AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

14TACD2023

Between:

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. These matters come before the Tax Appeal Commission (hereinafter the "Commission") as appeals against Notices of Assessment to Domicile Levy raised by the Revenue Commissioners (hereinafter the "Respondent") on 26 October 2018 for the tax years 2010, 2011, 2012, 2014 and 2016 (hereinafter "the relevant tax years").
2. The total amount under appeal is €719,208.
3. The hearing of these appeals took place on 8 September 2022 by way of a blended hearing involving the physical attendance at the offices of the Commission by the Appellant and by way of a mixture of physical and remote attendance by the Respondent.

Background

4. Mr [redacted] (hereinafter the "Appellant") is a self-made and successful (by any reasonable measure) person. In the relevant tax years, the Appellant was resident and domiciled in Ireland. He owned Irish property with a value exceeding €5,000,000.

5. The Appellant filed Form 11 tax returns with the Respondent which contained the following figures for Irish and Foreign Rental Income for the years 2010, 2011, 2012 and 2014:

	2010 €	**2011 €**	**2012 €**	**2014 €**
Irish Rental Income	2,910,111	3,074,440	2,718,618	2,955,794
Repairs	21,233	39,584	48,633	191,315
Allowable Interest	2,355,134	2,349,296	2,122,280	1,442,341
Other	504,811	603,523	553,865	666,664
Amount of chargeable **Income** after expenses **but** before Capital Allowances and losses	28,933	81,997	0	655,474
Foreign Rents				
Income from Foreign Rents	268,119	227,431	113,944	80,713
Expenses relating to this income (excluding interest)	59,256	49,268	27,734	21,579
Allowable Interest	208,863	200,315	119,695	77,568
Net profit on Foreign Rental properties	0	0	0	0

6. The Appellant filed a Form 11 tax return with the Respondent for 2016 which contained the following figures for Irish Residential and Commercial Rental Income:

	2010 €
Irish Rental Income	
Residential Property	
Gross Rent Receivable	1,276,362
Repairs	0
Allowable Interest	492,567

Other Expenses	350,921
Amount of chargeable Income after expenses – residential property	432,874
Commercial Property, land and all other sources of Irish rental Income	
Gross Rent Receivable	2,191,883
Repairs	43,684
Allowable Interest	1,868,459
Other Expenses	200,593
Amount of chargeable Income after expenses – Commercial Property etc.	79,147

7. In addition to the above amounts for rents receivable, repairs, allowable interest and other expenses, the Appellant's Form 11 returns included capital allowance amounts which are not the subject of these appeals before the Commission.

8. Following an aspect query and correspondence between the Parties in respect of same, the Respondent assessed the Appellant to Domicile Levy pursuant to section 531AB of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") for the relevant years and raised Notices of Assessment to Domicile Levy on 26 October 2018 as follows:

Year	Domicile Levy €	Tax Paid (Credit) €	Domicile Levy Due €
2010	200,000	12,022.38	187,977.62
2011	200,000	40,884.49	159,155.51
2012	200,000	26,322.43	173,677.57
2014	200,000	100,081.96	99,918.04
2016	200,000	101,480.34	98,519.66
	1,000,000	**280,791.60**	**719,248.40**

9. By way of Notice of Appeal dated 21 November 2018 the Appellant appealed the said Notices of Assessment to Domicile Levy. The appeal hearing took place on 8 September. The Appellant was represented by Junior Counsel and the Respondent was represented by Senior and Junior Counsel.

Legislation and Guideline

10. The legislation relevant to the appeal with respect to the relevant tax years and their respective assessments is as follows:

Section 1(2) of the TCA1997 "*Interpretation of this Act*":

> *"In this Act and in any Act passed after this Act , except where the context otherwise requires –*
>
> *…*
>
> *"the Income Tax Acts" means the enactments relating to income tax in this Act and any other enactment;*
>
> *…"*

Section 3(1) of the TCA1997 "*Interpretation of Income Tax Acts*":

> "…
>
> *"total income" means total income from all sources as estimated in accordance with the Income Tax Acts;*
>
> *…*"

Section 18 of the TCA1997 "*Schedule D*":

> *"(1)The Schedule referred to as Schedule D is as follows:*
>
> *SCHEDULE D*
>
> *1.Tax under this Schedule shall be charged in respect of—*
>
> *(a)the annual profits or gains arising or accruing to—*
>
> *(i)any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,*
>
> *(ii)any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,*

(iii)any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv)any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b)all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains.

