AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

21TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

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 ("the TCA 1997") brought by [redacted] ("the Appellant") regarding the assessment to income tax raised by the Revenue Commissioners ("the Respondent") for the income tax year 2023. It is this decision that the Appellant is appealing.

2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

Background

3. In [redacted] 2020 the Appellant got married. For the income tax years 2020 to 2022 the Appellant's wife was tax resident in [redacted].

4. On 19 April 2023 the Appellant notified the Respondent that his wife had arrived in the State and that she would be tax resident in the State for 2023 and all subsequent years. The Appellant further instructed that his wife had been issued with a PPS number and he requested that his records be updated.

5. On 25 April 2023 the Respondent issued an acknowledgment to the Appellant and advised that his Form 11 for 2022 had been amended to include Non-Resident Aggregation Relief.

6. On 8 May 2023 the Appellant instructed the Respondent that he and his wife wanted to be assessed on a joint assessment basis with him as the assessable spouse.

7. On 8 June 2023 the Respondent replied to the Appellant and advised that the time to request a change of assessment to joint assessment for the year 2023 had passed and that the application must be made between 1 October of the previous year and 31 March in the year the change was requested.

8. On 22 January 2024 the Appellant filed his Form 11 for the income tax year 2023 ("Form 11 for 2023"). The submission of the Form 11 for 2023 raised a charge to income tax in the amount of € 2,622.59.

9. There was correspondence between the parties as to why was there a charge to tax. The Respondent advised the Appellant that the election for the '*Joint Assessment/Separate Assessment*" for the year 2023 had to be made between 1 October of the preceding year and 31 March in the year that the couple wanted separate assessment to apply. The Respondent submitted that as the election was made outside of that period the liability

for the year 2023 as assessed was correct. Further the Respondent stated that it was precluded from transferring any unused allowances between the spouses in this instance.

10. On 11 July 2024 the Appellant submitted his Notice of Appeal to the Commission. In the Notice of Appeal the Appellant claimed as follows:

> *'My spouse arrived in Ireland in March 2023 and got her PPS number in April 2023. In April 2023, I applied to Revenue to change my Basis of Assessment from "Marriage/Separate assessment" to "Married/Joint assessment" but I was told that the time to apply for a change of Basis of Assessment had passed but that I can apply for a review to be carried out at end of year under Joint Assessment for an unused rate band".*

Legislation and Guidelines

11. The legislation and guidelines relevant to this appeal are as follows:

> *Income tax treatment of married persons and civil partners Part 44-01-01 (Document last updated June 2024).*
>
> > *"4.2.2 Nomination of assessable spouse or nominated civil partner*
> >
> > *A couple may elect which of them is to be chargeable to tax. This election is made by married couples by completing an Assessable Spouse Election Form and by civil partners by completing a Nominated Civil Partner's Election Form. The nomination must be made to the appropriate Revenue Branch on or before 31 March in the tax year."*
>
> *Section 960C of the TCA1997: Tax to be due and payable to Revenue Commissioners.*
>
> *Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.*
>
> *Section 1016 of the TCA 1997: Assessment as single persons*
>
> *(1)Subject to subsection (2), in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.*
>
> *(2)Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment.*

Section 1017 of the TCA 1997: Assessment of husband in respect of income of both spouses

(1)Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –

(a)the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,

(b)the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and

(c)any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

(2)Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.

(3)Subject to subsection (4), for a year of assessment prior to the current year of assessment in which this section applies as a consequence of—

(a)an election made (including an election deemed to have been duly made) under section 1018,

(b)an election made under section 1019(2)(a)(ii), or

(c)section 1019(4)(a),

a husband or a wife who is not assessed under this section may elect to be so assessed and such election shall apply in place of any earlier election or deemed election for that year of assessment.

(4)Subsection (3) shall not apply where the husband or the wife is a chargeable person (within the meaning of section 959A).

Section 1018 of the TCA 1997: Election for assessment under section 1017

(1)A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

(2)Where an election is made under subsection (1) in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.

(3)Notwithstanding subsections (1) and (2), either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment.

(4)(a)A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016.

(b)Where a husband or his wife has duly given notice under paragraph (a), that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.

Section 1019 of the TCA 1997: Assessment of wife in respect of income of both spouses.

(1)In this section –

"the basis year", in relation to a husband and wife, means the year of marriage or, if earlier, the latest year of assessment preceding that year of marriage for which details of the total incomes of both the husband and the wife are available to the inspector at the time they first elect, or are first deemed to have duly elected, to be assessed to tax in accordance with section 1017;

"year of marriage", in relation to a husband and wife, means the year of assessment in which their marriage took place.

