his or her powers of perception, memory and recall and any relevant physical or mental disabilities that could affect these. Finally, the cross-examining party may attack the credit of the witness by questioning him or her in relation to previous convictions, bias, partiality or improper motive on his or her part, his or her bad character or general reputation for untruthfulness. When doing so, the cross-examining party may put matters to the witness which are not directly relevant to the facts in issue.[20]

Limits on Cross-Examination

3-105

The central feature of cross-examination, which distinguishes it from examination-in-chief, is that the cross-examining party is permitted to ask leading questions.[21] *This enables the cross-examining party to engage in more intensive questioning of the witness and that cross-examination can be "hard, detailed, challenging and bruising".*[22] *A cross-examiner is also permitted to put questions based on information that is inadmissible or that he or she is unable to prove except through cross-examination and to "pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition".*[23]

However, it is important to note that there are limits to the form, content and length of questioning that is permissible on cross-examination. [24] *In particular, cross-examination by counsel is expected to be conducted with restraint and appropriate*

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[20] *People (DPP) v Cull (1980) 2 Frewen 36* at 40; *People (DPP) v Campbell, unreported, Court of Criminal Appeal, 19 December 2003* at 25.

[21] *Parkin v Moon (1836) 7 C & P 408*; *McLure v Mitchell (1974) 6 ALR 471*. Cf. *Mooney v James [1949] VLR 22* (no absolute right to put leading questions in cross-examination).

[22] *People (DPP) v DO [2006] IESC 12, [2006] 2 ILRM 61* at 73 (per Hardiman J).

[23] *R v Lyttle (2004) 180 CCC (3d) 476* at [46]–[48].

[24] See *People (DPP) v PR [2020] IECA 68* at [86].

courtesy and consideration for the witness[25] *and he or she cannot put questions based on a factual premise that he or she knows to be false or is reckless as to whether it is false.* [26] *A crossexaminer should also avoid comment in the course of cross-examination* [27] *and refrain from unnecessary and personalised attacks on expert witnesses.*[28]

3-106

A trial judge exercises a general supervisory jurisdiction in relation to the cross-examination of witnesses and may disallow questions which he or she considers to be improper. So, for example, in People (DPP) v R,[29] *it was held that counsel for the prosecution should not have put a question to the accused, who was on trial for sexual offences, as to whether the complainant was perjuring herself. Barrington J, delivering the judgment of the Court of Criminal Appeal, stated that:*

> *"a question put in that particular form implying that either the complainant is a perjuress or the applicant is guilty of rape is one which is inherently unfair to the applicant in that the jury might take the view that if they acquitted the applicant they would be implying that the complainant was a perjurer".*[30]

3-107

Similarly, a trial judge may disallow questions which he or she regards as vexatious or irrelevant to any matter at issue.[31] *A trial judge may also curtail cross-examination*

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[25] *Mechanical & General Inventions Co. Ltd v Austin [1935] AC 346* at 360 (per Sankey LC).
[26] *R v Lyttle (2004) 180 CCC (3d) 476 at [46]–[48].*
[27] *See R. v Farooqi [2013] EWCA Crim 1649, [2003] All ER (D) 16 at [113]. See also R. v Baldwin [1925] All ER 402, (1925) 18 Cr App R 175 (questions should not be framed in such a way as to invite argument rather than elicit evidence on the facts in issue). In Bailey v Commissioner of An Garda Síochána [2017] IECA 220 at [110], it was held that, "in the course of the examination of witnesses counsel should normally refrain from expressing personal views, since – certainly if unchecked – it would tend to blur the line between the true questioning of the witness and the incorporation of inadmissible comment." It was held, however, that the failure by counsel to preface a suggestion that the witness was being untruthful with "I suggest" or similar words did not give rise to any unfairness in circumstances where the basis for this suggestion had been fully set out and explored with the witness in cross-examination.*
[28] *People (DPP) v Abdi [2005] 1 ILRM 382* at 393; *O'Driscoll v Hurley [2015] IECA 158* at [66]; *O'Leary v Mercy University Hospital Cork [2019] IESC 48* at [45]–[47].
[29] *[1998] 2 IR 106*.
[30] *[1998] 2 IR 106* at 110. See also *Byrne v Judges of the District Circuit Court [2015] IESC 105* at [40]–[41], per Charleton J, where it was suggested by counsel for the defence to the victim of a tiger kidnapping that he was complicit in the offence. Charleton J noted that witnesses in criminal trials are presumed to be innocent and have a right to their good name, such that 'unpleasant allegations' should only be put to them on express instructions or where there is an evidential basis. Counsel are not otherwise permitted to use their position to attempt to undermine a prosecution witness as an accomplice. The same judge observed, in *People (DPP) v Hawkin [2014] IECCA 36* at [14], that cross-examination is not "at large".
[31] *Kenny v Coughlan [2008] IEHC 28*. See in the civil context, Ord.36, r.37 of the Rules of the Superior Courts which provides: "The Judge may in all cases disallow any questions put in cross-examination of any party or

which is repetitive or excessive in length[32] if the judge is satisfied that the cross-examiner has been given an adequate opportunity to ask relevant questions of the witness.[33] Particular vigilance may be required by a judge where a vulnerable witness, such as a child or a person with an intellectual disability, is being cross-examined.[34]

…

Previous Inconsistent Statements

3-121

Cross-examination of a witness by reference to previous inconsistent statements made by him or her is one of the most effective methods of both eliciting helpful evidence and impugning the credibility of the witness. As Hardiman J observed in O'Callaghan v Mahon[35]: "The cross-examination of a witness on the basis of comparing what he has said on oath with an account given on another occasion is one of the longest established of the conventional methods of contradiction."[36] He went on to state[37]:

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other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter." See *Byrne v Judges of the District Circuit Court [2015] IESC 105* at [41], where Charleton J observed that: "Cross-examination should be focused. If it is not, then cases become unwieldy and more than difficult to try. A trial judge is entitled to, and is required to maintain, focus so that irrelevant speculations do not side-track a case."

[32] *O'Broin v Ruane [1989] IR 214* at 216; *R. v Kalia [1975] Crim LR 181*. See also *Konadu v DPP [2018] IEHC 72* at [21].

[33] *Burke v Fulham [2010] IEHC 448* at [36]; *Burke v Anderson [2010] IEHC 452* at [30]–[31]. Cf. the position in New Zealand where s.85 of the Evidence Act 2006 which provides that a judge may disallow or direct that a witness is not obliged to answer any unacceptable question, viz. "any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand" having regard to a number of factors including the age of the witness and the nature of the proceeding.

[34] See the discussion of the difficulties arising in relation to the cross-examination of vulnerable witnesses and judicial control of same in *R v Wills [2011] EWCA Crim 1938, [2012] 1 Cr App R 2* at [36]–[39]. In *People (DPP) v DC [2019] IECA 367* at [242], the Court of Appeal rejected the contention that the trial judge made inappropriate interventions in the cross-examination of a complainant, noting that the interventions relied on included "ensuring humane treatment of the complainant by offering breaks and giving encouragement to her to give evidence". See also *DPP v L.D. [2018] IECA 54* at [17], where the Court of Appeal was satisfied that comments made to a child witness prior to cross-examination were directed towards putting the witness at her ease and did not endorse the witness. See, further, Biggs and Delahunt, "Prosecutorial challenges – vulnerable witnesses" *(2017) 22 BR 23*.

[35] *[2005] IESC 9 at [42], [2006] 2 IR 32* at 55.

[36] To similar effect, the same judge stated in *O'Callaghan v Mahon [2007] IESC 17 at [356], [2008] 2 IR 514* at 614, that: "a prior statement by a witness which is inconsistent with his subsequent testimony is one of the most effective and best and longest recognised techniques for attacking that witness's credibility. This is so regardless of whether the inconsistency is a positive factual inconsistency or takes the form of an omission to state something relevant in the prior statement". In that case (at [364], 617–618), he gave an example of a case from 1829 where Daniel O'Connell had destroyed the credibility of the chief prosecution witness, thereby saving the lives of all but one of the accused, by cross-examining him on a previous inconsistent statement.

[37] *[2005] IESC 9 at [46], [2006] 2 IR 32* at 58.

"In my view, it is a matter of common justice and indeed common sense, that a witness who makes a grave allegation against another may be contradicted out of his own mouth where that is possible. If a right to do this were not assured, cross-examination would be gravely hampered and even subverted. It is a statement of the obvious to say that the credibility of a particular statement made by a particular person is reduced or destroyed if he has made a contradictory statement on a previous occasion, unless that can be explained in some way. Conversely, consistency enhances the credibility of a statement."

3-122

The learned judge elaborated in a subsequent instalment of that litigation that[38]*:*

"Although a certain amount of technicality has grown up around the circumstances in which a prior statement can be put to a witness, the basic principle is not a technical one at all, but one grounded in ordinary fairness, common sense and every day experience. If a person is shown to have freely given, on two different occasions, contradictory accounts of the same matter within his own knowledge, it follows that he was either lying or mistaken on at least one occasion. If the same person is shown to have given such contradictory accounts on more than one occasion, clear questions arise as to his or her credibility or reliability. Any advocate with experience of litigation with seriously contested factual allegations will have seen cases won and lost on this basis.""

41. Lengthy oral submissions by both the Respondent and the Appellant were made in relation to this point. In summary, it was the Respondent's position that it should not be curtailed in its cross-examination of the Appellant in relation to statements made at the previous part-heard oral hearing and that any such curtailment would not only prejudice the Respondent's case, but would also infringe its constitutional right to cross-examine the Appellant.

42. In summary, it was the Appellant's position that the provisions of section 949AW of the TCA 1997 mean that, in circumstances where the previous Commissioner had vacated her position prior to the previous part-heard oral hearing being completed, this oral hearing must be conducted as if the previous-part heard oral hearing had not commenced.

[38] *O'Callaghan v Mahon [2007] IESC 17 at [357], [2008] 2 IR 514* at 615.

43. The Commissioner considered the submissions made by both parties and gave a ruling on the application at the oral hearing.

44. Prior to giving her ruling, the Commissioner enquired of the Appellant whether an objection was being made to the Respondent utilising previous documentation and correspondence which had been submitted to the Commission as part of its cross-examination of the Appellant in this appeal. Counsel on behalf of the Appellant confirmed that no objection was being made to that and that the only objection which was being pursued was the use by the Respondent of the transcript of the previous part-heard oral hearing as part of the cross-examination in this hearing.

