



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

65TACD2025

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against Notices of Amended Assessment to income tax for the years 2011, 2012 and 2013 raised by the Revenue Commissioners (hereinafter the “Respondent”) on 27 March 2024.
2. The amount of tax under appeal is €1,544,159.50.

Background

3. Mr [REDACTED] (hereinafter the “Appellant”) is a self-employed Chartered Accountant who, during the relevant years, was a partner in [REDACTED] (hereafter the “Partnership”).
4. On 20 February 2023, Determination [REDACTED] (hereinafter the “Determination”) which was dated 16 February 2023 was issued to the parties. The Determination related to the Appellant’s tax affairs for the years 2011, 2012 and 2013.
5. The Determination held, *inter alia*, that the Appellant had received the following income in those years:

	2011	2012	2013
Income received as determined [REDACTED]:	€846,152	€1,113,289	€1,219,886

6. In addition, the Determination held, *inter alia*, that the Appellant had received the following net rental income in those years:

	2011	2012	2013
Net rental income received as determined [REDACTED]	€95,578	€108,951	€108,951

7. On 5 April 2023, the Commission received correspondence from the Respondent which contained a copy of what was purported to be a Request for a Case Stated from the

Appellant in relation to the Determination. No Request for a Case Stated in relation to the Determination on behalf of the Appellant was submitted to the Commission.

8. Having considered matters, the Commissioner issued a Decision on 14 April 2023 refusing the Appellant's Request for a Case Stated in relation to the Determination.
9. On 4 May 2023, the Appellant issued judicial review proceedings in the High Court in relation to the Determination and on 3 July 2023 leave was granted by the High Court permitting the Appellant to bring judicial review proceedings against the Commission in relation to the Determination. The judicial review proceedings were dismissed by order of the High Court on 15 February 2024.
10. On 27 March 2024, the Respondent raised Notices of Amended Assessment to income tax to the Appellant in relation to the tax years 2011, 2012 and 2013 pursuant to the provisions of section 949AM of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997").
11. The Notices of Amended Assessment dated 27 March 2024 contained, *inter alia*, the following amended amounts for "*Schedule D – Income Received – Self*" for 2011, 2012 and 2013:

	2011	2012	2013
" <i>Schedule D – Income Received – Self</i> ":	€828,371	€1,097,158	€1,210,836

12. In addition, the Notices of Amended Assessment dated 27 March 2024 contained, *inter alia*, the following amended amounts for "*Profit from letting Premises - Self*" for 2011:

	2011	2012	2013
" <i>Profit from letting Premises - Self</i> ":	€107,687	€108,951	€108,951

13. The following are the balances payable contained in the Notices of Amended Assessment to income tax raised by the Respondent on 27 March 2024:

	2011	2012	2013
Balance Payable:	€445,911.00	€490,315.77	€607,932.73

14. The Notices of Amended Assessment for the years 2011 and 2012 raised by the Respondent on 27 March 2024 contained, *inter alia*, the following statement:

“If you wish to appeal against the assessment to which this notice refers, you must do so within the period of 30 days after the date of this notice by completing and 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. You must submit a copy of this Notice of Amended Assessment with your Notice of Appeal. The TAC can be contacted by email at info@taxappeals.ie.”

15. On 26 April 2024, the Appellant submitted a Notice of Appeal in relation to the Notices of Amended Assessment to income tax for 2011, 2012 and 2013 raised by the Respondent on 27 March 2024.
16. The oral hearing of this appeal took place on 14 February 2025.

Legislation and Guidelines

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

Section 949AM of the TCA 1997 – “Revenue Commissioners to give effect to determinations”:

“(1)The Revenue Commissioners shall give effect to any determination made by the Appeal Commissioners unless the determination has been appealed to the High Court in accordance with sections 949AP and 949AQ.

(2)In relation to an assessment, in giving effect to a determination, the Revenue Commissioners shall calculate the tax chargeable in respect of the amount assessed to tax.

(3)If, in relation to an assessment, the determination of the Appeal Commissioners is that the assessment is to stand or is to be amended, as the case may be, the assessment or the amended assessment shall be final and conclusive, unless the

determination is appealed to the High Court in accordance with sections 949AP and 949AQ.

...

History of this appeal

18. The following is the timeline of this appeal:

18.1. **26 April 2024** – A Notice of Appeal was submitted to the Tax Appeals Commission by the Appellant.

18.2. **1 May 2024** – A Notice of Objection was received from the Respondent as follows:

“Revenue is objecting to the appeal on the basis that it is not a valid Appeal. The attached assessments were raised to give effect to the attached TAC Determination in respect of appeals [REDACTED], [REDACTED] and [REDACTED].

Revenue issued correspondence to Mr. [REDACTED] dated 28 March 2024 in respect of the said assessments setting out the following: “Section 949AM of the Taxes Consolidation Act (“TCA”) 1997 states Revenue shall give effect to the determination of The Tax Appeals Commission (TAC) of the 16th of February 2023 given the determination was not appealed to the High Court. With that in mind, I now set out below the full liability on the income tax assessments raised today to give effect to the TAC determination”

Year	2011	2012	2013
<i>Income Tax/USC/PRSI Liability</i>	€465,387	€609,462	€683,594

Mr [REDACTED] is appealing the amounts noted below:

At both the TAC hearing, and as part of the judicial review proceedings brought by Mr [REDACTED] but later dismissed, Mr. [REDACTED] accepted €875,426 of the above sum as due and owing.

