



Between

187TACD2024

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Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) in relation to the Appellant’s liabilities to Vacant Homes Tax (“VHT”), in accordance with section 653AO TCA 1997, for the chargeable period November 2022 to November 2023 (“the relevant period”), in the amount of €16,141.35.
2. The liabilities arose in respect of the Appellant’s property at [REDACTED] [REDACTED] (“the property”), consequent to the Respondent’s correspondence of October 2023, informing the Appellant that he may have a liability to VHT.
3. On 5 November 2023, the Appellant duly appealed to the Commission. The appeal proceeded by way of a hearing on 12 September 2024. The Appellant represented himself and the Respondent was represented by junior counsel.

Background

4. In August 2019, the Appellant became the owner of a second home and is the owner of the property, the subject matter of this appeal. During the relevant period, the property was vacant, such that it was not occupied by the Appellant or a tenant. The Appellant currently resides in the property.
5. The Appellant submitted that the property was under construction for a number of years from mid-2020 to mid-2022, when the construction works ceased. However, the works were only half way through completion when they ceased. The Appellant stated that this was due to a number of reasons, including delays to the supply of materials. [REDACTED] [REDACTED] an extensive restoration of the property was required to be carried out.
6. On Friday, 6 October 2023, the Appellant received correspondence from the Respondent stating that he might have a liability to the VHT. The correspondence was non-specific in terms of the property. Furthermore, the correspondence requested that the Appellant log onto the Respondent’s portal to confirm if the property was liable to VHT and to submit a return by 7 November 2023. The Respondent submitted that on 25 September 2023, the VHT portal became available to members of the public.
7. The Respondent submitted that VHT operates on a self-assessment basis, such that property owners are required to self-assess their liability to VHT and submit a VHT return if the property owner determines that VHT applies to their property. Moreover, the

Respondent submitted that the onus is on the taxpayer to ensure that they are compliant with their obligations in relation to VHT.

8. On 4 November 2023, the Appellant filed a VHT return for the relevant period in relation to the property, as a vacant property. On 21 March 2024, the amount of VHT in the sum of €16,141.35 was paid by the Appellant.
9. The Appellant argues that had he been aware earlier of his potential liability to VHT, he would have either resided in the property or rented the property to avail of the exemptions to VHT in the legislative scheme. However, he argued that in circumstances where the Respondent wrote to him on 6 October 2023, "*with just 25 days to the end of the tax [period]*" he was denied access to the exemptions set out in the legislation.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:-

11. Section 653AO TCA 1997, Charge to vacant homes tax, *inter alia* provides that:

(1) Subject to and in accordance with the provisions of this Part, there shall be charged, levied and paid a tax to be known, and which is referred to in this Part, as 'vacant homes tax' in respect of a residential property for a chargeable period in which the residential property is in use as a dwelling for less than 30 days, other than a residential property –

- (a) in respect of which no local property tax was payable in respect of the liability date falling in the year in which the chargeable period commences,*
- (b) that was the subject of a relevant tenancy for a period of not less than 30 days during the chargeable period, or*
- (c) that was the subject of a sale during the chargeable period.*

(2) Vacant homes tax shall be payable in respect of a residential property for a chargeable period by the person that is the chargeable person in relation to the property on the relevant date.

12. Section 653AP TCA 1997, Amount of vacant homes tax, *inter alia* provides that:

The amount of vacant homes tax to be charged in respect of a residential property for a chargeable period shall be the amount represented by 'A' in the formula –

.....

13. Section 653AQ TCA 1997, Obligation on chargeable person to prepare and deliver a return *inter alia* provides that:

(1) *The chargeable person in relation to a residential property shall prepare and deliver to the Revenue Commissioners a return prescribed by the Revenue Commissioners for that purpose for any chargeable period in respect of which –*

- (a) *a charge to vacant homes tax arises in respect of the residential property under section 653AO, or*
- (b) *the Revenue Commissioners have required the chargeable person, by notice, to prepare and deliver to them a return in relation to the residential property.*

14. Section 653AV TCA 1997, Self-assessment and signed declaration, *inter alia* provides that:

Every return prepared and delivered under this Part shall include –

- (a) *a self-assessment by, or on behalf of, the chargeable person concerned in such form as the Revenue Commissioners may specify, and*
- (b) *a signed declaration by the person who prepares the return that the return is, to the best of that person's knowledge and belief, correct.*

15. Section 653BC TCA 1997, Exemptions, *inter alia* provides that:

Subject to and in accordance with the provisions of this Part, an exemption from vacant homes tax in respect of a residential property for a chargeable period may be claimed in a return delivered under this Part where –

.....

