AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

53TACD2024

Between

[redacted]

Appellant

and

CRIMINAL ASSETS BUREAU

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against Notices of Assessment to Income Tax. Those assessments which were issued by the Criminal Assets Bureau (hereinafter "the Respondent") on 28th February 2017 are as follows:

Year of Assessment	Quantum €
2006	12,925
2007	22,747
2008	27,782
2009	22,723
2010	29,616
2011	18,259
2012	7,061
2013	9,393
2014	10,074
Total	**160,580**

2. This appeal also relates to a Notice of Assessment to Capital Gains Tax ("CGT") for the tax year 2014, in the sum of €1,717 which was also issued by the Respondent on 28h February 2017.

3. The hearing of the appeal occurred over two dates on 15th September 2023 and 27th October 2023.

4. The Appellant was represented by Counsel and her accountant. The Respondent was represented by Counsel, its solicitor and three members of its staff. In addition, the Commissioner heard sworn testimony from the Appellant, her accountant and her partner, in addition to legal submissions from the Appellant's and the Respondent's ("the parties'") representatives.

Background

5. The Appellant is a PAYE[1] worker who was primarily an employee for the periods under appeal. As the Appellant deemed that her taxation liabilities were discharged under the

[1] PAYE stands for 'Pay As You Earn'. If you are an employee, you normally pay tax through PAYE. Every time your salary is paid, your employer deducts Income Tax, Pay Related Social Insurance (PRSI) and Universal Social Charge (USC) and pays the amount deducted to Revenue. PAYE ensures

PAYE system, she did not originally submit tax returns for the tax years ("the years") 2006 to 2012 inclusive. As the Appellant had exercised share options in 2013 and disposed of a property which gave rise to a CGT liability in 2014, she submitted income tax returns for both years 2013 and 2014.

6. By letter dated 28th February 2017, the Appellant was advised that the Respondent would carry out all functions reserved by law to the Inspector of Taxes and the Collector General until further notice. The letter further advised the Appellant that the Respondent had conducted an investigation into her taxation affairs for the years under appeal.

7. The Respondent considered all the evidence gathered in the context of that investigation. In particular, the Respondent examined the Appellant's bank accounts and properties. The Respondent identified undeclared profits or gains chargeable to tax pursuant to section 922 Taxes Consolidation Act 1997 ("TCA 1997") for the years 2006 to 2012 inclusive and section 959AC TCA 1997 for the years 2013 and 2014.

8. The Respondent quantified undeclared profits or gains as follows:

Year of Assessment	**Quantum €**
2006	25,000
2007	48,000
2008	55,000
2009	45,000
2010	60,000
2011	35,000
2012	12,500
2013	16,000
2014	18,000
Total	**314,500**

9. The Respondent taxed that income as "miscellaneous income" under Schedule D, Case IV and issued its Notices of Assessment in accordance with the provisions of section 58 TCA 1997 on 28th February 2017.

10. During the course of the investigation, the Respondent also formed the view that the Appellant had under-returned her CGT liability on the disposal of a property in 2014.

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that the yearly amounts you have to pay are collected evenly on each pay day over the course of the tax year. https://www.revenue.ie/en/jobs-and-pensions/what-is-paye/index.aspx

11. The Respondent raised an Assessment on 28th February 2017 to CGT for 2014 under Part 41A TCA 1997, in the sum of €1,716.99, which included a 10% surcharge for late submission of the return, which it believed represented the Appellant's correct CGT liability.

12. The Appellant who was not in agreement with the Notices of Assessment to Income Tax and the Notice of Assessment to CGT lodged her Notice of Appeal with the Commission on 29th March 2017.

13. At that time[2], the Appellant had not lodged Income Tax Returns for the years 2006 to 2012 and as such, on 29th June 2017, the Respondent objected to the Commission accepting the Appellant's appeals for those years as she had failed to comply with the provisions of section 957 (2) (a) (i) and (ii) TCA 1997 and section 957 (2) (b) TCA 1997.

14. The Respondent did not object to the appeals lodged by the Appellant in respect of her income tax assessments for 2013 and 2014 or in respect of the appeal lodged in respect of her 2014 CGT assessment, as the Appellant had submitted tax returns for those years.

15. On 26th July 2017, the Commission issued a letter refusing the Appellant's income tax appeals for the years 2006 to 2012 inclusive on the basis that the Appellant had not satisfied the conditions of section 957 (2) (a) (i) and (ii) TCA 1997 and section 957 (2) (b) TCA 1997. That letter was not expressed to be "final and conclusive" by the Commission pursuant to section 949N (3) TCA 1997.

16. On 9th August 2017, the Appellant requested the Commission to reconsider its refusal to accept her appeals for the years 2006 to 2012. Absent an immediate reply, on 16th August 2017, the Appellant proceeded to submit income tax returns to the Respondent for the tax years 2006 to 2012. Those income tax returns recorded the Appellant's sole sources of income as being employment income which had been taxed at source and income from the Department of Social Protection ("DSP") for those periods in which the Appellant was in receipt of Jobseeker's Benefit[3].

17. Subsequent correspondence ensued between the Appellant and the Respondent ("the parties") and the Commission. This correspondence cumulated in a preliminary hearing

[2] As will be noted from sub-paragraph 22.3 below, the Appellant submitted her 2012 Income Tax return on the same date as the date she submitted her appeal to the Commission. It appears, when the Respondent lodged its objection to acceptance of the Appellant's appeals for the years 2006 to 2012 that it was unaware that the Appellant had submitted her 2012 Income Tax return. Consideration of the Appellant's 2012 appeal is provided further below at paragraphs 23 to 52.

[3] Jobseeker's Benefit is a weekly payment from the DSP to people who are out of work and are covered by social insurance (PRSI).

being held before the Commission on 21st October 2022. The purpose of this preliminary hearing was to determine whether the Appellant's appeals for the tax years 2006 to 2012 were valid appeals and as such whether the substantive hearing of the Appellant's appeals included those years or was confined to the years of assessment 2013 and 2014 only.

18. The Commissioner issued his Decision on the preliminary matter on 24th November 2022 which confirmed that the Appellant's appeals for the years 2006 to 2012 were valid appeals. A copy of this Decision, which details why the Appellant's appeals for those years were deemed valid by the Commission is annexed at **Appendix 1** to this Determination.

19. Within that Decision, the Commissioner held that while the Appellant's appeals were valid appeals, a further joint hearing was required to determine the chargeability and admissibility of the Appellant's appeals for the years 2006 to 2012 and contingent upon those findings on the quantum issue for the years 2006 to 2014 (or such years as were determined to be admissible appeals), or solely the years 2013 and 2014.

20. As noted above, the hearing of these matters was held before the Commission over two dates on 15th September 2023 and 27th October 2023.

21. To assist the matters under appeal, the Commissioner shall consider the documentation presented to the Commission by the parties before determining, on a preliminary basis, whether the Appellant was a chargeable person for the years 2006 to 2012, and if so, whether the Appellant complied with the legislative requirements for those appeals to be admissible appeals. Following which, the Commissioner shall consider the parties' witness evidence and legal submissions before determining the substantive issues under appeal.

Documentation presented to the Commission

22. Included within the documentation presented to the Commission was the following:

    22.1. A copy of the Respondent's Assessment to CGT for the year 2014. This showed a chargeable gain of €6,000 for that year. From that amount, the sum of €1,270 (which represents the amount not chargeable under section 601 TCA 1997) was deducted to give a net amount chargeable to taxation, €4,730. The CGT calculated thereon was at the rate of 33% and in the amount of €1,560.90. A surcharge for late submission of the return in the sum of 10%, €156.09 was added

to the CGT due to give a net amount due of €1,716.99. The due date for payment of that liability was shown as 15th December 2014.

22.2. Copies of the Appellant's Notices of Assessment issued by the Respondent on 28th February 2017 for the years 2006 to 2016 ("the years under appeal"). Those assessments recorded the Appellant's PAYE and DSP income and the assessed Schedule D "miscellaneous income" for the years under appeal.

22.3. Copies of the Appellant's submitted tax returns for the years 2012 and 2013. Those tax returns were dated 29th March 2017 and returned details of the Appellant's employment income for the years 2012 and 2013. In addition, the returns for the years 2012 and 2013 returned the amounts of €2,720 and €5,126 respectively under the heading "share options" in the Schedule E section of those returns. The income tax liabilities payable on those returns was shown as €1,305.16 for 2012 and €2,930.84 for 2013. While the 2012 liability did not include a 10% surcharge for late filing of the return, the 2013 liability did include this amount.

22.4. Copies of the Appellant's submitted income tax returns for the years 2006 to 2012 inclusive, dated 16th August 2017. All of those returns consisted solely of PAYE income, save the 2009 and 2010 Income Tax returns which included amounts received from the DSP in the sums of €3,417 and €3,830. In addition, the re-submitted 2012 Income Tax return replicated the same information as per the previous 2012 return submitted on 29th March 2017. The refunds/liabilities shown on those income tax returns were as follows:

Year of Assessment	-refund/ liability €
2006	-27.34
2007	-20.74
2008	-44.07
2009	32.56
2010	35.18
2011	-38.92
2012	1305.16

22.5. A copy of the Appellant's Form CG1 (CGT return) for 2014 dated 29th March 2017. This showed a disposal of development land in the sum of €37,000, a gain of €98, allowable losses carried forward of €781 and losses carried forward of €683.

22.6. A copy of the Appellant's CGT computation for 2014. This showed that the Appellant disposed of her interest on the sale of her 50% interest in a site. The following details were recorded under the Appellant's 50% share:

Sale of site		€37,000
Cost		29,000
		8,000
Expenses		
[redacted] Auctioneer	1,073	
[redacted] – planning	2,805	
Solicitor – Purchase (EST)	1,230	
Solicitor – Sale	677	
Searches, etc.	344	
Accountancy	615	
Stamp on Purchase – 4%	1,160	7,903
		98
Personal Exemption		1,270
Taxable Gain/Loss		NIL

22.7. Included within the typed CGT computation was handwritten narrative as follows:

"Not all receipts are included due to the short time available. All can be produced in future on request".

22.8. A copy of a document dated 10th July 2014 from a firm of solicitors. This document quoted the solicitors' VAT number but stated "*This is not a VAT invoice but one will be furnished upon receipt of payment*". It detailed the following information:

"*Description: Sale of site @* [redacted].

Legal Fee	*€1,000*
VAT @ 23%	*230*
Outlay	*100*

Vat @ 23% *23*

Total Due *€1,353*"

22.9. An invoice from [redacted] dated 14th July 2014. This invoice was addressed to the Appellant's solicitor and referred to [redacted] *sale of site* [redacted]. The professional fee, inclusive of VAT charged on that invoice was €1,845 and the additional sum of €300, inclusive of VAT was charged for "signage". The invoice was stamped "*Received with thanks*".

22.10. A further document entitled "Statement of Account" from [redacted] This document was dated 14th July 2014 and recorded a deposit received of €5,000. From that amount the sum of €2,145 was deducted which represented "*our fees*" and the balance €2,855 was recorded as "*Balance to you*".

22.11. An invoice from [redacted] dated 11th January 2010. This invoice was addressed to the Appellant at her home address and under the description was the narrative "*additional work done to date €750*". A handwritten note on that invoice stated "*Received €350 in full settlement, 2/3/2010 –* [redacted]".

22.12. A letter from [redacted] dated 8th January 2009. This was addressed to the Appellant at her home address and was entitled *"Re: Proposed extension and rehabilitation work to dwelling at* [redacted]" and detailed certain costs for surveys of the house and site. A handwritten note on that invoice stated "[redacted] *received €4,860 … [illegible] "*.

22.13. A document from the Appellant's solicitor addressed to the Appellant at her home address and dated 18th February 2010. This document referred to a "Purchase of land at [redacted]" and detailed the following information:

	Payments	*Receipts*
[redacted]		75,00.00 (sic)
Purchase	58,000.00	
Land Registry fee on Deed	375.00	
Land Registry fee on Mortgage	125.00	
Copy Folio & Plan	25.00	

Search fees (approx.)	120.00	
Fee to agent re stamping	42.00	
Professional fee (to include additional work)	1,100.00	
Outlay	65.00	
VAT @ 21%	244.65	
	60,096.65	75,000.00
Balance due to you		14,903.35

22.14. A letter from the Respondent to the Commission dated 14th February 2018. This letter stated:

"… I refer to the Case Management Conference which was held on 9th February 2018 in relation to [the Appellant].

It was agreed that the accountant representing [redacted] *will communicate with the Criminal Assets Bureau as regards obtaining a copy of statements in respect of a bank account held in the name of* [redacted] *which was considered by the Inspector in making his assessments…*"

22.15. A document entitled "*Combined Bank Lodgement Summary"*. This document was prepared by the Appellant's accountant and detailed a summary of purported lodgements into the various bank accounts held by the Appellant for the years under appeal. As will be noted throughout the balance of this Determination, this document is relied upon by both parties and as such is reproduced at **Appendix 2** to this Determination.

22.16. Summary of the individual lodgements for the years noted below into the individual bank accounts held by the Appellant for the periods under appeal.

Account	*Years Covered*
[redacted] – Account number [redacted]	2010-2014
[redacted] – Account number [redacted]	2006-2010
[redacted] – Account number [redacted]	2007, 2009-2014 (inclusive)
[redacted] – Deposit Account Number [redacted]	2006-2009
[redacted] – Deposit Account Number [redacted]	2010-2014

[redacted] – Deposit Account Number [redacted] 2010-2014

22.17. A breakdown of the individual lodgements into [redacted] Account number [redacted] for the period 1st January 2010 to 30th December 2014.

22.18. A breakdown of the individual lodgements into [redacted] Account number [redacted] for the period 10th January 2006 to 26th August 2010.

22.19. A breakdown of the individual lodgements into the [redacted] Account number [redacted] for the period 9th January 2007 to 28th November 2007, for the period 4h February 2009 to 31st December 2009 and for the period 29th January 2010 to 28th November 2012.

22.20. A breakdown of the individual lodgements into [redacted] Deposit Account [redacted] for the period 24th January 2006 to 23rd November 2009.

22.21. A breakdown of the individual lodgements into [redacted] Deposit Account [redacted] for the period 1st March 2010 to 1st December 2014.

22.22. A breakdown of the individual lodgements into [redacted] Deposit Account [redacted] for the period 2nd March 2010 to 24th November 2010.

22.23. Copies of the [redacted] bank statements in the name of the Appellant on account number [redacted] for the period (illegible) December 2009 to 5th January 2015. Those statements show that the account was opened on (illegible) December 2009 and that the closing balance on 5h January 2015 was €692.29. In addition, as with all the provided bank statements below, these statements also showed the lodgements into and withdrawals taken from the individual accounts for the provided periods.

22.24. "Internet type" bank statements for [redacted] on account number [redacted] in the name of the Appellant for the period 5h September 2005 to 2nd September 2014. The date of opening of the account is unclear from the nature of the provided documentation and the closing balance on the account as at 2nd September 2014 was (minus) €8,657.81.

22.25. A "Member's Statement" from [redacted] on account number [redacted] in the name of the Appellant and her partner for the period 9th January 2007 to 4h March 2017. The latter dates record the dates the account was opened and closed. Those statements showed regular savings and loan repayments for the

covered periods. The following loans were advanced to the Appellant and her partner from that provided documentation:

Date	*Amount of Loan*
8th July 2009	€3,000
9th February 2010	€5,800
15th February 2010	€69,200
7th March 2011	€10,000
5th January 2013	€14,386.54
31st January 2014	€8,104.11

The closing balance as at 4h March 2017 showed both the loan and savings balance as "nil".

22.26. "Internet type" bank statements for [redacted] on account number [redacted] for the period 9th September 2005 to 22nd November 2010 in the name of the Appellant. These disclosed that the account was opened on the 9th September 2005 and the closing balance on the account, as at 22nd November 2010 was €11.03.

22.27. Bank statements for [redacted] account number [redacted] for the period 2nd February 2010 to 10h December 2014 in the name of the Appellant. These disclosed that the opening balance on the account was €100 and the closing balance as shown as €0.85.