S949AM(3) TCA 1997 states “If, in relation to an assessment, the determination of the Appeal Commissioners is that the assessment is to stand or is to be amended, as the case may be, the assessment or the amended assessment shall be final and conclusive, unless the determination is appealed to the High Court in accordance with sections 949AP and 949AQ”

In accordance with S.949L(1) TCA 1997 please accept this email as Revenue's written notice of objection to the Appeal."

18.3. **2 May 2024** – The Notice of Objection was sent to the Appellant pursuant to the provisions of section 949L(3) of the Taxes Consolidation Act 1997 with 28 days to respond.

18.4. **28 May 2024** – An application for an extension of time to respond to the Notice of Objection received from the Appellant as follows:

"The purpose of this email is to respectfully request additional time in which to respond to the objections raised by the Respondent.

The tax years to which these Appeals relate are 2011, 2012 and 2013 which, with the passage of time, relate to events which took place between eleven and thirteen years ago. We need time to access this historic documentation and address the matters raised by the Respondent.

In addition to the passage of time there are matters of law pertaining to the issue of these Assessments outside of the four year time rule laid down by statute. We need time to take advice from Counsel and include this with our replying Submission.

Finally, the Respondent claims that the Appellant has already agreed the quantum of these Assessments. This is not the case. For the years under appeal the Appellant was a member of a Partnership who filed Partnership Tax Returns. The tax returns for the other partners in the same partnership were finalised by reference to these tax returns. It is inequitable for the Appellant to be assessed in a manner which is inconsistent to the assessment of the other partners. We need time to retrieve the partnership accounting and tax records for the same period and address the matters raised by the Respondent.

Taking all of the above into account we respectfully request a further 28 days to lodge our reply to the Respondent's objections."

18.5. **5 June 2024** – The Appellant's application for an extension of time to respond to the Notice of Objection was refused as follows:

"The Commissioner to whom this appeal is assigned has reviewed the Appellant's application submitted on 28 May 2024 for an extension of time of 28 days to respond to the Respondent's Notice of Objection which was sent to him by the Tax Appeals Commission on 2 May 2024 and is refusing same.

The Commissioner notes that the Appellant was given 28 days to respond to the Respondent's Notice of Objection and that the deadline for the response elapsed on 30 May 2024. The Commissioner further notes that the objections raised by the Respondent in its Notice of Objection are set out in a short and concise manner such that the Appellant should be in a position to respond to same within 28 days, that is to say on or before 20 May 2024.

This is the Appellant's appeal and he must know the basis on which he has submitted his appeal.

*As a result, the Commissioner has directed pursuant to section 949E of the Taxes Consolidation Act 1997 that the Appellant respond to the Notice of Objection submitted by the Respondent **on or before close of business on 7 June 2024.**"*

- 18.6. **5 June 2024** – An application by the Appellant for an extension of time of 3 days to the new deadline for response to the Notice of Objection was received as follows:

"We respectfully ask that the Commission's deadline be extended until close of business on Monday, June 10th. This will give a short additional period of three days in which to address the matters raised by the Respondent."

- 18.7. **5 June 2024** – The Appellant's application for an extension of time until 10 June 2024 to respond to Notice of Objection was granted by the Commissioner.

- 18.8. **10 June 2024** – The Appellant's response to the Notice of Objection was submitted.

- 18.9. **21 June 2024** – A direction to attend a Case Management Conference on 30 August 2024 was issued to both parties. The purpose of the Case Management Conference was stated and an additional direction was also issued as follows:

"1. The purpose of the CMC is:

- To clarify any matters raised by the parties in their recent correspondences;*
- To enable the Appeal Commissioner to give all such directions as appear to be necessary or desirable for the purpose of securing the completion of the proceedings in an expeditious and fair manner.*

2. Given the contents of the Notice of Appeal and the recent correspondences, the Appeal Commissioner is directing pursuant to section 949E of the Taxes Consolidation Act 1997 that the parties are to attend the CMC with the figures and calculations which they believe are relevant to the disputed Notice of Assessment.”

18.10. **9 July 2024** – An application was received from the Respondent to hold Case Management Conference on a date in July 2024 as follows:

“We refer to the above and to your direction to attend a physical case management conference (‘CMC’) on Friday 30 August. We have always expressed that there is no substance to the appeal which has been brought by the Appellant and indeed we formally objected to the validity of same. However, we appreciate that a direction has now issued for a CMC which we trust will address the issue and bring finality to the matter.

In circumstances where the collection of liability on foot of the TAC determination is now potentially delayed, we seek to accelerate the CMC. We have availability in July as follows: 11, 22, 25, 29, 30, 31.