- (c) *the property was being actively marketed for sale in the chargeable period and the following conditions were met –*
 - (i) *the price sought for the property did not exceed the price which such property would have fetched if sold on the open market in such a manner and subject to such conditions as might reasonably be calculated to have obtained for the vendor the best price for the property, and*
 - (ii) *there were no conditions attaching to the sale which were designed to impede or disrupt the sale of the property,*

(f) *the property underwent structural works, substantial repairs or substantial refurbishment (hereafter referred to in this paragraph as 'the works') for a period of not less than 6 months in the chargeable period, the works were carried out in that period without any undue delay and –*

.....

(g) *the property was in use as a dwelling for less than 30 days in the chargeable period by reason of the chargeable person in relation to the property ceasing to occupy the property as a consequence of his or her mental or physical infirmity, that person having occupied the property as his or her sole or main residence prior to such cessation of occupation and which infirmity has been certified by a registered medical practitioner, or*

.....

16. Section 653BD TCA 1997, Assessments, enquiries and appeals, *inter alia* provides that:

(1) *Sections 959Y, 959Z, 959AA, 959AC, 959AD and 959AE shall apply to vacant homes tax, subject to the following modifications:*

.....

(2) *A chargeable person aggrieved by an assessment or an amended assessment, as the case may be, made on that person pursuant to the provisions referred to in subsection (1), as applied subject to the modifications referred to in that subsection, may, within 30 days after the date of the notice of assessment appeal the assessment or the amended assessment to the Appeal Commissioners in accordance with section 949I.*

17. Section 949A TCA 1997, Interpretation, *inter alia* provides that:

"appealable matter" means any matter in respect of which an appeal is authorised by the Acts;

18. Section 949J TCA 1997, Valid appeal and references in this Part to acceptance of an appeal, *inter alia* provides that:

(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.*

19. Section 949N TCA 1997, Refusal to accept an appeal, *inter alia* provides that:

(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.*

20. Section 959AG TCA 1997, Chargeable persons: no appeal against self assessment, provides that:

No appeal may be made against –

- (a) *a self assessment made under section 959R, section 959T or section 959U,*
- (b) *a self assessment amended under section 959V,*
- (c) *the amount of any income, profits or gains or, as the case may be, chargeable gains, or the amount of any allowance, deduction, relief or tax credit specified in such an assessment.*

Evidence and Submissions

Appellant's evidence and submissions

21. The Appellant gave evidence and made submissions at the hearing of the appeal. The Appellant furnished the Commissioner and the Respondent with a written note of his oral submission to be articulated at the hearing of the appeal. The Commissioner has set out hereunder a summary of the evidence and submissions made by the Appellant:-

21.1. The Appellant testified that in August 2019, he became the owner of a second home.

The Appellant relayed that the property was a [REDACTED] property that had been [REDACTED] extensive restoration works were required to convert it back to its original appearance. The Appellant submitted that the works on the property commenced in mid-2020, but ceased in mid-2022 as a result of delays in relation to the supply of materials. The Appellant testified that he currently resides in the property, despite the works on the property not being fully completed.

21.2. The Appellant gave evidence that on Friday 6 October 2022, he received correspondence from the Respondent, stating that he may have a liability to VHT. The correspondence informed him that he was required to confirm if he was liable

to VHT and if necessary, to file a return by 7 November 2023. The Appellant testified that this was the first time that he became aware of a tax called VHT.

21.3. The Appellant testified that in light of the date of the correspondence, being 25 days prior to the end of the chargeable period, he studied the Respondent's website. The Appellant stated that the full significance of the VHT then became apparent to him, such that a property is deemed to be a vacant home if it not occupied as a dwelling for fewer than 30 days in the chargeable period. The Appellant submitted that the Respondent's correspondence that he received on 6 October 2023, meant that it was impossible for him to meet the 30 day occupancy requirement for exclusion from the imposition of VHT. The Appellant testified that had he been notified in a timelier manner, than the final weeks of the tax period, he could have legitimately availed of the exemption provisions in the legislation.

