AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

46TACD2025

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"). The Appellant is appealing the decision by the Revenue Commissioners ("the Respondent") to refuse to allow the Appellant loss relief in respect of an investment the Appellant claims he made in a music distribution partnership called [redacted] Partnership.

2. The appeal proceeded by way of a hearing on 7 November 2024. The Appellant gave oral evidence and represented himself. The Respondent was represented by two employees of the Respondent.

Background

3. Following the determination of the Supreme Court in the case of *Revenue Commissioners -v- Droog* [2016] IESC 55 ("*Droog*"), loss relief was allowed in respect of investment by individuals in a number of music and film partnership schemes in the 1990s. The Respondent obtained lists of investors from film and music partnerships to determine the parties to whom repayments were to be made.

4. The Appellant's name was on the list of investors given to the Respondent of people who had invested in [redacted] Partnership. A repayment of tax in the amount of €16,274.69 and interest of €12,474.22 was issued to the Appellant by the Respondent in May 2017.

5. The Appellant made a claim for refund in respect of his claimed investment in [redacted] Partnership on 28 November 2022.

6. The Respondent submits that the Appellant did not appear on the list of investors in [redacted] *Partnership* which the Respondent had received from the partnership ("List of Investors in [redacted] Partnership"). The Respondent made a decision that as it had no confirmation from [redacted] Partnership that the Appellant had invested in [redacted] Partnership no repayment could issue to the Appellant in respect of his claim for loss relief.

7. The Appellant disputes this decision by the Respondent and submits that the List of Investors in [redacted] Partnership supplied to the Respondent must be incomplete. The Appellant submits that a former colleague who made a similar investment in [redacted] Partnership informed him that he had received a refund for his investment in [redacted] Partnership. The Appellant submits that he should receive a similar refund from the Respondent in respect of his investment in [redacted] Partnership. The

Appellant submits that people he knows were also not included in the List of Investors in [redacted] Partnership. In support of his appeal the Appellant submitted to the Commission inter alia copy letters from [redacted] Partnership which the Appellant submits confirm and support his claims that he had invested in [redacted] Partnership in the amount of £3,226 in the 1998/1999 tax year.

8. The Appellant submitted a Notice of Appeal to the Commission on 29 January 2024 and therein claimed:

"*In 1999 I invested in a music distribution partnership, [redacted] Partnership. Following a significant trading loss, I claimed for income tax loss relief of £25,075.30 in 2000. The relief sought was disputed by Revenue and, prior to 28/11/2022 (when I raised the issue vis ROS), I had not received any correspondence on the matter since 2010. However, recently a former work colleague in [redacted] & Partners ([redacted]) who also invested in the [redacted] Partnership informed me that he had received a refund, including interest, of €25,392 in June 2017. I believe that I am due a similar refund. Two other fellow directors in [redacted] Partners ([redacted]) also invested in the [redacted] Partnership and they have not yet received a refund.*

My position is that I did invest in [redacted] Partnership and, therefore, the list of investors supplied to Revenue must be incomplete. It is clear that it is not just my name that is missing from it as [redacted] and [redacted] names are also missing from it. The documentation (dated 18/5/1999 & 20/3/2000) submitted via MyEnquirie also supports my contention that the list supplied to Revenue is incomplete."

Legislation and Guidelines

9. The legislation relevant to this appeal is set out in the Appendix.

Evidence

[redacted] - *The Appellant:*

10. The Commissioner sets out below an extract of the Appellant's oral evidence during the hearing:

The Appellant stated it was not until the hearing that he became aware that the Respondent had submitted that he was prevented by the application of the four year rule from making an appeal. The Appellant stated that he thought the only matter he had to address at the hearing was the question around his name not being on the List of Investors in [redacted] Partnership. The Appellant referred to the following copy

letters which were cited in the Appellant's Statement of Case and which were also submitted to the Commission in the Appellant's Book of Documents:

[redacted] *Partners dated 18 May 1999;*

[redacted] *& Company dated 20 March 2000;*

[redacted] *Partners dated 4 August 2000;*

[redacted] *Partners dated 25 August 2003;*

The Respondent to a third party dated 28 June 2017 ("the Appellant's Letters").