45. On the basis that the application related to the use by the Respondent of the transcript of the previous part-heard oral hearing as part of the cross-examination in this hearing, the Commissioner referred to section 949H of the TCA 1997 which is entitled "*Flexible proceedings"* and which provides that:

> *"(1) The Appeal Commissioners shall, subject to the provisions of this Part, endeavour to the best of their ability to manage and conduct proceedings in a way that will meet the reasonable expectations of members of the public (and in particular tax payers) with regard to—*
>
> > *(a) undue formality being avoided, and*
> >
> > *(b) a flexible approach being adopted by the Commissioners in respect of procedural matters.*"

46. The Commissioner also referred to section 949AC of the TCA 1997 which is entitled "*Evidence*" and provides:

> *"The Appeal Commissioners may—*
>
> > *(a) allow evidence to be given orally or in writing,*
> >
> > *(b) admit evidence whether or not the evidence would be admissible in proceedings in a court in the State, or*
> >
> > *(c) exclude evidence that would otherwise be admissible where—*
> >
> > > *(i) the evidence was not provided within the time allowed by a direction,*
> > >
> > > *(ii) the evidence was provided in a manner that did not comply with a direction, or*
> > >
> > > *(iii) they consider that it would be unfair to admit the evidence."*

47. The Commissioner further referred to the judgment of O'Neill J in the High Court in the decision of *D.S. vs The Minister for Health and Children and the Hepatitis C Compensation Tribunal* [2005] IEHC 58 (from here on referred to as "*D.S.*") which was a case which involved an appeal against the decision of the Hepatitis C Compensation Tribunal regarding compensation for loss of consortium and losses incurred as a carer under the Hepatitis C Compensation Act 1997. The issue before the Court was whether the respondent in that case was entitled to cross-examine the appellant on appeal, in circumstances where cross-examination was prohibited in the Tribunal proceedings.

48. In *D.S.* the Court stated that:

> *"It would seem to me to be quite impermissible to construe the complete absence of statutory provision on this subject as having the effect of either eliminating entirely or substantially curtailing a right which though not an absolute right is in general terms a right protected by the Constitution."*

49. The Commissioner noted that an effect of O'Neill J's finding was that the right of cross-examination is not an absolute right but that it is, in general terms, a right protected by the Constitution.

50. Having taken the above into consideration, the Commissioner noted that section 949AW of the TCA 1997 which is entitled "*Appeal Commissioner vacating office: prior to determination"* and provides that:

> *"Where, in relation to an appeal—*
>
> *(a) a hearing has commenced but is not completed, or*
>
> *(b) a hearing has been completed but a determination has not been made*
>
> *by the one or more Appeal Commissioners who presided over the hearing (and the omission to complete or do the foregoing thing is due to one or more Appeal Commissioners having vacated, in whatever circumstances, office), the appeal shall, as one or more other Appeal Commissioners decide, either—*
>
> *(i) be reheard by one or more other Appeal Commissioners as if the first hearing had not commenced or been completed, as the case may be, or*
>
> *(ii) instead of being reheard, be adjudicated on by one or more other Appeal Commissioners in accordance with section 949U."*

51. The Commissioner held that the language of section 949AW of the TCA 1997 was clear and that it provided a direction that the Commissioner, in circumstances where the previous Commissioner had vacated her office prior to the completion of the previous oral hearing, that the Commissioner must rehear this appeal as if the previous oral hearing had never commenced.

52. The Commissioner stated that it was her interpretation of section 949AW(a)(i) of the TCA 1997 that the previous part-heard oral hearing should be ignored as part of this oral hearing. The Commissioner noted that, whilst this may be a curtailment of the Respondent's ability to cross-examine the Appellant, the Respondent was not being precluded from cross-examining the Appellant.

53. The Commissioner further noted that she was mindful of the fact that not only had the previous part-heard oral hearing not completed, but also that the Appellant's cross-examination in the previous part-heard oral hearing had not completed.

54. In addition, the Commissioner noted that she had not read the transcript of the previous part-heard oral hearing in order to avoid a situation where she might be influenced by the contents of the transcript.

55. As a result, the Commissioner refused the Respondent's application to be allowed to utilise the transcript of the previous part-heard oral hearing as part of its cross-examination of the Appellant. The Commissioner clarified to the parties that the Respondent was not precluded from utilising the correspondence and documentation previously submitted by the Appellant to the Commission as part of its cross-examination of the Appellant in this appeal.

Witness Evidence

Appellant's Witness Statement

56. The following is the Witness Statement submitted by the Appellant which comprises the entirety of the direct evidence submitted by the Appellant in support of this appeal:

> *"I, [redacted], of [redacted], businessman, am the Appellant in these proceedings. I declare that this witness statement is true and accurate to the best of my knowledge and belief.*
>
> *The assessments to income tax in this appeal were raised by the Respondent on 4 July 2019. The tax years of assessment under appeal are 2010 to 2015 inclusive.*

The income tax assessments total €279,073. The breakdown per tax year of assessment is as follows.

- *2010 - €31,694*
- *2011- €37,403*
- *2012- €37,024*
- *2013- €55,486*
- *2014 - €90,333*
- *2015- €27,133*

I say that I had understood from engagement with my then accountant that I had made a return for 2010 however, the Respondent's position is that no return was received in relation to 2010 and I am willing to accept that this is the position.

I say that I did not file returns for 2011 to 2013 as I was running a business in Northern Ireland and I was residing in Northern Ireland during those years. I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015. I say that I filed nil returns in respect of 2014 and 2015.

Rental income

The Respondent has assessed me for income tax on the basis the Respondent claims that I was in receipt of rental income (as estimated by the Respondent) in respect of a property at [redacted]*. ('the property')*

The Respondent has stated that rent subsidy payments were linked to my tax registration number. The Respondent has taken the view that I was in receipt of Rent Subsidy Payments (2009 – 2013) from the Eastern Health Board for the property at [redacted]*.*

On this basis, the Respondent has assessed me to income tax as though I received the following round sum estimated amounts:

- *2010 - €12,000*
- *2011 - €13,000*
- *2012 - €14,000*

- *2013 - €15,000*
- *2014 - €16,000*
- *2015 - €17,000*

The calculation/estimation of rental income by the Respondent is completely wrong and without basis. I did not receive rental income from this property. I have been assessed to a substantial amount of tax as though I received rent however, I did not.

The property at [redacted] *('the property') was purchased by my father,* [redacted]*, in and around 1990, however, by way of family arrangement, the property was registered in my name. I was aged 18 in 1990 at the time. The property is my parents family home and they resided there. They lived in it, maintained it and considered it their permanent home. My mother died in 2011 and my father moved out of the property in or around 2012. For a time in the 1990s I also lived there until I moved out in 1994. I wish to emphasis and repeat; I did not charge my parents rent.*

After my father moved out in 2012, there was an attempt to rent the property to Mr. [redacted]*. Mr.* [redacted] *paid one month rent and one month deposit to a letting agency and then squatted in the property doing considerable damage for close to one year. I believe he was in receipt of rent payment subsidy which he was receiving by cheque however, he did not hand the cheque to me or to my father. I do not know if the Respondent is in a position to clarify who cashed the cheque. I have previously provided my father's PPS number to the Respondent to assist.*

I say that no rent was charged by me nor received by me for the relevant tax years of assessment, nor did I personally receive any payments from the Eastern Health Board in the form of rent subsidy payments.

The document/schedule from the Eastern Health Board upon which the Respondent relies, states that rent subsidy payments were made to tenants (not to landlords). It also states that the landlord customer number is assigned "using Revenue's computer matching and you may wish to verify this number is correct". Thus to the extent that the payments were linked to my tax registration number, it is clear from Revenue's own document, that the link was generated by the Respondent's "computer matching" which is expressly caveated with "you may wish to verify this number is correct".

It is clear that my number was assigned to the property automatically through Revenue's computer matching processes. I say that I am a stranger to any claim for

rent subsidy payments. I did not provide my number to any person for the purposes of claiming the rent subsidy payments and I did not receive any rent subsidy payments. Revenue's own document states that the payment is paid to tenants and not landlords. Again, I say that my father was not my tenant and I was not his landlord. This was his family home. I never charged my father rent. I never received any rent and I never received subsidy payments from the Eastern Health Board.

The Respondent's own schedule from the Eastern Health Board, which they have utilised as a basis for assessing me (wrongly) to rent, goes as far as 2013. However, Revenue has estimated large round-sum amounts of rent as accruing to me, for the years 2014 (€16,000) and 2015 (€17,000), without any schedule from the Eastern Health Board. They have not identified their basis for assessing me to tax for rental income for these tax years of assessment. I say that they have no basis whatsoever to do so as I did not receive rent from the property at any time during the relevant tax years of assessment.

I did not receive rental income from my parents or from any third party during the relevant tax years of assessment and there are no payments into my bank account representing rent received because I never was in receipt of the alleged, estimated sums as I explained to Revenue from the very first day I was asked about this.

Residence

During the tax years of assessment 2011 to 2014 and up to mid 2015, I lived in Northern Ireland, carrying on my business through my UK registered and resident company, [redacted].

In 2010 I did not spend a great deal of time in Belfast as I was in a lot of pain and I was doing my best to recover from a car accident in which I had been involved which occurred in August 2009.

In 2011, I stayed with relations of my wife one hour's drive from Belfast which was just outside [redacted]. *I was staying approximately 5 days per week initially as I incorporated* [redacted] *in January 2011 and I was keen to get it up and running.*

On or about late 2011, a friend of mine called [redacted] *came to visit me in Belfast and we spoke about the fact I was commuting from* [redacted] *and driving back to* [redacted] *sometimes at weekends and he mentioned his company was involved with the building and management of apartments in Belfast. It took a few months but he was true to his word and he organised for me to be able to stay in one of the 2 bedroom apartments in the Titanic Quarter in Belfast City Centre.*

The apartment was given to me for no rental cost however I did have to pay to park my car in the underground car park. Many of the apartments were unfinished at the time and many of the apartments were being used for corporate lettings. I had access to the apartment in 2012, 2013 and into 2014. It was within walking distance of the city centre.

I believe it was a 4th floor apartment in building 3 or a 3rd floor apartment in building 4. Now in 2025 these are called the [redacted] *but in 2012 the address was* [redacted]*. The arrangement continued until April 2014, approximately.*

[redacted] *was a very good friend who I met originally in the early 1990s in London and he was a very successful business man with interests in many different areas. I met him through my relationship with* [redacted] *and we became very good friends. I lost contact with* [redacted] *around 2016 and the last time I spoke to him was 2017. I have tried to contact him but have been unsuccessful in locating him.*

When living in the apartment my father came to stay there for weeks at a time and on one occasion he set the toaster on fire which resulted in myself having to pay to retile the kitchen and replace presses as I could not tell [redacted] *we had set his apartment on fire.*

My agreement with [redacted] *was that I would pay for any maintenance required during my time in the apartment and if he needed the apartment I would clean up the apartment and vacate it and I could return once his rental was finished. This only happened a few times over the time I was staying in the apartment.*

I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014.

Merchant acquirer data

I confirm that through [redacted] *and the website it operated,* [redacted]*, I utilised the services of both Elevon and Worldpay UK.*

Initially, I mistook and misunderstood the references to Worldpay UK. However I now know that Worldpay UK acceded to the card services business of Ulster Bank and Nat West and this is why my response at the outset was to assert that I had not had dealings with Worldpay when I now understand that in fact I have.

My banking was always with Bank of Ireland when in ROI. My Bank of Ireland branch in [redacted] *organised a meeting for me with the* [redacted] *Branch of Bank of Ireland where I opened the* [redacted] *Account in 2010 / 2011 and were I*

opened the Elavon Account for [redacted]. The Elavon account was a problem almost from day one as how debit cards were dealt with in Northern Ireland differed from how they were dealt with in ROI and the EU and this was causing me problems.

I spoke to my Bank of Ireland relationship manager in Belfast about this and he advised me to contact the[redacted] branch and they advised me to setup a euro account with Elavon which I did through them but then I found out I could not accept the payments to the Bank of Ireland Belfast Account which forced me to use the Bank of Ireland [redacted] Account and all of this was done after discussion with Bank of Ireland [redacted] and Elavon.