21.4. The Appellant gave evidence that from the moment he read the correspondence, the Respondent had identified him as a potentially liable person under VHT and he became bound by this new law. The Appellant stated that as he was becoming bound by the law, he was simultaneously being denied access to one of its important provisions, due solely to the tardy notice of the Respondent. The Appellant argued that he must be entitled to access all of the provisions in the legislation and to have been denied access to one, while being bound to another, was a misapplication of the law and a reasonable ground of justifiable grievance.

21.5. The Appellant gave evidence that it was his understanding that a potentially liable person under VHT, who was not otherwise excluded or exempted, was required to comply with the law by making their vacant property available to the market for sale or rent. The law further requires that any attempt to do so must be, according to the Respondent's website, a "*genuine and sustained attempt within the chargeable period*".

21.6. The Appellant testified that he had purchased the property with the intention of replacing his existing private residence and to have sold it would have been a nonsense. The Appellant stated that however, a temporary renting arrangement would have been possible, but this would have necessitated refurbishment works of several months duration. The Appellant argued that had he been notified of the VHT in a timelier manner, there would have been a realistic prospect of him putting the property into a rentable condition. However, the receipt of Respondent's correspondence on 6 October 2023, removed that possibility.

21.7. The Appellant submitted that following receipt of the correspondence from the Respondent, the earliest opportunity of engaging an estate agent was Monday 9 October. The Appellant testified that it would have taken two to three weeks to bring a property to market and he referred to document No. 5, a copy of an e-mail from [REDACTED], submitted by the Appellant in support of his appeal.

21.8. The Appellant argued that whilst the word "sustained" is not defined by the Respondent for VHT purposes, there is no way in which the appearance of a property on the market for one week out of 52 could be regarded or considered a sustained effort at marketing. The Appellant testified that he was forced to conclude that his attempt to comply with the law would have been defeated and the inevitable outcome was that VHT in the amount of €16,141 had to be paid.

21.9. The Appellant argued that to the "person in the street" a tax is an exercise by the State to gather revenue and compliance means paying the amount to which one has been correctly assessed. However, with VHT, payment of the tax results not from compliance, but from failure to comply. This is because the purpose of VHT is not primarily to raise revenue, but to raise awareness among owners of vacant residential properties that the latter must be made available for occupation as dwellings. The VHT is a fixed rate penalty for failure to comply with this requirement.

21.10. The Appellant referred to the Respondent's methods of highlighting VHT to members of the public, namely the Respondent's website and the reporting of the VHT by the national news media. The Appellant argued that the means of promulgation of the new tax measures were inadequate and the Appellant received no prompt or instruction to visit the Respondent's website for important information concerning VHT.

21.11. The Appellant submitted that for 11 months of the chargeable period and up to 6 October 2023, the discovery of these details depended entirely on chance and that the use of the digital medium was not a reliable method of promulgation of VHT. The Appellant submitted that throughout the early months of 2023, the references to VHT in the national news media were scattered and occasional. [REDACTED]

[REDACTED]

[REDACTED] Thus, the Appellant argued that it was entirely possible for the Appellant to have missed the media coverage of VHT.

21.12. The Appellant submitted that the Respondent had invoked the legal principle *ignorantia juris non excusat*, stating that it was applicable in the present case, which

he refuted. The Appellant argued that it was significant in the context of this appeal that the Latin expression cited by the Respondent employed the word "*jus juris*" to refer to the law. The Appellant stated that for a law to be binding, it must first be promulgated. However, the new legislation relating to VHT was not promulgated until 6 October 2023, when the Appellant opened the correspondence from the Respondent.

21.13. The Appellant gave evidence that the unreasonable and unacceptable belated act of promulgation was the sole cause of the Appellant being denied access to one of the crucial provisions in the legislation and one to which he would otherwise have been entitled to. The Appellant argued that this was a misapplication of the law and the Appellant requested that the Commissioner reverse this law and the loss suffered as a consequence.