22.28. Bank statements for [redacted] account number [redacted] for the period 1st March 2010 to 2nd March 2015 in the name of the Appellant. These statements showed that the account was opened on 1st March 2010 and the closing balance on that account as at 2nd March 2015 was €15,500.54.

22.29. Copies of the Appellant's VISA card statements for the periods 12th December 2008 to 30th April 2009. These statements showed moderate expenditure and payments made for the provided periods.

Admissibility of the 2006 to 2012 Appeals

First issue – Was the Appellant a chargeable person for the years 2006 to 2012?

23. As noted at paragraph 19 above, as part of the Commissioner's Decision on the validity of the Appellant's appeals, the Commissioner determined while the Appellant's appeals

for the year 2006 to 2012 were valid appeals, a further joint hearing was required to determine whether the Appellant was a chargeable person for the years 2006 to 2012 and if so, whether she complied with the legislative requirements for those appeals to be admitted before the Commission.

24. Since it would be unfair and potentially prejudicial to both parties for the Commissioner to base his findings on chargeability and admissibility of the Appellant's appeals based upon the evidence and submissions of the parties during the course of the substantive hearing (as the issues on chargeability and admissibility may deem that no substantive hearing is required for some or all of those years), the Commissioner confines his analysis on this matter to the documentation provided to the Commission.

25. The Commissioner notes this documentation consists primarily of bank statements (which despite not having been required to so do in accordance with *Menolly Homes v Appeal Commissioners and another* [2010] IEHC 49 ("Menolly Homes"), were provided to the Appellant by the Respondent to assist with her appeal) and the Appellant's tax returns with supporting documentation and analysis. The Commissioner further notes from within the provided analysis that it contains a number of entries in dispute between the parties ("the disputed entries") including in particular the column entitled "*Lodgements by* [redacted] *partner –* [redacted]".

26. As an understanding of the disputed entries can only be gained following analysis of the parties' evidence and submissions and as this is potentially prejudicial to the parties, it follows that the Commissioner is required to base his findings on chargeability and admissibility on the face value of the documentation submitted to the Commission. As the Commissioner is later required to consider the substantive matters under appeal it follows that the Commissioner may subsequently find, following analysis of the parties' evidence and submissions, that the Appellant was a chargeable person for some or all of the years in which she was originally held not to be a chargeable person.

27. It therefore follows that the Commissioner's findings under this heading are confined to determining whether the Appellant was a chargeable person for the purpose of establishing the admissibility of her appeals and as such these findings, which are preliminary findings, do not preclude the Commissioner subsequently amending the Appellant's chargeability status.

28. In examining the documentation provided to the Commission, and in noting that all of the documentation relied upon by the Commissioner in coming to these preliminary findings was available to the parties in advance of the appeal hearing, the Commissioner seeks

to ensure that neither party is prejudiced by consideration of this documentation which is necessarily required to determine whether the Appellant was a chargeable person for the years 2006 to 2012, and contingent on those findings, whether the Appellant's appeals for some or all of those years are admissible appeals.

29. Within the Appellant's appeal documentation, the Appellant maintained her position that as all her income for the years 2006 to 2012 was taxable under Schedule E at source, then it followed that she was not a "chargeable person" for the purpose of the TCA 1997 during those years. The Appellant's position is best summarised by the comments contained within her Statement of Case submitted to the Commission as follows:

    "…The Appellant's only source of income for tax years 2006 to 2012 inclusive was PAYE income and social welfare income. Accordingly, there was no requirement for the Appellant to file a tax return for the tax years 2006 to 2012 inclusive as she was not an assessable person within the meaning of section 959B TCA 1997…The Appellant was not in receipt of Schedule D income for the tax years 2006 to 2014 inclusive…"

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

31. The referenced section 959B (1) TCA 1997 provides:

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

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

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

(ii) *is fully taxed at source under section 261..."*

32. Sections 256 to 267 TCA 1997 impose obligations on certain deposit takers, such as financial institutions, to deduct Deposit Interest Retention Tax ("DIRT") on certain interest payments made by them to entities which includes individuals. Where DIRT is deducted from interest paid to an individual, under certain circumstances[4], it is considered a "final liability tax" and the taxpayer has no further liability imposed upon them. The practical effect of section 261 TCA 1997 is, in circumstances where the taxpayer's income from other sources is less than €5,000 in a given tax year and where that income has been fully taxed at source, such income is disregarded for the purposes of determining whether the taxpayer is a chargeable person in that particular tax year.

33. The Commissioner notes from the Appellant's schedule of lodgements at **Appendix 2** and the provided copy bank statements that the Appellant was in receipt of deposit interest from the [redacted] and [redacted] for the periods under review and received "dividends" from the Credit Union for the years 2007 to 2013. While DIRT was mandatorily deducted from the [redacted] and [redacted] accounts, the Commissioner further notes from the provided credit union statements that there is no evidence that DIRT was deducted from the dividends received by the Appellant from the credit union.

34. Prior to enactment of the Finance (No. 2) Act 2013, the first €480 of dividends and/or interest posted annually to a "Special Medium Term Share Credit Union Account[5]" were exempt from DIRT and as such were disregarded from both the imposition of income taxation and by default in determining whether an individual was a chargeable person.

35. As the Appellant received sums of deposit interest from financial institutions and dividends from the Credit Union which were below the threshold amount of €5,000 for the years 2006 to 2012 (at its height the Appellant received the sum of €366 in deposit interest in 2010) and as that income was either taxed at source (under the DIRT regime) or exempt from taxation, it follows that the Appellant's deposit interest and dividends

[4] While a full analysis of DIRT is not required for the purpose of this Determination, further guidance on the operation of DIRT is available at https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-08/08-04-03.pdf

[5] "Term Share Accounts" were accounts which could be opened in credit unions subject to satisfying certain criteria during the period 1st January 2002 to 16th October 2013 - https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-08/08-05-01.pdf

received are disregarded under the provisions of section 959B (1) TCA 1997 in establishing whether the Appellant was a chargeable person for the years 2006 to 2012. In considering chargeability, the Commissioner also disregards the payments received by the Appellant from the DSP in the form of Jobseeker's Benefit for the years 2009 and 2010 as such income is ordinarily "codified" against a taxpayer's tax credits and as such does not in itself make a taxpayer a chargeable person.

36. The Commissioner notes from the provided **Appendix 2** that the Appellant received the sum of €6,632 in 2012 in respect of the exercise of share options within that year.

37. Section 128 TCA 1997, which considers the tax treatment of directors and employees of companies granted rights to acquire shares or other assets, provides:

> "*…(2) Where a person realises a gain by the exercise of, or by the assignment or release of, a right obtained by the person on or after the 6th day of April, 1986, as a director of a company or employee, the person shall be chargeable to tax under Schedule E for the year of assessment in which the gain is so realised on an amount equal to the amount of his or her gain as computed and shall be so chargeable notwithstanding that he or she was not resident in the State on the date on which the right was obtained.*
>
> *(2A) Notwithstanding any other provision of the Tax Acts, where a person is, by virtue of this section, chargeable to tax under Schedule E for a year of assessment in respect of an amount equal to the gain realised from the exercise, assignment or release of a right, he or she shall be a chargeable person for that year for the purposes of Part 41A, unless—*
>
> (b) *the person has been exempted by an inspector from the requirements of Chapter 3 of Part 41A by reason of a notice given under section 959N…*"

38. As the Appellant exercised share rights in 2012 and as sections 128 (2) and (2A) TCA 1997 impose a tax liability on the Appellant in respect of the exercise of such rights; and as no evidence was provided to the Commission that the Appellant was exempted from her inspector (from being considered a chargeable person), it follows for the year 2012 that the Appellant is a chargeable person for the purpose of Part 41A TCA 1997.

Finding on the first issue.

39. For the provided reasons, the Commissioner makes the following preliminary findings:

    39.1. The Appellant was not a chargeable person for the years 2006 to 2011.

39.2. The Appellant was a chargeable person for the year 2012.

40. As noted, the Commissioner makes these findings as "preliminary findings" for the purpose of determining whether the Appellant was a chargeable person for the periods 2006 to 2012. These preliminary findings, which find that the Appellant was not a chargeable person for the years 2006 to 2011 may subsequently be amended when the Commissioner considers the parties' witness evidence and submissions in determining the substantive matters under appeal. These matters are considered by the Commissioner below at paragraphs 107 to 127.

Second issue – Are the Appellant's appeals for the years 2006 to 2012 admissible appeals?

41. Having established, on a preliminary basis, that the Appellant was not a chargeable person for the years 2006 to 2011 and that she is considered as such for the year 2012, the Commissioner is required to establish whether the Appellant satisfied the legislative requirements for the appeals to be considered admissible appeals for the years 2006 to 2012.

42. The Appellant filed her Notices of Appeal with the Commission on 29th March 2017. The Appeal was made within 30 days of the date of the Notices of Assessment so was not a "late appeal" for the purposes of section 949O TCA 1997.

43. As noted, on 29 h June 2017, the Respondent objected to the income tax appeals lodged by the Appellant for the years 2006 to 2012 on the basis that the Appellant did not deliver any income tax returns for those years and had therefore not complied with the provisions of section 959(2) (a) (i) and (ii) and section 957 (2) (b) TCA 1997.

44. Those provisions of the TCA 1997 provide that no appeal lies against assessment(s) which were made in default of delivery of a tax return(s) until such stage as the chargeable person delivers the return(s) and pays or has paid an amount of tax on foot of the assessment(s) which is not less than the tax which:

    (i) Is payable by reference to any self assessment included in the chargeable person's return(s), or

    (ii) Where no self assessment is included, would be payable on foot of a self assessment if the assessment was made in all respects by reference to the statements and particulars contained in the return(s) delivered by the chargeable person.

45. On the same date that the Appellant submitted her Notice of Appeal with the Commission, the Appellant filed her 2012 income tax return. For unknown reasons, on 16th August

2017, the Appellant re-summited an identical 2012 income tax return together with income tax returns for the years 2006 to 2011 inclusive.

46. However, based upon the available information at the time and in accordance with the Commissioner's preliminary findings on chargeability, this was not necessary for any of those years, with the exception of 2012 (as the Commissioner has found that the Appellant was not a chargeable person for the years 2006 to 2011 but, owing to the exercised share options, that she was a chargeable person for the year 2012).

47. Sections 957 and 959 TCA 1997 impose obligations on chargeable persons to fulfil certain conditions in order for their appeals to be admissible appeals before the Commission. Owing to the Commissioner's preliminary findings on chargeability, it therefore follows that as the Appellant was not a chargeable person for the years 2006 to 2011, then she was not required to fulfil those conditions under sections 957 and 959 TCA 1997, and as such the Appellant's appeals for the years 2006 to 2011 are admissible appeals.

48. In relation to the year 2012, the Commissioner notes that the Appellant submitted her tax return for that year on 29th March 2017, which was the same date that the Appellant submitted her Notice of Appeal to the Commission. The Commissioner further notes that the Appellant's income tax liability for 2012, calculated in accordance with her self-assessment, was €1,305.16.

49. As no evidence has been presented to the Commissioner that the 2012 income tax liability was discharged by the Appellant, the Commissioner is required to consider the provisions of sections 957 and 959 TCA 1997 for that year.

50. In so doing, the Commissioner notes while the Appellant complied with the return filing obligations of those sections that she failed to satisfy the tax payment requirements. Those requirements imposed an obligation on the Appellant to pay the taxation arising on her calculated self assessment for 2012 (together with any interest therein) in order for her appeal for that year to be considered an admissible appeal.

51. It follows that as the Appellant failed to pay her self-assessed liability for 2012, then in accordance with the provisions of sections 957 and 959 TCA 1997, the Appellant's appeal for that year is not an admissible appeal and as such, the Commissioner finds that he is precluded from making any further findings in relation to that year.

Findings on the second issue.

52. For the provided reasons, the Commissioner makes the following findings on the admissibility of the Appellant's appeals for the years 2006 to 2012:

    52.1. The Appeals for the years 2006 to 2011 are admissible appeals.

    52.2. As the Appellant did not satisfy the requirements of sections 957 and 959 TCA 1997 for the year 2012, her appeal for that year is not admissible before the Commission and as such, the Commissioner is precluded from making findings for that year.

53. Having established that the Appellant's appeals for the years 2006 to 2011 are admissible appeals and as the Respondent did not object to the Commission's acceptance of the 2013 and 2014 appeals, the Commissioner is required to consider the quantum of the Respondent's raised assessments for the years 2006 to 2011 inclusive and the years 2013 and 2014.

54. In so doing, the Commissioner firstly considers the Appellant's witness evidence, together with that of her witnesses before examining the parties' legal submissions.

Witness Evidence

The Appellant

55. The Appellant, having being sworn in by the Commissioner, stated she was originally from [redacted] in the United Kingdom ("UK") and that she attended a university in Northern Ireland. The witness explained that she met her life partner ("partner"), Mr [redacted], while at university. In November 2005, she and her partner moved from the UK to [redacted], where they rented a residential property.

56. The witness stated that she was always a PAYE worker and had been employed in various roles since 2005. She further stated that her current role was with [redacted] where she managed an international [redacted] which supports sales growth.

57. The witness advised she required a bank account to rent a property and that she opened such an account in her sole name with PTSB on her arrival to Ireland in 2005. She advised at the time she opened the account, which was a current account, she also opened a deposit account in her own name as she and her partner had intended on saving to purchase a property.

58. The witness further advised that she opened a joint credit union account with her partner around the time that she moved to Ireland. She explained that she had been approved for a mortgage to purchase a residential property by [redacted] in or around 2010, but when the global crisis evolved around that time, the bank subsequently withdrew its mortgage offer to her. The witness stated as a result of these actions, she closed her accounts with [redacted] and switched her banking business to [redacted] where she opened a current and deposit account with them.

59. The witness stated that the source of lodgements into the current accounts she maintained for the periods under appeal stemmed primarily from her wages which were paid directly into those accounts. She explained in addition to her wages that "things" like refunds were also lodged into those accounts. The source of lodgements into the credit union account, she further explained, were normally relatively small sums withdrawn from her bank accounts.

60. The witness stated that she was never self-employed or the operator of any businesses in her own name and at all material times was an employee. In particular, the witness stated that she was not in receipt of any miscellaneous funds for the periods under appeal and the sole source of her income related to income from her employments, while employed, and the DSP when not employed.

61. The witness advised that she and her partner, while engaged were not married and that they lived together since their arrival in Ireland. She explained that her partner did not trust banks and as such did not open a bank account in his own name, preferring in place to use her bank account as and when required.

62. Having confirmed that the bank accounts listed at **Appendix 2** were her bank accounts, the witness advised she arranged with her accountant to analyse the lodgements into her bank accounts by classification, in order to assist with her appeal. The witness explained that the lodgements under the heading "*Lodgements by* [redacted] *Partner –* [redacted] disclosed on the summary at **Appendix 2** ("the summary") represented sums paid to her from her partner and that those payments represented contributions towards their joint living expenses. The witness further stated those lodgements represented "*…* [redacted] *money, not mine. He used my bank account as if it was his. It wasn't my money.*[6]"

[6]Transcript, day 1, page 53 at lines 6-7.

63. The witness further explained the other entries within the summary and stated that the "*inter account transfers*" arose from her moving monies from her savings account to the current account when necessary. She further explained that in 2014, both she and her partner sold some land and the amount of these proceeds was entered on the summary under the "*sale of land*" column.

64. Turning to the sale of that land, the witness explained that both she and her partner acquired the land and applied for and obtained planning permission to build on that land. She stated when her mortgage offer was revoked by [redacted], that she and her partner took the subsequent decision in 2014 to sell those lands as they did not have the money to complete the necessary building works to construct a dwelling on the land.

65. The witness advised that she engaged the services of her accountant to prepare a CGT computation on the sale of the land and she understood that this had been completed by him. Turning to the listed expenses on the CGT computation, she explained that [redacted] Auctioneers were the "*people we bought the land from*", that an entity called [redacted] looked after the planning permission on the property and that her engaged solicitor at the time was [redacted].