While the Merchant Acquirer data cites transactions to [redacted] in [redacted] and [redacted] in [redacted], I say this information is contained in that data because I continued to use my Irish bank accounts for online business and transactions. However, [redacted] closed in 2009 and I did not trade from [redacted]. in [redacted] until 2015. The business from the Merchant Acquirer data came through [redacted] the website operated by [redacted], my UK company.

The Revenue assert that the Merchant Acquirer data relates to an ROI business but this assertion is incorrect. I accept the Merchant Acquirer data and information however, it pertains to [redacted]. It does not relate to my Irish trade of [redacted] which ceased operations in 2009. Ireland was in deep recession at that time. It was because of my inability to generate sales from my Irish business in 2009, together with Revenue's refusal to issue me with a VAT number, that I made the decision to set up a company in Northern Ireland, where I could obtain a VAT number and conduct my business through a UK registered and resident company, namely, [redacted].

The Merchant Acquirer data relates to business which was generated by [redacted], a UK registered and resident company which was an online business operating the [redacted] website. The Merchant Acquirer data does not relate to business generated by an Irish trade as Revenue allege. I was not carrying out an Irish trade during these tax years of assessment.

Erroneous estimation/calculation of income tax assessment

The Respondent has calculated the assessments by estimating that the Merchant Acquirer data comprises 48% of total sales for each year. I say that this grossly underestimates the quantum of sales generated by card payments.

I say that the basis of Revenue's calculation is incorrect and unfair.

First of all, the Merchant Acquirer data relates to [redacted] *and* [redacted] *did not have a retail front. It was an online business only. The Merchant Acquirer data comprises 100% of sales in* [redacted].

[redacted], *my Irish trade, closed in 2009.* [redacted] *had a retail front in* [redacted] *however approximately 85% of the* [redacted] *business was online in 2008 and 2009 with very little foot fall. Even at that, most payments were by debit or credit card.*

Secondly, the Respondent in the assessments raised has estimated the net profit at 20% of the net turnover. This is far in excess of margins in this line of business. I say that based on my experience in this business, a more accurate and realistic margin would be a margin in the region of approximately 7-11%.

Documentation

I rely on the documentation heretofore submitted as part of this appeal. I have since located some more bank statements and these will shortly be furnished to Revenue and to the TAC.

A booklet of all bank statements in chronological order will be furnished for ease of reference, at the hearing of this appeal.

Initially I did not believe that I had any of the original bank statements from 2010 to 2015 as these has been given to the accountant from [redacted] *in East Belfast. These were paper statements. It was my normal procedure to punch 2 holes in the statements each month and put into a folder and at the end of the year I would hand this to the accountant which is how I had been advised to do this and what I understood was best practice.*

In 2017 I was asked for Bank Statements by Revenue relating only for 2015 and I was able to get these statements and I provided what I had to Revenue.

Re 2010, 2011 and 2013 I could not simply log into the Bank of Ireland app and download bank statements given there was no feature to do this. It was necessary to order the statements which the bank would then post to you.

I was not asked for the 2010, 2011, 2012, 2013 or 2014 Bank Statements by Revenue until 2019 and when I asked Bank of Ireland for these statements I was told that Bank of Ireland only kept statements for a maximum of 5 years. I went back to [redacted] *from Revenue and I explained to her what Bank of Ireland had told me.*

A few days later she sent a Form BD62 for me to sign which I was told was to allow [redacted] to get access to all of my Bank of Ireland bank records including the statements. I co-operated with this request and signed the BD62. I understood that this would give [redacted] access to my Bank of Ireland accounts.

In 2019 I also tried to contact the accountant from Belfast however I found the phone number was no longer connected and at a later date I drive to Belfast and I found the office closed. I called into one of the neighbours and I was told that the person I was looking for had closed the business through ill health and had died the previous year.

In late August of 2023 I was moving boxes belonging to my father who died in [redacted] of 2019 and in one of the boxes I noticed documents related to myself from Belfast. There was a number of boxes in storage belonging to my father and I did not want to dispose of them. I assumed the papers were belonging to my father. I knew he kept almost every document from his life and he was 87 years old when he died. As I rummaged through the boxes with the help of my wife I found many of my bank statements from 2010 to 2015 and I can only assume he took these when we were moving from the apartment in Belfast.

I do not know when or why he put the bank statements into his boxes and I would love nothing better to be able to ask him but I cannot do this as he died in May of 2019. If I had of known these documents existed in 2019 I would have without question handed them over to[redacted] as I have nothing to hide. I signed a BD62 and tried to facilitate Revenue obtaining my bank records so that clarity could be brought to this matter and I hoped, resolution in terms of the outcome.

I never expected to need these old bank statements. If it were not for my father and his hoarding of documents these bank statements would not exist for Revenue or myself given neither myself nor Revenue were able to obtain them from the bank.

I would like to make the point that during the relevant tax years of assessment, e-banking was not what it is today. Smartphones were not widespread until the mid-tens and it was not uncommon for people to still deal with bank statements in hard copy. I regret that I did not retain all of my bank statements and did not have them accessible to me and in chronological order. I regret that I have not been able to furnish Revenue with all the bank statements that they have requested however, I have done everything possible to locate and furnish my bank statements to Revenue and I have done everything I can to facilitate Revenue recovering the bank statements from my bank. However, as Revenue discovered, Banks retain statements for a finite number of years and as a result, this procedure was not effective to recover all of the statements and I

regret that that is the case however I did everything within my power to facilitate the recovery by Revenue of my bank records and statements.

Miscellaneous

[redacted]

This matter has been ongoing for many years and during that time Invoices have been produced by [redacted] *from* [redacted] *dated 24 September 2009 and 14 October 2009 to be shipped to* [redacted] *at* [redacted].

[redacted] *did not exist in 2009. Its predecessor in title* [redacted], *traded from 21 December 1981 to 3 January 2012. I do not understand how an invoice could exist from* [redacted] *dated 2009 when that company did not trade until 1 September 2014. The invoices from* [redacted] *could not have existed in 2009 in circumstances where the company did not trade until 2014 and I am concerned about the accuracy and reliability of the documents being relied upon by the Revenue Commissioners in support of their case.*

PPS

Prior to 2010, my tax reference number was [redacted]. *This number has not been in use or available to me since prior to 2010 as it was compromised and a new PPS number was provided to me in 2012 namely* [redacted]. *I have requested details in relation to this and why it was no longer available to me however I do not know the answer. Conversely, in correspondence with me, the Respondent has used the tax number* [redacted]. *During the period 2010 to 2014 I used my National Insurance number as I lived and worked in Belfast.*

Conclusion

For the reasons set out above, I believe that the assessments are incorrect, excessive and should be reduced to zero.

I confirm my willingness to attend in person at the Tax Appeals Commission to give oral evidence and/or answer questions in relation to my witness statement.

I believe that this witness statement is true and accurate to the best of my knowledge and belief."

Witness Evidence - [redacted]

57. The Commissioner heard evidence from [redacted] (from here on referred to as the "Witness") who is an Assistant Principal in the Respondent's Business Division in the [redacted] branch. The following is a summary of the direct evidence adduced by the Witness.

58. The Witness stated that, although the contested Notices of Assessment for 2010, 2011, 2012 and 2013 and the Notice of Amended Assessment for 2014 were raised outside of the 4 year period provided for in section of the 959AC of the TCA 1997, the Respondent had reason to believe that there were grounds for the raising of those Assessments based on third party information received in the form of Merchant Acquirer data and information from the Department of Social Protection regarding rent subsidy paid in relation to the a property at [redacted] (from here on referred to as the "Property"). This information, she stated, was assessed by the Respondent and established, she stated, that the Appellant had been in receipt of income in those years that had not been returned by the Appellant.

59. The Witness stated that the Appellant had not filed income tax returns in Ireland for the years 2010 to 2013 inclusive. In addition, she stated that the Appellant has never provided evidence to the Respondent that he has either filed tax returns or paid tax to the HMRC for the years 2010 to 2013 inclusive.

60. The Witness further stated that the Appellant filed nil tax returns in Ireland for the years 2014 and 2015. In addition, she stated that the Appellant has never provided evidence to the Respondent that he has either filed tax returns or paid tax to the HMRC for the years 2014 and 2015.

61. She stated that there is a legislative obligation on certain financial institutions which process payments on behalf of customers to provide Merchant Acquirer data to the Respondent. The Respondent, she stated, came into possession of Merchant Acquirer data in relation to the Appellant for the years 2010 to 2015 inclusive which indicated that the Appellant was in receipt of payments in those years. All of the Merchant Acquirer payments were, she stated, in Euro.

62. In addition, she stated that the Respondent was in receipt of information from the then Eastern Health Board, indicating that rent subsidy payments had been paid in relation to the Property which the Appellant owns.

63. She stated that, in raising the contested Notices of Assessment and Notices of Amended Assessment, the Respondent did not use information which had been included in VAT returns filed by the Appellant. This, she stated, was because the Merchant Acquirer data was available and the Respondent had based the Appellant's turnover for the years 2010 to 2015 inclusive based solely on the Merchant Acquirer data received in relation to the Appellant.

64. She stated that, in calculating the Appellant's income for the periods 2010 to 2015 inclusive, the Respondent had taken the total Merchant Acquirer payment figure for the relevant year and had removed the assumed VAT element from the total to arrive at a turnover figure.

65. Once the turnover figure was arrived at, she stated that the Respondent had looked at the company which the Appellant had established in 2015 and had used the figures from that company to establish a percentage of online versus non-online sales. This established, she stated, that 48% of sales were generated through online sales and 52% of sales were generated through non-online sales.

66. She stated that non-online sales would have been comprised of cash sales and other online sales (such as through PayPal or other payment methods) for which, during 2010 to 2015 inclusive, there had not been an obligation on the payment providers to return information to the Respondent.

67. In relation to rental income, she stated that rent subsidy information received from third party sources was also used to calculate income received by the Appellant for the years 2010 to 2015 inclusive. She stated that the Appellant is, and was during the years 2010 to 2015 inclusive, the registered owner of the Property and that he was identified by the Department of Social Protection as the landlord in respect of the rent subsidy payments that were made in relation to the Property.

68. She stated that, based on the information available, the Respondent had made its best judgement in calculating the Appellant's income for the periods 2010 to 2015 inclusive.

69. The Witness stated that, despite large amounts of correspondence with the Appellant, he has never provided information to the Respondent to assist in verifying, or contradicting, the information which the Respondent was in receipt of. She stated that the Appellant's stance throughout had been that he was not trading in the State but that the information which the Respondent was in receipt of shows that he was in receipt of Merchant Acquirer payments and rent subsidy payments in the State in the years 2010 to 2015 inclusive.

70. She stated that, despite numerous requests over many years, the Appellant had never provided any information to the Respondent to substantiate his claim that he was resident outside of the State for the periods 2010 to 2015 inclusive.

71. She stated that the Appellant has not provided the Respondent with a complete set of bank statements for the periods 2010 to 2015 inclusive. She stated that the Appellant has never provided statements from the bank account(s) attached to the Merchant Acquirer accounts.

72. The Witness stated that she and the Respondent had at all times used their best judgement in raising the contested Notices of Assessment and Notices of Amended Assessment, based on the information which they were in receipt of at the time of raising in July 2019.