2.Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of paragraph 1 be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule.

(2)Tax under Schedule D shall be charged under the following Cases:

…

Case V — Tax in respect of any rent in respect of any premises or any receipts in respect of any easement;

and subject to and in accordance with the provisions of the Income Tax Acts applicable to those Cases respectively.

(3)This section is without prejudice to any other provision of the Income Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases mentioned in subsection (2), and tax so directed to be charged shall be charged accordingly."

Section 75 of the TCA1997 "*Case V: Basis of Assessment*":

"(1)Without prejudice to any other provision of the Income Tax Acts, the profits or gains arising from—

(a)any rent in respect of any premises, and

(b)any receipts in respect of any easement,

shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule

D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule; but such rent or such receipts shall not include any payments to which section 104 applies.

(2)Profits or gains chargeable under Case V of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and subsection (3) shall apply accordingly.

(3)Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment.

…"

Section 97 of the TCA1997 "*Computational rules and allowable deductions*":

"(1)Subject to this Chapter, the amount of the profits or gains arising in any year shall for the purposes of Case V of Schedule D be computed as follows:

(a)the amount of any rent shall be taken to be the gross amount of that rent before any deduction for income tax;

(b)the amount of the profits or gains arising in any year shall be the aggregate of the surpluses computed in accordance with paragraph (c), reduced by the aggregate of the deficiencies as so computed;

(c)the amount of the surplus or deficiency in respect of each rent or in respect of the total receipts from easements shall be computed by making the deductions authorised by subsection (2) from the rent or total receipts from easements, as the case may be, to which the person chargeable becomes entitled in any year.

(2)The deductions authorised by this subsection shall be deductions by reference to any or all of the following matters—

(a)the amount of any rent payable by the person chargeable in respect of the premises or in respect of a part of the premises;

(b)any sums borne by the person chargeable—

(i)in the case of a rent under a lease, in accordance with the conditions of the lease, and

(ii)in any other case, relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received,

in respect of any rate levied by a local authority, whether such sums are by law chargeable on such person or on some other person;

(c)the cost to the person chargeable of any services rendered or goods provided by such person, otherwise than as maintenance or repairs, being services or goods which—

(i)in the case of a rent under a lease, such person is legally bound under the lease to render or provide but in respect of which such person receives no separate consideration, and

(ii)in any other case, relate to and constitute an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature;

(d)the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature;

(e)interest on borrowed money employed in the purchase, improvement or repair of the premises.

…"

Section 531AA(1) of the TCA1997 "*Interpretation (Part 18C)*":

'*"relevant individual", in relation to a tax year, means an individual—*

(a)who is domiciled in the State in the tax year,

(b)whose world-wide income for the tax year is more than €1,000,000,

(c)whose liability to income tax in the State for the tax year is less than €200,000, and

(d)the market value of whose Irish property on the valuation date in the tax year is in excess of €5,000,000;

…

"world-wide income", in relation to an individual, means the individual's income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and—

(a)without regard to any deduction—

(i)in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),

(ii)under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iii)under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iv)under section 847A, in respect of a relevant donation (within the meaning of that section),

(v)under section 848A, in respect of a relevant donation (within the meaning of that section),

and

(b)having regard to a deduction for—

(i)any payment to which section 1025 applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,

(ii)a payment of a similar nature to a payment referred to in subparagraph (i) pursuant to a maintenance arrangement (within the meaning of section 1025) relating to the marriage for the benefit of the other party to the marriage which attracts substantially the same tax treatment as such a payment,

(iii)any payment to which section 1031J applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the civil partnership for the benefit of the other party

to the civil partnership, unless section 1031K applies in respect of such payment,

(iv)a payment of a similar nature to a payment referred to in subparagraph (iii), pursuant to an order of a court under the law of another territory that, had it been made by a court in the State, would be a maintenance arrangement (within the meaning of section 1031J), relating to the civil partnership for the benefit of the other party to the civil partnership which attracts substantially the same tax treatment as such a payment, or

(v)any payment to which section 1031Q applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) where a relationship between cohabitants ends,

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year;

…"

Section 531AB of the TCA1997 "*Charge to domicile levy*":

"*Subject to this Part, with effect from 1 January 2010 a levy, to be known as "domicile levy", shall be charged, levied and paid annually by every relevant individual and the amount of such levy shall be €200,000."*

Submissions

Appellant's Submissions

11. The Appellant submitted that he was not a relevant individual as defined in section 531AA of the TCA1997 in that his world-wide income for the relevant tax years did not exceed €1,000,000. Therefore, the Appellant submitted, he was not liable to the Domicile Levy in the relevant tax years as assessed by the Respondent.