The Respondent’s attendance at the proposed CMC is completely without prejudice to our contention that there is nothing for the TAC to hear, either on the basis that there is no right of appeal at all or by virtue of Section 949 N.”

18.11. **10 July 2024** – The Appellant responded to Respondent’s application as follows:

“We refer to the Commission’s email in this matter dated June 21st, and to the Respondent’s email of yesterday.

We are not in agreement to reschedule this CMC to a date earlier than August 30th.

Part of the Commission’s Direction in scheduling the CMC was ‘...to attend the CMC with the figures and calculations which they believe are relevant to the disputed Notice of Assessment.’

As the disputed Assessments relate to three tax years, 2011, 2012 and 2013, and which in turn relate to events which occurred over ten years ago, we would not be in a position to present our case before the scheduled date of August 30th.

We are also presently trying to secure Counsel to present our Case.

Re-scheduling to an earlier date would be prejudicial to our appeal.”

18.12. **15 July 2024** – The Respondent’s application for an earlier date for Case Management Conference was refused as follows:

“Commissioner O’Driscoll notes the Respondent’s request for the CMC scheduled for 20 August 2024 to be brought forward to a date in July 2024 and notes the reasons for the application. She further notes the Appellant’s objection to same and the reasons for the objection. Due to Commissioner O’Driscoll’s diary she is unavailable on the dates indicated by the Respondent. In addition, having considered the Appellant’s indication that he requires time to prepare the calculations directed, Commissioner O’Driscoll has directed that the date of 30 August 2024 remains the date for the CMC to proceed.”

18.13. **7 August 2024** – The Respondent submitted Hearing Books for the Case Management Conference.

18.14. **7 August 2024** – An application for adjournment of the Case Management Conference received from Appellant as follows:

“We are still working on the collation and analysis of the data referred to in our email dated July 10th. We are also taking advice in relation to legal representation at the CMC.

At present this firm has seven other Appeals before the Commission, and three substantial multi-Tax Head multi-Tax Year Audits in progress with the Respondent. This is a significant pressure on the resources of a sole practitioner. We respectfully request that this CMC be deferred by sixty days to allow the Appellant to adequately prepare for it, and be legally represented.

We apologise to the Commission for any inconvenience.”

18.15. **21 August 2024** – The Appellant’s application for an adjournment of the Case Management Conference scheduled for 30 August 2024 was granted. A New date for the Case Management Conference of 5 November 2024 communicated to the parties.

18.16. **29 October 2024** – The Appellant submitted an application for an adjournment of the Case Management Conference scheduled for 5 November 2024 until a date in February 2025 as follows:

“Unfortunately we must request a further rescheduling of this matter for the following reasons:

- 1. Legal Representation in this matter has only recently been appointed. Mr [REDACTED], copied here, will be representing the Appellant. He is in the process of appointing Counsel. Both Mr [REDACTED] and Counsel require time to take instructions and prepare for the CMC. We understand that Mr [REDACTED] will separately write to the Commission.*
- 2. The scheduled date for the CMC occurs on November 5th which is the week before the Tax Filing Deadline of November 14th. This firm represents over one hundred self-employed taxpayers and all resources at present are being directed to ensure filing and payment commitments are met. Our resources have been under further strain since a key member of staff returned home [REDACTED] for medical treatment and has not been able to return to work. She has not yet been replaced.*
- 3. This firm has at least ten other Appeals before the Commission, and resources are being applied to manage those cases. One set of Appeals were successfully negotiated with Revenue during the last three weeks which resulted in those Appeals being withdrawn. This took significant time and resources.*
- 4. This firm also has a significant number of live multi-year audits open with Revenue, and these require time for management and processing of requests for documentation, etc.*

We respectfully request that this CMC be rescheduled to a date in February 2025.”

18.17. 30 October 2024 – [REDACTED] solicitor wrote to the Commission as follows:

“We refer to the above matter which is scheduled for a hearing on the 5th November next. Our client has been in touch with you seeking a rescheduling of the hearing for the reasons set out in his email. We need to appoint a barrister and then hold a consultation with our client. This is a difficult and busy time of year for accountants involved in client tax returns and it seems unlikely

our client will be able to focus on a meeting until sometime after the ROS deadline of the 15th November next due to the post tax returns paperwork. In all the circumstances, our client's suggestion of February next seems sensible. We look forward to hearing from you"

18.18. **31 October 2024 at 09:10** – The Respondent submitted a response to the Appellant's application as follows:

"We refer to your email of 30 October 2024 and to the request by the Appeal Commissioner for the Respondent's comments on the Applicant's application for an adjournment of the CMC in this case to a date in February 2025. The Respondent objects to the adjournment on the following grounds: -