66. Turning to the balance of the transactions listed on the summary, the witness stated:

    66.1. The "*sale of shares*" in 2013 arose on the disposal of shares she had acquired in entities that she was employed in under share option schemes.

    66.2. The "*employment income*" represented her salary payments received for the periods under appeal.

    66.3. She could not provide an explanation for the "*unknown amount*" received in 2014 in the sum of €5,166.

    66.4. The "*refunds, etc.*" represented small sums which arose on the return of goods and services.

    66.5. She did not know what the "*miscellaneous amounts*" were in respect of.

    66.6. The "*dividend and interest*" represented the sums received on the deposit accounts held with financial institutions.

    66.7. She understood that the "*loan returned from* [redacted]" was the repayment of a loan which her partner had lent [redacted].

66.8. The "*solicitor refunds*" of €1,000 represented the return of a rental deposit and the sum of €14,903 related to the sale of the lands.

66.9. The "[redacted] *loan*" related to loan proceeds she received from that institution in respect of the purchase of a motor vehicle.

67. Under cross examination, the witness stated that:

67.1. The provided [redacted] bank statements referred to her as "[redacted]" rather than her proper surname of "[redacted]". She explained the reason for this error on the name on the AIB bank account arose from the Northern Ireland passport office wrongly issuing her with a passport with the incorrect surname and as she was due to fly out a few days after she obtained the passport, she never changed the incorrect surname on it. The Appellant explained that she subsequently used this passport for the opening of the [redacted] account.

67.2. She collected the amounts payable by the DSP in cash format from the local post office and did not subsequently lodge these amounts into any of her bank or credit union accounts.

67.3. She did not return the amounts received from the DSP in 2009 and 2010 on an income tax return as she understood that this was accounted for by her employer.

67.4. She was unsure why the summary listed the sum of €96,415 as being received in respect of the land sale when the provided CGT computation listed the sale proceeds received as €74,000.

67.5. She was uncertain who wrote in ink on the provided [redacted] invoice the sum of €4,860.

67.6. Not all receipts were available for expenses claimed on the provided CGT computation.

67.7. She could not provide an explanation of the "*unknown funds*" of €5,166 apparently received by her in 2014 and as such was unsure if tax was due or paid on this sum.

67.8. Her partner worked with [redacted] selling cars and they operated that business from a yard situate on [redacted] property. She explained that her partner and [redacted] were also friends and that [redacted] was now deceased.

67.9. While she stated that her partner did not want a bank account, that he had opened a credit union account in joint names with her.

67.10. Despite stating that her bank account contained contributions from her partner that her partner actively used her bank account in that he requested her to both lodge and withdraw sums of money from that account.

67.11. She was regularly instructed by her partner to lodge and withdraw large sums of cash to and from her bank account, which she did. She stated that she was unsure what exact purpose her partner required these sums for.

Mr [redacted]

68. Mr [redacted] having being sworn in by the Commissioner presented as a credible witness who, based upon the information made available to him, sought to assist the Commission with the accountancy works he had undertaken on the Appellant's behalf.

69. The witness advised that he was a qualified Chartered Certified Accountant and member of the Irish Taxation Institute. He further advised that he had worked in his own firm of accountants since [redacted]

70. The witness stated that he was engaged as the Appellant's accountant and having gathered the Appellant's bank and credit union statements for the periods under appeal, he analysed the lodgements into the various bank and credit union accounts in an excel spreadsheet format. He advised following the completion of these works that he met with the Appellant and her partner and based upon the available ancillary documentation and information furnished by the Appellant and her partner, he analysed the lodgements by category as best he could. Upon completion of these works, the witness advised that he prepared a summary of the Appellant's lodgements and identified that document as the summary. The witness confirmed that the bank statements provided to the Commission were the bank statements that he based his workings on and both the individual bank lodgement analysis and summary were prepared by him.

71. The witness stated that he believed his workings provided a fair reflection of the Appellant's lodgement summary and sources of those lodgements for the periods under appeal. The witness proceeded to provide the Commission with a summary of how he undertook his works. This explanation presented to the Commissioner as a sensible and comprehensive method of producing the provided analysis and summary of the Appellant's lodgements for the years under appeal.

72. Having provided such detail, the witness advised that the "*sale of shares*" represented the disposal of shares which the Appellant had previously acquired in her employments. He stated that he was unsure whether PAYE was deducted on the exercise of the share options but that he had included them on the Appellant's tax returns for 2013. He stated that he was not provided with any details of the original purchase price of those shares from the Appellant and as such had returned them on the Appellant's tax return in full.

73. The witness further advised that the amounts entered on the summary as "*unknown*" in 2014 in the sum of €5,166 were entered as such as neither the Appellant nor her partner could provide any explanation as to what those sums represented. He further advised that the amounts entered in the column "*Misc*" on the spreadsheet were similarly compiled as the Appellant and her partner could not provide any explanations on the source of those items.

74. Turning to the provided entry for the "*sale of lands*", the witness advised[7] that the total entered in that column, €96,412 (sic) was inadvertently computed as €30,000 of that sum actually represented a transfer from the deposit to the current account. Hence, the witness submitted that the correct sum for the sale of lands was correctly €66,412 (sic) and not the €96,412 (sic) incorrectly entered on the summary. The witness further advised that the effect of this error was tax neutral since the amount wrongly entered was a transfer between bank accounts and as such did not represent taxable income.

75. The witness further advised that the loss forward figure of €781 on the Appellant's 2014 CGT computation was derived from the sale of the shares which she had acquired under share option schemes from her employer. He advised that the sale of the 2012 shares for €6,632 and the sale of the shares in 2013 for €9,836 produced the small loss of €781.

76. In computing the chargeable gain on the disposal of the lands in 2014, the witness advised that he based the CGT computation on documentation which was provided to him and where applicable, some estimates. He explained the accountancy fee estimate provided in the CGT returns was his fee, which remained unpaid but accrued and while he had no documentation to support the stamp duty cost on the acquisition of the site, he had calculated the amount at 4% which represented the then rate of stamp duty in place on the purchase of land.

77. Under cross examination, the witness stated that:

[7] Transcript Day 1, Pages 107 and 108 at lines 26-16.

77.1. He was engaged as the Appellant's accountant in early March 2017 and he was initially instructed to submit the Appellant's appeal to the Commission.

77.2. His works were mainly confined to the analysis of the Appellant's bank statements and the credit union accounts held jointly by the Appellant and her partner. He advised that his workings were chiefly prepared by the information contained on the bank statements and the information and explanations provided by the Appellant and her partner. He stated that he had not been provided with copies of the Appellant's payslips or contracts of employment and that he had "most definitely" taken the Appellant and her partner at "their word"[8].

77.3. The information entered on the analysis and the summary in respect of the household contributions were based entirely upon the explanations provided by the Appellant and her partner and that he had not seen any independent verification of these figures, such as lodgement slips. Put plainly, the witness stated that after identifying the source of the identified lodgements, he treated the majority of the unidentified lodgements as being household contributions received by the Appellant from her partner.

77.4. While the Appellant stated she received her DSP payments in cash from the local post office, it was unlikely that she lodged those sources of cash into the bank account. He stated that the Appellant's submitted tax returns did not include these DSP payments.

77.5. He was not provided with any loan documentation in respect of the alleged repayment of the loan from [redacted] in 2014.

77.6. While the sale of land was recorded on the CGT return as €74,000 and on the summary as €66,412, that the latter figure represented the amount received from the solicitor on the sale. The witness confirmed that the correct gross figure which was received on the sale of the lands was €74,000.

77.7. He had no documentation to support the loss claimed on the 2014 CGT computation in respect of the alleged losses arising on the sale of the share options in 2013.

[8] Transcript, day 1, page 118 at lines 2-4.

The Appellant's Partner – Mr [redacted]

78. Mr [redacted] who had not been present at the proceedings up to this point was sworn in by the Commissioner before tendering his evidence. During the course of his evidence, the witness made some comments relating to one of the Respondent's staff. The witness was advised by the Commissioner that the Commission was not the appropriate forum for such comments and was further advised following a repeated outburst that he would be excluded from presenting his evidence to the Commission if he persisted. Following a short recess to allow the witness to receive instructions from the Appellant's Counsel, the witness apologised to the parties present and continued his evidence before the Commission.

79. The witness advised that he was originally from just outside of [redacted] and that he met the Appellant in 1998. He further advised that both he and the Appellant moved to Ireland in the early 2000s.

80. The witness stated that he was working in the motor trade for the periods under appeal but following an illness was required to cease that business. He advised owing to that illness that the Appellant now acts as his carer.

81. The witness advised for reasons known to himself that he never had a bank account and that he was not familiar with the Appellant's various bank accounts. He stated that he often asked the Appellant to put money into, or take money out of her bank accounts on his behalf.

82. The witness stated that he had discussions with the Appellant and her accountant in relation to the workings subsequently prepared by her accountant. He explained that while not familiar with the bank accounts, he was familiar with the credit union account which was in the joint name of him and the Appellant and that he had assisted the Appellant's accountant in identifying some of the lodgements into both the bank and credit union accounts for the periods under appeal.

83. The witness stated that as long as he knew the Appellant, she was always in gainful employment and for want of a better term, he kind of operated in a grey area and did not use bank accounts to record his trading activities[9]. He explained that he sometimes needed to pay for cars in the UK and that he used the Appellant's bank accounts for such purposes. To fund the purchase of cars, the witness advised that he also lodged money into the Appellant's bank accounts to fund his car purchases and for safe keeping. He

[9] Transcript day 1 at page 141 at lines 19-21.

explained that "*there is no point in me keeping thousands in the sock drawer in the house when someone like me could come and rob it*[10]".

84. In addition to using the Appellant's bank account to fund his business activities, the witness advised that he also contributed funds to the Appellant's bank accounts to fund the household bills since he and the Appellant lived together. Turing to the summary, the witness advised that the sums under the heading "*Lodgements by* [redacted] *partner –* [redacted]" for the years under appeal represented his income.

85. Under cross examination the witness stated that:

    85.1. He was originally a panel beater by trade before repairing some vehicles and offering them for sale. The witness advised that he started in the business of selling vehicles with the now deceased friend of his, [redacted]

    85.2. When asked if he was self-employed, the witness stated[11]:

    > "*I don't know the answer to that question; I was employed… well, I worked, it was not, how do I put it? I wasn't declaring any income"*.

    85.3. He did not make any tax returns for the periods under appeal and did not pay any tax on his earnings.

    85.4. When asked how much money he received for the periods under appeal, the witness stated "*I couldn't put my finger on it*[12]".

    85.5. When asked who paid him his wages, the witness advised that [redacted] paid his wages and when further asked if tax was paid on those wages, he stated "*you would have to ask* [redacted] *that*[13]". The witness further advised that he did not receive a payslip but that he received an envelope with money in it and deductions on it every week. When asked whether he had any of those envelopes with him, the witness stated that "*No, I wasn't asked to bring it*"[14].

    85.6. He had received unemployment benefit for approximately two years and those payments were subsequently withdrawn for unknown reasons in or around 2013. When presented with a copy of his jobseeker's claim form, he acknowledged this form was signed by him and that it stated that his last occupation was that of a

[10] Transcript, day 1, pages 141-142, lines 28-2.
[11] *Ibid* page 149 at lines 8-10.
[12] *Ibid.* page 149 at line 20.
[13] *Ibid.* page 150 at line 25.
[14] *Ibid.* page 151 at line 1.

digger driver. When asked why there was no mention of his alleged involvement in the motor trade, the witness stated "*people can have more than one occupation*[15]."

85.7. When further questioned in relation to that form, the witness stated he agreed that he never listed any employer, in particular [redacted] or any employment under the heading "*Please state your last employer's name, address of employer, occupation, dates of employment or work pattern?*"

85.8. The following information was entered in that form under the heading "*name of employer"*:

> "*Left* [redacted] *in June 2005 and moved to* [redacted]*, then to* [redacted] *for the last two and a half years. Thought he was going to be extradited, but the guards recently called to the house as...and said they knew he was and he wasn't wanted for anything. Had savings which he was living off, but has no bank account…*"

85.9. When asked why in his earlier evidence he stated his income was derived from the car trade in 2013, when in fact he stated above in 2013 that he had no job and was living off his savings, the witness stated:[16]

> *"What was I supposed to go and tell the local unemployment office that the man I had been working for hadn't been paying any tax, I would have got him into trouble.*"

85.10. When asked if the witness lent [redacted] money, he stated that he did but could not recall how much he lent him. He stated that whatever was lent to him was repaid by [redacted]

85.11. He did not have any lodgement slips which supported the lodgements made for the period under appeal to either his joint credit union account with the Appellant nor to the Appellant's bank accounts.

85.12. He contributed the amounts under the heading on the summary *"Lodgements by* [redacted] – [redacted]*"* to the Appellant for the years under appeal.

[15] Transcript, day 1, page 157 at line 10.
[16] *Ibid.* page 158 at lines 4-7.

85.13. When advised that based upon his evidence, it was likely the Commissioner would be unable to ascertain the source of lodgements into the Appellant's bank accounts, the witness stated[17]:

"I have given you the source of [the Appellant's] money…

… if this was a murder trial and [the Appellant] was on trial for murder and I came in and says, excuse me, there is the gun, it was me that did it, you'd be [expletive] kissing me."

Submissions

Appellant

86. The Appellant stated that for the periods under appeal, she was a single person living in rented residential accommodation. The Appellant submitted at all material times she was an employed person whose only source of income was her Schedule E emoluments which were subject to PAYE and that those earnings were paid into directly into her bank account.

87. Turning to the other lodgements into her various bank and credit union accounts held for the years under appeal, the Appellant submitted that any other lodgements had been analysed by her accountant in the summary provided to the Commission and vouched in evidence by herself and her partner.

88. As her partner did not maintain a bank account during the years under appeal, the Appellant submitted that her partner made various contributions towards household bills and living expenditure from his own income.

89. As these lodgements came from her partner's income, the Appellant submitted that as she and her partner were single people for the purpose of the Tax Acts by virtue of not being married or such-like, then there was no available mechanism within the TCA 1997 which permitted the Respondent to tax the Appellant on the earnings of her partner.

90. As such, the Appellant submitted that the lodgements into her bank accounts comprised of two main sources. The first of these comprised her salary (which were her taxed income) and the second of which were contributions to household expenses or outgoings from a "third-party" (which were the third party's income and not that of the Appellant). Given that the third-party income was not that of the Appellant but rather that of her

[17] Transcript, day 1, page 152 at lines 6 and lines 8-11.

partner, the Appellant submitted that she was not responsible for paying the associated taxation on his income, if applicable.

91. The Appellant noted that the Respondent's assessments had been raised under section 18 TCA 1997, Schedule D, Case IV which taxes annual profits and gains to the extent that such profits or gains are not taxed within any other Case of Schedule D or any other Schedule. The Appellant submitted that as she did not conduct any trade or profession capable of producing such profits or gains and as she had been an employee for the years under appeal, then the Respondent had erred in law in the classification and quantification of the income forming those assessments. As such, the Appellant submitted that those assessments ought to be vacated by the Commission.

92. Further or in the alternative, the Appellant submitted that, in raising its assessments, the Respondent was required under the provisions of section 959Y TCA 1997 to use its "best judgment" in making those assessments. The Appellant submitted that as her only source of income for the years under appeal was employment income, which had been taxed at source, then it was evident that the Respondent had not raised its assessments in compliance with the provisions of section 959Y TCA 1997, and as such those assessments should be vacated by the Commission.

93. Turning to the CGT assessment, the Appellant submitted that the prepared CGT computation which had been returned to the Respondent represented the correct position on the disposal of the property and as such, the Respondent's assessment was incorrect and should also be vacated by the Commission.

94. In conclusion, the Appellant submitted that as she had no income aside from her returned Schedule E income, then the Commission should allow her appeal and vacate the Notices of Assessment to Income Tax. In addition, the Appellant submitted that she had correctly returned the disposal of the site she co-owned with her partner and as such, the Respondent's CGT Assessment should be reduced to reflect a nil liability.

Respondent

95. The Respondent opened paragraph 20 of *Menolly Homes* in which Charleton J expressly approved the following extract from the judgment of Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168:

> "*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."