12. The Appellant submitted that income tax is a tax charged in respect of profits or gains. Whilst there is no statutory definition of income, the Appellant submitted that it is clear that income means profits or gains rather than gross receipts.

13. The Appellant submitted that for income tax purposes it is necessary for income to have/come from a source and that without a source there can be no income. In support of this the Appellant submitted that the TCA1997 specifies the sources of income in the

Schedular system therein, that is to say Schedule C, D, E and F as set out in the TCA1997. For the purposes of the within appeals Schedule D is the relevant Schedule.

14. The Appellant submitted that the charge to tax under Schedule D is set out in section 18 of the TCA1997 which specifies, *inter alia*, in subsection (1) that tax under Schedule D "*…shall be charged in respect of (a) the annual profits or gains arising or accruing to – (i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere.*"

15. Section 18(2) of the TCA1997 sets out five charges to income tax under Schedule D and Case V thereof provides that tax under Schedule D shall be charged "*....in respect of any rent in respect of any premises…*"

16. The Appellant submitted that section 75 of the TCA1997 which is entitled "*Case V: basis of Assessment*" is very specific in stating that Case V income is computed on the "*...profits or gains…*" in a relevant tax year, and not gross receipts. The Appellant also submitted that section 75(3) of the TCA1997 provides that Case V income is deemed to originate from a single source and states that "*Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment.*"

17. The Appellant submitted that income from the Case V source is ascertained by calculating whether there is a surplus or deficiency in respect of each separate rental property and then combining all of the surpluses and deficiencies together to give rise to the Case V income from that source. The Appellant submitted that the surplus or deficiency in respect of each rental property is calculated by ascertaining the gross receipts from that property and subtracting from those the outgoings in relation to that property which are permitted under section 97(2) of the TCA1997.

18. Section 97 of the TCA1997 is entitled "*Computational rules and allowable deductions*" and relates to income under Case V of Schedule D. Section 97(2) of the TCA1997 sets out the deductions authorised when computing the amount of profits or gains arising in any year. As such section 97(2)(d) of the TCA1997 provides that deductions are authorised in respect of "*the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature.*".

19. Section 97(2)(e) of the TCA1997 sets out that deductions in respect of "*interest on borrowed money employed in the purchase, improvement or repair of the premises*" are authorised when computing the amount of profits or gains arising in any year.

20. The Appellant submitted that it is clear that outgoings and expenses, including interest, are not deducted from the income itself, but are deducted in the course of arriving at Case V income. The Appellant submitted that the Case V income is the source of the income, that it is a single source and it is made up of a composite of the net profits or gains arising from the individual properties. The Appellant submitted that the gross rental receipts are therefore only one of the components that go into arriving at the Case V income figure.

21. The Appellant submitted that "*total income*" is defined in section 3(1) of the TCA1997 as meaning "*…total income from all sources as estimated in accordance with the Income Tax Acts*". The Appellant submitted that it is necessary to calculate total income as one of the stages in arriving at the taxable income for an individual. The Appellant submitted that total income is comprised of the aggregate of the individual's income from all of his/her sources calculates on the rules set out Schedule C, D (Cases I to V), E and F.

22. The Appellant submitted that in arriving at the total income figure, certain items are deductible from some of the Cases/sources in order to arrive at the total income figure, these are known as "*Case Specific Deductions*". The Appellant submitted that Case Specific Deductions are not in issue in the within appeals. Thereafter, once the overall total income figure is calculated, it may then be reduced by carious deductions "*General Deductions*". The Appellant submitted that General Deductions are not in issue in these appeals against the assessments with respect to the relevant tax years.