(2)Subsection (3) shall apply for a year of assessment where, in the case of a husband and wife who are living together –

(a)(i)an election (including an election deemed to have been duly made) by the husband and wife to be assessed to income tax in accordance with section 1017 has effect in relation to the year of assessment, and

(ii)the husband and the wife by notice in writing jointly given to the inspector before 1 April in the year of assessment elect that the wife should be assessed to income tax in accordance with section 1017,

or

(b)(i)the year of marriage is the year 1993-94 or a subsequent year of assessment,

(ii)not having made an election under section 1018(1) to be assessed to income tax in accordance with section 1017, the husband and wife have been deemed for that year of assessment, in accordance with section 1018(4), to have duly made such an election, but have not made an election in accordance with paragraph (a)(ii) for that year, and

(iii)the inspector, to the best of his or her knowledge and belief, considers that the total income of the wife for the basis year exceeded the total income of her husband for that basis year.

(3)Where this subsection applies for a year of assessment, the wife shall be assessed to income tax in accordance with section 1017 for that year, and accordingly references in section 1017 or in any other provision of the Income Tax Acts, however expressed –

(a)to a husband being assessed, assessed and charged or chargeable to income tax for a year of assessment in respect of his own total income (if any) and his wife's total income (if any), and

(b)to income of a wife being deemed for income tax purposes to be that of her husband,

shall, subject to this section and the modifications set out in subsection (6) and any other necessary modifications, be construed respectively for that year of assessment as references –

(i)to a wife being assessed, assessed and charged or chargeable to income tax in respect of her own total income (if any) and her husband's total income (if any), and

(ii)to the income of a husband being deemed for income tax purposes to be that of his wife.

(4)(a)Where in accordance with subsection (3) a wife is by virtue of subsection (2)(b) to be assessed and charged to income tax in respect of her total income (if any) and her husband's total income (if any) for a year of assessment –

(i)in the absence of a notice given in accordance with subsection (1) or (4)(a) of section 1018 or an application made under section 1023, the wife shall be so assessed and charged for each subsequent year of assessment, and

(ii)any such charge shall apply and continue to apply notwithstanding that her husband's total income for the basis year may have exceeded her total income for that year.

(b)Where a notice under section 1018(4)(a) or an application under section 1023 is withdrawn and, but for the giving of such a notice or the making of such an application in the first instance, a wife would have been assessed to income tax in respect of her own total income (if any) and the total income (if any) of her husband for the year of assessment in which the notice was given or the application was made, as may be appropriate, then, in the absence of an election made in accordance with section 1018(1) (not being such an election deemed to have been duly made in accordance with section 1018(4)), the wife shall be so assessed to income tax for the year of assessment in which that notice or application is withdrawn and for each subsequent year of assessment.

(5)Where an election is made in accordance with subsection (2)(a)(ii) for a year of assessment, the election shall have effect for that year and each subsequent year of assessment unless it is withdrawn by further notice in writing given jointly by the husband and the wife to the inspector before 1 April in a year of assessment and the election shall not then have effect for the year for which the further notice is given or for any subsequent year of assessment.

Section 949AK of the TCA 1997: Determinations in relation to assessments.

(1)In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that—

(a)an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly,

(b)an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly, or

(c)neither paragraph (a) nor (b) applies, determine that the assessment stand.

(2)If, on an appeal against an assessment that—

(a)assesses an amount that is chargeable to tax, and

(b)charges tax on the amount assessed,

the Appeal Commissioners consider that the appellant is overcharged or, as the case may be, undercharged by the assessment, they may, unless the circumstances of the case otherwise require, give as their determination in the matter a determination solely to the effect that the amount chargeable to tax be reduced or increased.

(3)In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was precluded from making the assessment or the amendment, as the case may be, the Acts (within the meaning of section 959A) shall apply as if the assessment or the amendment had not been made and, accordingly, that assessment or amended assessment shall be void.

(4)In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was not precluded from making the assessment or the amendment, as the case may be, that assessment or amended assessment shall stand, but this is without prejudice to the Appeal Commissioners making a determination in relation to that assessment or amended assessment on foot of an appeal on grounds other than those referred to in section 959AF(2).