96. The Respondent further opened *Bi-Flex Caribbean Limited v The Board of Inland Revenue* (1990) 63 TC 515, in which the Privy Council clarified that the basis for the rule that the taxpayer bears the onus of proof, as in this jurisdiction, is that the facts are within the knowledge of the taxpayer. At page 522 Lowry L stated that:

"*The element of guess-work and the almost unavoidable inaccuracy in a properly made best of judgment assessment, as the cases have established, do not serve to displace the validity of the assessments, <u>which are prima facie right and remain right until the taxpayer shows that they are wrong</u> and also shows positively what corrections should be made in order to make the assessments right or more nearly right. It is also relevant, when considering the sufficiency of evidence to displace an assessment, to remember that the facts are peculiarly within the knowledge of the taxpayer." (emphasis added)*"

97. The Respondent submitted it was evident from the above jurisprudence that it was for the Appellant to prove that the sources lodged into her various bank accounts for the years under appeal were not miscellaneous income but rather came from some verifiable source. The Respondent submitted that despite this position, the Appellant had failed to produce any valid explanation in relation to a number of lodgements made into her bank accounts for the years under appeal.

98. As such, the Respondent submitted it was evident from the summary that the Appellant had sources of income other than "*emoluments to which Chapter 4 of Part 42 applies"* and that she was also in receipt of deposit interest income and credit union dividends which were also liable to tax.

99. Turning to the summary, the Respondent submitted that as no evidence had been provided to the Commission that the Appellant's partner had any legitimate means of contributing sums to the Appellant during the years under appeal, then the income under the heading on the summary entitled "*Lodgements by* [redacted] *Partner,* [redacted]" ought to be assessed on the Appellant as miscellaneous income, since the source of that income remained unknown.

100. In addition, the Respondent submitted that those items under the headings "*unknown*", "*refunds etc*.", "*Misc*" "*solicitor refund*" and "[redacted] *loan*" ought to be similarly liable to taxation as the Appellant had failed to produce any documentary evidence which supported her belief that the funds came from those sources.

101. As no documentation was provided to the Commission to evidence the Appellant's claims that the sum of €10,000 was the repayment of a loan from [redacted], the Respondent further submitted that this sum should be taxed as miscellaneous income under Schedule D, Case IV.

102. Furthermore, as the Appellant exercised share options in the year 2013 and had provided the Commission with no evidence as to the cost of those share options, the Respondent submitted that the Appellant ought to be taxed under Schedule E on the entire amount of the sum representing the proceeds of those share disposals. The Respondent further submitted that as the Appellant received sums from the DSP for those periods that she was not working, then those sums should also be liable to taxation under Schedule E.

103. Turning to the disposal of the land in 2014, the Respondent submitted that the allowable deductions in computing the Appellant's CGT liability ought to be reduced by those expenses which were estimated by the Appellant's agent and those expenses which did not have any receipts or other proofs that they were discharged.

104. In addition, as the Appellant produced no evidence of the loss claimed on her 2014 CGT computation, the Respondent submitted that the amount of this loss should be disallowed in computing the Appellant's CGT liability for 2014.

105. In conclusion, the Respondent submitted that that as the Appellant had received income for the years under appeal and had failed to provide the Commission with any evidence of the source of those funds, then the Commission should refuse the Appellant's appeal. In addition, the Respondent submitted that its assessment to CGT for 2014 ought to be upheld by the Commission as it represented the Appellant's correct liability for that year.

Material Facts

106. The Commissioner finds the following material facts:

106.1. The Appellant was primarily a PAYE worker for the years under appeal.

106.2. The Appellant received the sum of €9,836 in 2013 from the disposal of share options received in the course of her employment. No documentation was provided to the Commission which provided details of the acquisition cost of those shares.

106.3. Under the heading "PAYE/BIK/Pensions" and the sub-heading "Share options exercised, released or assigned" on the Appellant's submitted tax return for 2013, the Appellant entered the sum of €5,126 as the "total chargeable amount". The amount of tax paid on the exercise of the share option was shown as "nil".

106.4. In the years 2009 and 2010 the Appellant received sums from the DSP. Those amounts were included on her submitted Income Tax returns for the years 2009 and 2010 as €3,417 and €3,830 respectively.

106.5. The Respondent issued Notices of Assessment for Income Tax to the Appellant for the years 2006 to 2014 on 28th February 2017. The sum of Income Tax due on those assessments was €160,580.

106.6. The Appellant disposed of a property in 2014 and claimed a number of deductions in the computation of her 2014 CGT liability. The Appellant did not provide the Commission with all receipts or proof of payments for some of those claimed expenses.

106.7. The Respondent issued a Notice of Assessment to CGT on 28th February 2017 which shows a CGT liability payable of €1,716.99. This liability includes a 10% surcharge for the late submission of the Appellant's CGT return.

106.8. The Appellant submitted her Notice of Appeal to the Commission on 29th March 2017.

106.9. On the date the Appellant submitted her Notice of Appeal to the Commission, she had submitted Income Tax returns to the Respondent for the years 2013 and 2014. The Appellant had not submitted income tax returns on the date she lodged her appeal to the Commission for the years 2006 to 2011 inclusive.

106.10. The Respondent did not object to the Commission accepting the Appellant's 2013 and 2014 appeals as admissible appeals.

106.11. The Commission held a hearing on 21st October 2022 to determine whether the Appellant's appeals for the years 2006 to 2012 were valid appeals. The Commissioner issued his Decision which confirmed that those appeals were valid appeals on 24th November 2022.

106.12. As a preliminary finding, the Commissioner found that the Appellant was not a chargeable person for the years 2006 to 2011. As such, the Appellant was not required to submit Income Tax returns for those years.

106.13. As the Appellant was not a chargeable person for the years 2006 to 2011, those appeals are admissible appeals before the Commission.

106.14. The Appellant's agent summarised the Appellant's bank accounts into a number of categories for the years under appeal. This document is referred to as "the summary". When compiling the summary, the Appellant's accountant categorised the identified lodgements under various headings and treated the resultant unexplained lodgements as being contributions received from the Appellant's partner.

106.15. Within the summary there are a number of disputed transactions which the Respondent submits are liable to taxation under Schedule D, Case IV as "miscellaneous income".

106.16. Included within those disputed transactions is a number of lodgements described as "*Contributions from* [redacted] *Partner –* [redacted]".

106.17. The Appellant's partner provided evidence before the Commission. The Appellant's partner did not present to the Commission as a credible witness for reasons which included that he sought the Respondent's Counsel to verify certain information from a known deceased individual. In addition, the Appellant's partner was unable to confirm to the Commission whether the income he received for the years under appeal were subjected to taxation or where his alleged income for the years under appeal derived from.

106.18. As the Appellant's partner was unable to provide any documentary evidence to the Commission which explained and verified the source of his income, the source of that income remains unknown.

106.19. In addition, despite the Appellant's partner claiming that he worked in the motor trade for the years under appeal, he was unable to explain why he was in receipt of unemployment benefit for two of the years under appeal.

106.20. The Appellant's bank accounts which received the disputed transactions were under the sole control of the Appellant and she was entitled to the use and enjoyment of those funds.

Analysis

107. At the commencement of the Appellant's appeal on 15th September 2023, the Appellant's Counsel advised[18] the Commissioner may have been mistaken in his Decision dated 24 h November 2022 in that he considered the admissibility of the Appellant's appeals for the years 2006 to 2012. The Appellant's Counsel submitted that as the Appellant had submitted a 2012 Income Tax Return at the date she lodged her appeal with the Commission then there was no uncertainty regarding the admissibility of the 2012 appeal and as such, the admissibility issue related to the years 2006 to 2011 inclusive, and did not include the year 2012. The Commissioner advised that he would examine this issue and make corrections, if applicable.

108. As noted the Commissioner considered admissibility of the Appellant's 2012 appeal at paragraphs 45 to 51 above. As further noted, as the Appellant did not fulfil the conditions of sections 957 and 959 TCA 1997, the Commissioner is precluded for making any findings in relation to that year. As such the Commissioner correctly considered the admissibility of the Appellant's 2012 appeal as despite having lodged a tax return for that

[18] Transcript, day 1 at pages 8 and 9, lines 10 to 6.

year, the Appellant failed to pay the associated arising taxation liability on that return, which is not in compliance with those statutory provisions.

109. Turning to the substantive issues, the appropriate starting point for analysis of those issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in *Menolly Homes* where Charleton J held at paragraph 22:-

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

110. This burden of proof was reiterated in the recent High Court case of *O'Sullivan v Revenue Commissioners* [2021] IEHC 118, ("*O'Sullivan*") where Sanfey J. held at paragraph 90:

> "*…The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer's position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position...*"

111. The Commissioner notes that the Respondent assessed the Appellant under two tax heads that is income tax and CGT. The Commissioner considers the Appellant's position under each of these tax heads separately.

Income Tax Assessments

112. The Commissioner notes that the Respondent assessed the Appellant to income tax under Schedule D, Case IV on the basis that the Appellant had "unexplained" income for the years under appeal. The Appellant's Counsel submits that this is the incorrect sub-schedule to assess the Appellant's income (see paragraph 91 above) on the basis that she was an employee for the years under appeal and did not conduct a trade or profession during those years. However, as the provisions of section 18 (2) (f) TCA 1997 require that tax is charged under Schedule D, Case IV 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",* it follows in the event of the Appellant being deemed to have unexplained income for the years under appeal, as that income is not taxed under any "other Schedule", then the Respondent will be found to have correctly assessed the Appellant under Schedule D, Case IV on that unexplained income. It follows for the Appellant's

appeal to succeed, it is first necessary for the Appellant to establish that the income received by her was not from unexplained sources but rather came from some other verifiable source.

113. As noted above and throughout this Determination, the Appellant's accountant assisted the Commission in the preparation of the summary. As further noted at paragraph 68 above, the Appellant's accountant presented as a credible witness and the Commissioner considered his workings to be prepared using sensible and comprehensive methods (paragraph 71 above refers). For those reasons, the Commissioners relies on the summary in coming to his findings.

114. Within his evidence, the Appellant's accountant advised that he firstly identified those lodgements which were verifiable with reference to either documentation or explanations furnished by the Appellant and her partner. When this figure was classified and quantified, he treated the balance of the lodgements into the Appellant's accounts for the years under appeal as being referable to contributions received from the Appellant's partner and lodged into her bank accounts ("the balancing figure").

115. While this methodology is logical, it follows for the Appellant's appeal to succeed, the income of the Appellant's partner must be capable of being evidenced, since by his own admission the Appellant's accountant treated the unexplained lodgements as relating to the income of the Appellant's partner. Absent this evidence, the balancing figure will remain unexplained and as such liable to taxation in the hands of the Appellant, as she enjoyed the control, use and enjoyment of those funds. In addition, if the Appellant is found to have been in receipt of other funds which are not capable of explanation and verification, it follows that those funds will similarly remain unidentified and as such liable to income tax in the hands of the Appellant under Schedule D, Case IV.

116. Turning to the summary and in considering the lodgement column entitled "[redacted] *Employment Income (incl Exps)*", the Commissioner notes that the following sums were returned under that heading and that the Appellant earned the following gross sums for the years 2006 to 2011 and 2013 and 2014:

Year	Net Income Per Schedule €	Gross Income Per Assessments €
2006	27,046	34,734
2007	37,288	39,488
2008	43,206	44,935
2009	27,114	26,189
2010	17,784	17,419
2011	19,791	25,364
2013	29,779	50,671
2014	46,450	76,797

117. As the heading is entitled "*…including expenses*" and as no documentary evidence was produced to the Commission to verify the quantum and validity of those expenses, the Commissioner finds that the Respondent is required to calculate the Appellant's net pay for the above years from the information it possesses from forms P35 and to deduct those sums from the figures entered in the "net income per schedule" column above with the resultant difference being taxed under Schedule D, Case IV as miscellaneous income. In coming to this finding the Commissioner notes that the amount of net income for 2009 and 2010 exceeds the Appellant's gross income for those years and for the balance of the provided years that the net income appears overstated in comparison to the gross pay earned by the Appellant in the provided year.

118. Furthermore as the Appellant received sums of Jobseeker's Benefit for the years 2009 and 2010, which are not exempt from taxation, the Commissioner finds that the Appellant is liable to income tax on those sums under Schedule E for those years.

119. Having considered the summary, the individual bank and credit union accounts analysis and bank statements, the Commissioner accepts as valid the figures entered on the summary under the headings "*Sale of Land*" and "*Inter-Account Transfers*". As these items do not relate to taxable income (save the sale of land, see below at paragraphs 129 - 132), the Commissioner finds that the figures entered under these headings on the summary are tax neutral.

120. The Commissioner notes that the Appellant received the sum of €9,836 in respect of the "*Sale of Shares*" in 2013 and that she returned this amount on her 2013 Income Tax return as €5,126. As no evidence was provided to the Commissioner on the acquisition cost of those shares, it follows that the Appellant is liable to income taxation under Schedule E on the gross sum received, €9,836 in the year 2013.

121. As no evidence was provided to the Commissioner in respect of the sums entered under the headings "*unknown*", "*Misc*", the "*Loan Returned from* [redacted] *(now deceased)*" and the "[redacted] *Loan*", it follows that the source of that income is not verified and as such is liable to taxation, in the year of receipt, under Schedule D, Case IV as "miscellaneous income". The Commissioner examined the components of the "refunds, etc." column of the summary and notes for those sums do not relate to taxable income and as such are precluded from assessment under Schedule D, Case IV.

122. While evidence was provided to the Commissioner in respect of the solicitor refund of €14,903 received in 2010 (sub-paragraph 22.13 above which shows the sum of €14,903 under the heading "*Balance due to you*"), as no documentary evidence was provided to the Commissioner in respect of the amount of €1,000 entered under the same column for the year 2009, it follows that the source of that lodgement remains unknown and as such that sum is liable to taxation in the year 2009 under Schedule D, Case IV.

123. Turning to the lodgements on summary allegedly received from the Appellant's partner, the Commissioner notes while the Appellant's partner asserted that the source of those lodgements was from "his income", he was unable to provide any reliable evidence to the Commissioner as to either the source of that income or whether that income had been subject to taxation. The Commissioner further notes that while [redacted] stated his income was derived from his involvement in the motor trade with [redacted], that this explanation is contradicted by the information that he submitted to the DSP and as he was in receipt of jobseeker's allowance for periods in which he claimed his income was derived from his involvement in the motor trade.

124. As such, the Commissioner finds that the source of the Appellant's partner's income remains unknown and as the Appellant enjoyed the use and enjoyment of those funds for the years under appeal, it follows that income is liable to taxation under Schedule D, Case IV as miscellaneous income.

125. During the course of the appeal, the Appellant presented to the Commissioner as a bright and diligent person, which is verified by the holding of her senior position within [redacted] Given this position, the Appellant knew or ought to have known that lodging sums of money into her various bank accounts for the years under appeal without knowing the source or validity of those sums could result in adverse taxation findings against her.

126. As the effects of the above reclassifications of income result in the Appellant's non-PAYE income exceeding €5,000 per annum, it follows that she is also subject to taxation on the

amount of the deposit interest she received from the financial institutions for the years 2006 to 2011 and for the years 2013 and 2014 under the provisions of section 261 TCA 1997. As the dividends received from the credit union were exempt from taxation for the periods up to an including 16th October 2013, it follows that portion of the interest received is not assessable to taxation under Schedule D, Case IV.

127. Owing to the number of adjustments required to ascertain the Appellant's taxable income and to assist the parties, the Commissioner sets out at **Appendix 4** a summary of the methodology to assess the Appellant to income tax for the years 2006 to 2011 and 2013 and 2014. For the avoidance of any doubt, the Commissioner is satisfied upon population of the provided table, that the Appellant's taxable income will be calculated in accordance with the provisions of section 959Y TCA 1997.

128. Upon calculation of the Appellant's income tax liabilities, as the Appellant is found to have "*carelessly delivered an incorrect return of income*" for the years 2006 to 2011 and 2013 and 2014, in accordance with the provisions of section 1084 TCA 1997; the Respondent is required to impose a 10% surcharge to the Appellant's taxation liabilities for those years.