- 1. The Appellant states that legal representation in this matter has only recently been appointed and that Mr [REDACTED] will be representing the Appellant. He states that he is in the process of appointing Counsel and will require time to take instructions and prepare for the CMC. We wish to point out that as recorded at paragraph 15 (iv) of Commissioner O'Driscoll's decision of 14 April 2022 that she had no jurisdiction to state a case for the opinion of the High Court, [REDACTED], Solicitor was acting on behalf of the Appellant as also was Mr [REDACTED]. Mr [REDACTED] continued to act for the Appellant in judicial review proceedings 2003 no. 455 JR until they were dismissed by consent on 15 February 2024 by Order of Ms Justice Hyland. It is therefore far-fetched to say that Mr [REDACTED] needs time to take instructions and prepare for the CMC. He is fully aware of the background to the application and could not have instructed Counsel without being so. When the Applicant emailed the Commission on Wednesday 10 June 2024 objecting to the rescheduling of the CMC to a date earlier than 30 August, he stated that "we are also presently trying to secure Counsel to present our case, he could not have done unless he already had a solicitor. When he again emailed the Commission on 7 August 2024, he himself requested that the matter be "deferred for 60 days to allow the Appellant to adequately prepare for it, and to be legally represented". 60 days from 30 August would have brought the date of the CMC to 30 October. The CMC is scheduled within one week of that date and the Appellant has had more time not less to prepare. There is a responsibility on the Appellant to organise his legal representation and he*

has had several months to do so in respect of the narrow issues to be dealt with at the case management conference.

- 2. The scheduled date is after 30 October on which date the Appellant requested the matter be heard. Whether or not the Appellant represents a large number of taxpayers, he has an obligation to meet the limited point which will be an issue on 5 November. There is no indication what role the person alleged to have returned [REDACTED] for medical treatment filled and there is no indication when it is alleged, she returned.*
- 3. When the Appellant wrote to the Commission on 7 August, he wished to defer on the basis that he had seven other appeals before the Commission and three tax audits. The Appellant's choice to take on work can in no circumstances excuse his failure to prepare to meet the issues to be dealt with on 5 November.*
- 4. See 3 above.*
- 5. The issue to be argued on 5 November concerns whether any aspect of the Appellant's appeals can be argued or whether each one of them has been finally determined before the Commission so that for the relevant tax years, the Commission is functus officio on the issues raised in the appeal and whether the decisions in each year constitute res judicata between the parties and estop the parties from arguing them again. The matters referred to in the Notice of Appeal were finally determined by the Commissioner's determination of 20 February 2023. No appeal was brought within time. This was intentional on the Applicant's part according to the Judicial Review papers and the judicial review ended as set out above.*

We would add that successive requests for adjournment form part of a pattern of many years in dealing with the Appellant in relation to the tax liabilities for the years concerned. These concern not only repeated requests for adjournment, but general failure to comply with TAC or other requirements in order to permit the hearing of the substantive case to go ahead. We attach an email chain from Friday 28 October 2022 to 4 November 2022 as a representative example.

The determination of the TAC resulted in a very large tax liability, collection of which with interest and penalties has been wholly or partly obstructed, first by futile judicial review proceedings and more recently by the appeals brought herein. It is not suggested that that fact alone should deprive any appellant of any right of appeal, but where such appeal is without substance or foundation, it weighs heavily in the balance to the extent that it threatens recovery in whole or in part. The Appellant should be in an ample position to deal with these matters on Tuesday 5 November. If for any reason it appeared after the CMC on that date that the interests of justice suggested that he should have any further opportunity to urge any matter, it would always be open to the Commission to afford it. It is suggested, however, that this will not prove to be so.”

18.19. **31 October 2024 at 11:40** – A supplemental Book of Authorities was submitted by the Respondent.

18.20. **31 October 2024 at 16:19** – The Appellant’s application for an adjournment of the Case Management Conference scheduled for 5 November 2023 was granted and a new date of 9 December 2024 for the Case Management Conference was scheduled as follows:

“The Commissioner to whom this matter is assigned has considered the Appellant’s application for an adjournment of the Case Management Conference schedule for 5 November 2024 until a date in February 2025 and has considered the Respondent’s comment on same. In the circumstances, the Commissioner considers that it is appropriate to grant an adjournment of the Case Management Conference to allow the Appellant time to instruct his legal representatives. The Commissioner does not consider it necessary to adjourn the date until February 2025 and considers that a date of 9 December 2024, being in excess of 5 weeks from the scheduled date of 5 November 2024, allows the Appellant sufficient time to instruct his legal representatives.

*As a result, the Commissioner has directed that the Case Management Conference be adjourned until **10:00 am on 9 December 2024**. Notification of the new date and time will be sent by separate correspondence to the parties.”*

18.21. **31 October 2024 at 16:39** – Correspondence was received by the Commission from [REDACTED] solicitor as follows:

“To be clear the writer’s involvement and that of [REDACTED] came to an end with the withdrawal of the JR proceedings.

The current CMC proceedings is not about the TAC Determination but about our client’s attempt to appeal the Assessments which Revenue subsequently issued. Our client says the Revenue’s calculations for these Assessments do not match the TAC determination and this gives rise to the appeal which our client seeks to prosecute. In addition, the Assessments state that our client has a right to appeal them if he considers them to be incorrect which he does and therefore wishes to exercise his right of appeal.

It is clear that the writer needs to take instructions, and that counsel needs to be instructed so that our client is in a position to properly prosecute his right of appeal. Further, the writer has a previous court listing in [REDACTED] on the 5th November and therefore cannot attend the hearing in Dublin.