Submissions

Appellant's Submissions

Preliminary objection – time limit

73. It was submitted that the contested Notice of Amended Assessment for 2014 was raised out of time as it was raised outside of the four year period provided for under section 959AA of the TCA 1997.

74. No objection to the timing of the Respondent raising of the contested Notices of Assessment for the years 2010 to 2013 was raised, with Counsel for the Appellant helpfully setting out the legislative reasons why this is so.

Appellant's Residence

75. The Appellant submitted that he was resident in Northern Ireland during the years 2010 to 2015. As a result, it was submitted, the Appellant's income from a trade or profession in Northern Ireland for those years is not subject to tax in this jurisdiction.

Card vs Cash Sales

76. In relation to the quantum of income to which the Appellant has been assessed for the years 2010 to 2015, it was submitted that the Respondent's contention that 52% of the Appellant's sales were cash sales is unrealistic.

77. Notwithstanding the Appellant's position that he was not resident in Ireland for the years 2010 to 2015, it was submitted that the suggestion that all in person sales were conducted in cash and that no card transactions for in person sales had occurred is not realistic or

credible and fails to reflect the commercial realities of retail business. It was submitted that the majority of payments received by the Appellant were made by card and, therefore, the Merchant Acquirer data should be treated as a much larger percentage of the overall sales of the business.

Profit Margin

78. It was submitted that the profit margin of 20% applied by the Respondent to the Appellant's sales is too high and that a more appropriate profit margin falls in the region of between 7% and 11%.

Rental Income

79. In relation to rental income for the years 2010 to 2015, it is the Appellant's position that he was not in receipt of rental income for the Property in those years. It was submitted that the Property had been purchased by his parents.

80. It was submitted that in or around 1990 when the Appellant was 18 years of age, for reasons unknown to the Appellant, the Property had been registered in his name. He stated that his parents had lived in the Property as their family home for the duration of their remaining lifetimes until his mother passed away in 2012 at which point his father moved out of the Property.

81. It was submitted that, in or around 2012, his father had attempted to rent the Property to a third party but that this arrangement had been between his father and the third party. The Appellant did not, it was submitted, have any role to play in this.

82. It was submitted that the in all the years since the Property had been registered in his name, the Appellant had had never charged his parents rent, nor had he received any rent subsidy payments in relation to the Property.

83. It was submitted that the documentation proffered by the Respondent in support of the contention that the Appellant was in receipt of rent subsidy payments from the Eastern Health Board / HSE expressly provides that rent subsidy payments were made to tenants and not to landlords. It was also submitted that the documentation sets out that landlord customer numbers were assigned "*Using Revenue's computer matching and you may wish to verify this number is correct*".

84. It was further submitted that the Appellant had not signed any claim forms in relation to rent subsidy payments and that if any such forms were submitted which purported to be signed by him, they were not lodged or signed by him.

85. The Appellant also submitted that there is no evidence that payments of rent subsidy were made to, or received by, him.

86. The Appellant submitted that, in relation to the years 2014 and 2015, the Respondent has assessed him to rental income on the basis of an estimate. The Respondent, it was submitted, has no documentary evidence which supports the contention that the Appellant had received rental income in 2014 and 2015.

Respondent's Submissions

87. It is the Respondent's position that the Appellant was resident in Ireland for the years 2010 to 2015 inclusive and that all of the income received by the Appellant in those years is subject to tax in this State.

88. The Respondent submitted that the Appellant did not submit tax returns for the years 2010 to 2013 inclusive and for the years 2014 and 2015 he submitted "nil" tax returns. All of the returns submitted were done so without ticking the relevant box to indicate that he was not resident in Ireland in those years. It is the Respondent's position that the Appellant was resident in Ireland for the years 2010 to 2015 inclusive.

89. It was submitted that the Appellant has failed to establish that he was resident in Northern Ireland for the years 2010 to 2015 inclusive. It was submitted that the Appellant has failed to submit documentation which establishes his claimed residence in Northern Ireland and that the documentation which he has submitted establishes that he was resident in this State for those years. In addition, it was submitted, the Appellant has failed to provide any documentary evidence which establishes that he made tax returns or paid tax in Northern Ireland for those years.

90. The Respondent submitted that all of the financial information which the Appellant has submitted establishes that the Appellant was resident in this State and was trading in this State for the years 2010 to 2015 inclusive.

91. In relation to rental income, it was submitted that the Appellant was the legal registered owner of the Property and that applications for rent subsidy had been made to the Eastern Health Board / Department of Social Protection in respect of the Property for the years 2010, 2011, 2012 and 2013.

92. The Respondent submitted that the Appellant had been assessed to rental income on the years 2010 to 2015 inclusive based on the market rent which similar properties received in those years. It is the Respondent's position that the Appellant has failed to submit all of his bank statements in relation to those years.

Material Facts

93. 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."*

94. Charleton J. confirmed that the burden of proof rests on Appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 (from here on referred to as "*Menolly Homes*") 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."

95. This has most recently been confirmed by the Court of Appeal by McDonald J. in *JSS & Ors v A Tax Appeal Commissioner and the Criminal Assets Bureau* [2025] IECA 96 (from here on referred to as "*JSS*" when he stated at paragraph 34 that:

"Both s. 949AK(1) of the 1997 Act and s. 50(6) of the 1970 Statute proceed on the basis that the assessment will stand unless it is established that the assessment is wrong. As outlined above, there is a long line of case law on both sides of the Irish Sea which has taken the consistent view that, under the provisions of these sections (and their respective predecessor provisions), the taxpayer bears the burden of demonstrating that a tax assessment is wrong..."

Uncontested Material Facts

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

96.1. The Appellant is a businessman who was involved in the business of [redacted] for the years 2010 to 2015 inclusive.

96.2. The Appellant did not submit tax returns to the Respondent for the years 2010, 2011, 2012 and 2013.

96.3. On 29 March 2017, the Appellant submitted a Form 11 tax return for the year 2014. The return submitted was a "nil return" for that period.

96.4. On 10 October 2016, the Appellant submitted a Form 11 tax return for the year 2015. The return submitted was a "nil return".

96.5. On 3 November 2017, the Respondent issued an audit notification letter to the Appellant for income tax and VAT for the year 2015.

96.6. On 15 June 2018, the Respondent informed the Appellant that the scope of the audit had been expanded to include the years 2010, 2011, 2012, 2013 and 2014.

96.7. On 4 July 2019, the Respondent issued Notices of Assessment to income tax to the Appellant for the years 2010 to 2013 inclusive and in addition issued Notices of Amended Assessment to income tax to the Appellant for the years 2014 and 2015 for the following amounts:

Tax Year	Amount €
2010	31,694
2011	37,403
2012	37,024
2013	55,486
2014	90,333
2015	27,133

96.8. The Notices of Assessment to income tax and the Notices of Amended Assessment to income tax raised by the Respondent on 4 July 2019 assessed the Appellant to Schedule D income "[redacted] – *Self*" and "*Profit from letting Premises – Self*".

96.9. The Appellant appealed the Notices of Assessment to income tax and the Notices of Amended Assessment to income tax issued by the Respondent on 4 July 2019 by way of Notices of Appeal dated 2 August 2019.

96.10. In addition, on 4 July 2019 the Respondent issued VAT estimates for the years 2011 to 2015 inclusive. However, notification of the VAT estimates was never issued to the Appellant.

96.11. On 4 July 2019, the Respondent issued a Final Demand letter to the Appellant for the payment of VAT in respect of the year 2015. The Appellant submitted an appeal in relation to this Final Demand letter to the Commission.

96.12. On 9 December 2022, the Respondent wrote to the Appellant confirming that, as a result of the estimates to VAT not being notified to the Appellant, it was undertaking to reverse the estimates to VAT for the years 2011 to 2015 inclusive.

96.13. The Appellant confirmed at the oral hearing of this appeal that, as a result of the reversal by the Respondent of the estimates to VAT for the years 2011 to 2015 inclusive, he was not pursuing any appeal in relation to the estimates to VAT for the years 2011 to 2015 inclusive.

96.14. This, therefore, is an appeal against Notices of Assessment to income tax for the years 2010 to 2013 inclusive issued by the Respondent on 4 July 2019 and against Notices of Amended Assessment to income tax for the years 2014 and 2015 issued by the Respondent on 4 July 2019.

Contested Material Facts

97. The following material facts are in dispute in this appeal:

97.1. Whether the Appellant was resident in Northern Ireland in the years 2010 to 2015 inclusive;

97.2. Whether the Appellant was trading within the State in the years 2010 to 2015 inclusive;

97.3. The quantum of the income and profits in relation to the Appellant's trade within the State in the years 2010 to 2015 inclusive;

97.4. Whether the Appellant was in receipt of rental income in relation to the Property for the years 2010 to 2015 inclusive.

Whether the Appellant was resident in Northern Ireland in the years 2010 to 2015 inclusive

98. On the one hand, it is the Appellant's position that he was resident in Northern Ireland in the years 2010 to 2015 inclusive. On the other hand, the Respondent has submitted that the Appellant was resident in the Irish State in the years 2010 to 2015 inclusive.

99. The Appellant has accepted that he had an address in the State during the years 2010 to 2015 and that he was paying a mortgage on a property in which his wife, and latterly his child, were living during those years.

100. Section 819 of the TCA 1997 provides that in order to discharge the burden of proof to establish that he was resident in Northern Ireland for the years 2010 to 2015 inclusive, the Appellant must establish the following:

"(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State -

(a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or

(b) at any one time or several times -

(i) in the year of assessment, and

(ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days on which the individual was present in the State in the preceding year of assessment) in the aggregate amounting to 280 days or more."

101. McDonald J in *JSS* confirmed that in tax appeals where residence is a contested fact, the burden of proof rests on the Appellant to establish his or her place of residence in the relevant tax periods. He stated that:

"29 …in assessing whether an individual is liable to tax, one always needs to examine the factual circumstances during a specific tax year to see whether that person was or was not resident in Ireland during that period, whether that person was carrying on a trade during that period and whether that person realised a profit or a gain during that period from that trade. It may well transpire that a person may meet those criteria in one period but not in another. Everything will depend upon the facts which are found to exist.

30. In my view, the plaintiffs have wholly failed to demonstrate that, in considering whether a person is a chargeable person within the meaning of the 1997 Act, a distinction must be drawn between residence, on the one hand, and the remaining criteria for chargeability, on the other. In this context, issues relating to whether a person is carrying on a trade frequently come before the TAC. Likewise, the question whether a person has generated a profit or a loss on his or her trade also arises on a very frequent basis. It has never been suggested that the Revenue bears the burden of proof in an appeal to the TAC in respect of such issues. There is a long line of authority both here and in the various jurisdictions within the United Kingdom to the effect that, on an appeal from a tax assessment, the burden of proof lies on the taxpayer in respect of these issues. That was the view taken by Gilligan J. in T.J. v. Criminal Assets Bureau [2008] IEHC 168 at para. 50. In turn, that view was reiterated by Charleton J. (albeit in the context of a V.A.T. appeal) in Menolly Homes Ltd. v. The Appeal Commissioners [2010] IEHC 49 at para. 22.