Capital Gains Tax Assessment

129. The Commissioner notes that the Appellant disposed of a property in 2014 and claimed a number of expenses as deductions in the computation of her CGT liability.

130. While the provisions of section 552 TCA 1997 detail the expenses of a type deductible in computing a taxpayers' CGT liability, the provisions of section 886 (2) (a) TCA 1997 require a taxpayer to retain such records "*as will enable true returns to be made for the purposes of …capital gains tax of such…chargeable gains*". The combined effect of these sections of the TCA 1997 is that allowable expenditure is confined to those costs incurred in the acquisition, enhancement and disposal of an asset and absent supporting documentation, such expenditure is not deductible in computing a taxpayer's chargeable gains or losses.

131. The Commissioner notes that the Appellant provided the Commission with the following documentary evidence of allowable expenses incurred on the disposal of the site in 2014:

131.1.	[redacted] (sub-paragraphs 22.9 and 22.10 refer)	€2,145
131.2.	[redacted] (sub-paragraph 22.11 refers)	350
131.3.	Site purchase cost (sub-paragraph 22.13 refers)	58,000

131.4. Site Acquisition costs (sub-paragraph 22.13 refers) 2,096

132. Therefore the Appellant's allowable expenditure is confined to those expenses evidenced and not those expenses claimed by the Appellant in computing her liability for which no documentary evidence was provided to the Commission. The effect of the disallowance of that claimed expenditure results in the following computation:

	Sale proceeds		€74,000
Less:	Purchase Price	58,000	
	Incidental Costs of Acquisition	4,591	€62,591
	Gain		€11,409
	One-half attributable to the Appellant		€5,704
Less:	Annual Exemption		€1,270
	Chargeable Gain		€4,434
	CGT @ 33%		€1,463

133. The Commissioner notes while the Appellant's accountant claimed stamp duty at the rate of 4% on the purchase price of the property when computing the Appellant's chargeable gain, that as the Appellant and her partner were "first-time buyers" on the date they acquired the site, they would then have been exempt from stamp duty[19]. Hence for that reason, and as the Appellant produced no evidence relating to stamp duty paid, the Commissioner finds that the Appellant is not entitled to a deduction in respect of stamp duty when computing her 2014 CGT liability. Furthermore, as the Appellant produced contradictory evidence in relation to, and no evidence to support, the loss of €781 claimed on her provided CGT assessment, the Commissioner is unable to allow this loss in the calculation of the Appellant's CGT liability for 2014.

134. As the provisions of section 1084 TCA 1997 are also applicable to CGT, it follows that the Appellant is liable to the imposition of a 10% surcharge on her calculated CGT liability.

[19] The Finance Act 2011 implemented a new stamp duty regime with effect from 8th December 2010. As part of these measures included the abolition on the previous exemption from stamp duty for first time buyers it follows that as the Appellant purchased the site in or around 18th February 2010, that they would have been eligible for and most likely acquired that site without any stamp duty charge.

Determination

135. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the relevant tax is not payable.

136. In the circumstances and based on a review of the facts and consideration of the Appellant's witnesses' evidence and the documentary evidence and submissions of the parties, the Commissioner determines:

    136.1. The Notice of Assessment to income tax for the year 2012 is not an admissible appeal before the Commission and as such, the Commissioner is precluded from making any further findings for the year 2012.

    136.2. The Notices of Assessment to income tax which issued by the Respondent for the years 2006 to 2011 and 2013 and 2014 are upheld with the variations detailed at paragraphs 115 to 127 above computed in accordance with the template at **Appendix 4.**

    136.3. The Notice of Assessment to CGT issued by the Respondent is upheld subject to the variations detailed at paragraph 132 above.

137. The Commissioner appreciates that the Appellant will be disappointed with this determination but she was correct to seek legal clarity on her appeal.

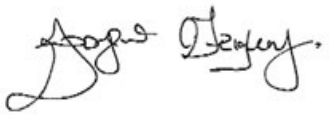
138. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

139. 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

140. 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.



Andrew Feighery

Appeal Commissioner

31 January 2024

Appendix 1 – Commissioner's Decision of 24th November 2022

[redacted]

Between

[redacted]

Appellant

and

THE CRIMINAL ASSETS BUREAU

Respondent

Decision on preliminary issue

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against Notices of Assessment to Income Tax and Capital Gains Tax ("CGT"). The income tax assessments cover the years 2006 to 2014 and the amount of tax at issue is €160,580. The CGT assessment relates to the tax year 2014 and the quantum of tax owed on that assessment is €1,716.99.

2. The oral hearing of the within appeals took place on 21st October 2022 at which a preliminary issue of whether the Appellant's appeals for the years of assessment 2006 to 2012 were admissible appeals as the Appellant had initially failed to lodge income tax returns for those years. The income tax appeals for the years of assessment 2013 and 2014 and the CGT 2014 assessment do not form part of this decision as the Appellant had submitted valid tax returns for those years and accordingly the Commission had accepted those appeals.

3. Arising from a Case Management Conference it had been agreed with the Appellant and the Respondent that this preliminary issue would be determined prior to the hearing of the substantive appeal. As a consequence, this is a determination of a preliminary issue as to whether the Appellant's appeals for the years of assessment 2006 to 2012 are

admissible appeals or whether admittance of those appeals should be refused by the Commission.

Background

4. The Appellant was assessed to "Schedule D, Miscellaneous Income" in the following additional sums for the tax years 2006 to 2012 inclusive by the Respondent on 28th February 2017:

Year of Assessment			Quantum €
2006			25,000
2007			45,000
2008			55,000
2009			45,000
2010			60,000
2011			35,000
2012			12,500

5. A notice of appeal against the aforementioned assessments (and the 2013 and 2014 assessments) was received by the Commission on 29th March 2017.

6. The Appellant submitted that her only source of income for the years of assessment 2006 to 2012 was PAYE income. As such the Appellant submitted that she was not a chargeable person and was not required to submit income tax returns for those years.

7. On 29th June 2017, the Respondent objected to the Commission accepting the appeals for the years 2006 to 2012 on the grounds that the Appellant did not deliver any income tax returns for these periods. If the Appellant was a "chargeable person" section 957(2)(a)(i) and (ii) and section 957(2)(b) of the TCA 1997 required the Appellant to have submitted her returns for the periods under appeal and have paid the associated tax (and interest) in order for the appeal to comply with the legislative requirements governing acceptance.

8. On 26th July 2017, the Commission advised the Appellant that the appeals for the years of assessment 2013 and 2014 and the CGT Assessment for 2014 had been accepted as valid appeals. The Appellant was further advised that the appeals for the years of assessment 2006 to 2012 had been refused on the basis that the conditions set out in section 957 (2) (a) (I) TCA 1997 had not been satisfied.

9. On 9th August 2017, the Appellant's agent requested the Commission to reconsider its decision to refuse the appeals for the years of assessment 2006 to 2012. The basis of the request was that the Appellant stated she was not a chargeable person within the meaning

of section 957B TCA 1997 and therefore section 957 (2) (a) (i) and section 957 (2) (b) TCA 1997 did not apply.

10. On 11th August 2017, following the Commission's refusal of the Appellant's income tax appeals for the years 2006 to 2012, the Respondent issued to the Appellant a final demand for the arrears of income tax for the tax years 2006 to 2012 inclusive of statutory interest. This final demand was in the amount of €232,684.20.

11. In the absence of an immediate response from the Commission, the Appellant's agent filed income tax returns for the years 2006 to 2012 on 16th August 2017. These returns alleged that the Appellant was not a chargeable person for those years (as all her income was PAYE income and taxed at source) and that the income tax liability for those periods was nil.

12. A Case Management Conference ("CMC") was held on 9th February 2018. The CMC concluded with a direction that the Appellant's agent would correspond with the Respondent to enable the Appellant's agent to conduct his own analysis of the lodgements made to the Appellant's bank accounts during the tax years 2006 to 2014, in addition to conducting a review of the Respondent's capital gains tax computations as set out in the CGT 2014 return.

13. A further CMC was held on 11th February 2021 and arising from this CMC, the Commission sent an email stating inter alia that: "*For the avoidance of any doubt in the matter the Commissioner wishes to advise both parties that the matter of whether or not there are valid appeals in relation to the income tax assessments for 2006, 2007, 2008, 2009, 2010, 2011 and 2012 the subject of the discussion at the CMC is not resolved. These appeals were regarded by the TAC as not valid and this was communicated to both parties on 26 July 2017. The appeals against the Income Tax assessments for 2013, 2014 and the CGT assessment for 2014 are regarded as being valid appeals and the TAC wishes to be provided with a statement of case for these appeals by both parties and the Commissioner has sought the Respondent's submission on a number of matters including such further submissions "in relation to the outcome of the CMC as required"*."

Legislation

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

Section 18 TCA 1997

(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.*

Tax under Schedule D shall be charged under the following Cases:

…

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;

…

PART 38

Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers

CHAPTER 1

Income tax: returns of income

Section 876- Notice of liability to income tax.

Every person who is chargeable to income tax for any year of assessment and who in relation to that year has not been given a notice under section 877 or 879 and has not made a return of such person's total income shall, not later than one year after the end of the year of assessment, give notice to the inspector of taxes that such person is so chargeable.

Section 877-Returns by persons chargeable.

(1) Every person chargeable under the Income Tax Acts, when required to do so by a notice given to such person by an inspector, shall, within the time limited by such notice, prepare and deliver to the inspector a statement in writing as required by the Income Tax Acts, signed by such person, containing the amount of the profits or gains arising to such person, from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts.

(2) There shall be added to the statement referred to in subsection (1) a declaration that the amounts contained in that statement are estimated in respect of all the sources of income mentioned in the Income Tax Acts, describing those sources, after deducting only such sums as are allowed.

(3) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect of that interest of money or other annual payment.

(a) Every person to whom a notice has been given by an inspector requiring such person to deliver a statement of any profits, gains or income in respect of which such person is chargeable under Schedule D or E shall deliver a statement in the form required by the notice, whether or not such person is so chargeable.

(b)The penalty imposed on any person proceeded against for not complying with this subsection who proves that such person was not chargeable to income tax shall not exceed €5 for any one offence.

Section 933 TCA 1997

Appeals against assessments

(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue

Commissioners shall appoint in that behalf (in this section referred to as "other officer") shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

(b)Where on an application under paragraph (a) the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.

(c) A person who has had an application under paragraph (a) refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.

(d) On receipt of an application under paragraph (c), the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under paragraph (b) and, on receipt of the copy of the notice, they shall as soon as possible—

(i) refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal,

(ii) allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or

(iii) notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.

` *…*

Section 949I TCA 1997 – Notice of Appeal

(1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.

A notice of appeal shall specify—

(a) the name and address of the appellant and, if relevant, of the person acting under the appellant's authority in relation to the appeal,

(b) in the case of an appellant who is an individual, his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) or, in the case of any other person, whichever of the numbers in respect of the person specified in paragraphs (b) and (c) of the definition of "tax reference number" in section 885(1) is appropriate,

(c) the appealable matter in respect of which the appeal is being made,

(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and

(e) any other matters that, for the time being, are stipulated by the Appeal Commissioners for the purposes of this subsection.

(2) Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied.

(3) Where an appeal is a late appeal, the notice of appeal shall state the reason the appellant was prevented from making the appeal within the period specified by the Acts for doing so.

(4) A copy of the notification that was received from the Revenue Commissioners (that is to say, the notification in respect of the matters the subject of the appeal) shall be appended to a notice of appeal.

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

Section 949 J TCA 1997 - Valid appeal and references in this Part to acceptance of an appeal.

(1) For the purposes of this Part, an appeal shall be a valid appeal if—

(a) it is made in relation to an appealable matter, and

(b) any conditions that are required (by the provisions of the Acts relevant to the appeal concerned) to be satisfied, before an appeal may be made, are satisfied before it is made.

(2) References in this Part to an appeal being accepted by the Appeal Commissioners shall be construed as references to their determining that, for the time being (on the facts and information then available to them)—

(a) the appeal is a valid appeal, and

(b) there are no grounds for their invoking section 949N (1) (c) as a basis for not proceeding as subsequently mentioned in this subsection,

and, accordingly, that they should proceed to deal with the appeal.

(3) However, any such determination of the Appeal Commissioners may be reversed by them as and when facts and information become available to them that, in their opinion, warrant that course of action.

(4) Subsection (3) shall not affect the operation of section 949N (3) (provision with regard to finality of Appeal Commissioners' refusal to accept an appeal).

Section 949 N – Refusal to accept an appeal

(1) Where the Appeal Commissioners—

(a) are satisfied that an appeal is not a valid appeal,

(b) become aware, having previously formed the view that an appeal was a valid appeal, that it is not a valid appeal, or

(c) are satisfied that an appeal is without substance or foundation,

they shall refuse to accept the appeal.

(2) Where the Appeal Commissioners refuse to accept an appeal, they shall notify the parties in writing accordingly stating the reason for the refusal.

(3) Where, in respect of a refusal on their part to accept an appeal, the Appeal Commissioners declare that their decision in that regard is final, then that decision shall be final and conclusive.

(4) For the avoidance of doubt—

(a)references in the preceding subsections to the Appeal Commissioners' refusing to accept an appeal include references to a member or members of staff of the Commission, pursuant to an authority granted under section 5(2) of the Finance (Tax Appeals) Act 2015, refusing to accept an appeal, and

(b) the Appeal Commissioners may make a declaration under subsection (3) in respect of a foregoing refusal by a member or members of staff to accept an appeal as they may make such a declaration in respect of such a refusal on their part.

Section 949 O TCA 1997

(1) The Appeal Commissioners may accept a late appeal where—

(a) they are satisfied that—

(i) the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the period specified by the Acts for the making of that appeal, and

(ii) the appeal is made thereafter without unreasonable delay,

and

(b) the appeal is made within a period of 12 months after the end of the period specified by the Acts for the making of that appeal.

(2) Notwithstanding the period specified in paragraph (b) of subsection (1) for the making of an appeal, the Appeal Commissioners may accept an appeal made after the end of that period where paragraph (a) of that subsection applies and—

(a) any return that was required to be delivered to the Revenue Commissioners under the Acts has been so delivered, and

(b) the requirement in subsection (3) (a) or (b) (or both as the case may be) has been complied with.

(3) Each of the following is a requirement mentioned in subsection (2) (b)—

(a) where, in the opinion of the Appeal Commissioners, the return referred to in subsection (2)(a) is insufficient to enable the appeal to be determined, such other information as, in the opinion of the Appeal Commissioners, would enable the appeal to be determined by them without undue delay has been provided, and

(b) where an appeal is made against an assessment, any tax charged by the assessment has been paid together with any interest on that tax chargeable under—

(i) section 1080,

(ii) section 159D of the Stamp Duties Consolidation Act 1999.

(iii) section 103 of the Finance Act 2001,

(iv) section 51 of the Capital Acquisitions Tax Consolidation Act 2003,

(v) section 114 of the Value-Added Tax Consolidation Act 2010, or

(vi) section 149 of the Finance (Local Property Tax) Act 2012,

as the case may be, at the time the appeal is made.

(4) For the purpose of deciding whether to accept a late appeal, the Appeal Commissioners may make such enquiries as they consider necessary or appropriate and may do so by holding a hearing.

(5) Nothing in this section derogates from the functions of the Appeal Commissioners under section 949N.

Section 951. Obligation to make a return

(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector General on or before the specified return date for the chargeable period a return in the prescribed form of

(a) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment -

(i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 877, if the period specified in such notice were the year of assessment which is the chargeable period, and

(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in subparagraph (i), all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under section 879, or

(b) in the case of a chargeable person who is chargeable to corporation tax for a chargeable period which is an accounting period, all such matters and particulars in relation to the chargeable period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 884, and such further particulars (including particulars relating to the preceding year of assessment where the profits or gains of that preceding year are determined in accordance with section 65(3)) as may be required by the prescribed form.

(1A) The prescribed form referred to in subsection (1) may include such matters in relation to gift tax and inheritance tax as may be required by that form.