The Appellant submitted that the Appellant's Letters were sufficient proof that he had made an investment in [redacted] Partnership. The Appellant further submitted that an error must have been made and that is why his name was not on the List of Investors in [redacted] Partnership submitted to the Respondent. The Appellant further submitted that the Respondent in refusing his claim for loss relief must not therefore accept the veracity of the Appellant's Letters and he wanted to know why the Respondent did not accept the Appellant's Letters as sufficient proof of his claim. The Appellant stated that the Appellant's Letters are sufficient proof that he had invested in [redacted] Partnership and further that he knew people who also were not included on the List of Investors in [redacted] Partnership and they also had been refused loss relief by the Respondent.

[redacted] *– Representative for the Respondent*

11. The Commissioner sets out below an extract of the Respondent's Representative's oral evidence during the hearing:

That after the decision in *Droog* the Respondent conducted a full investigation into all the partnerships that were affected. The Respondent's Large Case Division ("LCD") carried out the reviews. The Respondent identified nine (9) such partnerships. Two of the partnerships were [redacted] Partnership and [redacted] Partnership. The Respondent obtained lists of investors in respect of each partnership from the relevant partnership. Repayments were made by the Respondent to all investors who appeared in the list of investors in the nine partnerships. The Appellant was on the list of investors in [redacted] Partnership. The Appellant was issued with a letter on 2 May 2017 and he received a full refund for tax withheld together with interest in respect of his investment in [redacted] Partnership. The Respondent does not accept that the Appellant made an investment in [redacted] Partnership as the Appellant was not on the List of Investors in [redacted] Partnership. As the Appellant was not on the List of Investors

in [redacted] Partnership the Appellant was not entitled to his claim for loss relief. The Respondent's Witness stated that a valid claim for loss relief must be made by way of a completed form "RICT 3" and this was not done by the Appellant. The Witness further stated that the documentation supplied by the Appellant is not sufficient to support the Appellant's claim. The Witness further stated that the application of the four year rule means that the Appellant is now prevented from making a further claim as the Appellant is since 2 May 2017 on notice of the repayments made by the Respondent arising from the *Droog* decision and more than four (4) years have now passed since then and accordingly the Appellant is out of time.

[redacted] *- The Appellant: - Rebuttal*

12. The Appellant stated that he never received an "RICT 3" form to complete and none of his colleagues received it.

Submissions

The Appellant's submissions:

13. The Commissioner sets out below an extract of the Appellant's Statement of Case:

"*In 1999 I invested in a music distribution partnership, [redacted] Partnership. Following a significant trading loss, I claimed for income tax loss relief of £25,075.30 in 2000. The relief sought was disputed by Revenue and, prior to 28/11/2022 (when I raised the issue vis ROS), I had not received any correspondence on the matter since 2010. However, recently a former work colleague in [redacted] Partners ([redacted] who also invested in the [redacted] Partnership informed me that he had received a refund, including interest, of €25,392 in June 2017. I believe that I am due a similar refund. Two other fellow directors in [redacted] Partners ([redacted] & [redacted]) also invested in the [redacted] Music Partnership and they have not yet received a refund. I did receive a 28,748.91 refund in May 2017 but this related to a film partnership, [redacted] Partners, which I invested in in late 1997/early 1998. On 8th May 2023, following my initial enquiry which was made via ROS, I received the following reply from the Business Division:*

"Thank you for your reply. Both [redacted] Partnership and [redacted] Partnership respectively supplied a list of investors to Revenue. Once these lists had been provided the investors were subsequently refunded by Revenue. You do not appear on the list of investors supplied in relation to [redacted] Partnership, only on [redacted] Partnership. Revenue does not possess any information to state any investment was made by you in [redacted] - therefore no refund is due to you."