23. The Appellant submitted that the issue in these appeals relates to expenses and outgoings. The expenses and outgoings are deductible at various stages prior to Case V income being established. The Appellant submitted that the stages are necessary to ascertain the surplus / deficiency from each rental property. Once the surpluses and deficiencies have been established they are aggregated to give rise to Case V income. The Appellant submitted that this is the income source and that it is a single source. This source, the Appellant submitted, is net of outgoings, such as interest at that stage. Therefore, the Appellant submitted, the expenses and outgoings (such as interest) are deductible in arriving at the source of the income

24. The Appellant submitted that the basis of the charge to the Domicile Levy requires that an individual has world-wide income exceeding €1,000,000 in the relevant year. World-wide income has been defined in section 531AA of the TCA1997 as meaning the individuals "*income, without regard to any amounts deductible from or deductible in computing total income, from all sources estimated in accordance with the Tax Acts*".

25. The Appellant submitted that expenses and outgoings such as interest are not deductible from or deductible in computing total income as set out in the submissions at paragraphs 12-24 above.

26. The Appellant submitted that a key element of the definition of world-wide income is that it comprises of income "*... from all sources as estimated in accordance with the Tax Acts*". The Appellant submitted that Schedule D Case V is a single source and the TCA1997 specifically require that it is to be calculated on the basis of the surpluses and deficiencies from the individual properties.

27. The Appellant submitted that this meant that it is beyond doubt that the interest deduction available under section 97(2) of the TCA1997 is deductible in arriving at the Case V source itself and is not deductible from or in computing total income.

28. The Appellant submitted that an individual's income from each source must first be established in order to determine an individual's world-wide income. Only then once the income from each source is determined, is it aggregated. The Appellant submitted that the words "*without regard to any amount deductible from or deductible in computing total income*" in the definition of world-wide income contained in section 531AA of the TCA1997 disallows any further deductions under any other provisions. The Appellant submitted that, once the aggregate income from each source is determined, it is then that consideration is given to the words "*without regard to*" and "*having regard to*" deductions which are listed in the definition. The Appellant submitted that once an adjustment has been made to the aggregate income from all sources to either allow a "*having regard to*" deduction or to disallow a "*without regard to*" deduction, the amount that is left is the individual's world-wide income.

29. The Appellant submitted that in calculating world-wide income, income is initially calculated after deducting "*without regard to*" items and before deducting "*having regard to*" items. The Appellant submitted that paragraph (a) of the definition of world-wide income contained in section 531AA of the TCA1997 then takes back out the deduction for "*without regard to*" items and allows a deduction for "*having regard to*" items.

30. The Appellant submitted that included in the "*without regard to"* items in the definition of world-wide income is a deduction provided for under section 372AP of the TCA1997 in respect of expenditure on a qualifying premises (for special qualifying premises) in computing the surplus or deficiency in respect of rent from any premises. The Appellant submits that the fact that such a deduction is included in the list of "*without regard to*" items makes it clear that such a deduction has been taken into account in arriving at the individual's income to that point. This, the Appellant submits, confirm that in calculating

the individual's Case V income to be included, "income" is the rental surplus calculated after allowing for deductions provided for by section 97 of the TCA1997.

31. The Appellant submitted that the wording set out in section 531AM of the TCA1997 which is the Charge to Universal Social Charge (hereinafter "USC"), is very similar and/or almost identical to that in section 531AM of the TCA1997. The Appellant submitted that the Respondent has always accepted that USC is charged on the aggregate of the surpluses and deficiencies and not on gross rental income.

32. The Appellant submitted that the April 2022 judgments in *Fitzgerald v Revenue Commissioners* [2021] IEHC 487 (hereinafter "*Fitzgerald*") of Egan J in *Corcoran v The Revenue Commissioners* [2022] IEHC 199 (hereinafter "*Corcoran*") support his method of calculating his world-wide income for the relevant years.

Respondent's Submissions

33. The Respondent submitted that the Appellant is liable to the Domicile Levy as his world-wide income for the relevant years was in excess of €1,000,000. Therefore, the Respondent submitted that, the Appellant was a relevant individual as defined in section 531AA of the TCA1997.

34. In support of this position the Respondent submitted that the inclusion of the words *"…without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts …*" in the definition of world-wide income in section 531AA of the TCA1997 precludes any deduction being made in determining world-wide income.