(2) The precedent partner of any partnership shall be deemed to be a chargeable person for the purposes of this section and shall as respects any chargeable period deliver to the Collector-General on or before the specified return date for that chargeable period the return which that partner would be required to deliver for that period under section 880, if the appropriate inspector had given notice under that section before that specified date.

(3) (a) Where under subsection (1) or (2) a person delivers a return to the Collector-General, the person shall be deemed to have been required by a notice under section 877 to deliver a statement containing the matters and particulars contained in the return or to have been required by a notice under section 879, 880 or 884 to deliver the return, as the case may be.

(b) Any provision of the Tax Acts relating to the taking of any action on the failure of a person to deliver a statement or return pursuant to a notice given under any of the sections referred to in paragraph (a) shall apply to a chargeable person in a case where such a notice has not been given as if the chargeable person had been given a notice on the specified return date for the chargeable period under such one or more of those sections as is appropriate to the provision in question.

(4) A chargeable person shall prepare and deliver to the Collector-General, a return for a chargeable period as required by this section notwithstanding that the chargeable person has not received a notice from an inspector to prepare and deliver a statement or return for that period under any of the sections referred to in subsection (3)(a).

(5) *(a) A return required by this section may be prepared and delivered by the chargeable person or by another person acting under the chargeable person's authority in that regard.*

(b) Where a return is prepared and delivered by such other person, the Tax Acts shall apply as if it had been prepared and delivered by the chargeable person.

(c) A return purporting to be prepared and delivered by or on behalf of any chargeable person shall for the purposes of the Tax Acts be deemed to have been prepared and delivered by that person or by that person's authority, as the case may be, unless the contrary is proved.

(6) An inspector may exclude a person from the application of this section by giving the person a notice in writing stating that the person is excluded from the application of this section, and the notice shall have effect for such chargeable period or periods or until such chargeable period or until the happening of such event as shall be specified in the notice; but - (a) where before the 25th day of May, 1988, a person has been given notice by the inspector that the person need not prepare and deliver a return for or until a specified chargeable period or until the happening of any event, the person shall be deemed to have been given notice to that effect under this subsection; (b) where a person who has been given a notice under this subsection is chargeable to capital gains tax for any chargeable period, this subsection shall not operate so as to remove the person's obligation under subsection (1) to make a return of the person's chargeable gains for that chargeable period.

(7) *(a) This section shall not affect the giving of a notice by an inspector under any of the specified provisions and shall not remove from any person any obligation or requirement imposed on the person by such a notice.*

(b) The giving of a notice under any of the specified provisions to a person shall not remove from that person any obligation to prepare and deliver a return under this section.

(8) In a case to which section 1023(5) or 1031H (5), as the case may be, applies, a return containing for both the husband and the wife, or both civil partners, the matters and particulars required by subsection (1) shall, if delivered by one spouse, or one civil partner, satisfy the obligation of the other spouse or civil partner under this section.

(9) Nothing in the specified provisions or in a notice given under any of those provisions shall operate so as to require a chargeable person to deliver a return for a chargeable period on a date earlier than the specified return date for the chargeable period.

(10) A certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined the relevant records and that it appears from those records - (a) that as respects a chargeable period a named person is a chargeable person, and (b) that on or before the specified return date for the chargeable period a return in the prescribed form was not received from that chargeable person, shall be evidence until the contrary is proved that the person so named is a chargeable person as respects that chargeable period and that that person did not on or before the specified return date deliver that return, and a certificate certifying as provided by this subsection and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by that inspector.

(11) (a) [deleted]

(b) [deleted]

(c) [deleted]

(d) The Collector-General may designate an address for the delivery of returns which in accordance with this section are required to be delivered to the Collector-General by chargeable person.

(e) Where the Collector-General designates an address under paragraph (d), that address shall be published in Iris Oifigiúil as soon as is practicable after such designation.

(12) Sections 1052 and 1054 shall apply to a failure by a chargeable person to deliver a return in accordance with subsections (1) and (2) as they apply to a failure to deliver a return referred to in section 1052.

Section 954. Making of Assessments

(1) An assessment shall not be made on a chargeable person for a chargeable period at any time before the specified return date for the chargeable period unless at that time the chargeable person has delivered a return for the chargeable period, and an assessment shall not be made at a time when the making of the assessment is precluded under section 955(2).

(2) Subject to subsection (3), an assessment made on a chargeable person for a chargeable period shall be made by the inspector by reference to the particulars contained in the chargeable person's return.

(3) Where –

(a) a chargeable person makes default in the delivery of a return for a chargeable period, or

(b) the inspector is not satisfied with the return which has been delivered, or has received any information as to its insufficiency, nothing in this section shall prevent the inspector from making an assessment in accordance with section 919(4) or 922, as appropriate.

(4) (a) Whereas respects a chargeable period the inspector is satisfied that a chargeable person has paid all amounts of tax which, if the inspector were to make an assessment on the chargeable person for the chargeable period, would be payable by the chargeable person for the chargeable period, the inspector may elect not to make an assessment on the chargeable person for the chargeable period and, where the inspector so elects, he or she shall give notice of the election to the chargeable person, and the amounts paid by the chargeable person shall be deemed to have been payable in all respects as if the inspector had made the assessment.

(b) Subject to section 955(2), nothing in this subsection shall prevent an inspector from making an assessment on the chargeable person for the chargeable period at any time after the giving of the notice of election under this section.

(5) Where an inspector makes an assessment –

(a) under either of the provisions referred to in subsection (3) in default of the delivery of a return, or

(b) in circumstances where the chargeable person has calculated the amount of tax which will be payable by that person on foot of an assessment and the inspector does not at the time of the making of the assessment disagree with the tax as so calculated, it shall not be necessary to set out in the notice of assessment any particulars other than particulars as to the amount of tax to be paid by the chargeable person.

(6) Notwithstanding subsections (1) to (5) but subject to section 955(2), where a chargeable person has delivered a return for a chargeable period, the chargeable person may by notice in writing given to the inspector require the inspector to make an assessment for the chargeable period and the inspector shall make the assessment forthwith.

(7) Nothing in this section shall prevent an inspector from making an assessment in accordance with –

(a) section 977(3) or subsection (2) or (3) of section 978, as appropriate, and, notwithstanding sections 952 and 958, tax specified in such an assessment shall be due and payable in accordance with section 979,

(b) subsection (4) or (5), as appropriate, of section 980 and, not withstanding sections 952 and 958, tax specified in such an assessment shall be due and payable in accordance with section 980(10), or

(c) section 1042 and, notwithstanding sections 952 and 958, tax specified in such an assessment shall be due and payable in accordance with section 1042.

Section 957 - Appeals

(1) No appeal may be made against –

(a) [deleted]

(b) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of and without departing from the statement or statements or the particular or particulars with regard to income, profits or gains or, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

(c) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where that amount had been agreed between the inspector and the chargeable person, or any person authorised by the chargeable person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

(2) (a) Where –

(i) a chargeable person makes default in the delivery of a return, or

(ii) the inspector is not satisfied with the return which has been delivered by a chargeable person, or has received any information as to its insufficiency, and the inspector makes an assessment in accordance with section 919(4) or 922, no appeal shall lie against that assessment until such time as –

(I) in a case to which subparagraph (i) applies, the chargeable person delivers the return, and

(II) in a case to which either subparagraph (i) or (ii) applies, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person, and the time for bringing an appeal against the assessment shall be treated as commencing at the earliest date on which both the return has been delivered and that amount of tax has been paid, and references in this subsection to an assessment shall be construed as including references to any amendment of the assessment which is made before that earliest date.

(b) References in this subsection to an amount of tax shall be construed as including any amount of interest which would be due and payable under section 1080 on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(3) Subject to subsections (1) and (2), where an assessment is amended under section 955 (not being an amendment made by reason of the determination of an appeal), the chargeable person may appeal against the assessment as so amended in all respects as if it were an assessment made on the date of the amendment and the notice of the assessment as so amended were a notice of the assessment, except that the chargeable person shall have no further right of appeal, in relation to matters other than additions to, deletions from, or alterations in the assessment, made by reason of

the amendment, than the chargeable person would have had if the assessment had not been amended.

(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal - (a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and (b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.

(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with subsection (4), the notice shall, in so far as it relates to that amount or matter, be invalid and the appeal concerned shall, in so far as it relates to that amount or matter, be deemed not to have been brought. (6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice.

Section 959AF TCA 1997

Chargeable persons and other persons: appeal in relation to time limit on assessment made or amended by Revenue officer.

(1) A person who is aggrieved by an assessment made by a Revenue officer, or the amendment of an assessment by a Revenue officer, on the grounds that the person considers that the Revenue officer was precluded from making the assessment or, as the case may be, the amendment –

(a) in the case of a chargeable person, by reason of section 959AA, 959AC or 959AD, or

(b) in the case of a person other than a chargeable person, by reason of section 959AB or 959AD, may appeal against the assessment or amended assessment on those grounds.

(2) If, on the hearing of the appeal, the Appeal Commissioners determine that the officer was precluded from making the assessment or, as the case may be, the amendment, the Acts apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate is void.

(3) If, on the hearing of the appeal, the Appeal Commissioners determine that the officer was not precluded from making the assessment or, as the case may be, the amendment, the assessment or the assessment as amended stands, except

to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

959AH. Chargeable persons: requirement to submit return and pay tax.

(1) Where a Revenue officer makes a Revenue assessment, no appeal lies against the assessment until such time as –

(a) where the assessment was made in default of the delivery of a return, the chargeable person delivers the return, and

(b) in all cases, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which –

(i) is payable by reference to any self assessment included in the chargeable person's return, or

(ii) where no self assessment is included, would be payable on foot of a self assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person.

(2) A Revenue officer shall refuse an application for an appeal unless the requirements of both paragraph (a) and (b) of subsection (1) have been satisfied within the time for bringing an appeal against the assessment.

(3) References in subsection (1) to an amount of tax shall be construed as including any amount of interest which would be due and payable under section 1080 on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(4) The requirements of this section apply in relation to an assessment as amended by a Revenue officer as they apply to a Revenue assessment made by a Revenue officer.

Submissions

Appellant

15. The Appellant's Counsel stated that the Appellant's appeal was submitted to the Commission within the time limits prescribed by statue and the appeals in respect of the years 2006 to 2012 were refused on the grounds that the requirements of section 957 (2) TCA 1997 had not been complied with.

16. The Appellant's Counsel submitted that the Appellant was a single person and as such she was not taxable on the income of her cohabitant with whom she shared a house. The Appellant's Counsel submitted that the Appellant's income related solely to Schedule E income and any non-Schedule E receipts related to contributions from the Appellant's cohabitant who gave her money for rent and living expenses.

17. The Appellant's Counsel submitted that the Respondent had erred in assessing the Appellant to income under Case IV as any lodgements "*gleamed*" from her bank account were explainable by household contributions. The Appellant's Counsel submitted as the lodgements were household contributions that there was no basis for the Respondent contending that they were taxable miscellaneous income.

18. Given this position, the Appellant's Counsel submitted that the Appellant was not a chargeable person and accordingly was not required to submit tax returns for the years 2006 to 2012. The Appellant's Counsel submitted that this was confirmed by the tax returns for those periods which were lodged by the Appellant's agent shortly after the appeal was instigated.

19. Counsel for the Appellant opened the case of *Keogh v Criminal Assets Bureau* [2004] IESC32 ("*Keogh*"). In *Keogh,* it was held that a taxpayer was not prohibited from bringing an appeal in situations where the taxpayer was not required to submit a tax return. In the case of *Keogh,* the Appellant submitted that he was not required to submit a tax return as he was non-resident. Counsel for the Appellant submitted that this was sufficient proposition to allow the appeals for the periods 2006 to 2012 to be valid appeals and hence be accepted by the Commission.

20. The Appellant's Counsel stated that when the Commission wrote to the Appellant's agent advising that the years of assessment 2006 to 2012 were being refused, the Appellant's agent reiterated that they were of the view that the Appellant was not a chargeable person and that the provisions of section 957 (2) TCA 1997 were erroneously applied. Counsel for the Appellant stated that this explained the reason for the Appellant's agent asking for a reconsideration of the decision to refuse the 2006 to 2012 appeals and lodged returns for those periods to show that the Appellant's only source of income for those years was Schedule E income.

21. The Appellant's Counsel opened the Commission's letter dated 26th July 2017. It stated:

> *"…Please be advised that the Appeal Commissioners have in accordance with Section 949N (2) of the Taxes Consolidated Act, 1997, as amended refused your application for an appeal in respect of Income Tax for the years 2006, 2007, 2008, 2009, 2010,*

2011 & 2012 as your client has not satisfied the conditions set out in Section 957 (2) (a) (I) & (II) and Section 957 (2) (b) of the Taxes Consolidated Act, 1997, as amended…"

22. The Appellant's Counsel submitted as the Commission did not advise in its letter of the 26th July 2017 that the decision to refuse the appeals was "final" pursuant to the provisions of section 949N (3) TCA 1997, then it was open to the Commission to now allow the 2006 to 2012 appeals to be admitted.

23. The Appellant's Counsel advised that no response was received from the Commission in respect of the Appellant's Agent's request to the Commission that the refusal be reconsidered. However, the Appellant's Counsel submitted that the Commission had *de facto* admitted those appeals as at a CMC held on 9th February 2018, the Commission issued a direction that the Appellant's Agent was to correspond with the Respondent to enable the Appellant's agent to conduct his own analysis of the lodgements made to the Appellant's bank account during the period 2006 to 2014.

24. Furthermore, the Appellant's agent submitted that at a subsequent CMC, the Commissioner advised the following:

"*for the avoidance of any doubt in the matter the Commissioner wishes to advise both parties that the matter of whether or not there are valid appeals in relation to the income assessment for 2006 to 2012 inclusive is not resolved...*"

25. The Appellant's Counsel submitted that the Appellant had not being given any opportunity to present her case that she was not a chargeable person. In addition, the Appellant's Counsel stated that he had several grounds upon which he wished to advance the appeal, in particular that the Inspector did not use his "best judgment" in accordance with the provisions of section 959Y TCA 1997, when assessing the Appellant to income tax. Given this position, the Appellant's agent submitted that it was incumbent on the Commission to now admit the appeals for the years 2006 to 2012.

26. Further or in the alternative, the Appellant's Counsel submitted that if the Appellant was a chargeable person that the provisions of section 957 (2) (ii) (I) TCA 1997 permitted the Appellant's appeal by virtue of the Appellant subsequently lodging her returns for the years 2006 to 2012.

27. In summation, the Appellant's Counsel submitted as the Commission's decision was not "*final*" and to ensure the Appellant received fair procedures, the Commission should accept the appeals for the years 2006 to 2012.

Respondent

28. The Respondent's Counsel advised that by letter to the Commission dated 9th August 2017, the Appellant's agent requested that the "*Appeal Commissioners reconsider*" their determination that the appeals for 2006 to 2012 be refused.

29. The Respondent's Counsel submitted that there was no statutory basis to the Appellant's request nor was the refusal to accept the appeals in itself an appealable matter when considering the provisions of section 949J TCA 1997. The Respondent's Counsel submitted that once a determination has been made by the Commissioner then the Commissioner could not subsequently "change their mind".

30. Counsel for the Respondent submitted the proper procedure that the Appellant should have followed when the appeal was refused by the Commission was to bring about a further appeal in accordance with the provisions of section 949I TCA 1997 or a late appeal in accordance with the provisions of section 949O TCA 1997. The Respondent's Counsel submitted that as this had not been so done then the Commission could not now determine the matter.

31. Counsel for the Respondent opened the case of *Menolly Homes Ltd v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49 ("*Menolly*") in which it was held that the Commission is a creature of statue with no equitable jurisdiction and that its jurisdiction is confined to that as prescribed by Part 40A of the TCA 1997.

32. Turning to the legislation, the Respondent's Counsel submitted that the Commissioner's jurisdiction in relation to the admission of an appeal is confined by the parameters of s949J and 949N of the TCA. Counsel for the Respondent submitted that the provisions of section 949J TCA 1997 only provides that the Commissioner could determine that an appeal was an invalid appeal having originally considered it a valid appeal but by definition, this did not permit the reversal of a decision that an appeal which was originally considered an invalid appeal was later considered to be a valid appeal. Given this, the Respondent's Counsel submitted that it was *ultra vires* the Commission to now accept the Appellant's appeals as they had been refused.