Submissions

The Appellant's submissions

12. The Appellant submitted his Statement of Case an extract of which is set out below:

"*I got married in [redacted] 2020 and for the tax years 2020 to 2022 my wife was tax resident in [redacted]. My wife arrived in Ireland in March 2023 and obtained her PPS number in April 2023. I immediately notified Revenue that my wife had arrived in Ireland and that she will be tax resident in Ireland for the tax year 2023 and subsequent years.*

In May 2023, I notified Revenue in writing of our wish to be assessed on a joint assessment basis with me as the assessable spouse. Revenue replied in June 2023 that the time to request a change of assessment for the year 2023 had passed and indicated that a review may be carried out at the end of the year under joint assessment. According to Revenue:

"The request must be made between 1 October of the previous year and 31 March in the year you want new taxation basis of assessment to apply. For example, in order to be joint assessed in 2023, the claim must be made between 1 October 2022 and 31 March 2023.

A review may be carried out at end of year under Joint Assessment for an unused rate band, please apply via MyEnquiries for this review.

I filed my 2023 income tax return in January 2024 and applied for the review as stated above. Revenue replied in May 2024 my Form 11 for 2023 cannot be amended to joint assessment because I did not made [sic] the request before 31st March 2023.

From Revenue's Statement of Case, I see that Revenue is relying on Section 1016(1) TCA 1997. Subsection 2 of the same section clearly stated that" Where an election under section 1018 has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment."

Section 1018 TCA 1997 did not place any time period on when an election can be made to be jointly assessed for a year of assessment. According to the subsections 1 and 2,

"(1) A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

(2) Where an election is made under subsection (1) in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment."

And Section 1018 (4)(a) states "A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she

wishes to be assessed to tax for that year as a single person in accordance with section 1016."

I should conclude that at no time during the tax year 2023 did I or my wife notified [sic] Revenue of our wish to be assessed to tax for that year as a single person. It will [sic] seem that Revenue wrongly denied our election for joint assessment for the tax year 2023".

The Respondent's submissions

13. The Respondent submitted its consolidated Statement of Case 18 July 2024 an extract of which is set out below:

"Form 11 for the year 2023 has been submitted on 22 January 2024, on a Separate Treatment basis of assessment. Submission has resulted in an outstanding liability in amount of €2,622.59.

In the appeal, dated 11 July 2024, the Appellant is stating the following;

'My spouse arrived in Ireland in March 2023 and got her PPS number in April 2023. In April 2023, I applied to Revenue to change my Basis of Assessment from "Marriage/Separate assessment" to "Married/Joint assessment" but I was told that the time to apply for a change of Basis of Assessment had passed but that I can apply for a review to be carried out at end of year under Joint Assessment for an unused rate band'.

The Appellant is referring to the Section 1024 in his Appeal, which is related to Separate Assessment under the Joint Assessment basis of taxation.

However, Appellant's basis of assessment in the year 2023 was Separate Treatment, as prescribed by Section 1016 TCA 1997.

Revenue is precluded from transferring any unused allowances between the spouses, in line with Part 44 TCA 1997 and Section 1016 TCA 1997;

'Under separate treatment (section 1016), each spouse is treated for tax purposes as if unmarried. The main difference between separate treatment and separate assessment is that, under separate treatment, one spouse's unused allowances, reliefs and rate bands cannot be transferred to the other spouse'.

According to our record, the Appellant contacted Revenue, through My Enquiries, on 17/04/2023, advising Revenue of the change in his spouse's residency status;

'Please note that my spouse has now arrived in Ireland and she will be tax resident in Ireland this year and all subsequent years'.(My Enquiries date 17/04/2023)

Unfortunately, the request for 'Joint Assessment/Separate Assessment' had to be rejected as the deadline for the election, for the year 2023, had passed.

The election for the 'Joint Assessment/Separate Assessment 'for the year 2023 had to be made by 31/March 2023, in line with Section 1017 and Section 1019 of TCA 1997;

'An election for separate assessment must be made in writing, or through MyEnquiries, to Revenue. The application to Revenue can be made by either spouse or civil partner and must be made between 1 October of the preceding year and 31 March in the year that the couple wants separate assessment to apply'.

Based on all the above mentioned facts, the liability for the year 2023 is considered to be correct, as Revenue is precluded from transferring any unused allowances between the spouses in this instance."

Material Facts

14. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

    14.1. In [redacted] 2020 the Appellant got married. For the income tax years 2020 to 2022 the Appellant's wife was tax resident in [redacted].