Respondent's submissions

22. The Commissioner has set out hereunder, a summary of the legal submissions made by the Respondent both at the hearing of the appeal and in the documents submitted in support of its appeal:

22.1. Counsel for the Respondent submitted that VHT was introduced in the Budget 2022 by section 96 of the Finance Act 2022 and is administered by the Respondent in accordance with Part 22B TCA 1997. The Finance Act 2022 was signed into law on 15 December 2022. VHT is a tax and it is not a penalty or a fixed-rate penalty.

22.2. It was submitted that VHT is an annual self-assessed tax that applies to vacant residential properties in certain circumstances. The responsibility to file VHT returns and pay the liabilities due rests with liable property owners. A residential property is within the scope of VHT if it has been occupied as a dwelling for less than 30 days in a chargeable period. The first chargeable period was from 1 November 2022 to 31 October 2023. The first self-assessed returns were due on or before 7 November 2023.

22.3. Counsel for the Respondent submitted that the Appellant's appeal was invalid, because there is no appealable matter in issue. An "appealable matter" is defined in section 949A TCA 1997 as meaning any matter in respect of which an appeal is authorised by the Acts. The only appeal authorised pursuant to section 653BD(2) TCA 1997 is an appeal against an assessment or an amended assessment. In the present case the Respondent did not raise an assessment or an amended assessment to VHT and the Appellant simply paid the VHT in accordance with the

return filed by him. Hence, there was no appealable matter in issue and counsel submitted that acceptance of this appeal should be refused, in accordance with section 949(N)(1)(b) TCA 1997.

22.4. Counsel for the Respondent submitted that the Appellant has argued that if he had been aware of the terms of the legislation, he could have complied with the VHT exemption requirements by using the property as a dwelling for the minimum period of 30 days within the chargeable period or that he could have placed the property on the rental market. However, the Commissioner has no jurisdiction to deal with hypothetical arguments. Reference was made to the decision of the Court of Appeal in *Lee v The Revenue Commissioners* [2021] IECA 18 (“the Lee decision”), wherein at paragraph 20 of the decision, Mr Justice Murray stated that:

“The issue is, first and foremost, one of statutory construction. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.

22.5. Furthermore, reference was made to the Judgment of the Court of Appeal in *Colm Murphy v The Revenue Commissioners* [2023] IECA 160 (“Colm Murphy”), where Mr Justice Haughton considered the jurisdiction of an Appeal Commissioner and applied the principles enunciated by Murray J. in the Lee decision. At paragraph 55, Haughton J. stated that:

“Further, for the reasons elaborated by Murray J. in Lee, it also follows that any argument that the appellant might wish to advance in respect of “procedural unfairness” (or, as it appears to have been raised in the Circuit Court, of estoppel based on the same facts) by reason of the absence of formal confirmation for the Regional Office of the ending of the enquiry and resumption of the audit, was not one which the Appeal Commissioners had jurisdiction to determine.”

22.6. Counsel submitted that the Appellant’s appeal was based on his submission that the Respondent should have notified him sooner of his potential exposure to liability for VHT. However, VHT was subject to self-assessment and the onus was on the Appellant to be aware of his obligations under the laws in place. Comprehensive information regarding VHT was published on the Respondent’s website during 2023 and there was extensive print and radio coverage nationally, since the Finance Act

2022 was signed into law in December 2022. The correspondence that issued to property owners in October 2023, was for the purposes of assisting taxpayers and which were part of a customer service programme engaged in by the Respondent in pursuance of its public service obligations.

22.7. Counsel submitted that the Respondent also relied on the doctrine of *ignorantia juris non excusat* to argue that ignorance of the law is no defence. Reference was made to the decision in *Duffy v Road Safety Authority & Others* [2015] IEHC 579 (“*Duffy*”), where at paragraph 19, Noonan J. stated that:

“The applicant’s fundamental complaint appears to be that notwithstanding the coming into force of the Regulations, he ought to have been entitled on presenting his vehicle for testing and passing that test to a CRW (certificate of roadworthiness) of at least twelve months duration. However, that complaint, valid or otherwise, was available to the applicant since the 23rd of January, 2014 when he received a CRW with a duration of approximately three weeks. Even if he was not actually aware at that time of the passage of the Regulations, and of course ignorance of the law cannot avail the applicant, nonetheless he was certainly fully aware of the position by July, 2014 at the latest. All of the arguments that the applicant advances in relation to the grant of the CRW on the 20th of February, 2015 were equally available to him in respect of the CRW in 2014.”