35. In relation to the Appellant's contention that the Respondent allows deductions under section 97 of the TCA1997 in computing "*relevant income*" for the purposes of the charge to USC, the Respondent submitted that the Appellant failed to have regard to the fact that section 531AM of the TCA1997 does not include a phrase which is prominently included in section 531AA of the TCA1997 *" ... and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted ...*"

36. The Respondent submitted that unlike the provisions of section 531AM of the TCA1997 which impose the USC, any amounts which would normally be deductible in computing income, as that term is used in the TCA1997, must be ignored for the purposes of determining world-wide income under section 531AA of the TCA1997. The Respondent submitted that sections 531AA of the TCA1997 and 531AM of the TCA1997 are stand-

alone provisions and the definition sections contained therein are expressly referable to different parts of the TCA1997 (Part 18C and 18D respectively).

37. The Respondent submitted that the *Corcoran* judgment relates to different sections of the TCA1997 than those with which these appeals are concerned. Therefore, the Appellant submitted, it is not directly applicable to the facts of these appeals with respect to the relevant tax years and their respective assessments. Senior Counsel for the Respondent submitted that the particular parts of the judgment on which the Appellant seeks to rely were *obiter dictum*. *Obiter dictum* in a legal judgment refers to a judge's comments or observations made in passing on a matter arising in a case which does not require a decision and which are not meant to have binding precedent. Therefore, the Respondent submitted that, the judgment in *Corcoran* is not applicable to these appeals.

Material Facts

38. There is no dispute between the Parties as to the facts in these appeals. As such he Commissioner accepts and finds the following as material facts:

    i. The Appellant was resident and domiciled in Ireland and owned Irish property with a value exceeding €5,000,000 during the tax years 2010, 2011, 2012, 2014 and 2016.

    ii. In 2010 the Appellant had Irish rental income of €2,910,111 with repairs, allowable interest and other expenses totalling €2,881,178.

    iii. In 2010 the Appellant had foreign rental income of €268,119 with expenses and allowable interest of €268,119.

    iv. In 2011 the Appellant had Irish rental income of €3,074,440 with repairs, allowable interest and other expenses totalling €2,992,403.

    v. In 2011 the Appellant had foreign rental income of €227,431 with expenses and allowable interest of €249,583.

    vi. In 2012 the Appellant had Irish rental income of €2,718,618 with repairs, allowable interest and other expenses totalling €2,724,778.

    vii. In 2012 the Appellant had foreign rental income of €113,944 with expenses and allowable interest of €147,429.

    viii. In 2014 the Appellant had Irish rental income of €2,955,795 with repairs, allowable interest and other expenses totalling €2,300,320.

ix. In 2014 the Appellant had foreign rental income of €80,713 with expenses and allowable interest of €99,147.

x. In 2016 the Appellant had Irish rental income of €3,468,245 with repairs, allowable interest and other expenses totalling €2,956,224.

xi. In 2016 the Appellant had no foreign rental income.

xii. The Appellant returned and paid the following amounts in income tax to the Respondent in the relevant years:

2010	€ 12,022.38
2011	€ 40,884.49
2012	€ 26,322.43
2014	€ 100,081.96
2016	€ 101,480.34

Analysis

39. The Domicile Levy was introduced in section 150 of the Finance Act 2010 which inserted a new Part 18C (sections 531AA to 531AK) into the TCA1997. Section 531AB of the TCA1997 provides that:

> "*Subject to this Part, with effect from 1 January 2010 a levy, to be known as "*domicile levy*", shall be charged, levied and paid annually by every relevant individual and the amount of such levy shall be €200,000.*"

40. Section 531AA of the TCA1997 defines a relevant individual as meaning an individual, in relation to a tax year:

a. who is domiciled in the State in the tax year;

b. whose world-wide income for the tax year is more than €1,000,000;

c. whose liability to income tax in the State for the tax year is less than €200,000; and

d. the market value of whose Irish property on the valuation date in the tax year is in excess of €5,000,000.

41. World-wide income is defined in section 531AA of the TCA1997 as follows:

> **"***"world-wide income", in relation to an individual, means the individual's income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and—*
>
> *(a)without regard to any deduction—*
>
> *(i)in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),*
>
> *(ii)under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,*
>
> *(iii)under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,*
>
> *(iv)under section 847A, in respect of a relevant donation (within the meaning of that section),*
>
> *(v)under section 848A, in respect of a relevant donation (within the meaning of that section),*
>
> *and*
>
> *(b)having regard to a deduction for—*
>
> *(i)any payment to which section 1025 applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,*
>
> *(ii)a payment of a similar nature to a payment referred to in subparagraph (i) pursuant to a maintenance arrangement (within the meaning of section 1025) relating to the marriage for the benefit of the other party to the marriage which attracts substantially the same tax treatment as such a payment,*
>
> *(iii)any payment to which section 1031J applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the civil partnership for the benefit of the other party*

to the civil partnership, unless section 1031K applies in respect of such payment,