33. Further or in the alternative, the Respondent's Counsel submitted that while the provisions of section 949N (1) (b) TCA 1997 permits the reversal of a finding that an appeal was determined to be a valid appeal, this did not extend to the Commission holding that a previously considered invalid appeal was now deemed a valid appeal. Accordingly, Counsel for the Respondent submitted that once the Commission determined that the

appeals were not valid, then the Appeal Commissioner is *functus officio* and has no further role.

34. In summation, Counsel for the Respondent submitted that the Commission's decision that the appeal was refused could not be overturned and given this position, the Appellant's appeal should be denied.

Material Facts

35. The Commissioner finds the following material facts:-

35.1 A notice of appeal was received by the Commission from the Appellant on 29 h March 2017. This notice of appeal was not a late appeal and complied with the time limits specified under section 933 (1) (a) TCA 1997.

35.2 On 29th June 2017, the Respondent objected to acceptance of the appeals for the years 2006 to 2012 on the grounds that the Appellant did not submit tax returns for those years.

35.3 The Appellant contends that she is not a chargeable person for the years 2006 to 2012 and as such was not required to submit returns of income for those years.

35.4 On 29 h July 2017, the Commission advised the Appellant that she had not satisfied the requirements of section 959(2) TCA 1997 and given this position, the appeals for the years 2006 to 2012 were being refused.

35.5 This decision was not "final and conclusive".

35.6 No evidence has been presented to the Commission that the Appellant is or is not a chargeable person.

35.7 The Commission did not respond to the Appellant's request for a reconsideration and the Commission erred in not responding to that request.

35.8 The Appellant filed income tax returns for the years 2006 to 2012 on 16th August 2017. These returns purport that the Appellant's income for those years was fully chargeable to tax under Schedule E and that the income tax due on those returns is nil. Those returns were lodged to assist the Appellant with her contention that she is not a chargeable person and to enable the appeal to proceed.

Analysis

36. Section 949N (3) TCA 1997 provides in circumstances where an appeal has been refused by the Commission and the Commissioner has declared that decision is final, then the decision shall become final and conclusive.

37. As the Commission in its correspondence of the 29th July 2017 did not state that its decision was "final", it follows that is open to the Commission to modify the decision which would allow the appeals for the periods 2006 to 2012 to proceed.

38. In order for the Commission to consider if the appeal should be admitted, regard must firstly be had as to whether the appeal received from the Appellant on 29th March 2017 fulfilled the legislative requirements and was made in respect of an appealable matter. In reviewing sections 933,949I, 949J and 957 of the TCA 1997 and *Keogh*, it is clear to the Commissioner that the Appellant's main ground of appeal (that she was not a "chargeable person") is an "appealable matter" and accordingly the Commissioner determines that the appeal submitted by the Appellant is a valid appeal.

39. In finding that the Appellant's appeal is a valid appeal, the Commissioner is further required to look at admissibility of the appeal. In making that decision, regard must be had to *JSS and others v TAC and CAB* [2020] IECA 73 ("*JSS*"). In *JSS,* the Appellants submitted in circumstances similar to the within appeal that they were not required to submit tax returns (as they were non-resident). As their appeals were refused on the grounds that they had failed to comply with the provisions of section 959AH TCA 1997 and as the Commission had not provided adequate explanations as to why their appeal was refused, the appeal was allowed. The Court of Appeal held at paragraphs 42 and 43 of that judgment:

> "*The letter [refusing the appeal] acknowledges that the Commissioner had 'carefully considered' the arguments. However, it does not articulate, even summarily, why he had rejected them. At the very least, as a matter of fair procedure, the appellants were entitled to know why their arguments had failed or, in other words, why they had lost (see Nano Nagle v Daly). The decision that issued does not provide any reason as to why, nor any explanation as to how, the Commissioner arrived at the conclusion that the impugned provisions apply to the appellants. At no stage does he address, let alone weigh, the principal arguments raised by the appellants to the effect that the pre-conditions contained in the impugned provisions refer to a 'chargeable person' and, since they are not 'chargeable persons' because of their non-residence, the provisions do not apply to them. Although he had stated that it was for him to interpret the*

legislation in accordance with the established principles, no such interpretation was offered by way of an alternative to the one carefully set out by the appellants.

Furthermore, there is no evidence in the letter of 26 April 2018 which demonstrates that the Commissioner had addressed his mind to any of the arguments raised by the appellants. For example, at no stage is it explained why he considers the appellants to be chargeable persons. At no stage does he address the question of their agent (as distinct from the appellants) being the appropriate 'chargeable person' under the Act. At no stage does he consider, let alone determine, the issue of the residence or non-residence of the appellants. Nor does he address whether a determination under s. 824 of the Act (a determination on residence) ought to have been made. At no stage is it explained why the general provisions of s. 933 relating to appeals should not apply to the appellants. It had been pointed out to him that under s. 933 'any person aggrieved by an assessment was entitled to an appeal' without the preconditions contained in the impugned provisions. Without identifying even one of arguments raised by the appellants, the Commissioner simply proceeded to find only that the impugned provisions were applicable to them. That being so and those preconditions not having been met, he then refused to admit the appeals. Such a failure to engage in any way with any of the points raised by the appellants is problematic, to say the least."

40. It follows that the Appellant is entitled to fair procedures and as she has not been provided with adequate explanations as to why the appeals for the years 2006 to 2012 were refused, the Commissioner determines that it is incumbent upon the Commission to accept the appeals for a preliminary ruling as to whether those appeals may proceed. It would be a bizarre situation if the Commission on receiving guidance from the Court of Appeal in the judgment of JSS did not acknowledge and recognise that Superior Court guidance. It is evident that the Commission did not provide the Appellant with adequate explanation and failed to respond adequately to the Appellant. The Commission must recognise that omission. It would be a perverse situation if the only resolution open to the Appellant would be to refer to the High Court for them to rule that the Commission (in line with the *JSS* judgment) did not give adequate consideration to her application and for the matter to be reverted back to the Commission. In addition, the Commission did not state that the decision was final in accordance with the statutory provision. The Commission acknowledges that it erred in the initial administration of this appeal and hence is rectifying that error by holding a preliminary hearing and making this decision. The Commission is under a statutory duty to ensure that there is a charge to tax and if so, that the correct tax

is charged. The Commission is satisfied that by rectifying the error referred to above and having a preliminary hearing it is fulfilling its statutory duty correctly.

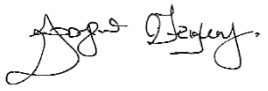
Decision

41. The burden of proof lies with the Appellant. As confirmed in *Menolly,* the burden of proof is, as in all taxation appeals, on the taxpayer.

42. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner concludes that the Appellant has succeeded in establishing that the appeals for the years 2006 to 2012 should be accepted by the Commission for preliminary ruling as valid appeals. This decision is final and conclusive. This decision has no bearing on the prospects of success of the Appellant at a later hearing but is a decision relating to the admissibility of the appeals for 2006 to 2012 alone.

43. As the Appellant's Counsel wishes to advance numerous submissions regarding the years 2006 to 2012, which include those that the Appellant is not a chargeable person and the provisions of sections 876, 877, 951 and in particular section 959AH have been misapplied, the Commissioner directs that a date shall be fixed for a joint hearing on chargeability and admissibility for the years 2006 to 2012 and contingent upon those findings on the quantum issue for the years to 2006 to 2014 or solely 2013 and 2014.

44. The Commissioner shall under separate cover issue directions to the Appellant and the Respondent which are considered necessary to dispense with the appeals in a timely manner. These directions shall include the requirement for further submissions on chargeability and admissibility to be submitted to the Commission in advance of the hearing date and such other matters as the Commissioner deems appropriate.



Andrew Feighery
Appeal Commissioner
24th November 2022

Appendix 2 – Summary of lodgements for the years under appeal

Lodgement Summary									
Account Holder: [redacted]									
Combined Accounts									
	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
[redacted] Employment Income (Incl Exps)	27,046	37,288	43,206	27,114	17,784	19,791	26,546	29,779	46,450
Sale of Land	-	-	-	-	-	-	-	-	96,415
Inter Account Transfers	9,500	10,500	17,000	5,500	27,604	31,310	19,107	14,100	72,697
Sale of Shares	-	-	-	-	-	-	6,632	9,836	-
Unknown	-	-	-	-	-	-	-	-	5,166
Refunds, etc.	-	-	-	-	50	78	322	386	-
Lodgements by [redacted] Partner - [redacted]	35,702	71,701	78,985	64,404	45,489	30,719	9,981	10,300	4,288
Misc	200	-	310	1,648	-	-	-	-	-
Dividend and Interest	2	9	8	3	366	6	3	89	3
Loan Returned from [redacted] (now deceased)	-	-	-	-	-	-	-	-	10,000
Solicitor Refund	-	-	-	1,000	14,903	-	-	-	-
[redacted] Loan	-	-	15,500	-	-	-	-	-	-
	72,450	**119,498**	**155,009**	**99,669**	**106,196**	**81,904**	**62,591**	**64,490**	**235,019**
	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
[redacted] Current Account Number - [redacted]	-	-	-	-	33,129	48,188	46,187	51,100	110,986
[redacted] Current Account Number - [redacted]	57,948	101,166	109,501	68,746	20,727	-	-	-	-
[redacted] Account Number - [redacted]	-	2,828	-	19,921	22,337	13,102	8,300	2,390	80,033
[redacted] Deposit Account Number - [redacted]	14,502	15,504	45,508	11,002	-	-	-	-	-
[redacted] Deposit Account Number - [redacted]	-	-	-	-	1,003	1,100	1,300	1,000	1,200
[redacted] Deposit Account Number - [redacted]	-	-	-	-	29,000	19,514	6,804	10,000	42,800
	72,450	**119,498**	**155,009**	**99,669**	**106,196**	**81,904**	**62,591**	**64,490**	**235,019**
Lodgements by [redacted]	35,702	71,701	78,985	64,404	45,489	30,719	9,981	10,300	4,288
Miscellaneous Income per Criminal Assets Bureau	25,000	45,000	55,000	45,000	60,000	35,000	12,500	16,000	18,000
*It would appear that contributions/lodgements made by [redacted] partner [redacted] have been treated as additional income for [redacted] by CAB									

Appendix 3 – Supplemental Legislation

Section 58 TCA 1997 -Charge to tax of profits or gains from unknown or unlawful source.

(1) Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made—

(a) the source from which those profits or gains arose was not known to the inspector,

(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or

(c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.

(2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) or charged to tax by virtue of or following any investigation by any body (in this subsection referred to as "the body") established by or under statute or by the Government, the purpose or one of the principal purposes of which is—

(a) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the purposes mentioned in paragraphs (a) and (b),

shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as "miscellaneous income", and in respect of such profits and gains so assessed—

(i) the assessment—

(I) may be made solely in the name of the body, and

(II) shall not be discharged by the Appeal Commissioners or by a court by reason only of the fact that the income should apart from this section have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity,

and

(ii) (I) the tax charged in the assessment may be demanded solely in the name of the body, and

(II) on payment to it of the tax so demanded, the body shall issue a receipt in its name and shall forthwith—

(A) lodge the tax paid to the General Account of the Revenue Commissioners in the Central Bank of Ireland, and

(B) transmit to the Collector-General particulars of the tax assessed and payment received in respect of that tax.

Section 128 TCA 1997 - Tax treatment of directors of companies and employees granted rights to acquire shares or other assets.

(1) (a) In this section, except where the context otherwise requires—

"branch or agency" has the same meaning as in section 4;

"company" has the same meaning as in section 4;

"director" and "employee" have the meanings respectively assigned to them by section 770(1);

"right" means a right to acquire any asset or assets including shares in any company;

"market value" shall be construed in accordance with section 548;

"shares" includes securities within the meaning of section 135 and stock.

(b) In this section—

(i) references to the release of a right include references to agreeing to the restriction of the exercise of the right;

(ii) a person shall be regarded as acquiring a right as a director of a company or as an employee—

(I) if by reason of the person's office or employment it is granted to the person, or to another person who assigns the right to the person, and

(II) if section 71(3) does not apply in charging to tax the profits or gains of that office or employment,

and clauses (I) and (II) shall apply to a right granted by reason of a person's office or employment before the person has commenced to hold it or after the person has ceased to hold it as they would apply if the person had commenced to hold the office or employment or had not ceased to hold the office or employment, as the case may be.

(2) Where a person realises a gain by the exercise of, or by the assignment or release of, a right obtained by the person on or after the 6th day of April, 1986, as a director of a company or employee, the person shall be chargeable to tax under Schedule E for the year of assessment in which the gain is so realised on an amount equal to the amount of his or her gain as computed and shall be so chargeable notwithstanding that he or she was not resident in the State on the date on which the right was obtained.

(2A) Notwithstanding any other provision of the Tax Acts, where a person is, by virtue of this section, chargeable to tax under Schedule E for a year of assessment in respect of an amount equal to the gain realised from the exercise, assignment or release of a right, he or she shall be a chargeable person for that year for the purposes of Part 41A, unless—

(b) the person has been exempted by an inspector from the requirements of Chapter 3 of Part 41A by reason of a notice given under section 959N.

(3) Subject to subsection (5), where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.

(4)The gain realised by—

(a) the exercise of any right at any time shall be taken to be the difference between the market value of the asset or assets, as the case may be, at the time of acquisition and the aggregate amount or value of the consideration, if any, given for the asset or assets and for the grant of the right, and

(b) the assignment or release of any right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration, if any, given for the grant of the right,

and for this purpose the inspector may make a just apportionment of any entire consideration given for the grant of the right or for the grant of the right and for something besides; but neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with an office or employment,

and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection.

…

Section 257 TCA 1997 – Deduction of Tax from relevant interest.

(1) Where a relevant deposit taker makes a payment of relevant interest—
- *(a) the relevant deposit taker shall deduct out of the amount of the payment the appropriate tax in relation to the payment,*
- *(b) the person to whom such payment is made shall allow such deduction on the receipt of the residue of the payment, and*
- *(c) the relevant deposit taker shall be acquitted and discharged of so much money as is represented by the deduction as if that amount of money had actually been paid to the person.*

(2) A relevant deposit taker shall treat every deposit made with it as a relevant deposit unless satisfied that such a deposit is not a relevant deposit; but, where a relevant deposit taker has satisfied itself that a deposit is not a relevant deposit, it shall be entitled to continue to so treat the deposit until such time as it is in possession of information which can reasonably be taken to indicate that the deposit is or may be a relevant deposit.

(3) Any payment of relevant interest which is within subsection (1) shall be treated as not being within section 246.

Section 261 TCA 1997 – Taxation of relevant interest, etc.

Notwithstanding anything in the Tax Acts –

…

(c) (i) the amount of any payment of relevant interest shall be regarded as income chargeable to tax under Case IV of Schedule D, and under no other Case or Schedule, and shall be taken into account in computing the total income of the person entitled to that amount, but, in relation to such a person (other than a company)—

(I) except for the purposes of a claim to repayment under section 267(3), the specified amount within the meaning of section 188 shall, as respects the year of assessment for which he or she is to be charged to income tax in respect of the relevant interest, be increased by the amount of that payment,

(II) where the taxable income of that person includes relevant interest, the part of taxable income equal to that relevant interest shall be chargeable to tax at the rate at which tax was deducted from that relevant interest,

and

(ii) where the specified amount is so increased, references in section 188 to—

(I) income tax payable shall be construed as references to the income tax payable after credit is given by virtue of paragraph (d) for appropriate tax deducted from the payment of relevant interest, and

(II) a sum equal to twice the specified amount shall be construed as references to a sum equal to the aggregate of—

(A) twice the specified amount (before it is so increased), and

(B) the amount of the payment of relevant interest;

(d) where relevant interest is to be taken into account in computing the total income of a person (other than a company) for any year of assessment, then, for the purpose of charging that total income to tax at the rate or rates of tax charged for that year of assessment, the following provisions shall apply—

(i) the relevant interest shall be regarded as income chargeable to tax under Case IV of Schedule D and shall be charged accordingly, and

(ii) in determining the amount of tax payable on that relevant interest, credit shall be given for the appropriate tax deducted from the relevant interest and the amount of the credit shall be the amount of such appropriate tax.