I responded on 17th May 2023 as follows: "Please find attached written confirmation from [redacted] *Partners (dated 18/5/1999) that I invested IR£3,226 in a music partnership in April 1999. I understand that a number of partnerships were established through a syndication arrangement and I am an investor in one of them, - presumably* [redacted] *Partners, - as all correspondence to me has been from* [redacted] *Partners. I also enclose a letter dated 20/3/2000 from* [redacted] *& Company Accountants which refers to my investment in* [redacted] *Partners. I am very surprised that I do not appear on the list of investors supplied to you but I assume it was simply an administrative error. If you check my Notice of Assessment for 1998/1999 you should find confirmation of my investment. It is possible that I am listed as* [redacted] *or* [redacted] *in the list as, in correspondence, I used the first name* [redacted] *to distinguish myself from my late father, also* [redacted] *" Eventually, after further queries through MyEnquiries and the submission of a formal complaint, on 25/1/2024 I received the following response to my email of 17/5/2023:*

"Dear [redacted] *,*

I wish to acknowledge receipt of the above complaint. Following examination of this case I wish to advise that, as advised on the 18/04/2023 & 08/05/2023, You do not appear on the list of investors supplied in relation to [redacted] *Partnership, only on* [redacted] *Partnership, therefore no further refunds are due at this time. If you wish to appeal this decision, you must do so by submitting a Notice of Appeal form to the Tax Appeals Commission (TAC). The Notice of Appeal form can be obtained from the TAC's website at www.taxappeals.ie and it contains the address to which an appeal is to be sent. The TAC can be contacted by email at info@taxappeals.ie."*

My position is that I did invest in [redacted] *Partnership and, therefore, the list of investors supplied to Revenue must be incomplete. It is clear that it is not just my name that is missing from it as it is reasonable to assume that* [redacted] *and* [redacted] *names are also missing from it. The documentation (dated 18/5/1999 & 20/3/2000) submitted via MyEnquiries also supports my contention that the list supplied to Revenue is incomplete*."

14. During the hearing the Commissioner raised queries with the Respondent about the number of partnerships affected by the *Droog* decision and were investigated by the LCD. The Commissioner directed that further information be sent by the Respondent to the Commission after the hearing. The Respondent furnished further material and submissions to the Commission on 7 November 2024. On 14 November 2024 the

Appellant replied to the Respondent's submissions. The Appellant's replies are contained within the square brackets below:

"*The [redacted]' letter provided by the Appellant refers to an individual other than the Appellant.*

[As noted by me, it was addressed in error to my father, [redacted]. As also noted, I contacted Revenue on 30/3/2011 and requested that my [redacted] be corrected in Revenue"s [sic] files.]

The PPSN referenced on the letter is not the Appellant's.

[The PPSN in the letter is my father's PPSN.]

The address is, by the Appellant's own admission not his address.

[The address in the letter is my father's home address. My father retired from work in [redacted] and [redacted]. He did not invest in any music or film partnership.]

The letter refers to "investment in the film partnership [redacted] Partners" (underline added) and the matter under appeal is in relation to an investment in a music partnership.

[The letter from Revenue dated 28/6/2017 to [redacted] incorrectly refers to the "film partnership [redacted] Partners". [redacted] has confirmed to me that he did not invest in any film partnership, rather he invested solely in a music partnership. I'm sure Revenue can confirm that [redacted] and [redacted] were music partnerships. Assuming this to be the case, it is clear that Revenue simply made an error in their letter dated 14/3/2011 (as they did in their letter to [redacted]) in labelling [redacted] Partners a film partnership.]

Revenue does not have any comment in relation to the [redacted]' letter as this does not form part of the appeal.

[The purpose of including the [redacted] letter was to highlight the fact that two letters went out on the same day from the same person in Revenue to the same recipient, one in relation to a film partnership and the other in relation to a music partnership. If both letters were in reference to a film partnership investment, the contents would almost certainly have been identical, whereas the contents are very different.]

Revenues Large Case Division carried out extensive reviews in respect of each investor to establish the amounts due for refund. The audit work in respect of [redacted] was concluded by LCD, the Appellant was issued with a letter confirming same on the 2nd May 2017, and the appellant received a full refund for tax withheld together with interest.