In the circumstances the writer repeats his request to defer this hearing to a date after Christmas, preferably a date in February.”

18.22. **4 November 2024** – Correspondence was received by the Commission from the Respondent as follows:

“We have been copied with an email from [REDACTED], Solicitor which was sent to you on 31 October in the above matter. It would appear that the email may have been sent prior to the Commission’s decision to defer the CMC to 9 December 2024. In the circumstances that date will not prevent Mr [REDACTED] from attending to his commitment in [REDACTED] on 5 November 2024.

It may well be that Mr [REDACTED] involvement with the case came to an end with the withdrawal of the judicial review proceedings. However, it was necessary that before that point and including from the time when he became involved in the possible appeal, Mr [REDACTED] must have been thoroughly familiar with the facts which gave rise to the Commission’s determination and with the determination itself.

Central to Mr ██████ email is the suggestion that the current CMC proceedings “is not about the TAC determination” but about the fact that “Revenue’s calculations for these assessments do not match the TAC determination”. Mr ██████ states that this gives rise to the appeal which the Appellant seeks to prosecute.

None of the notified grounds of appeal relate to this issue - All seek to challenge the assessment on the basis that the ‘raw materials’ which gave rise to the original determination are in some unspecified way wrong. If the Appellant had appealed on such grounds he would have had to specify which figures did not align with those in the Determination and why.

It is in these circumstances that a net issue arises before the TAC which can and should be resolved at the CMC fixed for December, 2024.”

18.23. **4 November 2024** – Confirmation of the date of 9 December 2024 for Case Management Conference sent to parties as follows:

“The Commissioner notes that the Appellant’s correspondence received on 31 October 2024 at 16:39 was after the notification of the rescheduled date for the Case Management Conference of 9 December 2024 was sent to the parties on 31 October 2024 at 16:19.

The parties should note that the rescheduled date for the Case Management Conference is 9 December 2024 at 10.00 am as notified to the parties.”

18.24. **4 December 2024** – An email was received by the Commission from ██████ solicitor as follows:

“We are not in a position to proceed next Monday, the 9th December. ██████ has too many commitments to become involved before the end of term. Next week the writer is in ██████ on Wednesday for two matters, one of which is part heard and started on the 5th December last. On Thursday the writer starts a two-day JR hearing for which the writer needs Monday and Tuesday to prepare. The writer is in a contested motion in ██████ on Thursday. ██████ has been focused since early September on the 31st October tax deadline and also the 14th November ROS deadline both

of which involved post deadline work due to clients being late with their paperwork for various reasons. He is now dealing with the end of year CRO filings for a significant number of clients.

Can we repeat an earlier suggestion and request that this matter go back to the New Year, please? This is a serious and difficult matter and needs a significant amount of time spent on it to prepare for the hearing by solicitor and counsel, so he is fairly represented in what is a complex and very important matter.

We acknowledge we are late requesting this adjournment. The writer mistakenly thought Ms. [REDACTED] was Revenue's representative in this matter and tried to contact her by phone on Monday without success leaving a voicemail. Ms. [REDACTED] and the writer spoke on Tuesday explaining she was not involved and reminding the writer that Ms. [REDACTED] was involved on behalf of Revenue. The writer emailed, in the same vein as this correspondence, Ms. [REDACTED] yesterday late afternoon."

18.25. **5 December 2024** – An email was received by the Commission from [REDACTED] [REDACTED] solicitor as follows:

"The position in which [REDACTED] finds himself at this point remains as they were at the end of October/Start of November last. He requires representation at the TAC hearing but neither the writer nor his counsel, [REDACTED] [REDACTED], are available due to our respective workloads. It is acknowledged that the matter had been adjourned from an August hearing date to a date in October shortly before which the writer was asked by Mr. [REDACTED] to represent him and to seek an adjournment. The writer and [REDACTED] had represented Mr. [REDACTED] in a JR which related to the same tax returns, but the JR never touched upon the calculation of the tax due. Therefore, neither counsel nor the writer have any knowledge of the substance the appeals to be dealt with in this TAC matter.

The matter was adjourned to the 9th December. We requested a date in January/February of 2025 because both counsel and the writer had a very busy work schedule in all the way to Christmas and could not give the time necessary to provide Mr. [REDACTED] with proper representation he requires to advocate

for him. This morning the writer spoke with [REDACTED] who is free after the 16th December to work on Mr. [REDACTED] matter. The writer is similarly available from the same date. Mr. [REDACTED] has since September been on tax returns for clients for the 31st October and then the ROS deadline in November. Since then, he has been dealing with late returns and on CRO returns due in by the 31st December. Taking all this into account, it would be preferable to run this matter in January 2025.

In summary, our client has no representation for the 9th December. Neither counsel or the writer is available as outlined. Mr. [REDACTED] needs representation to properly present his case. It would be possible to organise representation after the 16th December but it would not be ideal.”