…

34. Both s. 949AK(1) of the 1997 Act and s. 50(6) of the 1970 Statute proceed on the basis that the assessment will stand unless it is established that the assessment is wrong. As outlined above, there is a long line of case law on both sides of the Irish Sea which has taken the consistent view that, under the provisions of these sections (and

their respective predecessor provisions1), the taxpayer bears the burden of demonstrating that a tax assessment is wrong. While most of those cases have been decided in the context of issues other than residence, the appellants have completely failed to put forward any plausible basis to suggest that issues relating to residence are required to be addressed differently to any other aspect of chargeability. Moreover, as explained in paras. 14 to 15 above, Wood v. Holden provides clear authority for the proposition that appeals of assessments on residence grounds are treated in precisely the same way as appeals of assessments on other grounds."

102. Having considered the evidence adduced and the documents submitted, the Commissioner is not satisfied that the Appellant has discharged the burden of proof to establish that he was resident in Northern Ireland in the years 2010 to 2015 inclusive. This is for the reasons set out below.

103. The Appellant claimed in his direct evidence that he was resident in Northern Ireland in the years 2010 to 2015 inclusive as follows:

    103.1. 2010: In his direct evidence he stated that he "*did not spend a great deal of time*" in Belfast in 2010.

    103.2. 2011: In his direct evidence he stated that in 2011 he stayed with relations of his wife in Northern Ireland. He stated that he spent approximately 100 days in Northern Ireland in 2011.

    103.3. 2012, 2013 and 2014: In his direct evidence he stated that in late 2011, a friend of his agreed to allow him to stay, rent and bill free, in a 2-bedroom apartment in the Titanic Quarter in Belfast city centre. He stated that he had access to that apartment in 2012, 2013 and 2014 on the basis that he would maintain the apartment and would move out when the apartment was required for short term lets.

    103.4. 2015: In his direct evidence he stated that he spent approximately 100 days in Northern Ireland in 2015.

2010

104. In relation to the year 2010, the Commissioner notes that the Appellant gave direct evidence in his Witness Statement which stated that "*I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015*". He also stated in his Witness Statement that:

"During the tax years of assessment 2011 to 2014 and up to mid 2015, I lived in Northern Ireland, carrying on my business through my UK registered and resident company, [redacted].

In 2010 I did not spend a great deal of time in Belfast as I was in a lot of pain and I was doing my best to recover from a car accident in which I had been involved which occurred in August 2009."

105. Despite the direct evidence in his Witness Statement in relation to his residence in 2010, the Appellant maintained a position throughout the oral hearing that he was resident in Northern Ireland in 2010. Under cross examination, the Appellant was unable to state how many days he spent in Northern Ireland in 2010.

106. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2010. It was open to the Appellant to submit documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2010. He did not.

107. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2010 which he had submitted and that he was unable to point to any transactions which would tend to establish that he was living and residing in Northern Ireland in 2010.

2011

108. In relation to his claim that he was resident in Northern Ireland in 2011, the Commissioner notes the Appellant's direct evidence in his Witness Statement that he was living in Northern Ireland and was carrying on business through his UK registered and resident company, [redacted] in that year.

109. In relation to the year 2011, the Commissioner notes that the Appellant gave direct evidence in his Witness Statement which stated that "*I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015*". He also stated in his Witness Statement that:

"In 2011, I stayed with relations of my wife one hour's drive from Belfast which was just outside [redacted]*. I was staying approximately 5 days per week initially as I incorporated* [redacted] *in January 2011 and I was keen to get it up and running.*

…"

110. The Appellant also gave direct evidence in his Witness Statement that:

"I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014."

111. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2011. It was open to the Appellant to submit documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2011. He did not.

112. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2011 which he had submitted and that he was unable to point to any transactions which would tend to establish that he was living and residing in Northern Ireland in 2011.

113. The Commissioner also notes that it was open to the Appellant to adduce third party evidence of his living with relatives of his wife in Northern Ireland in 2011. He did not.

114. The Commissioner further notes that an application to incorporate [redacted] was submitted by or on behalf of the Appellant on [redacted] January 2011 to the UK Companies Office. This application states that the country / state in which the Appellant was usually resident at that time was Ireland. The Commissioner does not accept the Appellant's assertion under cross examination that he would never refer to Northern Ireland as being a place when filling out documentation. The application to incorporate a company is an official document which is required to be completed correctly. The Commissioner notes that the Appellant had professional advice and guidance when completing this application.

115. In addition, the Commissioner notes that the AR01 for 2011 Annual Return form dated 27 January 2012 and submitted by or on behalf of [redacted] to the UK Companies Office states that the country / state in which the Appellant was usually resident was the "Republic of Ireland" and is signed by the Appellant.

2012

116. In relation to his claim that he was resident in Northern Ireland in 2012, the Commissioner notes the Appellant's direct evidence in his Witness Statement that he was living in Northern Ireland and was carrying on business through his UK registered and resident company, [redacted] in that year.

117. The Commissioner notes that the Appellant gave direct evidence in his Witness Statement which stated that "*I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015*". He also stated in his Witness Statement that:

"On or about late 2011, a friend of mine called [redacted] came to visit me in Belfast and we spoke about the fact I was commuting from [redacted] and driving back to [redacted] sometimes at weekends and he mentioned his company was involved with the building and management of apartments in Belfast. It took a few months but he was true to his word and he organised for me to be able to stay in one of the 2 bedroom apartments in the Titanic Quarter in Belfast City Centre.

The apartment was given to me for no rental cost however I did have to pay to park my car in the underground car park. Many of the apartments were unfinished at the time and many of the apartments were being used for corporate lettings. I had access to the apartment in 2012, 2013 and into 2014. It was within walking distance of the city centre.

I believe it was a 4th floor apartment in building 3 or a 3rd floor apartment in building 4. Now in 2025 these are called the [redacted] but in 2012 the address was [redacted]. The arrangement continued until April 2014, approximately.

…"

118. The Appellant also gave direct evidence in his Witness Statement that:

"I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014."

119. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2012. It was open to the Appellant to submit documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2012. He did not.

120. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2012 which he had submitted and that he was unable to point to any transactions which would tend to establish that he was living and residing in Northern Ireland in 2012.

121. The Commissioner also notes that it was open to the Appellant to adduce third party evidence of his living in an apartment in the Titanic Quarter of Belfast in 2012. He did not.

122. The Commissioner notes that the Appellant claimed that he had to pay for parking for his car in the underground car park of the apartment building. It was open to the Appellant to adduce evidence of regular payment made in relation to such parking. He did not.

123. Further, the Commissioner notes that the AR01 Annual Return form for 2012 dated 27 January 2013 and submitted by or on behalf of [redacted] to the UK Companies Office states that the country / state in which the Appellant was usually resident at that time was the "Republic of Ireland" and is signed by the Appellant.

2013

124. In relation to his claim that he was resident in Northern Ireland in 2013, the Commissioner notes the Appellant's direct evidence in his Witness Statement that he was living in Northern Ireland and was carrying on business through his UK registered and resident company, [redacted] in that year.

125. The Commissioner notes that the Appellant gave direct evidence in his Witness Statement which stated that "*I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015*". He also stated in his Witness Statement that:

> *"On or about late 2011, a friend of mine called [redacted] came to visit me in Belfast and we spoke about the fact I was commuting from [redacted] and driving back to [redacted] sometimes at weekends and he mentioned his company was involved with the building and management of apartments in Belfast. It took a few months but he was true to his word and he organised for me to be able to stay in one of the 2 bedroom apartments in the Titanic Quarter in Belfast City Centre.*
>
> *The apartment was given to me for no rental cost however I did have to pay to park my car in the underground car park. Many of the apartments were unfinished at the time and many of the apartments were being used for corporate lettings. I had access to the apartment in 2012, 2013 and into 2014. It was within walking distance of the city centre.*
>
> *I believe it was a 4th floor apartment in building 3 or a 3rd floor apartment in building 4. Now in 2025 these are called the [redacted] but in 2012 the address was [redacted]. The arrangement continued until April 2014, approximately.*
>
> *…"*

126. The Appellant also gave direct evidence in his Witness Statement that:

> *"I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014."*

127. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2013. It was open to the Appellant to submit

documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2013. He did not.

128. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2013 which he had submitted. The only period in 2013 which contains an extended period of time with GBP transactions is from mid-October to early November 2013. The Commissioner notes that under cross examination, the Appellant was unable to identify what those transactions related to. The Commissioner notes that during this period, there are also transactions in Ireland included in the bank account.

129. The Commissioner also notes that it was open to the Appellant to adduce third party evidence of his living in an apartment in the Titanic Quarter of Belfast in 2013. He did not.

130. The Commissioner further notes that the Appellant claimed that he had to pay for parking for his car in the underground car park of the apartment building. It was open to the Appellant to adduce evidence of regular payment made in relation to such parking. He did not.

2014

131. In relation to his claim that he was resident in Northern Ireland in 2014, the Commissioner notes the Appellant's direct evidence in his Witness Statement that he was living in Northern Ireland and was carrying on business through his UK registered and resident company, [redacted] in that year.

132. The Commissioner notes that the Appellant gave direct evidence in his Witness Statement which stated that "*I believe that I was not Irish tax resident in relation to the tax years of assessment 2011 to 2015*". He also stated in his Witness Statement that:

> *"On or about late 2011, a friend of mine called [redacted] came to visit me in Belfast and we spoke about the fact I was commuting from [redacted] and driving back to [redacted] sometimes at weekends and he mentioned his company was involved with the building and management of apartments in Belfast. It took a few months but he was true to his word and he organised for me to be able to stay in one of the 2 bedroom apartments in the Titanic Quarter in Belfast City Centre.*
>
> *The apartment was given to me for no rental cost however I did have to pay to park my car in the underground car park. Many of the apartments were unfinished at the time and many of the apartments were being used for corporate lettings. I had access*

to the apartment in 2012, 2013 and into 2014. It was within walking distance of the city centre.

I believe it was a 4th floor apartment in building 3 or a 3rd floor apartment in building 4. Now in 2025 these are called the [redacted] *but in 2012 the address was* [redacted]*. The arrangement continued until April 2014, approximately.*

…"

133. The Appellant also gave direct evidence in his Witness Statement that:

"I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014."

134. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2014. It was open to the Appellant to submit documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2014. He did not.

135. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2014 which he had submitted and that he was unable to point to any transactions which would tend to establish that he was living and residing in Northern Ireland in 2014.

136. The Commissioner also notes that it was open to the Appellant to adduce third party evidence of his living in an apartment in the Titanic Quarter of Belfast in 2014. He did not.

137. The Commissioner notes that the Appellant claimed that he had to pay for parking for his car in the underground car park of the apartment building in 2014. It was open to the Appellant to adduce evidence of regular payment made in relation to such parking. He did not.

138. The Commissioner notes that the Form 11 income tax return for 2014 filed by the Appellant with the Respondent in 2017 did not indicate that the Appellant was resident outside of Ireland for 2014 in the box which is contained in that form.

139. The Commissioner notes that this Form 11 income tax return for 2014 was filed by a tax agent on the Appellant's behalf.

140. The Commissioner does not accept as credible the Appellant's explanation under cross examination that the income tax return did not indicate that the Appellant was resident outside of Ireland on the basis that it was a nil return filed for the purpose seeking a tax clearance certificate and that his attention was not brought to this aspect of the tax return

by his tax agent. This is particularly in circumstances where the Appellant claims that he was both resident in Northern Ireland and carrying out a trade in Northern Ireland in 2014.