[The refund solely related to an investment in a film partnership, [redacted] Partners. No reference was made in the letter to my investment in a music partnership.]

There are no amounts due or owning per Revenue records to the Appellant in relation to any other investment.

[This is disputed by me. My contention, backed by the evidence I have submitted, is that there is a substantial amount owed arising from my investment in a music partnership in April 1999.]

The Appellant has not established that a valid refund claim was made in relation to either the "[redacted]" or "[redacted]" partnerships under Section 865(b).

The appellant was not included on the list of investors under these Partnerships. The Appellant has not provided any information, or any such confirmation from Revenue, to substantiate that he is entitled to any further refund in respect of any other investments in any other Partnership.

[Correspondence has been provided by me which confirms that I invested in a music partnership, either via [redacted] Partners or [redacted] Partners.]

Revenue considers that any claim for a refund is precluded under Section 865(4) of TCA 1997.

[This would be patently unjust as I was unaware until November 2022 (when a former work colleague [redacted] told me that he had received a refund in 2017) that Revenue had conceded that loss relief would be given in relation to my investment in a music partnership]."

The Respondent's submissions:

15. The Commissioner sets out below an extract of the Respondent's Statement of Case:

"*The Appellant is appealing Revenue's decision not to allow him loss relief in respect of an investment he made in 1999 in a music distribution partnership. He made the application for the relief in filed their 2017 Income Tax return on 10 October 2023. The return November 2022 and following review, in January 2024, Revenue advised him that no loss relief was due. It is this decision that is the matter under appeal.*

In his Notice of Appeal, the Appellant states that he invested in a music distribution partnership, [redacted] Partnership in 1999. Following a significant trading loss, he claimed for income tax loss relief of £25,075.30 in 2000. He said that a former colleague that made a similar investment informed him that he had received a refund for the investment and

the Appellant considers that he should be due a similar refund. He added that two other fellow directors that also invested in [redacted] *Partnership have not received a refund. He further advised that he did receive a refund in May 2017 but this related to a film partnership,* [redacted] *Partners, which he invested in in late 1997/early 1998. Following a determination of the Supreme Court in the case of Revenue Commissioners -v- Droog [2016] IESC55, loss relief was allowed in respect of investment by individuals in a number of film relief and film partnership schemes in the 1990s. Repayments of tax, including interest, were due to a number of investors and these repayments were made by Revenue in 2017. Revenue obtained lists of investors from both* [redacted] *Music Partnership and* [redacted] *Partnership to determine the repayments due. He did appear on the* [redacted] *Partnership list and a repayment of tax in the amount of €16,274.69 and interest of €12,474.22 issued to him in May 2017. The Appellant however did not appear on the list of investors provided by* [redacted] *Partnership and no repayment issued. As Revenue had no confirmation from* [redacted] *Partnership that the Appellant had invested in 1999, no repayment can issue in respect of loss relief. The Appellant was advised of this decision by REVENUE STATEMENT OF CASE Revenue in May 2023 and January 2024.*

The Appellant's position is that he did invest in [redacted] *Partnership and, therefore, the list of investors supplied to Revenue must be incomplete. He added that it is not just his name that is missing from it as he knew of two former colleagues that made similar investments that did not receive any refund. The Appellant provided a copy of a letter from* [redacted] *Partnership that showed that he invested a partnership contribution of £3,226 in the 1998/1999 tax year. However, this is not sufficient to substantiate the loss relief claim, and an Employment Investment Incentive/Relief for Investment in Corporate Trades certificate is required. The letter does not clarify exactly what Partnership was invested in by the Appellant and it does not provide a date of the investment which could allow Revenue to identify the certificate. Without the certificate, Revenue can only base their review on the list provided by* [redacted] *Partnership and as the Appellant does not appear on their list as an investor, loss relief cannot be considered. Revenue have requested additional supporting information from the Appellant in relation to the investment including the exact date of the investment, any certificate that issued in relation to the investment and any other relevant information the Appellant has in relation to the investment. On receipt of this, Revenue will conduct further investigations of the Appellant's record*."

