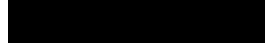




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

52TACD2025



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## **Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) in relation to a Notice of Assessment dated 11 September 2020, issued by the Revenue Commissioners (“the Respondent”), for the period 1 January 2019 to 31 December 2019 (“the relevant period”), in the amount of €10,494.50.
2. On 23 October 2020, the Appellant paid to the Respondent an amount of €4,949.50 and on 8 December 2020, a further amount of €500.00 was paid to the Respondent, leaving a balance due in the amount of €5,045.00.
3. In September 2023, the Respondent offset an amount of €3,865.87 arising from an income tax overpayment in respect of the year 2022, leaving an outstanding liability of €1,179.13, in respect of the relevant period. On 24 October 2024, the Appellant informed the Commission that he had paid the outstanding liability.
4. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.
5. The Appellant submitted a Notice of Appeal and accompanying documentation in support of his appeal. In addition, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.

## **Background**

6. In 2019, the Appellant was married and he was jointly assessed with his spouse. In accordance with section 1017(1)(a) TCA 1997, the Appellant was named as the assessable spouse for the relevant period. The Appellant was jointly assessed with his spouse for the years prior to and post 2019, and up to and including the tax year 2022.
7. On 11 September 2020, the Appellant filed his 2019 income tax return under joint assessment for him and his spouse. The income tax return indicated a tax liability in the amount of €10,494.50.
8. On 11 September 2020, a Notice of Assessment issued to the Appellant showing a balance of tax payable for the relevant period in the amount of €10,494.50. It is this Notice of Assessment that the Appellant appeals herein.

9. On 23 October 2020, the Appellant paid an amount of €4,949.50 in respect of his liabilities and on 8 December 2020, a further amount of €500.00 was paid, leaving a balance in the amount of €5,045.00 outstanding.
10. The Respondent submitted that in September 2023, it offset a further €3,865.87 arising from an income tax overpayment in respect of the tax year 2022, leaving an outstanding liability of €1,179.13, in respect of the relevant period. On 24 October 2024, the Appellant informed the Commission that he has paid the outstanding liability.
11. The Respondent argued that as the Appellant was jointly assessed with his spouse in 2019, and he was the assessable spouse, he was responsible for the liability in the full amount of €10,494.50.
12. The Appellant submitted that he paid and was responsible for only 50 per cent of the balance of tax due as set out in the Notice of Assessment, as at the time all payments were made equally between himself and his spouse. The Appellant stated that he and his spouse have since separated and the outstanding liability that remains was that of his spouse, as it arose at a time when they were jointly assessed and jointly liable. Hence, it was his spouse who should discharge the final outstanding balance.
13. On 9 August 2024, the Appellant duly appealed to the Commission the Notice of Assessment, dated 11 September 2020.

### **Legislation and Guidelines**

14. The legislation relevant to this appeal is as follows:
15. Section 1017 TCA 1997, Assessment of husband in respect of income of both spouses, provides *inter alia* as follows:
  - (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,*

16. Section 1018 TCA 1997, Election for assessment under section 1017, provides *inter alia* as follows:

- (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.*

## **Submissions**

### *Appellant's submissions*

17. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

*“Final Notice 28144k is a last payment from Income Tax assessment arising from a pre-COVID time when all taxes were jointly paid by myself and my spouse. Now my ex-spouse, and that is where the problem arises. While I was self employed at that time, all costs and benefits, were equally shared. Had this cost arisen since our separation, I would have no issue in paying the full amount. I am happy to pay 50% of the outstanding bill. The final demand is in my name solely as I was responsible for the joint self assessment.*

*Tax liability (28144K)*

*50% of this liability has been paid by [REDACTED]*

*This liability arises from a time when we were jointly assessed and jointly liable.*

*This is a final balance of an outstanding bill; all payments to this time were paid 50/50.*

*In the meantime, we have separated and are now individually assessed.*

*[REDACTED] is aware of this outstanding liability.*

*Our separation agreement, underway will state "It is a matter for each individual to deal with your own tax liability"*

*I managed the correspondence with accountants and revenue and therefore was the named tax-payer. All affairs were jointly paid and reimbursed over the years.”*

#### *Respondent’s submissions*

18. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

*“The Appellant has an outstanding income tax liability for the 2019 tax year in the amount of €1,179.13. He advised Revenue that he wanted to pay half of this liability and asked that Revenue collect the other half from his ex-spouse. Revenue refused his request advising him that the full liability is payable by him. It is this decision that the Appellant is appealing.*

*In his Notice of Appeal, the Appellant states that he was married and filed returns under joint assessment but that he has since separated from his spouse. He states that he is happy to pay 50% of the outstanding liability and that Revenue should ask his ex-spouse to pay the other 50%.*

*In 2019 the Appellant was married and was jointly assessed with his spouse under Section 1017 of TCA 1997 with the Appellant named as the assessable spouse. The*

*Appellant was jointly assessed with his spouse in the years before and after 2019 and up to and including the 2022 tax year.*

*The Appellant filed his 2019 under joint assessment for him and his spouse on 11 September 2020 and it indicated a tax liability of €10,494.50. A Notice of Assessment issued to the Appellant on the same day indicating that the Balance of Tax Payable for the period 1 January 2019 to 31 December 2019 was €10,494.50 and that this balance should be paid on or before 31 October 2020.*

*The Appellant paid an amount of €4,949.50 on 23 October 2020 and a further €500.00 on 8 December 2020 leaving a balance of €5,045.00. Revenue offset a further €3,865.87 in September 2023 from an Income Tax overpayment in respect of the 2022 tax year leaving an outstanding liability of €1,179.13 in respect of the 2019 tax year.*