2015

141. In relation to his claim that he was resident in Northern Ireland in 2015, the Commissioner notes the Appellant's direct evidence in his Witness Statement that he was living in Northern Ireland and was carrying on business through his UK registered and resident company, [redacted] for part of that year.

142. The Appellant also gave direct evidence in his Witness Statement that:

> *"I estimate that I spent approximately 100 days in Belfast in 2011 and 2015 and that I spent approximately 200 days in Belfast in 2012, 2013 and 2014."*

143. The Appellant has not submitted any documentary evidence to support his claim that he was resident in Northern Ireland in 2015. It was open to the Appellant to submit documents such as receipts or bank account statements with evidence of everyday living expenses which he incurred in Northern Ireland in 2015. He did not.

144. The Commissioner notes that, under cross examination, the Appellant was brought through the bank statements for 2015 which he had submitted and that he was unable to point to any transactions which would tend to establish that he was living and residing in Northern Ireland in 2015.

145. The Commissioner notes that the Form 11 income tax return for 2015 filed by the Appellant in 2017 did not indicate that the Appellant was resident outside of Ireland for 2015 in the box which is contained in that form.

146. The Commissioner notes that this income tax return was filed by a tax agent on the Appellant's behalf.

147. The Commissioner does not accept as credible the Appellant's explanation under cross examination that the income tax return did not indicate that the Appellant was resident outside of Ireland on the basis that it was a nil return filed for the purpose seeking a tax clearance certificate and that his attention was not brought to this aspect of the tax return by his tax agent. This is particularly in circumstances where the Appellant claims that he was both resident in Northern Ireland and carrying out a trade in Northern Ireland in 2015.

148. Throughout cross examination, the Appellant claimed that he has been unable to procure full bank statements from his bank and gave this as his reason for not submitting complete bank statements, both personal and business, for the years under appeal 2010 to 2015

inclusive. The Appellant has claimed that he has asked his bank on several occasions to provide complete bank statements but that they had informed him that they were unable to provide him with same. No documentary evidence of any attempt by the Appellant to procure the bank statements has been submitted. In addition, no documentary evidence of the bank's reasons for not providing the Appellant with the bank statements has been submitted to the Commissioner.

149. For the reasons set out, the Commissioner finds, on the balance of probabilities, that the Appellant has not discharged the burden of proof to establish that he was resident in Northern Ireland in the years 2010 to 2015 inclusive. The Appellant has not provided corroborating evidence of his daily life in Northern Ireland, to include but not limited to:

    149.1. evidence relating to his places of residence,

    149.2. evidence relating to the arrangements which pertained to his places of residence,

    149.3. evidence of purchasing every day essentials such as food and toiletries,

    149.4. evidence of parking expenses,

    149.5. evidence of maintenance carried out on his place of residence as claimed.

150. The Commissioner would expect that, for a period extending over six calendar years, the Appellant would be in a position to provide such evidence and / or to adduce third party evidence which would tend to support his claim. He did not.

151. Therefore, the Commissioner finds as a material fact that the Appellant was not resident in Northern Ireland for the years 2010 to 2015 inclusive.

152. For the reasons set out above, the Commissioner finds as a material fact that the Appellant was resident in the State for the years 2010 to 2015 inclusive.

Whether the Appellant was trading within the State in the years 2010 to 2015 inclusive

153. It is the Appellant's position that he was not trading within the State in the years 2010 to 2015 inclusive.

154. In support of this, the Appellant stated in his Witness Statement that he ceased his sole trade where he was trading as "[redacted]" in late 2009. He stated that he took steps to move his business to Northern Ireland in 2010 and that he started trading in Northern Ireland through [redacted] which was a limited liability company which was first registered by the Appellant on [redacted] January 2011 in the UK Companies Office. He stated that [redacted] traded in Northern Ireland

from 2011 until May 2015 inclusive, at which time [redacted] was dissolved.

155. [redacted] was incorporated on [redacted] January 2011 by the Appellant in the UK Companies Office. The first annual return filed by [redacted] was filed with the UK Companies Office on 26 April 2012 for the year ending 31 January 2012 notes that [redacted] was dormant for that period and was signed by the Appellant.

156. The annual return for [redacted] for the year ending 31 January 2013 filed with the UK Companies Office contains an abbreviated balance sheet for the year ending 31 January 2013 which shows that [redacted] had current assets of GB£11,823, creditors falling due within 1 year of €13,816 and net current liabilities of €1,993.

157. The Appellant did not submit annual returns for [redacted] which were filed with the UK Companies Office for the years ending 31 January 2014, 31 January 2015 or 31 January 2016.

158. The Appellant did not submit trading accounts in relation to [redacted] any of the years ending 31 January 2012, 31 January 2013, 31 January 2014, 31 January 2015 or 31 January 2016.

159. The Appellant did not submit any tax returns filed by [redacted] with HMRC.

160. The Appellant submitted statements of a bank account held by [redacted] in Bank of Ireland UK which were not fully legible. However, the Commissioner notes that there were 6 pages of statements in total submitted, each page of which contain less than five transactions.

161. The Appellant has not submitted any invoices or receipts which [redacted] issued to customers, nor has he submitted any invoices or purchase orders which [redacted] were issued with in relation to the purchase of stock for trading purposes for those years.

162. In addition, the Appellant has not submitted any invoices or receipts in relation to any services which [redacted] utilised in those years.

Merchant Acquirer Data

163. The Respondent submitted Merchant Acquirer Data in respect of the Appellant which it had obtained from card services operators Elavon Financial Services Limited and Worldpay for the years 2010 to 2015 inclusive.

164. The following information is contained in the Merchant Acquirer Data which was submitted by the Respondent and which the Appellant has stated he accepts is accurate:

Year	Merchant Acquirer Company	Name of Payee received from Merchant Acquirer Company	Amount Paid €	Bank Account into which payments made
2010	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	285,468.72	[redacted]
2010	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	360.00	[redacted]
2011	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	103,700.18	[redacted]
2011	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	209,670.02	[redacted]
2012	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	311,366.66	[redacted]
2013	Elavon Financial Services Limited – Unique ID [redacted]	[redacted]	275,006.68	[redacted]
2013	Worldpay (UK) Ltd – Unique ID [redacted]	[redacted]	174,195.30	[redacted]

		[redacted]		
2014	Worldpay (UK) Ltd – Unique ID[redacted]	[redacted]	365,624.51	[redacted]
2014	Worldpay (UK) Ltd – Unique ID [redacted]	[redacted]	280,651.83	[redacted]
2015	Worldpay (UK) Ltd – Unique ID [redacted]	[redacted]	334,217.63	[redacted]

165. The Appellant has accepted the accuracy of the figures relating to the Merchant Acquirer Data. The Appellant has not submitted any statements relating to the data received and which would identify the details relating to the individual payments which make up the annual figures. The Appellant has submitted that he was unable to get detailed, or indeed any, statements from the service providers. No documentation as to the efforts which the Appellant made to seek the statements has been submitted. In addition, no documentation as to the reasons why the Merchant Acquirers were unable to provide the statement has been submitted.

166. He stated under cross examination that the Merchant Acquirer accounts were set up through his bank in Northern Ireland but that there had been a difficulty in payments being made by the Merchant Acquirer to the [redacted] bank account in Northern Ireland. He stated that the bank in Northern Ireland suggested that he use one of his accounts in Ireland to receive the payments. It is his position that the payments received from the Merchant Acquirers relate to his trade in Northern Ireland through [redacted].

167. The Commissioner has considered whether the Appellant has discharged the burden of proof to establish that he was not trading in the State in the years 2010 to 2015 inclusive.

168. In relation to trading in Northern Ireland, the documentation relating to [redacted] submitted by the Appellant does not establish that trade was being carried out in Northern Ireland in the years 2011 to 2015 inclusive for the following reasons:

168.1. The annual return submitted by [redacted] for the year ending 31 January 2012 shows that the company was dormant during that period;

168.2. The annual return submitted by [redacted] for the year ending 31 January 2013 contains an abbreviated balance sheet and does not contain any details of turnover or trade;

168.3. The bank account statements submitted contain six pages each of which have fewer than five transactions included;

168.4. No annual financial statements relating to [redacted] have been submitted;

168.5. No annual tax returns filed by [redacted] with HMRC have been submitted;

168.6. No invoices relating to individual sales made by [redacted] have been submitted;

168.7. No invoices or receipts relating to purchases made by [redacted] have been submitted.

169. As a result, the Commissioner finds as a material fact that the Appellant has not established that he or his company were carrying out a trade in Northern Ireland in the years 2010 to 2015 inclusive.

170. In relation to whether the Appellant was trading within the State in the years 2010 to 2015 inclusive, the documentation received tends to establish that he was trading within the State in those years.

171. The Merchant Acquirer Data received shows that payments amounting to €2,340,261.53 were made into a bank account held by the Appellant in his sole trading name in those years. All of the various Merchant Acquirer accounts are identified as being Euro accounts and no reference to sterling is seen on the documentation submitted.

172. In addition, the Merchant Acquirer Data clearly sets out that the payments were made in relation to "[redacted]" or "[redacted]" and not in relation to [redacted] as claimed by the Appellant. The payments being received in relation to [redacted]" fly in the face of the direct evidence given by the Appellant where he stated that he had ceased trading as [redacted] in 2009. None of the entities identified in the Merchant Acquirer Data related to a limited company, however all of the payments made were paid into a sole trade bank account in the name of the Appellant.

173. It was open to the Appellant to submit documentation / correspondence from the Merchant Acquirers which would establish what the payments related to. He did not.

174. It was open to the Appellant to submit documentation / correspondence from the bank in Northern Ireland to establish that they had advised him to direct the Merchant Acquirer payments to a bank account held by him in Ireland. He did not.

175. In circumstances where the payments were made to the Appellant's sole trade bank account and in circumstances where the Appellant has not provided any information or documentation as to the origin of the payments, the reasons for the payments or the details of the transactions relating to the payments, the Commissioner must find as a material fact that the Appellant was trading within the State in the years 2010 to 2015 inclusive.

176. Therefore, the Commissioner finds that the Appellant was trading within the State in the years 2010 to 2015 inclusive.

The quantum of the income and profits in relation to the Appellant's trade within the State in the years 2010 to 2015 inclusive

177. The Appellant has submitted that the quantum of income and profits in the years 2010 to 2015 inclusive to which he has been assessed by the Respondent is excessive.

178. The Witness gave evidence on behalf of the Respondent as to the basis of the calculation of the quantum of income and of the profits or gains earned on that income in relation to the Appellant's trade.

179. She stated that, in calculating the Appellant's income for the periods 2010 to 2015 inclusive, the Respondent had taken the total Merchant Acquirer payment figure for the relevant year and had removed the assumed VAT element from the total to arrive at an online sales turnover figure.

180. Once the turnover figure was arrived at, she stated that the Respondent had looked at the limited company which the Appellant had established in 2015 and had used the 2015 figures from that company to establish a percentage of online versus non-online sales. This established, she stated, that 48% of sales were generated through online card sales and 52% of sales were generated through non-online sales.

181. The Respondent then calculated a total turnover figure to which a profit margin of 20% was applied to calculate the profits earned by the Appellant's trade.

182. It is the Appellant's position that the basis of the Respondent's calculation of the breakdown of online versus non-online sales is incorrect.