16. The Commissioner sets out below an extract of the Respondent's Outline of Arguments:

"*1.1 This appeal relates to loss relief being allowed by the Respondent in respect of the tax year for the period 6 April 1998 to 5 April 1999.*

FACTUAL BACKGROUND

2.1 Investments were made in various Film Partnerships for the years 1996/97 to 1998/99. Losses were claimed by individual investors in these partnerships under Section 381 TCA 1997.

2.2 The Appellant included a loss in relation to his investment in his Income Tax return for the period ending 5 April 1999 in the amount of IR£25,075.00 or €31,838.68 that was filed in March 2000.

2.3 The issue of allowing loss relief in respect of investments in Film Partnerships was under review by the Respondent and pending a decision on it, loss relief was disregarded by the Respondent and not allowed in the Appellant's return.

2.4 Some 1,300 appeal cases arising from the investment by individuals in a number of film relief and film partnership schemes in the 1990s were lodged.

2.5 Following the decision in the Supreme Court (in a sample case) of the Revenue Commissioners -v- Droog [2016] IESC 55, on 6 October 2016, the Respondent decided to formally terminate all enquiries and withdraw from any outstanding appeals and to repay tax together with interest in those cases where the original tax relief claimed has not been granted.

2.6 The Film Partnerships involved provided lists of investors to the Respondent from which the Respondent calculated the amount of tax to be paid, together with interest, and these payments issued in May and June 2017.

2.7 The Appellant was included in the list of investors provided by [redacted] *Partnership.*

2.8 The Appellant received a refund of €16,274.69, together with interest of €12,474.22, in May 2017 in respect of an investment he made in 1997/1998 in the [redacted]

[redacted] *The Appellant was not included in any of the other lists provided by the other partnerships.*

APPEAL

3.1 In the Appellant's Notice of Appeal, he states that he made an investment in 1999 in a music distribution partnership, [redacted] Partnership.

3.2 Following a significant trading loss, he claimed loss relief in the amount of IR£25,075 in his Income Tax return for year ending 5 April 1999 and this relief was disputed by the Respondent.

3.3 He adds that a former work colleague advised the Appellant that he had received a refund and interest in respect of a similar investment his former colleague had made and the Appellant believes he should be due a similar refund in respect of his investment.

LEGAL ARGUMENT

4.1 Section 865 Taxes consolidation Act 1997 – Repayment of Tax

(1) (a) In this section and section 865A–

"Acts" means the Tax Acts, the Capital Gains Tax Acts, Part 18A, Part 18C and Part 18D and instruments made thereunder,

"chargeable period" has the meaning assigned to it by section 321;

"correlative adjustment" means an adjustment of profits under the terms of arrangements entered into by virtue of section 826(1);

"tax" means any income tax, corporation tax, capital gains tax, income levy, domicile levy or universal social charge and includes–

(i) any interest, surcharge or penalty relating to any such tax, levy or charge,

(ii) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, levy or charge,

(iii) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and,

(iv) any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;

"valid claim" shall be construed in accordance with paragraph (b).

(b) For the purposes of subsection (3) –

(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II) the repayment treated as claimed, if due—

(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time,

(ii) where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and

(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

(2A) Where a chargeable person (within the meaning of Part 41A) makes a claim under

subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due it shall not constitute a valid claim for the purposes

of subsection (3) unless the return and self assessment for the period to which the claim relates is amended, in accordance with section 959V, to correct the

error or mistake.

(2B) Where a chargeable person (within the meaning of section 950) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due and the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013 it shall not constitute a valid claim for the purposes of subsection

(3) unless the person's return for the accounting period or year of assessment, as the case may be, to which the claim relates is amended in accordance with section 959V to correct the error or mistake, and for this purpose section 959V shall apply to such an amendment as if—

(a) subsections (2) and (4) of that section were deleted,

(b) references in that section to "return and a self assessment", "return and the self assessment" and "return or self assessment" were references to "return", and

(c) references in that section to section 959Z were references to section 956.

(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.