22.8. Counsel submitted that the Appellant paid the VHT due on time and there was no dispute in relation to that matter.

Material Facts

23. Having read the documentation submitted and having listened to the oral submissions and evidence adduced from both parties at the hearing of the appeal, the Commissioner makes the following findings of material fact:

23.1. In August 2019, the Appellant became the owner of a second home and was the owner of the property.

23.2. During the relevant period, the property was vacant, such that it was not occupied by the Appellant or a tenant.

23.3. The Appellant stated that he currently resides in the property.

23.4. The property was under construction for a number of years from mid-2020 to mid-2022, when the construction works ceased halfway through completion.

- 23.5. The property is a [REDACTED] property [REDACTED] an extensive restoration of the property was required to be carried out.
- 23.6. On Friday, 6 October 2023, the Appellant received correspondence from the Respondent which informed him that he might have a liability to the VHT.
- 23.7. The correspondence was non-specific in terms of the property.
- 23.8. The Respondent advised the Appellant of his potential liabilities to VHT, 25 days before the end of the relevant period.
- 23.9. On 25 September 2023, the VHT portal became available to members of the public.
- 23.10. VHT operates on a self-assessment basis such that property owners are required to self-assess their liability to VHT and submit a VHT return, if the property owner determines that VHT applies to their property.
- 23.11. On 4 November 2023, the Appellant filed a VHT return for the relevant period in relation to the property, as a vacant property.
- 23.12. On 21 March 2024, the liability in the amount of €16,141.35 was paid by the Appellant.
- 23.13. The Respondent promoted the VHT via mainstream media and its website.
- 23.14. The Appellant paid the VHT due on time

Analysis

24. The appropriate starting point for the analysis of the 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 the High Court decision of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated that:

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

25. The Commissioner also considers it useful herein to set out paragraph 12 of the judgement of Charleton J. in *Menolly Homes*, wherein he stated that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

26. However, it is important to note that when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"). At paragraphs 97 to 99, the Court of Appeal held that:

"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake....."

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;...Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation....."

27. In terms of the background to VHT, the Respondent submitted that VHT was introduced by section 96 of the Finance Act 2022 and is administered by the Respondent in accordance with Part 22B TCA 1997. The Finance Act 2022 was signed into law on 15 December 2022.

28. The Commissioner notes the submission made by counsel for the Respondent that VHT is a tax and it is not a penalty or a fixed-rate penalty. Moreover, the Commissioner is satisfied that VHT is an annual self-assessed tax that applies to vacant residential properties in certain circumstances and the responsibility to file VHT returns and pay the liabilities due, rests with liable property owners. Counsel for the Respondent submitted that a residential property is within the scope of VHT, if it has been occupied as a dwelling for less than 30 days in a chargeable period, with the first chargeable period being from 1 November 2022 to 31 October 2023 and that the first self-assessed returns being due on or before 7 November 2023.

29. The Commissioner now turns to the particular facts of this particular appeal and the circumstances surrounding the imposition of the Appellant's liability to VHT. The Commissioner notes that the Respondent has raised a preliminary argument in relation to

the acceptance of the appeal on the grounds that the matter at issue is not an appealable matter. It was on that basis that counsel for the Respondent urged the Commissioner to refuse acceptance of the appeal, in accordance with section 949N TCA 1997. Therefore, the Commissioner considers it appropriate to proceed to deal with this preliminary argument first before proceeding, if appropriate, to consider the Appellant's appeal and the arguments made in relation to the imposition of VHT.

Whether this was an appealable matter

30. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A TCA 1997.

31. Section 949A TCA 1997 defines an "appealable matter" as "any matter in respect of which an appeal is authorised by the Acts". Section 949J TCA 1997 states that an appeal shall be valid if "it is made in relation to an appealable matter". Therefore, in order for an appeal to be valid, it must be a matter in respect of which an appeal is authorised by the Tax Acts. The Commission does not have a general or residual power to hear appeals into matters where no appeal is authorised by the Tax Acts.

32. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in the *Lee* decision wherein Murray J. stated that:

"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation".