(iv)a payment of a similar nature to a payment referred to in subparagraph (iii), pursuant to an order of a court under the law of another territory that, had it been made by a court in the State, would be a maintenance arrangement (within the meaning of section 1031J), relating to the civil partnership for the benefit of the other party to the civil partnership which attracts substantially the same tax treatment as such a payment, or

(v)any payment to which section 1031Q applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) where a relationship between cohabitants ends,

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year;

…"

42. It is of note that section 531AA(1A) of the TCA1997 states as follows:

"*"For the purposes of the definition of 'world-wide income' in subsection (1), an individual's income means the income of an individual before deducting capital allowances and losses."*

However, the Commissioner notes that this section was inserted into the TCA1997 by section 79(1)(b) of the Finance Act 2017. Therefore, the Commissioner finds that this section does not apply to the relevant tax years at issue in these appeals.

43. The Commissioner has already accepted and found as material facts that the Appellant was domiciled in the State for the relevant tax years and that the market value of his Irish property on the valuation date in the relevant tax years was in excess of €5,000,000. As stated above, both Parties agreed on these material facts.

44. Therefore, the issue which the Commissioner must determine in these appeals is whether the Appellant was entitled to deduct repairs, allowable interest and other expenses from the rental income which he received in the relevant tax years for the purposes of computing his world-wide income, as defined by section 531AA of the TCA1997 and for the purpose of the imposition of the Domicile Levy pursuant to section 531AB of the TCA1997.

45. The disagreement between the parties is a net point. On the one hand, the Appellant asserts that income means income as calculated in accordance with the TCA1997 and that income from rental properties should be calculated in accordance with Schedule D Case V. Therefore, the Appellant submits that, when calculating a taxpayer's world-wide income for the purposes of the imposition of the Domicile Levy, account should be taken of expenses and outgoings to include repairs and allowable interest prior to calculating rental income received.

46. On the other hand, the Respondent submits that when calculating a taxpayer's world-wide income for the purposes of the imposition of the Domicile Levy as provided for in section 531AB of the TCA1997, account should **not** be taken of expenses, repairs, allowable interest and outgoings prior to calculating rental income received. The Respondent submits that the definition of world-wide Income in section 531AA of the TCA1997 means that the Appellant is not entitled to deduct amounts from gross rental incomes received when calculating his world-wide income for the purposes of the Domicile Levy.

47. Section 3 of the TCA1997 defines total income as "*total income from all sources as estimated in accordance with the Income Tax Acts*". Total income is comprised of the aggregate of an individual's income from all of his/her sources calculated on the rules set out in relation to Schedule C, D (Cases I to V), E and F in the TCA1997.

48. Section 18 of the TCA1997 sets out the charge to tax under Schedule D and section 18(1)(i) of the TCA1997 sets out that tax shall be charged in respect of the annual gains or profits arising or accruing to any person residing in the State on any kind of property whatever, whether situate in the State or elsewhere.

49. Section 18(2) of the TCA1997 provides that tax under Schedule D shall be charged under five cases, Case V being pertinent to the within appeals. Case V of Schedule D is described as tax in respect of any rent in respect of any premises or any receipts in respect of any easement. Case V of Schedule D also provides that tax in relation to Case V shall be charged subject to and in accordance with the provisions of the TCA1997 applicable to it.

50. Section 75 of the TCA1997 sets out the basis of assessment for Case V income and section 75(1) of the TCA1997 provides that the profits or gains arising from "*…(a) any rent in respect of any premises … shall, subject to and in accordance with the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to those profits or gains shall be chargeable in respect of such profits or gains under Case V of that Schedule…*".

51. Section 75(2) of the TCA 1997 provides that "*Profits or gains chargeable under Case V of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and subsection (3) shall apply accordingly*".

52. Section 75(3) of the TCA1997 provides that "*Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment*."

53. Section 97 of the TCA1997 is entitled "*Computational rules and allowable deductions*" and relates to income under Case V of Schedule D, that is to say rental income. Section 97(2) of the TCA1997 sets out the deductions authorised when computing the amount of profits or gains arising in any year and section 97(2)(d) of the TCA1997 provides that deductions are authorised in respect of "*the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature.*".