183. He has submitted through his evidence and through submissions made by Counsel on his behalf, that the breakdown of online / non-online sales for the years 2010 to 2015 inclusive of 48% / 52% is incorrect.

184. In addition, the Appellant has submitted that the profit margin applied to the sales by the Respondent of 20% is excessive. The Appellant has submitted that a more appropriate profit margin is 7%.

185. The Commissioner has considered the evidence submitted, both oral and documentary in relation to this material fact. The burden of proof rests on the Appellant to establish that the Respondent's calculations were incorrect.

186. The Appellant has not submitted any documentation which sets out the extent of his trade or the amount of profit margin which his trade generated in the years 2010 to 2015 inclusive. It was open to the Appellant to submit his trading accounts to the Commissioner which would establish these facts. He did not.

187. It was further open to the Appellant to adduce independent expert evidence which could have established profit margin amounts in the Appellant's industry in those years. He did not.

188. The Commissioner has considered the Respondent's basis for the calculation of turnover and profit margin and accepts same as being reasonable on the basis that they are based on the Appellant's limited company online / non-online and profit margin figures.

189. As a result of the above, the Commissioner is left with no choice but to find as a material fact that the profit figures for the Appellant's trade in the years 2010 to 2015 inclusive are those which are contained in the Notices of Assessment and Notices of Amended Assessment raised by the Respondent.

Whether the Appellant was in receipt of rental income in relation to the Property for the years 2010 to 2015 inclusive.

190. The Appellant has been assessed to being in receipt of rental income in the years 2010 to 2015 inclusive in the following amounts:

Year	Rental Income Amount Assessed €
2010	12,000.00

2011	13,000.00
2012	14,000.00
2013	15,000.00
2014	16,000.00
2015	17,000.00

191. The Respondent has assessed the Appellant to rental income based on information which they received from the Eastern Health Board / HSE / Department of Social Protection that rent subsidies had been claimed and granted in respect of the Property for the years 2010 to 2013 inclusive.

192. The Respondent submitted that the Eastern Health Board / HSE / Department of Social Protection had provided information that rent subsidies had been claimed and paid in the following amounts in relation to the Property:

Year	Rent Subsidy Amount Paid €	Claimant Name
2010	8,352.00	[redacted]
2011	8,352.00	[redacted]
2012	1,945.20 2,081.80	[redacted] [redacted]
2013	773.30	[redacted]

193. The Respondent submitted that it based the assessments to rental income on the market rents which were payable in those years.

194. The Appellant submitted that he is a stranger to any claims for rent subsidy which were made in relation to the Property or by any payments of rent subsidy which were made by

a government agency to any third parties. It is also the Appellant's position that he did not receive any rental payments in relation to the Property at any time in the years 2010 to 2015 inclusive.

195. The Appellant submitted that the Property was purchased in 1990, when the Appellant was 18 years of age, by his parents but that due to family circumstances at that time it was decided to register the Property in his name. He stated the Property had at all times been his parents' home up until 2012 when his father moved out of the property following his mother's death. He stated that he takes exception to the suggestion that he would have charged his parents rent. He stated that, if his father had claimed rent subsidy, this had no connection with the Appellant and that he had never received or sought rent from his father.

196. In relation to rent subsidy payments made in 2012 and 2013, the Appellant stated that it was his understanding that his father had attempted to rent out the Property to a third party tenant, but that this attempt had failed with the third party tenant only paying one month's rent and occupying the property thereafter for a considerable time without paying rent. He stated that, if the third party had claimed rent subsidy, this had no connection with the Appellant and that he not had any interaction with the third party and had not received rent from the third party.

197. Under cross examination, the Witness accepted that rent subsidy payments are made from the Eastern Health Board / HSE / Department of Social Protection directly to claimants and that the only connection between the Appellant and the Eastern Health Board in relation to rent subsidy payments was the fact that the payments were made in relation to claims which identified the Property as being the premises which the claimants were living in. She stated that, as the Property was registered in the Appellant's name and, as the Appellant did not live in the Property, it was decided by the Respondent that the rent subsidy payment were transferred by the claimants to the Appellant.

198. The Commissioner has considered the position in relation to rental income for the Property and accepts that claims were made and received for rent subsidy by the Appellant's father for the years 2010, 2011 and part of 2012 and by a third party for part of 2012 and part of 2013.

199. It is a legal fact, and it is not disputed, that the Appellant was the registered owner of the Property during the years 2010 to 2015 inclusive and had been so since 1990.

200. The Commissioner is mindful that the burden of proof to establish that the assessment to rental income by the Respondent was incorrect rests on the Appellant. The Commissioner

appreciates that meeting this burden may be difficult. However, the Appellant has not submitted any evidence which establishes what the arrangements in relation to the Property in those years were. The only evidence which has been adduced to the Commissioner in relation to this is the Appellant's own evidence which has not been supported by any corroborating evidence, whether documentary or oral.

201. The Commissioner further appreciates that the Appellant's father passed away in 2019, making it difficult for the Appellant to adduce evidence in relation to this aspect of his appeal. However, the Commissioner notes that the audit in relation to the Appellant's tax affairs began in 2017 which was two years prior to his father's death.

202. It was open to the Appellant to submit documentary evidence in the form of communications between him and his father in relation to the Property. In addition, the Appellant has not produced any documentary evidence which establishes the arrangement which he had with his father in relation to the Property.

203. In addition, whilst the Appellant maintains a position that he is a stranger to any rent subsidy payments made by the Eastern Health Board / HSE / Department of Social Protection in relation to the Property, it was open to the Appellant to call a witness from the Eastern Health Board / HSE / Department of Social Protection in relation to the claims and the payments made. He did not.

204. It was also open to the Appellant to submit any correspondence which he may have entered into with the Eastern Health Board / HSE / Department of Social Protection in relation to him attempting to establish what exactly had occurred in relation to rent subsidy payments relating the Property. He did not.

205. In relation to the years 2014 and 2015, the Appellant has not adduced any evidence as to what the position was in relation to the Property in those years. The Commissioner has received no evidence as to whether the Property was occupied or if the property was vacant. It was open, for example, to the Appellant to produce documentary evidence in relation to electricity usage in the Property in those years. He did not.

206. As a result of the above, and based on the established legal principle that the burden of proof rests on the Appellant to establish that the assessment to rental income in those years was incorrect, the Commissioner must find that she has not been put in a position whereby she can find that the Appellant has discharged the burden of proof to establish that he was not in receipt of rental income in those years.

207. In relation to the amounts of rent to which the Appellant was assessed in those years, it was open to the Appellant to adduce evidence as to what the market rents were for

properties located in the area of the Property in order to dispute the quantum of rental income to which he has been assessed. He did not.

208. The Appellant has not submitted to the Commissioner any evidence, whether oral or documentary, which establishes that he discharged any expenses in relation to the Property in those years in the form of, for example, insurance payments or other maintenance expenses. As a result, the Commissioner has not been put in a position to consider any reduction in the level of rental income received by the Appellant in those years.

209. As a result of the above, the Commissioner finds as a material fact that the Appellant was in receipt of profits or gains in respect of rental income in the years 2010 to 2015 inclusive in the following amounts:

Year	Rental Income Amount Received by the Appellant €
2010	12,000.00
2011	13,000.00
2012	14,000.00
2013	15,000.00
2014	16,000.00
2015	17,000.00

Findings of Material Fact

210. For clarity and completeness, the Commissioner makes the following findings of material fact:

210.1. The Appellant is a businessman who was involved in the business of [redacted] for the years 2010 to 2015 inclusive.

210.2. The Appellant did not submit tax returns to the Respondent for the years 2010, 2011, 2012 and 2013.

210.3. On 29 March 2017, the Appellant submitted a Form 11 tax return for the year 2014. The return submitted was a “nil return” for that period.

210.4. On 10 October 2016, the Appellant submitted a Form 11 tax return for the year 2015. The return submitted was a “nil return”.

210.5. On 3 November 2017, the Respondent issued an audit notification letter to the Appellant for income tax and VAT for the year 2015.

210.6. On 15 June 2018, the Respondent informed the Appellant that the scope of the audit had been expanded to include the years 2010, 2011, 2012, 2013 and 2014.

210.7. On 4 July 2019, the Respondent issued Notices of Assessment to income tax to the Appellant for the years 2010 to 2013 inclusive and in addition issued Notices of Amended Assessment to income tax to the Appellant for the years 2014 and 2015 for the following amounts:

Tax Year	Amount €
2010	31,694
2011	37,403
2012	37,024
2013	55,486
2014	90,333
2015	27,133

210.8. The Notices of Assessment to income tax and the Notices of Amended Assessment to income tax raised by the Respondent on 4 July 2019 assessed the Appellant to Schedule D income “[redacted] – *Self*” and “*Profit from letting Premises – Self*”.

210.9. The Appellant appealed the Notices of Assessment to income tax and the Notices of Amended Assessment to income tax issued by the Respondent on 4 July 2019 by way of Notices of Appeal dated 2 August 2019.

210.10. In addition, on 4 July 2019 the Respondent issued VAT estimates for the years 2011 to 2015 inclusive. However, notification of the VAT estimates was never issued to Appellant.

210.11. On 4 July 2019, the Respondent issued a Final Demand letter to the Appellant for the payment of VAT in respect of the year 2015. The Appellant submitted an appeal in relation to this Final Demand letter to the Commission.

210.12. On 9 December 2022, the Respondent wrote to the Appellant confirming that, as a result of the estimates to VAT not being notified to the Appellant, it was undertaking to reverse the estimates to VAT for the years 2011 to 2015 inclusive.

210.13. The Appellant confirmed at the oral hearing of this appeal that, as a result of the reversal by the Respondent of the estimates to VAT for the years 2011 to 2015 inclusive, he was not pursuing any appeal in relation to the estimates to VAT for the years 2011 to 2015 inclusive.

210.14. This, therefore, is an appeal against Notices of Assessment to income tax for the years 2010 to 2013 inclusive issued by the Respondent on 4 July 2019 and against Notices of Amended Assessment to income tax for the years 2014 and 2015 issued by the Respondent on 4 July 2019.

210.15. The Appellant was not resident in Northern Ireland for the years 2010 to 2015 inclusive.

210.16. The Appellant was resident in the State for the years 2010 to 2015 inclusive.

210.17. The Appellant was trading within the State in the years 2010 to 2015 inclusive.

210.18. The quantum of the earnings or profit from the Appellant's trade within the State are those as set out in the Notices of Assessment and Notices of Amended Assessment to income tax for the years 2010 to 2015 raised by the Respondent on 4 July 2019.

210.19. The Appellant was in receipt of profits or gains in respect of rental income received in the State in the years 2010 to 2015 inclusive in the following amounts:

Year	Rental Income Amount Profits or Gains earned by the Appellant €
2010	12,000.00

2011	13,000.00
2012	14,000.00
2013	15,000.00
2014	16,000.00
2015	17,000.00

Analysis

Grounds of Appeal

211. The following are the grounds of appeal which were included in the Notice of Appeal and which were added to following application by Counsel for the Appellant at the opening of the oral hearing:

211.1. The audit was invalid based on 2015 audit being completed and confirmation I had no liability (witnessed by my Accountant).