- 18.26. **6 December 2024** – Appellant’s application for an adjournment of the Case Management Conference of 9 December 2024 was granted. New date for the Case Management Conference of 30 January 2025 was scheduled and a direction for the parties to lodge submissions in relation to the calculation of the disputed tax on or before 10 January 2025 was issued as follows:

“The Commissioner notes the Appellant’s application for an adjournment of the Case Management Conference scheduled for 9 December 2024 on the basis that his legal representation is not available.

Whilst the late nature of this application is undesirable, the Commissioner has decided to grant the adjournment request and has directed that the Case Management Conference be adjourned and rescheduled to take place on 30 January 2025. In circumstances where this is the Appellant’s appeal and where the matter has been adjourned previously due to the Appellant’s unpreparedness, the Commissioner has directed that the parties are to lodge submissions with the Tax Appeals Commission in relation to the calculation of the disputed tax on or before 10 January 2025.”

- 18.27. **10 January 2025** – A submission in relation to the calculation of the disputed tax was received from the Respondent.
- 18.28. **13 January 2025** – A reminder in relation to the direction to lodge a submission in relation to the calculation of the disputed tax was issued to the Appellant. No response was received.

18.29. **21 January 2025** – A second reminder in relation to the direction to lodge a submission in relation to the calculation of the disputed tax was issued to the Appellant. No response was received.

18.30. **30 January 2025 at 09:55** – An email from [REDACTED] solicitor received by the Commission as follows:

“Neither [REDACTED] nor the writer will be appearing as legal representatives for [REDACTED] in this appeal. [REDACTED] will be representing himself.”

18.31. **30 January 2025** – The scheduled Case Management Conference took place at which the Appellant confirmed he was representing himself. Following the Case Management Conference directions were issued to the parties as follows:

“1. The appeal is accepted as a valid appeal.

2. On foot of the Appellant's oral submissions at the Case Management Conference, the appeal is limited to the income amounts contained in the Notices of Amended Assessment raised by the Respondent on 27 March 2024 for 2011, 2012 and 2013.

3. On foot of the Appellant's oral submissions at the Case Management Conference, the appeal is limited to the rental amount contained in the Notices of Amended Assessment raised by the Respondent on 27 March 2024 for 2011.

4. A physical oral hearing of this appeal is scheduled to commence at 10.30 on 14 February 2025, separate notification of this shall issue to the parties.”

18.32. **11 February 2025** – The Appellant sought an adjournment of the oral hearing scheduled for 14 February 2025 on the following basis:

“This Hearing was granted on January 30th, and a date set for the Hearing of February 14th.

Unfortunately the Appellant will only have had nine working days in which to prepare for this Hearing.

These nine days have also been filled with professional commitments to clients, Revenue and other Appellants.

While we acknowledge that some of the components of this Appeal have been extant for some time, there are matters which we wish to rely on which require more time to research and document.

We also wish to make reference to the quantum of tax at issue in this Appeal. This will probably be the Appellant's last opportunity to present a case for mitigation of the liability. Failure to prepare and present his case will have ramifications for his career, livelihood, and professional standing.

We respectfully beg the Commissioner to grant a little more time to prepare for this Appeal."

18.33. Having considered the timeline of this appeal, the Commissioner wrote to the parties and refused the Appellant's application for an adjournment stating, *inter alia*, that:

"At the Case Management Conference, which took place on 30 January 2025, the Appellant confirmed that the only points which he is contesting are the calculation of the income amounts contained in the Notices of Amended Assessment raised by the Respondent on 27 March 2024 for 2011, 2012 and 2013 and the rental amount contained in the Notice of Amended Assessment raised by the Respondent on 27 March 2024 for 2011.

Having considered the history of this appeal, Commissioner O'Driscoll considers that sufficient time for the parties to prepare for the oral hearing of this appeal has been granted. This appeal was lodged by the Appellant on 26 April 2024, in excess of 9 months ago. On 21 June 2024, the parties were directed to attend at a Case Management Conference and were directed to attend the Case Management Conference with the figures and calculations which they believe are relevant to the disputed Notice of Assessment.

The parties were advised by Commissioner O'Driscoll at the Case Management Conference that no further adjournment would be granted in this appeal and the Appellant nominated the date of 14 February 2025 for the oral hearing having been given a choice of four dates between 11 February 2025 and 14 February 2025.

Commissioner O'Driscoll considers it in the interests of justice, having regard to the position of both parties and the Commissioner's obligation to ensure the efficient and effective running of appeals, that the oral hearing scheduled to commence at 10:30 on 14 February 2025 remains in place."

18.34. No further applications were made by the parties and the oral hearing commences at 10:30 on 14 February 2025 at the offices of the Commission.

Documents

19. The Appellant submitted a Notice of Appeal along with the contested Notice of Amended Assessment to income tax for 2011, 2012 and 2013 in support of this appeal. No further documentation was submitted by the Appellant in support of this appeal.
20. As part of this appeal, the Respondent submitted a full Book of Documents, a Book of Authorities, a Supplementary Book of Authorities together with a submission in relation to the calculation of the disputed tax.