54. Section 97(2)(e) of the TCA1997 further provides that deductions in respect of "*interest on borrowed money employed in the purchase, improvement or repair of the premises*" are authorised when computing the amount of profits or gains arising in any year.

55. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "*Perrigo*"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

> *"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;*
> >
> > *(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said*

that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners*, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in* Revenue Commissioners v. Doorley *[1933] I.R. 750 where Kennedy C.J. said at p. 766:*

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. 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 possible".

56. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words contained in sections 3, 18, 75 and 97 of the TCA1997 when taken together and when applied to the computation of Schedule D Case V income are plain and their meaning is self-evident.

Estimation of Schedule D Case V income:

57. The words contained in sections 18, 75 and 97 of the TCA1997 when taken together and when applied to the estimation of Schedule D Case V income mean that an individual is not charged on their gross income thereunder but rather on their profits or gains. In arriving at the profits or gains deductions are allowable in respect of outgoings and expenses, including interest, as follows:

    i. Section 18 of the TCA1997 sets out that tax shall be charged in respect of the annual gains or profits arising or accruing in respect of rents received by any person residing in the State on any kind of property, whether it is located in the State or elsewhere. Therefore, and individual is not charged to tax on their gross income but on their profits or gains;

    ii. Section 75 of the TCA1997 sets out that rent for the purposes of the imposition of tax means profits or gains arising in respect of rents as set out in section 18 of the TCA1997. In addition, section 75 of the TCA1997 sets out that profits or gains under Schedule D Case V are deemed to issue from a single source and that tax under Schedule D Case V shall be computed on the full amount of the profits or gains arising;

    iii. Section 97(2)(d) of the TCA1997 sets out that in computing the profits or gains arising or accruing in respect of rents received, deductions are authorised in respect of the cost of maintenance, repairs, insurance and management of a premises along with interest on borrowed monies employed in the purchase, improvement or repair of a premises. In addition section 97(2)(e) of the TCA1997 sets out that deductions in respect of interest on borrowed money employed in the purchase, improvement or repair of the premises are authorised when computing the amount of profits or gains arising in any year. Further section 97(1) of the TCA1997 states that the calculation of the amount of the profits or gains arising in any year is done on the basis of the calculation of the profits or losses made on

each individual property which a taxpayer may own. This is made clear in the wording contained in section 97(1)(b) and (c) of the TCA1997 which provide that:

> "*(b) the amount of the profits or gains arising any year shall be the aggregate of the surpluses computed in accordance with paragraph (c), reduced by the aggregate of the deficiencies as so computed*;
>
> *(c) the amount of the surplus or deficiency in respect of each rent or in respect of the total receipts from easements shall be computed by making the deductions authorised by subsection (2) from the rent or total receipts from easements, as the case may be, to which the person chargeable becomes entitled in any year.*"

58. Section 97(c)(ii) and section 97(d) of the TCA1997 make it clear that expenses of a capital nature are not authorised deductions for the purpose of computing Schedule D Case V profits or gains.

Calculation of Total Income:

59. The Commissioner finds that the words contained in the definition of total income at section 3 of the TCA1997 are plain and their meaning is self-evident. The Commissioner finds that pursuant to section 3 of the TCA1997 the computation of total income requires that, having estimated amounts for each individual source under the TCA1997, those amounts from each source are aggregated in order to arrive at the amount of total income.

Calculation of world-wide income:

60. Having established how total income is arrived at, the Commissioner must then look to the definition of world-wide income. Section 531AA of the TCA1997 defines world-wide income as follows:

> *"'world-wide income", … means the individual's income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and—*
>
> *(a)without regard to any deduction—*
>
> *(i)in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),*

(ii)under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iii)under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iv)under section 847A, in respect of a relevant donation (within the meaning of that section),

(v)under section 848A, in respect of a relevant donation (within the meaning of that section),

and

(b)having regard to a deduction for—

(i)any payment to which section 1025 applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,

(ii)a payment of a similar nature to a payment referred to in subparagraph (i) pursuant to a maintenance arrangement (within the meaning of section 1025) relating to the marriage for the benefit of the other party to the marriage which attracts substantially the same tax treatment as such a payment,

(iii)any payment to which section 1031J applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the civil partnership for the benefit of the other party to the civil partnership, unless section 1031K applies in respect of such payment,