    14.2. On 19 April 2023 the Appellant notified the Respondent that his wife had arrived in the State and that she would be tax resident in the State for 2023 and all subsequent years. The Appellant further instructed that his wife had been issued with a PPS number and he requested that his records be updated.

    14.3. On 8 May 2023 the Appellant instructed the Respondent that he and his wife wanted to be assessed on a joint assessment basis with him as the assessable spouse.

    14.4. On 8 June 2023 the Respondent replied to the Appellant and advised that the time to request a change of assessment to joint assessment for the year 2023 had passed and that the application must be made between 1 October of the previous year and 31 March in the year the change was requested.

    14.5. On 22 January 2024 the Appellant filed his Form 11 for 2023. The submission of the Form 11 for 2023 raised a charge to income tax in the amount of €2,622.59.

    14.6. There was correspondence between the parties and the Respondent advised the Appellant that the election for the 'Joint Assessment/Separate Assessment" for the year 2023 had to be made between 1 October of the preceding year and 31

March 2023. The Respondent advised that as the election was made outside of that period the liability for the year 2023 as assessed was correct. Further the Respondent stated that it was precluded from transferring any unused allowances between the spouses in this instance.

Analysis

15. 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 of the TCA 1997.

16. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:

> "*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".*

17. The Commissioner also refers to the judgment of *Fahy v the Revenue* Commissioners [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

> *" …….. Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions …".*

18. The Commission is entitled to consider that any assessment issued by the Respondent is valid and has no statutory jurisdiction to question the validity of that assessment. This was confirmed by the High Court in *J.S.S, J.S J, T S, D S, P S v Tax Appeals Commission* [2024] IEHC 565.

19. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court

case of *Menolly Homes Ltd v Appeal Commissioners and Anor*. [2010] IEHC 49, (*"Menolly*") wherein at paragraph 22, Charleton, J. stated:

"*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*".

20. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly*, wherein Charleton. J, stated:

"*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..".*

21. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee,* wherein Murray, J. stated at paragraph 76:

"*The jurisdiction of the Appeal Commissioners ……. is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid*."

22. All material submitted to the Commission has been assessed by the Appeal Commissioner ("the Commissioner") before making this determination.

23. The Respondent has issued guidance on income tax treatment of married persons and civil partners in a document entitled "*Income tax Treatment of Married Persons and Civil Partners*" (Part 44-01-01) and at paragraph 4.2.2: "*Nomination of assessable spouse or nominated civil partner"* it states that a couple may elect which of them is to be chargeable to tax. It further states that the election is made by married couples by completing an "*Assessable Spouse Election Form*" (and by civil partners by completing a "*Nominated Civil Partner's Election Form*") "…*and that the nomination must be made to the appropriate Revenue Branch on or before 31 March in the tax year*".

24. Section 1016 of the TCA 1997 provides *inter alia* that in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married except as is otherwise provided by the Income Tax Acts. The legislation provides therefore that unless otherwise elected/deemed for different treatment for tax a married couple who reside together will be treated for tax purposes as if they were not married. The Respondent submits that the Appellant's basis of assessment in the year 2023 was separate treatment as prescribed for at section 1016 of the TCA 1997.

25. Section 1017(1) of the TCA 1997("*Assessment of husband in respect of income of both spouses*") provides that where in the case of a husband and wife an election is made under section 1018 of the TCA 1997 to be assessed to tax it has effect for a year of assessment and the husband shall be assessed and charged to income tax, not only in respect of his total income for that year, but also in respect of his wife's total income for any part of that year of assessment during which she is living with him. In this matter, the Appellant notified the Respondent on 19 April 2023 of his wife's tax residency and on 8 May 2023 of their election under section 1018 of the TCA 1997 that their "[*B]asis of Assessment* [be changed] from "*Marriage/Separate assessment*" to "*Married/Joint assessment*" the effect of which was that they both be treated for tax purposes on the basis of assessment of husband in respect of income of both spouses (section 1017(1) of the TCA 1997*).*

26. Section 1018 of the TCA 1997 provides *inter alia* that a husband and his wife, where the wife is living with the husband, "…*may at any time during a year of assessment…*", [Added for emphasis] by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 of the TCA 1997 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section. Section 1018(1) of

the TCA 1997 provides that an election further to section 1017 of the TCA 1997 can be made "….*at any time during a year of assessment*".