Submissions

Appellant's Submissions

21. The Appellant submitted the following grounds of appeal in his Notice of Appeal:

"Applicable to all Notices:
 1. *Income from self-employment, and generally income assessed under Schedule D, estimated, overstated and duplicated*
 2. *Share of Partnership profits not consistent with Partnership Tax Return*
 3. *Investment income overstated*
 4. *Profit from letting premises estimated and overstated*
 5. *Expenses, overheads and interest incurred in renting properties understated or omitted*
 6. *Capital Allowances on Plant and Machinery in rental properties understated*
 7. *Claim for retirement annuities and pension contributions understated*
 8. *Carer's Allowance understated*
 9. *Health Expenses understated*
 10. *Other reliefs and deductions for which the Appellant is entitled understated"*
22. At the oral hearing of this appeal the Appellant took the Commissioner through the profit figures which he stated the Partnership generated in 2011 and 2012 and 2013 along with, what he stated were, his share of the Partnership profits in those years.
23. In addition, the Appellant took the Commissioner through the income figures which were found in the Determination along with the income figures which were contained in the

Notices of Amended Assessment to income tax for 2011, 2012 and 2013 which were issued by the Respondent on 27 March 2024.

24. The Appellant submitted that, whilst he accepts that the amendments to the income and net rental income amounts which the Respondent applied in the contested Notices of Amended Assessment to income tax for 2011, 2012 and 2013 reflect the findings of the Determination, he does not understand where the income and net rental income figures contained in the Determination come from.
25. The Appellant did not raise any issues of law in his Notice of Appeal, at the Case Management Conference or at the oral hearing. In addition, no legal submissions were made by the Appellant at the oral hearing.

Respondent's Submissions

26. The Respondent submitted that the figures contained in the contested Notices of Amended Assessment to income tax for the years 2011, 2012 and 2013 issued on 27 March 2024 are correct and reflect the findings of the Commissioner in the Determination.
27. The Respondent submitted that the contested Notices of Amended Assessment to income tax for the years 2011, 2012 and 2013 issued on 27 March 2024 were issued pursuant to its obligation to give effect to the Determination as set out in section 949AM of the TCA 1997.

Material Facts

28. The material facts are not in dispute in this appeal and the Commissioner accepts same as material facts:
 - 28.1. The Appellant is a self-employed Chartered Accountant who, during the relevant years, was a partner [REDACTED].
 - 28.2. On 20 February 2023, determination [REDACTED] dated 16 February 2023 was issued to the parties which related to the Appellant's tax affairs for the years 2011, 2012 and 2013.
 - 28.3. The Determination held, *inter alia*, that the Appellant had received the following income in those years:

	2011	2012	2013
Income received as determined ■ ██████████:	€846,152	€1,113,289	€1,219,886

28.4. In addition, the Determination held that the Appellant had received the following net rental income in those years:

	2011	2012	2013
Net rental income received as determined ■ ██████████:	€95,578	€108,951	€108,951

28.5. On 5 April 2023, the Commission received correspondence from the Respondent which contained a copy of what was purported to be a Request for a Case Stated from the Appellant in relation to the Determination. No Request for a Case Stated in relation to the Determination on behalf of the Appellant was submitted to the Commission.

28.6. Having considered matters, the Commissioner issued a Decision on 14 April 2023 refusing the Appellant’s Request for a Case Stated in relation to the Determination.

28.7. On 4 May 2023, the Appellant issued judicial review proceedings in the High Court in relation to the Determination and on 3 July 2023 leave was granted by the High Court permitting the Appellant to bring judicial review proceedings against the Commission in relation to the Determination. The judicial review proceedings were dismissed by Order of the High Court on 15 February 2024.

28.8. On 27 March 2024, the Respondent raised Notices of Amended Assessment to income tax to the Appellant in relation to the tax years 2011, 2012 and 2013 pursuant to the provisions of section 949AM of the TCA 1997.

28.9. The Notices of Amended Assessment dated 27 March 2024 contained, *inter alia*, the following amended amounts for “Schedule D – Income Received – Self” for 2011, 2012 and 2013:

	2011	2012	2013
"Schedule D – Income Received – Self":	€828,371	€1,097,158	€1,210,836

28.10. In addition, the Notices of Amended Assessment dated 27 March 2024 contained, *inter alia*, the following amended amounts for "Profit from letting Premises - Self" for 2011:

	2011	2012	2013
"Profit from letting Premises - Self":	€107,687	€108,951	€108,951

28.11. The following are the balances payable contained in the Notices of Amended Assessment to income tax raised by the Respondent on 27 March 2024:

	2011	2012	2013
Balance Payable:	€445,911.00	€490,315.77	€607,932.73

28.12. The Notices of Amended Assessment for the years 2011 and 2012 raised by the Respondent on 27 March 2024 contained, *inter alia*, the following statement:

"If you wish to appeal against the assessment to which this notice refers, you must do so within the period of 30 days after the date of this notice by completing and 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. You must submit a copy of this Notice of Amended Assessment with your Notice of Appeal. The TAC can be contacted by email at info@taxappeals.ie."