Section 552 TCA 1997 – Acquisition, enhancement and disposal costs.

(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b) *the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and*

(c) *the incidental costs to the person of making the disposal.*

…

Section 601 TCA 1997 – Annual Exempt Amount.

(1) *An individual shall not be chargeable to capital gains tax for a year of assessment if the amount on which he or she is chargeable to capital gains tax under section 31 for that year does not exceed €1,270.*

(2) *Where the amount on which an individual is chargeable to capital gains tax under section 31 for a year of assessment exceeds €1,270, only the excess of that amount over €1,270 shall be charged to capital gains tax for that year.*

Section 886 TCA 1997 – Obligation to keep certain records.

(1) *In this section—*

"linking documents" means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

"records" includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to—

(a) *all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,*

(b) *all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,*

(c) *the assets and liabilities of the trade, profession or other activity referred to in paragraph (a) or (b), and*

(d) *all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.*

(2) (a) *Every person who—*

(i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,

(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(aa) Without prejudice to the generality of paragraph (a) and subsection (4)—

(i) the records shall include records and linking documents relating to any allowance, deduction, relief or credit (referred to in this paragraph as a 'relevant amount') taken into account in computing the amount of tax payable (within the meaning of section 959A), for the year of assessment or accounting period concerned,

(ii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4)(a)(i), be treated as transactions, acts or operations that were completed at the end of the year of assessment or accounting period for which a relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid) for the year of assessment or accounting period concerned, and

(iii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4) (a) (ii), be treated as transactions, acts or operations that were completed at the end of the year of assessment or accounting period in which the return, in which the relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid), has been delivered.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept—

(a) in written form in an official language of the State, or

(b) subject to section 887(2), by means of any electronic, photographic or other process.

(4) (a) Notwithstanding any other law, linking documents and records kept in accordance with subsections (2) and (3) shall be retained by the person required to keep the records—

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

(ii) in the case of a person who fails to comply with Chapter 3 of Part 41A requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations, or

(iii) where the transaction, act or operation is the subject of—

(I) an inquiry or investigation started by the Revenue Commissioners or by a Revenue officer into any matters to which this Act relates,

(II) a claim under a provision of this Act,

(III) proceedings relating to any matter to which this Act relates,

linking documents and records shall be retained by the person required to keep the records for the 6 year period and until such time as—

(A) the enquiry or investigation has been completed or the claim has been determined, and

(B) any appeal to Appeal Commissioners in relation to that enquiry or the determination of that claim or to any other matter to which the Act relates, has become final and conclusive, and

(C) any proceedings in relation to the outcome of the inquiry or investigation or the determination of that claim or that appeal, or to any other matter to which the Act relates, has been finally determined, and

(D) the time limit for instituting any appeal or proceedings or any further appeal or proceedings has expired.

(aa) Where a person to whom this section applies ceases to be a person to whom subparagraph (i), (ii) or (iii), as appropriate, of subsection (2) (a) applies, that person (or such other person on that person's behalf) required to keep the linking documents and records shall keep or retain the linking documents and records notwithstanding that a period of 5 years has elapsed from the date of such cessation.

Section 922 (3) TCA 1997 (which applies to 2012 and earlier years of assessment).

Where—

(a) a person makes default in the delivery of a statement in respect of any income tax under Schedule D or F, or

(b) the inspector is not satisfied with a statement which has been delivered, or has received any information as to its insufficiency,

the inspector shall 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.

Section 950 TCA 1997 (which applies to 2012 and earlier years of assessment).

"chargeable person" means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person —

(a) whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies…

(b) who for the chargeable period has been exempted by an inspector from the requirements of section 951 by reason of a notice given under subsection (6) of that section, or

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

but paragraph (a) shall not apply to a person who is a director or, in the case of a person to whom section 1017 or 1031C applies, whose spouse or civil partner is a director (within the meaning of section 116) of a body corporate…"

Section 957 TCA 1997 – Appeals.(which applies to the years 2012 and subsequent).

(1) No appeal may be made against—

(a) a notice of preliminary tax under section 953 ,

(b) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of and without departing from the statement or statements or the particular or particulars with regard to income, profits or gains or, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

(c) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where that amount had been agreed between the inspector and the chargeable person, or any person authorised by the chargeable person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

(2) (a) Where—

(i) a chargeable person makes default in the delivery of a return, or

(ii) the inspector is not satisfied with the return which has been delivered by a chargeable person, or has received any information as to its insufficiency,

and the inspector makes an assessment in accordance with section 919 (4) or 922, no appeal shall lie against that assessment until such time as:

(I) in a case to which subparagraph (i) applies, the chargeable person delivers the return, and

(II) in a case to which either subparagraph (i) or (ii) applies, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference

to the statements and particulars contained in the return delivered by the chargeable person,

and the time for bringing an appeal against the assessment shall be treated as commencing at the earliest date on which both the return has been delivered and that amount of tax has been paid, and references in this subsection to an assessment shall be construed as including references to any amendment of the assessment which is made before that earliest date.

(b) References in this subsection to an amount of tax shall be construed as including any amount of interest which would be due and payable under section 1080 on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(3) Subject to subsections (1) and (2), where an assessment is amended under section 955 (not being an amendment made by reason of the determination of an appeal), the chargeable person may appeal against the assessment as so amended in all respects as if it were an assessment made on the date of the amendment and the notice of the assessment as so amended were a notice of the assessment, except that the chargeable person shall have no further right of appeal, in relation to matters other than additions to, deletions from, or alterations in the assessment, made by reason of the amendment, than the chargeable person would have had if the assessment had not been amended.

(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal—

(a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and

(b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.

(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with subsection (4), the notice shall, in so far as it relates to that amount or matter, be invalid and the appeal concerned shall, in so far as it relates to that amount or matter, be deemed not to have been brought.

(6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge

of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice.

Section 959 TCA 1997 (which applies to 2012 and previous years of assessment).

(1) …

(2) here the inspector or any other officer of the Revenue Commissioners acting with the knowledge of the inspector causes to issue, manually or by any electronic, photographic or other process, a notice of preliminary tax bearing the name of the inspector or a notice of assessment or a notice of an amendment of an assessment bearing the name of the inspector, that notice of preliminary tax shall for the purposes of the Tax Acts and the Capital Gains Tax Acts be deemed to have been given by the inspector to the best of his or her opinion, and that assessment or amended assessment to which the notice of assessment or notice of amended assessment relates, as the case may be, shall for those purposes be deemed to have been made by the inspector to the best of his or her judgment.

(3) An assessment which is otherwise final and conclusive shall not for any purpose of the Tax Acts and the Capital Gains Tax Acts be regarded as not final and conclusive or as ceasing to be final and conclusive by reason only of the fact that the inspector has amended or may amend the assessment pursuant to section 955 and, where in the case of a chargeable person the inspector elects under section 954 (4) not to make an assessment for any chargeable period, the Tax Acts and the Capital Gains Tax Acts shall apply as if an assessment for that chargeable period made on the chargeable person had become final and conclusive on the date on which the notice of election is given.

(4) The giving by a chargeable person of a notice pursuant to section 876 shall not remove from the person an obligation to deliver a return under section 951.

(5) The provisions of this Part as respects due dates for payment of tax shall apply subject to sections 579 (4) (b) and 981.

(6) References in this Part to any provision of the Income Tax Acts shall, where appropriate for capital gains tax and unless the contrary intention appears, be construed as a reference to those provisions as applied in relation to capital gains tax by sections 913 , 931 , 976 , 1051 , 1077 or 1083 , as appropriate.

(7) Section 926 shall not apply to a chargeable person as respects any chargeable period.

Section 959A TCA 1997 (which applies to 2012 and previous years of assessment).

'"chargeable person" means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person […]'

Section 959B TCA 1997 – Supplemental interpretation provisions.

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

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

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

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

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

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

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

…

Section 959N – Exclusion from obligation to deliver a return.

(1) A Revenue officer may exclude a person from the application of this Chapter by giving the person a notice in writing stating that the person is excluded from its application.

(2) The notice shall have effect for such chargeable period or periods or until such chargeable period or until the happening of such event as is specified in the notice.

(3) Where a person who has been given a notice under this section is chargeable to capital gains tax for any chargeable period, this section shall not operate so as to remove the person's obligation under this Chapter to make a return of the person's chargeable gains for that chargeable period.

Section 959Y – 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 959AC (2) (a) TCA 1997 (which applies to 2013 and subsequent years of assessment).

'[…] where in relation to a chargeable person […] the person fails to deliver a return for the chargeable period […] then a Revenue Officer may, at any time, make a Revenue assessment on the chargeable person in such sum as, according to the best of the officer's judgment, ought to be charged on that person.'

Section 959 AC (3) TCA 1997 (which applies to 2013 and subsequent years of assessment).

'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 of that assessment.'

Section 1084 TCA 1997 – Surcharge for late returns.

(1) (a) In this section—

"chargeable person", in relation to a year of assessment or an accounting period, means a person who is a chargeable person for the purposes of Part 41A;

"return of income" means a return, statement, declaration or list which a person is required to deliver to the inspector by reason of a notice given by the inspector under any one or more of the specified provisions, and includes a return which a chargeable person is required to deliver under Chapter 3 of Part 41A;

"specified return date for the chargeable period" has the same meaning as in section 959A;

"specified provisions" means sections 877 to 881 and 884, paragraphs (a) and (d) of section 888(2), and section 1023;

"tax" means income tax, corporation tax or capital gains tax, as may be appropriate.

(b) For the purposes of this section—

(i) (I) subject to clause (II), where a person deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or

carelessly delivers an incorrect return of income as set out in section 1077F(2), as appropriate, on or before the specified return date for the chargeable period, the person shall be deemed to have failed to deliver the return of income on or before that date unless the error in the return of income is remedied on or before that date,

(II) clause (I) shall not apply where a person—

(A) deliberately delivers an incorrect return of income as set out in section 1077E(2) or carelessly delivers an incorrect return of income as set out in section 1077E(5) or deliberately or carelessly delivers an incorrect return of income as set out in section 1077F(2), as appropriate, on or before the specified return date for the chargeable period, and

(B) pays the full amount of any penalty referred to in any of the provisions referred to in subclause (A) to which the person is liable,

(ia) where a person who is a specified person in relation to the delivery of a specified return for the purposes of any regulations made under section 917EA delivers a return of income on or before the specified return date for the chargeable period but does so in a form other than that required by any such regulations the person shall be deemed to have delivered an incorrect return on or before the specified return date for the chargeable period and subparagraph (ii) shall apply accordingly,

(ib) where a person delivers a return of income for a chargeable period (within the meaning of section 321(2)) and fails to include on the prescribed form the details required by the form in relation to any exemption, allowance, deduction, credit or other relief the person is claiming (in this subparagraph referred to as the "specified details") and the specified details are stated on the form to be details to which this subparagraph refers, then, without prejudice to any other basis on which a person may be liable to the surcharge referred to in subsection (2), the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period and to have delivered the return of income before the expiry of 2 months from that specified return date; but this subparagraph shall not apply unless, after the return has been delivered, it had come to the person's notice or had been brought to the person's attention that specified details had not been included on the form and the person failed to remedy matters without unreasonable delay,

(ii) where a person delivers an incorrect return of income on or before the specified return date for the chargeable period but does so neither deliberately nor carelessly and it comes to the person's notice (or, if he or she has died, to the notice of his or her personal representatives) that it is incorrect, the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period unless the error in the return of income is remedied without unreasonable delay,

(iii) where a person delivers a return of income on or before the specified return date for the chargeable period but the inspector, by reason of being dissatisfied with any statement of profits or gains arising to the person from any trade or profession which is contained in the return of income, requires the person, by notice in writing served on the person under section 900, to do any thing, the person shall be deemed not to have delivered the return of income on or before the specified return date for the chargeable period unless the person does that thing within the time specified in the notice, and

(iv) references to such of the specified provisions as are applied, subject to any necessary modifications, in relation to capital gains tax by section 913 shall be construed as including references to those provisions as so applied.

(2) (a) Subject to paragraph (b), where in relation to a year of assessment or accounting period a chargeable person fails to deliver a return of income on or before the specified return date for the chargeable period, any amount of tax for that year of assessment or accounting period which apart from this section is or would be contained in an assessment to tax made or to be made on the chargeable person shall be increased by an amount (in this subsection referred to as "the surcharge") equal to—

(i) 5 per cent of that amount of tax, subject to a maximum increased amount of €12,695, where the return of income is delivered before the expiry of 2 months from the specified return date for the chargeable period, and

(ii) 10 per cent of that amount of tax, subject to a maximum increased amount of €63,485, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,

and, except where the surcharge arises by virtue of subparagraph (ib) of subsection (1)(b), if the tax contained in the assessment is not the amount of tax as so increased, then, the provisions of the Tax Acts and

the Capital Gains Tax Acts (apart from this section), including in particular those provisions relating to the collection and recovery of tax and the payment of interest on unpaid tax, shall apply as if the tax contained in the assessment to tax were the amount of tax as so increased.

(b) In determining the amount of the surcharge, the tax contained in the assessment to tax shall be deemed to be reduced by the aggregate of—

(i) any tax deducted by virtue of any of the provisions of the Tax Acts or the Capital Gains Tax Acts from any income, profits or chargeable gains charged in the assessment to tax in so far as that tax has not been repaid or is not repayable to the chargeable person and in so far as the tax so deducted may be set off against the tax and contained in the assessment to tax,

(iii) any other amounts which are set off in the assessment to tax against the tax contained in that assessment.

(3) In the case of a person—

(a) who is a director within the meaning of section 116, or

(b) to whom section 1017 or 1031C applies and whose spouse or civil partner is a director within the meaning of section 116,

subsection (2) (b) (i) shall not apply in respect of any tax deducted under Chapter 4 of Part 42 in determining the amount of a surcharge under this section.

(4) (a) Notwithstanding subsections (1) to (3), the specified return date for the chargeable period, being a year of assessment (in paragraph (b) referred to as "the first-mentioned year of assessment") to which section 66(1) applies, shall be the date which is the specified return date for the year of assessment following that year.

(b) Paragraph (a) shall only apply if throughout the first-mentioned year of assessment the chargeable person or that person's spouse or civil partner, not being a spouse in relation to whom section 1016 applies, or a civil partner in relation to whom section 1031B applies, for that year of assessment, was not carrying on a trade or profession set up and commenced in a previous year of assessment.

(5) This section shall apply in relation to an amount of preliminary tax (within the meaning of Part 41A) paid under Chapter 7 of that Part as it applies to an amount of tax specified in an assessment.

Appendix 4 – Template to assist in the calculation of the Appellant's taxable income

Year/Description	2006	2007	2008	2009	2010	2011	2013	2014
Schedule E, Employment Income**								
DSP Income - Jobseeker's Benefit	-	-	-	3,417	3,830	-	-	-
Un-vouched taxable expenses**								
Share Options	-	-	-	-	-	-	9,836	-
**Total Schedule E Income - "A" ** **								
Schedule D, Case IV -								
Unknown amounts	-	-	-	-	-	-	-	5,166
Lodgement's by Appellant's Partner	35,702	71,701	78,985	64,404	45,489	30,719	10,300	4,288
Misc	200	-	310	1,648	-	-	-	
Loan Returned	-	-	-	-	-	-	-	10,000
Solicitor Refund	-	-	-	1,000	-	-	-	
[redacted] Loan	-	-	15,500		-	-	-	
"Miscellaneous" Schedule D, Case IV	35,902	71,701	94,795	67,052	45,489	30,719	10,300	14,288
Taxable Despoit Interest Received**								
**Total Schedule D, Case IV Income - "B" ** **								
**Total Taxable Income (A + B) ** **								

****Figures to be calculated by and inserted by the Respondent.**