211.2. Fabricated document used to expand audit (attached).

211.3. My previous compliance.

211.4. My UK company which operated 2012-2015.

211.5. No evidence I let any property or record receiving for [sic] rent.

211.6. Clear impropriety in the audit and surrounding events.

211.7. Previous assessments which were withdrawn.

211.8. The amounts in the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect.

211.9. The Appellant was not resident in Ireland during the years 2010 to 2015 inclusive.

211.10. The Notices of Assessment and Notices of Amended Assessment were raised out of time.

212. Counsel on behalf of the Appellant submitted at the opening of the oral hearing that the Appellant was not pursuing grounds of appeal which are outside of the Commissioner's

jurisdiction. The Commissioner is grateful to Counsel for this concession, however for the purposes of completeness, the Commissioner notes that the functions of an Appeal Commissioner are set out in section 6 of the Finance (Tax Appeals) Act 2015 (from here in referred to as the "2015 Act") and include (1) the functions assigned to them by the 2015 Act and the Taxation Acts and (2) the performance of the following functions in relation to the Taxation Acts:

"(a) deciding whether or not to accept an appeal,

(b) deciding whether to declare, under section 949N(3) (inserted by section 34) of the Act of 1997, that a refusal to accept an appeal is final,

(c) deciding on the appropriate procedure to be adopted in relation to an adjudication of an appeal,

(d) giving directions to the parties to an appeal,

(e) fixing dates, times and places for the hearing of appeals,

(f) hearing an appeal where the Commissioners have decided that a hearing is the appropriate method of adjudicating on the appeal,

(g) determining appeals,

(h) providing written determinations,

(i) publishing determinations,

(j) stating and signing cases stated for the opinion of the High Court,

(k) [deleted]; and

(l) doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants."

213. In addition, the Commissioner notes the scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, namely; *Lee, Stanley v The Revenue Commissioners* [2017] IECA 279*, The State (Whelan) v Smidic* [1938] IR 626*, Menolly Homes* and *The State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

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

"*From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment.*"[39]

215. As a result, the Commissioner's focus is on the Notices of Assessment and Notices of Amended Assessment to income tax for the years 2010 to 2015 inclusive raised by the Respondent on 4 July 2019 and it follows that the grounds of appeal which fall within the Commissioner's jurisdiction are:

    215.1. No evidence I let any property or record receiving for [sic] rent.

    215.2. The amounts in the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect.

    215.3. The Appellant was not resident in Ireland during the years 2010 to 2015 inclusive.

    215.4. The Notices of Assessment and Notices of Amended Assessment were raised out of time.

<u>No evidence I let any property or record receiving for [sic] rent:</u>

216. The Commissioner has already found as a material fact that the Appellant was in receipt of earnings or profit from rental income in the years 2010 to 2015 inclusive for the reasons set out above.

<u>The Appellant was not resident in Ireland during the years 2010 to 2015 inclusive:</u>

217. The Commissioner has also found as a material fact that the Appellant was resident in Ireland in the years 2010 to 2015 inclusive for the reasons set out above.

<u>The amounts in the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect:</u>

218. In relation to the ground of appeal that the Notices of Assessment and Notices of Amended Assessment are excessive, overstated and incorrect, the Commissioner has

[39] At paragraph 64

already accepted as material facts that the amounts of profits or earnings from trade and from rental income are as contained in the Notices of Assessment and Notices of Amended Assessment for the years 2010 to 2015 as raised by the Respondent on 4 July 2019 for the reasons set out above.

The Notices of Assessment and Notices of Amended Assessment were raised out of time.

219. The Commissioner has also considered the Appellant's ground of appeal that the Notices of Assessment and Notices of Amended Assessment for the years 2010 to 2015 inclusive were raised out of time.

220. In her final submissions to the Commissioner, Counsel on behalf of the Appellant conceded that in circumstances where the Appellant had not submitted Form 11 tax returns for the years 2010 to 2013 inclusive prior to the Notices of Assessment and Notices of Amended Assessment for those years being raised, the Respondent was entitled to raise those Notices of Assessment and Notices of Amended Assessment pursuant to the provisions of sections 959AC of the TCA 1997. The Commissioner is again grateful to Counsel on behalf of the Appellant for this concession and therefore considers that this ground of appeal as it relates to the years 2010 to 2013 inclusive has been withdrawn.

221. Counsel for the Appellant accepted that the Notice of Amended Assessment for 2015 was raised in time and so the Commissioner therefore considers that this ground of appeal as it relates to the years 2010 to 2013 inclusive has been withdrawn.

222. In relation to the Notice of Amended Assessment for 2014, section 959AA of the TCA 1997 provides that:

> *"(1) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period—*
>
> > *(a) an assessment for that period, or*
> >
> > *(b) an amendment of an assessment for that period,*
> >
> > *shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—*
> >
> > > *(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and*

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(2) Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period—

(a) where the return for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period,"

223. Therefore, as the Appellant had filed a Form 11 return for the year 2014, in order for the Respondent to have been able to raise the Notice of Amended Assessment for 2014 after the end of 4 years commencing at the end of the chargeable period in which the return is delivered, that is to say after the end of 2018, the Commissioner must be satisfied that the Form 11 return submitted by the Appellant for the year 2014 did not contain a full and true disclosure of all material facts necessary for the making of an assessment for 2014.

224. It is the Appellant's position that the Form 11 return submitted by him for 2014 did contain a full and true disclosure of all material facts necessary for the making of an assessment for 2014. It is the Respondent's position that it did not.

225. The High Court in *The Revenue Commissioners v Tobin* [2024[IEHC 196 (from here on referred to as "*Tobin*"), Mulcahy J stated at paragraph that:

"*An interpretation which equates "full and true" with "accurate" or "correct" no doubt poses a significant onus on the taxpayer, but that seems to me to be consistent with the existence of a system of self assessment. It also has the virtue of being more straightforward to apply, consistent with the requirement for clarity in the imposition of both liabilities and exemptions in taxation statutes.*"

226. Mulcahy J went on to state at paragraph 59 of *Tobin* that:

"*…the answer posed to the question at the opening of this judgment is that for a tax return to be regarded as a "true and full disclosure of all material facts", it must be accurate in every material respect; a taxpayer's subjective belief, however well informed, as to the accuracy of its contents is not a relevant consideration.*"

227. The Commissioner has considered whether the Form 11 income tax return which the Appellant submitted to the Respondent for the year 2014 contained a full and true

disclosure of all material facts necessary for the making of an assessment for that year by the Respondent and finds that it did not for the following reasons:

227.1. The Form 11 return submitted by the Appellant for 2014 was a "nil return" which returned no details of any income earned by the Appellant within the State that year.

227.2. The Commissioner has found as a material fact that the Appellant was in receipt of gains or profits from trade in 2014. In circumstances where the Appellant was in receipt of Merchant Acquirer payments to his Irish sole trade bank account in the amount of €646,276.34 in 2014, he cannot have been unaware of those payments being made to him. The Appellant chose not to disclose those payments to the Respondent in his Form 11 return for 2014. It was open to him to do so and to indicate an expression of doubt as to whether those payments related to a trade within the State. He chose not to do that, despite having the benefit of professional accountancy advice at the time of submitting the 2014 return to the Respondent.

227.3. The Commissioner has also found as a material fact that the Appellant was in receipt of profits or gains relating to rental income in 2014.

228. As a result, the Commissioner finds that the Form 11 return submitted by the Appellant for 2014 did not contain a full and true disclosure of all material facts necessary for the making of an assessment for that year by the Respondent, the provisions of section 959AA(2)(a) apply.

229. Having considered the above, the Commissioner determines that the Notice of Amended Assessment for the year 2014 raised by the Respondent on 4 July 2019 for the year 2014 was raised within time.

<u>The Notices of Assessment and the Notices of Amended Assessment</u>

230. There is no dispute between the parties as to the applicable legislation in relation to the taxing of profits from trade and rental income.

231. Section 18 of the TCA 1997 is the basis for the charge to income tax for self-employed individuals under what is known as "*Schedule D*" and provides that:

"(1) The Schedule referred to as Schedule D is as follows:

Schedule D

1. Tax under this Schedule shall be charged in respect of -

(a) the annual profits or gains arising or accruing to -

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains.

2. Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of paragraph 1 be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule.

(2) Tax under Schedule D shall be charged under the following Cases:

Case I - Tax in respect of -

(a) any trade;

(b) profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns -

(i) quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,

(ii) mines of coal, tin, lead, copper, pyrites, iron and other mines, and

(iii) ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of any lands, tenements or hereditaments;

...

Case V - Tax in respect of any rent in respect of any premises or any receipts in respect of any easement;

and subject to and in accordance with the provisions of the Income Tax Acts applicable to those Cases respectively."

232. As the Commissioner has found that the Appellant was in receipt of profits or earnings from a trade in the State and from rental income, it therefore follows that the Appellant was in receipt of Case 1 and Case V income under Schedule D of the TCA 1997 in the years 2010 to 2015 inclusive.

233. The basis of assessment to income tax under Schedule D Cases I and V are set out in section 65 of the TCA 1997 and in section 75 of the TCA 1997.

234. Section 65 of the TCA 1997 provides that *"… income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment."*

235. Section 75 of the TCA 1997 provides that:

"Without prejudice to any other provision of the Income Tax Acts, the profits or gains arising from—

(a) any rent in respect of any premises, and

(b) any receipts in respect of any easement,

shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule; but such rent or such receipts shall not include any payments to which section 104 applies.

(2) Profits or gains chargeable under Case V of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and subsection (3) shall apply accordingly.

(3) Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment.

…"

236. It therefore follows that income tax shall be levied on profits or gains earned in a tax year in relation to a trade within the State and in relation to rental income within the State.

237. The Commissioner has found as a material fact that the profits or gains earned by the Appellant in relation to his trade within the State in the years 2010 to 2015 inclusive were those as set out in the Notices of Assessment and Notices of Amended Assessment to income tax raised by the Respondent on 4 July 2019.

238. Additionally, the Commissioner has found as a material fact that the profits of gains earned by the Appellant in relation to rental income within the State in the years 2010 to 2015 inclusive were as follows:

2010	€12,000.00
2011	€13,000.00
2012	€14,000.00
2013	€15,000.00
2014	€16,000.00
2015	€17,000.00

239. As a result, the Commissioner determines that the Notices of Assessment to income tax for the years 2010, 2011, 2012 and 2013 inclusive and the Notices of Amended Assessment to income tax for the years 2014 and 2015 raised by the Respondent on 4 July 2019 were correct.

Determination

240. The Commissioner determines that the Appellant has not succeeded in establishing that the Notices of Assessment issued for the years 2010, 2011, 2012 and 2013 by the Respondent on 4 July 2019 were incorrect.

241. In addition, the Commissioner determines that the Appellant has not succeeded in establishing that the Notices of Amended Assessment issued for the years 2014 and 2013 by the Respondent on 4 July 2019 were incorrect.

242. The Commissioner determines pursuant to the provisions of section 949AK of the TCA 1997 that the Notices of Assessment issued for the years 2010, 2011, 2012 and 2013 by the Respondent on 4 July 2019 shall stand.

243. The Commissioner determines pursuant to the provisions of section 949AK of the TCA 1997 that the Notices of Amended Assessment issued for the years 2014 and 2015 by the Respondent on 4 July 2019 shall stand.

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

Notification

245. 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

246. 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
27 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.