33. Moreover, more recently in the decision of *Colm Murphy*, Haughton J., applied the principles enunciated by Murray J. in the *Lee* decision and at paragraph 55 stated that:

"Further, for the reasons elaborated by Murray J. in Lee, it also follows that any argument that the appellant might wish to advance in respect of "procedural unfairness" (or, as it appears to have been raised in the Circuit Court, of estoppel based on the same facts) by reason of the absence of formal confirmation for the Regional Office of the ending of the enquiry and resumption of the audit, was not one which the Appeal Commissioners had jurisdiction to determine."

34. It follows from the above that for an appeal to be a valid appeal that may be accepted by the Commissioner, there must exist some provision in legislation conferring on a taxpayer the right to appeal a specific decision to the Commission.
35. The Respondent objects to the acceptance of these appeals on the grounds *inter alia* that there is no appeal against an assessment or an amended assessment to VHT in accordance with to section 653BD(2) TCA 1997. The Commissioner notes that the Respondent did not raise any assessment or amended assessment to VHT and that it is a fact in this appeal that the Appellant made a return and paid the VHT in relation to the property. Furthermore, in accordance with Section 653AV TCA 1997, VHT is a self-assessed tax. Hence, the Appellant simply paid the VHT in accordance with the return filed by him. The Commissioner notes that it was accepted by the Appellant that the amount paid was the amount owed, having regard to the property. In addition to there being no appeal against an assessment or an amended assessment, section 959AG TCA 1997 provides generally that there is no appeal against a self-assessment under section 959R TCA 1997, where a taxpayer has made a self-assessment.
36. Having examined the content of the Appellant's Notice of Appeal, the Commissioner is satisfied that it does not relate to an appealable matter and the appeal is invalid. There was no assessment raised by the Respondent and the Appellant simply paid the self-assessed amount of VHT. There is no appeal against a self-assessment. In circumstances where the Commissioner's jurisdiction extends only to the tax and the charge, the Commissioner is satisfied that there is no appealable matter at issue herein. Therefore, the Appellant's appeal is invalid and must be refused.
37. Section 949N(1) of the TCA 1997 provides in mandatory terms that where the Commissioner is satisfied that an appeal is invalid, the Commissioner "*shall refuse to accept the appeal*". The Commissioner, being so satisfied for the reasons set out in the preceding paragraphs, is therefore bound to refuse acceptance of the Appellant's appeal. The decision to refuse to accept the appeal is final and conclusive and is made in accordance with section 949N TCA 1997 as there is no appealable matter at issue herein.
38. However, lest the Commissioner be wrong in her analysis and decision in relation to the matter at issue not being an appealable matter, the Commissioner will proceed to consider the Appellant's arguments in this appeal in relation to the imposition of the VHT.

Was VHT promulgated

39. The Appellant argued that he was not aware of the existence of VHT until 6 October 2023, when he received the aforementioned correspondence from the Respondent. The

Appellant gave evidence that had he been aware of the existence of VHT, he could have availed of the exemptions to VHT, in accordance with section 653BC TCA 1997. The Appellant testified that he himself could have resided in the property for the minimum period of 30 days within the chargeable period or alternatively he could have placed the property on the rental market. The Commissioner notes the correspondence submitted by the Appellant from [REDACTED] in this regard. Thus, the crux of the Appellant's argument is that had he been aware of the VHT and his potential liabilities, he would have availed of the exemptions provided for by the legislation. But, having only received correspondence on 6 October 2023, from the Respondent highlighting the "new tax", this meant that he was denied the opportunity to avail of the exemptions provided for in the legislation.