*Section 1017, subsection 1(a), of TCA 1997 states –*

*“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.*

*As the Appellant was jointly assessed with his spouse in 2019 and he was the assessable spouse, he was/is responsible for paying the tax liability of €10,494.50 of which an outstanding liability of €1,179.13 remains.*

*The fact that his circumstances has changed in the years since has no bearing on the payment of the outstanding liability.”*

### **Material Facts**

19. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
  - 19.1. In 2019, the Appellant was married and he was jointly assessed with his spouse.
  - 19.2. In accordance with section 1017 TCA 1997, the Appellant was named as the assessable spouse.
  - 19.3. The Appellant was jointly assessed with his spouse in the years prior to and post 2019, and up to and including the tax year 2022.

- 19.4. On 11 September 2020, the Appellant filed his 2019 tax return under joint assessment for him and his spouse. The return indicated a tax liability in the amount of €10,494.50.
- 19.5. On 11 September 2020, a Notice of Assessment issued to the Appellant showing a balance of tax payable for the relevant period, in the amount of €10,494.50. It is this notice of Assessment that the Appellant appeals herein.
- 19.6. On 23 October 2020, the Appellant paid an amount of €4,949.50 in respect of his liabilities.
- 19.7. On 8 December 2020, the Appellant paid a further amount of €500.00, leaving a balance in the amount of €5,045.00 outstanding.
- 19.8. In September 2023, the Respondent offset a further €3,865.87 from an income tax overpayment in respect of the tax year 2022, leaving an outstanding liability of the Appellant in the amount of €1,179.13, in respect of the 2019 tax year.
- 19.9. The Appellant and his spouse have since separated and are no longer jointly assessed.
- 19.10. On 9 August 2024, the Appellant duly appealed to the Commission the Notice of Assessment dated 11 September 2020.

### **Analysis**

20. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 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. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he states that:



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

22. The Commissioner notes that the Appellant was seeking to set aside a decision of the Respondent, that he was the assessable and chargeable spouse for the full amount of tax for the relevant period, as per the Notice of Assessment dated 11 September 2020, in the amount of €10,494.50.
23. The Appellant argued that whilst he and his then spouse were jointly assessed for the relevant period and he was the assessable person, they split their liabilities equally and hence, his spouse was liable for an amount of half of the Notice of Assessment issued by the Respondent. Thus, the Commissioner notes that it was not in dispute that the Appellant and his spouse were jointly assessed for the relevant period. What was in dispute was that he was the assessable and chargeable spouse for the full amount of the balance of tax due, as set out in the Notice of Assessment. The Commissioner notes that the Appellant stated in his Notice of Appeal that he was *"happy to pay 50% of the outstanding bill"*.
24. The statutory entitlement of the Appellant to be jointly assessed with his spouse derives from section 1018 TCA 1997, which applies where spouses elect to be jointly assessed. It is clear from the wording of section 1018(1) TCA 1997 that the section only applies *"where the wife is living with the husband"*. In this regard, section 1015(2) TCA 1997 provides that a *"wife shall be treated for income tax purposes as living with her husband unless ... they are in fact separated in such circumstances that the separation is likely to be permanent."* As stated, the Appellant does not contend that he was incorrectly jointly assessed, rather he argued that he was not liable for the full amount for the relevant period.
25. Section 1017(1)(a) TCA 1997 is the relevant section for the purposes of this appeal. In determining this appeal, the Commissioner has given the words in section 1017(1)(a) TCA 1997 their ordinary and natural meaning. The Commissioner is mindful of the summary of the principles that emerge from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (*"Perrigo"*) at paragraph 74:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;.....”*

26. The Commissioner is satisfied that the plain and ordinary meaning of the words in section 1017(1)(a) TCA 1997 provide that where a husband and wife are jointly assessed, the husband is the spouse that shall be assessed and charged to income tax, not only in respect of his income *“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....and for the purposes of the Income Tax Act that last mentioned income shall be deemed to be his income.”*
27. The Commissioner notes the mandatory nature of the language in section 1017(1)(a) TCA 1997 and the use of the word “shall” preceding the words *“assessed and charged to tax”*. Moreover, the Commissioner notes the use of the word “deemed” in the section. Thus, it is clear to the Commissioner that the section contains a deeming provision. A deeming provision is used in legislative drafting and it allows one set of facts to be treated as if they were a different set of facts. It is often referred to as a statutory fiction. The Commissioner is satisfied that the deeming provision in section 1017(1)(a) TCA 1997, seeks to treat the income of the Appellant’s spouse as his income for the purpose of taxation, the result of which was that he was not only the assessable person for both incomes, but also the chargeable person.
28. Consequently, the Commissioner is satisfied that the Appellant has not shown on balance that the Respondent was incorrect to issue the Notice of Assessment dated 11 September 2020, in the amount of €10,494.50, for the relevant period. Therefore, the Appellant was liable for the amount of €10,494.50, as set out in the Notice of Assessment dated 11 September 2020, as he was both the assessable and chargeable person for the relevant period. The Commissioner has every sympathy for the Appellant’s situation. However, the legislation does not afford the Commissioner any discretion on this matter. Hence, the appeal is denied.

## Determination

29. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to issue the Notice of Assessment dated 11 September 2020, in the amount of €10,494.50, for the relevant period.
30. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
31. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

## Notification

32. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

## Appeal

33. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
30 January 2025