(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of Part 41A), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any

provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made –

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years, after the end of the chargeable period to which the claim relates.

(5) Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and –

(a) that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and

(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection

(4), then that provision shall apply as if the longer period were the period referred to in subsection (4).

(6) Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –

(a) repay an amount of tax paid to them, or

(b) pay interest in respect of an amount of tax paid to them.

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

(8) Where the Revenue Commissioners make a repayment of tax referred to in subsection (2), they may if they so determine repay any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.

(9) Nothing in this section shall prevent the Revenue Commissioners from examining a claim subsequent to any repayment having been made and—

(a) making or amending an assessment, as the case may be, under—

(i) Chapter 5 of Part 41A,

(ii) section 954 or 955, as appropriate, where the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013, or

(iii) section 960Q,

or

(b) making a determination under section 960Q, in the case of persons who are

not chargeable persons.

(10) (a) In this subsection—

"successor company" has the meaning assigned to it by section 638A(1);

"transferor company" has the meaning assigned to it by section 638A(1).

(b) Where a transferor company is a person to whom subsection (2) applies, this section shall apply as if any thing done pursuant to it or required to be done pursuant to it by or for such a person or a chargeable person, as the case may be, were, as appropriate—

(i) a thing done pursuant to it, or

(ii) a thing required to be done pursuant to it, by or for a successor company.

(c) Where there is more than one successor company, any repayment of tax to be made under this section shall, as necessary, be apportioned on a just and reasonable basis.

(d) The amount of any repayment of tax or part repayment of tax to be made to a successor company or successor companies shall not exceed the total amount that would have been made to a transferor company but for the application of this subsection.

4.2 Section 865(4) of the Taxes Consolidation Acts (TCA) 1997 states "…a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made –

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years, after the end of the chargeable period to which the claim relates.

4.3 The tax year in question is for the period 6 April 1998 to 5 April 1999 and as provided in Section 865, subsection 4, a claim for repayment would have to have been made on or before the 5 April 2003.

4.4 However, as this issue of loss relief in respect of investments in film partnerships was subject to appeal, the Respondent considers that it would be incorrect to apply Section 865 from the end of the chargeable period, i.e. 5 April 1999.

4.5 Instead, the Respondent considers that the date of the Supreme Court decision should be used as the starting date for the counting of valid claims.

4.6 The Supreme Court determination was made on 28 October 2016 and the Respondent considers that for a claim for repayment be considered valid under Section 865, the claim would have to have been made on or before the 28 October 2020.

4.7 The Appellant made his claim for refund in respect of an investment in a music partnership, [redacted] Partnership, on 28 November 2022. This is clearly outside the limits imposed by Section 865, subsection 4.

4.8 The Respondent submits that as the claim for repayment was made by the Appellant over 6 years after the decision by the Supreme Court, the Respondent is precluded from either refund or offset of any resulting overpayment should it be considered that it is in order for the relief to be allowed.

CURRENT POSITION (in relation to the loss relief)

5.1 The Appellant first contacted the Respondent in November 2022 informing them that he had made an investment in 1999 in a music distribution partnership, [redacted] Partnership and requested a refund in respect of loss relief suffered on this investment.

5.2 The Respondent advised in April 2023 that, following review, it was noted that the Appellant received a refund of €28,748.91 in May 2017 and that no further refund was on record as due.

5.3 The Appellant contacted the Respondent again to state that the refund of €28,748.91 was in respect of loss relief on a film partnership investment, [redacted] *Partners, he made in late 1997/early 1998 and that his request for refund at this time was in relation to a different investment,* [redacted] *Partnership, that he had made in 1999.*

5.4 The Respondent replied to the Appellant in May 2023 advising that the lists provided by the partnerships had been reviewed, particularly those provided by the [redacted] *and* [redacted] *partnerships and while he had been included on the list provide by* [redacted] *(for which a refund, including interest) has issued, he was not included as an investor in the list provided by* [redacted].