40. The Appellant submitted that part of this argument was that a law is only binding if it is promulgated and that the Respondent failed to promulgate VHT to him, prior to 6 October 2023. The Respondent submitted that it published comprehensive information in relation to the imposition of the VHT on its website during 2023 and there was extensive print and radio coverage nationally since the Finance Act 2022 was signed into law in December 2022. Counsel for the Respondent stated that the correspondence that issued to property owners in October 2023, was for the purposes of assisting taxpayers and which was part of a customer service programme engaged in by the Respondent in pursuance of its public service obligations.
41. The Appellant took issue with the manner in which the Respondent raised awareness of the VHT. Moreover, the Appellant submitted that the purpose of the VHT was not primarily to raise revenue, but to raise awareness among owners of vacant residential properties that the latter must be made available for occupation as dwellings. Therefore, the VHT is a fixed rate penalty for failure to comply with this requirement.
42. The Appellant gave evidence that the unreasonable and unacceptable belated act of promulgation was the sole cause of the Appellant being denied access to one of the crucial provisions in the legislation and one to which he would otherwise have been entitled. The Appellant argued that this was a misapplication of the law and the Appellant requested that the Commissioner proceed to reverse the law and the loss the Appellant has suffered as a consequence. The Appellant refuted that the legal principle *ignorantia juris non excusat* was applicable in the present appeal. The Appellant argued that it was significant in the context of this appeal that the Latin expression cited by the Respondent employs the word "*jus juris*" to refer to the law. The Appellant stated that for a law to be binding, it must first be promulgated. However, the new legislation relating to the VHT was not

promulgated until 6 October 2023, when the Appellant opened the written notice from the Respondent.

43. The Commissioner is satisfied that a law is promulgated by the President of Ireland in accordance with Article 13.3.2. of the Constitution of Ireland, wherein it states that:

“The President shall promulgate every law made by the Oireachtas.”

44. Hence, the Commissioner is satisfied that it was not the role of the Respondent to promulgate the VHT legislation, but rather it was the role of the President of Ireland. Whilst it may be the case that the Respondent, in its role of collecting the VHT, could have corresponded with potential taxpayers at an earlier stage and that it was unfortunate that the Appellant was not informed via the media of the VHT, it is important to note that the Commission does not have a supervisory jurisdiction over the conduct of the Respondent.

45. In this regard, the Commissioner refers to the recent *dictum* of Mr Justice Quinn in the Judgment in *Browne v the Revenue Commissioners* [2024] IEHC 258, wherein Quinn J., when referring to an Appeal Commissioner’s jurisdiction and the well-established principles as set out in the *Lee* decision, at paragraph 20 stated that:

“In other words, this jurisprudence explains how the function of the Appeal Commissioners is essentially restricted to enquiring into and making findings as to issues of fact and law relevant to the statutory charge to tax and they do not have any quasi inherent powers to declare any aspect of the process or outcome of the Revenue Commissioners void or invalid, akin to the powers the High Court might have in a judicial review hearing”.

46. The Commission’s jurisdiction is limited to focussing on “*the assessment and the charge*”, as stated by Murray J. at paragraph 64 of the Court of Appeal’s judgment in the *Lee* decision. The Commissioner does not have jurisdiction to consider or decide on the constitutionality of legislation or to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts. Still, the Commissioner appreciates the unfairness and frustration felt by the Appellant in his dealings with the Respondent.

47. It is a fact nonetheless that VHT is a self-assessed tax and the obligation was on the Appellant to ensure that he was in compliance with his obligations in relation to his tax returns. As in any case, the Appellant was the person who was best placed to prepare a computation required for self-assessment on the basis of his personal circumstances

within the relevant tax period, as per the principles enunciated by Gilligan J. in *T.J. v Criminal Assets Bureau*. Moreover, the Commissioner is satisfied that the *dictum* of Noonan J. in *Duffy* is relevant wherein he stated that “[e]ven if he was not actually aware at that time of the passage of the Regulations, and of course ignorance of the law cannot avail the applicant...”

48. The Commissioner is very sympathetic towards the Appellant in this instance, but the Commissioner is satisfied that the Appellant has not demonstrated that the VHT paid in the amount of €16,141.35 was incorrect. Therefore, the Appellant’s appeal must fail.

Determination

49. As such and for the reasons set out above, the Commissioner determines that the Appellant’s appeal does not relate to an appealable matter and is thus invalid. Consequently, acceptance of the appeal is refused under section 949N TCA 1997. This decision is final and conclusive.

50. Lest the Commissioner be wrong in her assessment of the matter at issue not being an appealable matter, the Commissioner is satisfied that the Appellant has not shown on balance, for the reasons set out above in the preceding paragraphs, that the VHT is not payable.

51. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to check to see whether his legal rights were correctly applied.

52. This appeal is hereby determined in accordance with Part 40A TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Notification

53. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ (5) and section 949AJ (6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ (6) TCA 1997. This notification under section 949AJ 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

54. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
25 September 2024