28.13. On 26 April 2024, the Appellant submitted a Notice of Appeal in relation to the Notices of Amended Assessment to income tax raised by the Respondent on 27 March 2024.

28.14. The oral hearing of this appeal took place on 14 February 2025.

Analysis

29. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, 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”.

30. The standard of proof applicable in an appeal to an Appeal Commissioner is the balance of probabilities.

31. Section 949AM of the TCA 1997 is entitled “*Revenue Commissioners to give effect to determinations*” and provides

“(1)The Revenue Commissioners shall give effect to any determination made by the Appeal Commissioners unless the determination has been appealed to the High Court in accordance with sections 949AP and 949AQ.

(2)In relation to an assessment, in giving effect to a determination, the Revenue Commissioners shall calculate the tax chargeable in respect of the amount assessed to tax.

(3)If, in relation to an assessment, the determination of the Appeal Commissioners is that the assessment is to stand or is to be amended, as the case may be, the assessment or the amended assessment shall be final and conclusive, unless the determination is appealed to the High Court in accordance with sections 949AP and 949AQ.

...”

32. It is not in dispute between the parties, and the Commissioner has held as a material fact, that Determination [REDACTED] determined that the Appellant had received the following income in 2011, 2012 and 2013:

	2011	2012	2013
Income received as determined ■ ■■■■■:	€846,152	€1,113,289	€1,219,886

33. The Commissioner has had regard to the contested Notices of Amended Assessment to income tax for 2011, 2012 and 2013 which were raised by the Respondent on 27 March 2024 and notes that the following amended amounts for Schedule D income were included:

	2011	2012	2013
"Schedule D – Income Received – Self":	€828,371	€1,097,158	€1,210,836

34. The Respondent has submitted that the differences between the income amounts contained in the Determination and those contained in the contested Notices of Amended Assessment can be explained by a credit being given to the Appellant in relation to €20,000 of Schedule E income which the Appellant had returned in his self-assessment Form 11 income tax returns which he filed for the years 2011, 2012 and 2013 with adjustments being made for income tax already paid, Universal Social Charge already paid and Pay Related Social Insurance already paid. The Appellant has, during oral submissions at the oral hearing, accepted the Respondent's explanation and has accepted that the figures are correct in this regard.

It is also not in dispute between the parties, and the Commissioner has held as a material fact, that Determination ■■■■■ determined that the Appellant had received the following net rental income in 2011, 2012 and 2013:

	2011	2012	2013
Net rental income received as determined ■■■■■:	€95,578	€108,951	€108,951

35. The Commissioner has had regard to the contested Notice of Amended Assessment to income tax for 2011 which was raised by the Respondent on 27 March 2024 and notes that the following amended amount “*Profit from letting Premises - Self*” was included:

	2011
“ <i>Profit from letting Premises - Self</i> ”:	€107,687

36. The Respondent has submitted that a credit in relation to “*Rental Capital Allowances*” was contained in the Notice of Amended Assessment to income tax for 2011 in the amount of €12,109. This, the Respondent submitted, reflects the Determination and brings the net rental income figure for 2011 in the Notice of Amended Assessment to income tax for 2011 to €95,578. The Appellant has, during oral submissions at the oral hearing, accepted the Respondent’s explanation and has accepted that the figures are correct in this regard.

37. As such, the Appellant has accepted that the amendments to the income and net rental income amounts which the Respondent applied in the contested Notices of Amended Assessment to income tax for 2011, 2012 and 2013 reflect the findings of the Determination.

38. The Appellant did not submit a request for a Case Stated pursuant to the provisions of section 949AP of the TCA 1997 in relation to the Determination. As a result of this, no Case Stated pursuant to the provisions of section 949AQ of the TCA 1997 was issued by the Commissioner in relation to the Determination.

39. The Commissioner notes that the Appellant has stated that he does not understand where the income and net rental income figures contained in the Determination come from. A full analysis of the facts and the reasons for the Commissioner’s determination is contained in the Determination. The Appellant did not appeal the Determination and, whilst he sought a judicial review in relation to the Determination, the judicial review proceedings were dismissed by order of the High Court on 15 February 2024.

40. No legal submissions were made by the Appellant, whether in writing or at the oral hearing, in relation to the Commissioner’s power to review or explain her findings and determinations.

41. As such, the findings and determinations contained in the Determination remain extant.

42. As a result of the above, the Commissioner must find that the Respondent has correctly given effect to the Determination which was dated 16 February 2023 and was issued to the parties on 20 February 2023 pursuant to its obligations contained in section 949AM of the TCA 1997.

Determination

43. Having considered the facts and circumstances of this appeal, together with the submissions from both parties, the Commissioner determines that the Appellant has not succeeded in establishing that the Respondent was incorrect to raise the Notices of Amended Assessment to income tax for the years 2011, 2012 and 2013 on 27 March 2024.

44. The Commissioner determines that the Notices of Amended Assessment to income tax for the years 2011, 2012 and 2013 raised by the Respondent on 27 March 2024 shall stand.

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

Notification

46. 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

47. 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.



Clare O'Driscoll
Appeal Commissioner
21 February 2025