5.5 The Appellant then provided a letter to the Respondent from [redacted] *Partners, dated 18 May 1999, in relation to a music distribution in April 1999 in the amount of IR£3,226.*

5.6 The Respondent checked all the lists of investors provided by the Partnerships and again found that the Appellant had only been included by [redacted] *and he had already received a refund in respect of that investment. They advised the Appellant of their review in January 2024 and that no further refund was due.*

5.7 The lists provided by the investors has again been checked by the Respondent as part of the appeals process and again the only list the Appellant is included on is that provided by [redacted].

5.8 An investor's claim to relief must be capable of being supported, by a valid RICT 3. As part of this review Respondent asked the Appellant, June 2024, to provide additional supporting information in respect of his claim that may allow the Respondent to substantiate his claim.

5.9 The Appellant responded to the Respondent request for additional information on 16 October 2024 but has provided no further supporting documents to substantiate his claim."

Material Facts

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

    17.1. The Appellant made an investment in [redacted] Partnership and he made a claim for loss relief in respect of that investment. Arising from the Supreme Court decision in *Droog*, the Respondent allowed the Appellant's claim for loss relief in [redacted] Partnership on 2 May 2017.

17.2. The Appellant made a claim for loss relief in respect of an investment he claimed he made in [redacted] Partnership on 28 November 2022.

17.3. The Respondent refused the Appellant's claim for loss relief in respect of the Appellant's claimed investment in [redacted] Partnership as the Respondent made a decision that the Appellant's name does not appear on the List of Investors in [redacted] Partnership.

Analysis

18. 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.

19. 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".*

20. 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. [Emphasis added] This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor*. [2010] IEHC 49, 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*".

21. As the Appellant seeks to claim a reduction in the amount of tax assessed against him, the Commissioner has had regard to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, in which Kennedy CJ stated:

> "*The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable*."

22. 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*."

23. All material submitted to the Commission has been assessed by the Commissioner before making this determination.

24. The requirements to be met and satisfied regarding claims for repayment of tax are set out at section 865 of the TCA 1997, which provides inter alia that, a

> *"valid claim" shall be construed in accordance with paragraph (b).*

(b) For the purposes of subsection (3) –

(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and …[Emphasis Added].

25. The Commissioner in assessment of the above statutory requirement finds that a party seeking repayment from the Respondent must furnish to the Respondent "…*all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return…".* The Commissioner notes that the statutory requirement is that all the information that the Respondent may reasonably require be given to the Respondent. The Commissioner has examined and assessed all the material submitted by the Appellant in support of his appeal to the Commission including the Appellant's Letters. The Commissioner finds that none of the material submitted including the Appellant's Letters state and/or support that the Appellant did make an investment in [redacted] Partnership. The Commissioner finds that the Appellant's Letters and all the material submitted do not state that the Appellant was an investor in [redacted] Partnership and it is in respect of that partnership that this appeal is brought. Accordingly, the Commissioner finds that the Appellant has not supplied the information which the Respondent has reasonably required from the Appellant to enable it to determine if at all a repayment of tax is due to the Appellant. The Commissioner finds, that the Appellant for the reasons already stated, has not satisfied the statutory requirements to make a claim for repayment of tax to him.

26. The Commissioner notes that it is the Appellant's own submission that he did appear on a list of investors regarding [redacted] Partnership and that he received a repayment of tax in respect of that investment on 2 May 2017. The Commissioner notes that the Appellant was on notice from the date that the Respondent was making repayments on foot of the judgment in *Droog* to investors in certain partnerships. The Commissioner notes the Appellant made a claim to the Respondent for refund in respect of his claimed investment in [redacted] Partnership on 28 November 2022 which was after the expiry of four years from 2 May 2017. The Commissioner refers to the provisions of section

865(4) of the TCA 1997 which provides that: "….*a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made- (c) (ii)in relation to any chargeable period beginning on or after 1 January 2003, within 4 years ….after the end of the chargeable period to which the claim relates."* The Commissioner finds that the Appellant did not make a claim within the period prescribed by the legislation and that the Respondent was mandated to refuse his claim.