27. Section 1018(4)(a) of the TCA 1997 provides that where a husband and his wife are living together and an election under subsection (1) has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 of the TCA 1997 ("*Assessment of husband in respect of income of both spouses*") for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016 of the TCA 1997 (*separate treatment as not married*). In this matter the Appellant's wife arrived in the State in March 2023 and she obtained her PPS number in April 2023. Accordingly, the Appellant's spouse was assessable to tax from the issue to her of her PPS number from April 2023. Therefore, further to section 1018(4)(a) of the TCA 1997 it was a mandatory effect of the legislation that the Appellant and his spouse from that date shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 of the TCA 1997 ("*Assessment of husband in respect of income of both spouses*") for that year.

28. However, section 1019(2) of the TCA 1997 ("*Assessment of wife in respect of income of both spouses*") provides *inter alia* that subsection (3) shall apply for a year of assessment where, in the case of a husband and wife who are living together (a)(i)an election (including an election deemed to have been duly made) by the husband and wife to be assessed to income tax in accordance with section 1017 has effect in relation to the year of assessment, and (ii)the husband and the wife by notice in writing jointly given to the inspector before 1 April in the year of assessment elect that the wife should be assessed to income tax in accordance with section 1017 of the TCA 1997.[Emphasis added] This provision was introduced further to section 77 and Schedule 2 of the Finance Act 2001 with effect for year of assessment 2000 and subsequent years of assessment substituting the previous date restriction of "*6th day of July*" (*Calendar Year Basis Amendment*). In this matter, the earliest date that the election and/or the deemed election of treatment further to the provisions of section 1017 of the TCA 1997 and the notice thereof to the Inspector of Taxes of the election and/or of the deemed election could have been made was the date of issue of the PPS number to the Appellant's wife.

29. In the note on the Appellant's "*MyEnquiries.ie*" page the Appellant's first communication with the Respondent about his wife receiving her PPS number was on 19 April 2023. The Appellant does not state in that note the actual date of issue of the PPS number to his

wife but in the Appellant's Statement of Case the Appellant submits that *"….[M]y wife arrived in Ireland in March 2023 and obtained her PPS number in April 2023. I immediately notified Revenue that my wife had arrived in Ireland and that she will be tax resident in Ireland for the tax year 2023 and subsequent years*." The Commissioner notes the Appellant submits that after the issue of the PPS number to his wife he immediately notified the Respondent. The Commissioner refers to the *Oxford University Press* and its definition of "*immediately*": "*Without any delay or lapse of time; instantly, directly, straightaway; at once*". The Commissioner having regard to the above definition and the common use and understanding of the word *"immediately*" finds that the date of issue of the PPS number to the Appellant's wife and therefore the date from which the Appellant and his wife should have been deemed to be assessable further to the provisions of section 1017 of the TCA 1997 was a date that was proximate to 19 April 2023 and was therefore on the balance of probabilities on some date after 1 April 2023. Accordingly, as the Appellant and his spouse could not have been deemed to be assessable further to the provisions of section 1017 of the TCA 1997 before 1 April 2023 the Appellant and his spouse were not entitled to assessment under section 1017 of the TCA 1997 for the income tax year 2023.

30. Accordingly, the Appellant and his wife were assessed for tax for the tax year 2023 on the basis of separate treatment, as prescribed by section 1016 of the TCA 1997. As such the Respondent was precluded from transferring any unused allowances between the spouses, in line with Part 44 of the TCA 1997 and section 1016 of the TCA 1997 as under separate treatment prescribed at section 1016 of the TCA 1997 each spouse is treated for tax purposes as if unmarried.

31. Section 949AK(1) of the TCA 1997 provides *inter alia* that in relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that (a)an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly, (b)an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly, or (c)neither paragraph (a) nor (b) applies, determine that the assessment stand. The Commissioner in consideration of the section 949AK(1)(c) of the TCA 1997 finds that the decision by the Respondent to raise the charge to income tax against the Appellant in the amount of €2,622.59 for the income tax year 2023 shall stand.

Determination

32. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent was entitled to raise the charge to income tax against the Appellant in the amount of €2,622.59 for the income tax year 2023.

33. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful and the decisions of the Respondent to raise the charge to income tax against the Appellant in the amount of €2,622.59 for the income tax year 2023 shall stand.

34. The Commissioner acknowledges that the Appellant was within his rights to appeal the Respondent's decision and to have clarity of his legal rights. The Commissioner understands that the Appellant may be disappointed with the outcome of his appeal.

35. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK(1) and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997

Notification

36. 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

37. 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.

Leonora B. Doyle
Appeal Commissioner
12 November 2024

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