Determination

27. As stated earlier, it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that the decision made by the Respondent against him is incorrect. For the reasons set out already the Commissioner finds that the Appellant has not discharged the burden of proof that the decision by the Respondent to refuse his claim for loss relief was not done in compliance with statutory provisions and was incorrect. Accordingly, the Commissioner finds that the Appellant's appeal in this matter is unsuccessful.

28. Further to the provisions of section 949AL of the TCA 1997 the Commissioner determines that the Respondent's Decision shall stand.

29. 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.

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

Notification

31. 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

32. 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
22 January 2025

APPENDIX

Section 865 of the TCA 1997: Repayment of tax.

(1) (a)In this section and section 865A–

"Acts" means the Tax Acts, the Capital Gains Tax Acts, Part 4A, Part 18A, Part 18C, Part 18D, Part 22A and Part 22B and instruments made thereunder;

"chargeable period" has the meaning assigned to it by section 321;

"correlative adjustment" means an adjustment of profits under the terms of arrangements entered into by virtue of section 826(1);

"tax" means any income tax, corporation tax, capital gains tax, income levy, domicile levy, universal social charge, residential zoned land tax or vacant homes tax or IIR top-up tax, UTPR top-up tax or domestic top-up tax (each within the meaning of Part 4A) and includes—

(i)any interest, surcharge or penalty relating to any such tax, levy or charge,

(ii)any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, levy or charge,

(iii)any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and

(iv)any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;

"valid claim" shall be construed in accordance with paragraph (b).

(b)For the purposes of subsection (3) –

(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II)the repayment treated as claimed, if due—

(A)would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B)would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time,

(ii)where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and

(iii)to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(2)Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

(2A) Where a chargeable person (within the meaning of Part 41A) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due it shall not constitute a valid claim for the purposes of subsection (3) unless the return and self assessment for the period to which the claim relates is amended, in accordance with section 959V, to correct the error or mistake.

(2B)Where a chargeable person (within the meaning of section 950) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due and the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013 it shall not constitute a valid claim for the purposes of subsection (3) unless the person's return for the accounting period or year of assessment, as the case may be, to which the claim relates is amended in accordance

with section 959V to correct the error or mistake, and for this purpose section 959V shall apply to such an amendment as if—

(a)subsections (2) and (4) of that section were deleted,

(b)references in that section to "return and a self assessment", "return and the self assessment" and "return or self assessment" were references to "return", and

(c)references in that section to section 959Z were references to section 956.

(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.

(3A) (a)Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]9), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b)A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).

(4)Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a)in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b)in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c)in the case of claims made –

(i)under subsection (2) and not under any other provision of the Acts, or

(ii)in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates.

(5)Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and –

(a)that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and

(b)that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).

(6)Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –

(a)repay an amount of tax paid to them, or

(b)pay interest in respect of an amount of tax paid to them.

(7)Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

(8) Where the Revenue Commissioners make a repayment of tax referred to in subsection (2), they may if they so determine repay any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.

(9) Nothing in this section shall prevent the Revenue Commissioners from examining a claim subsequent to any repayment having been made and—

(a)making or amending an assessment, as the case may be, under—

(i)Chapter 5 of Part 41A,

(ii)section 954 or 955, as appropriate, where the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013, or

(iii)section 960Q,

or

(b)making a determination under section 960Q, in the case of persons who are not chargeable persons.

(10)(a)In this subsection—

"successor company" has the meaning assigned to it by section 638A(1);

"transferor company" has the meaning assigned to it by section 638A(1).

(b)Where a transferor company is a person to whom subsection (2) applies, this section shall apply as if any thing done pursuant to it or required to be done pursuant to it by or for such a person or a chargeable person, as the case may be, were, as appropriate—

(i)a thing done pursuant to it, or

(ii)a thing required to be done pursuant to it, by or for a successor company.

(c)Where there is more than one successor company, any repayment of tax to be made under this section shall, as necessary, be apportioned on a just and reasonable basis.

(d)The amount of any repayment of tax or part repayment of tax to be made to a successor company or successor companies shall not exceed the total amount that would have been made to a transferor company but for the application of this subsection.