(iv)a payment of a similar nature to a payment referred to in subparagraph (iii), pursuant to an order of a court under the law of another territory that, had it been made by a court in the State, would be a maintenance arrangement (within the meaning of section 1031J), relating to the civil partnership for the benefit of the other party to the civil partnership which attracts substantially the same tax treatment as such a payment, or

(v)any payment to which section 1031Q applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) where a relationship between cohabitants ends,

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year;

…'

61. The Commissioner has already found that an individual is charged to tax on profits or gains as estimated under Schedule D Case V of the TCA1997 and that this feeds in to the calculation of total income. The Commissioner finds that the combined effect of sections 75 and 97 of the TCA1997 is that under Schedule D Case V it is not gross revenue which is charged to tax but rather profits or gains which are charged to tax. The Commissioner finds that this then informs the definition of world-wide income and that it is the profits or gains as estimated in accordance with Schedule D Case V which also feed in to the calculation of world-wide income. Therefore, the Commissioner finds that the meaning of the words of the definition of world-wide income in section 531AA of the TCA1997 are plain and self-evident and that the profits or gains as estimated in accordance with Schedule D Case V and not gross income is what is charged to tax for the purposes of the definition of world-wide income.

62. The High Court in the judgment of Egan J in *Corcoran* is supportive of the Commissioner's findings in these appeals.

63. *Corcoran* was an appeal by way of case stated to the High Court from a determination delivered by an Appeal Commissioner in December 2015. *Corcoran* was concerned with whether the world-wide income of the taxpayers' exceeded €1,000,000 and turned on whether wear and tear capital allowances of the taxpayers' hotel trade were deductible in computing world-wide income.

Calculation of Total Income in Corcoran

64. It is noteworthy that at paragraph 17 of the *Corcoran* judgment Egan J noted that in the hearing before the Commission:

"*… it was common ground between the parties before* [the Commissioner] *that the phrase* "without regard to any amount deductible from or in computing total income" *does not refer to items such as expenses in the individual's profit and loss account. It was similarly common case before this court that such expenses as are wholly and*

exclusively expended for the purpose of the trade, within the meaning of s. 81 TCA, … may be deducted in arriving at an individual's "world-wide income". It was agreed that the deduction of these expenses is part of the initial estimation of income in accordance with the Tax Acts."

65. In addition at paragraph 51 of the *Corcoran* judgment Egan J stated:

"*The combined effect of s. 65 and s. 81 TCA is that it is not gross revenue that is charged to tax but rather profits or gains estimated after the deduction of, for example trading expenses, in accordance with s. 81 (2)(a), together with any other allowable expenses as set out in that section. Both the* [taxpayer] *and revenue are agreed that total income is not the same as gross income and that, at a minimum, trading expense under s. 81 TCA must be deducted from "world-wide income" for the purposes of the domicile levy.*

66. Egan J further stated at paragraph 52 of her judgment in *Corcoran*:

"*As I point out above at paragraph 37, the first part of the definition* [if world-wide income] *at (A) is, effectively the definition of "total income" as per s. 3 TCA. As both parties agree that this must allow for the deduction of trading expenses, their arguments effectively mean interpreting total income in part (A) of the definition of "world-wide income" as meaning "profit or gain". This is not without difficulty because, the phrase "total income" as separately defined in s. 3 does not, on its face, cross refer to the concept of profit or gain. However, as the Tax Acts have been promulgated and consolidated over many years, a process which has involved the combination and grafting together of pre-exiting statutes over time, words and phrases used therein are unfortunately not always used or defined consistently. I accept that, at least for the purposes of the definition of "world-wide income", total income - as it appears in part (A) of that definition cannot simply mean gross receipts. Amongst other reasons, this is because the phrase "income… from all sources as estimated in accordance with the Tax Acts" suggests that some process of estimation has been necessary. If one were simply adding up gross receipts, without making any allowances for expenses laid out wholly and exclusively for the purposes of the trade under s. 81, no process of estimation would be involved. Therefore, particularly as there is no difference between the parties on this point, I accept that the estimation of total income at (A), is an exercise which incorporates at least the deduction of trading expenses and of other amounts properly deductible pursuant to s. 81.*". (emphasis added)

67. The Commissioner notes that in *Corcoran* the parties in that case, including the Respondent in these appeals, agreed that total income is not the same as gross income for the purposes of calculating world-wide income as defined in section 521AA of the TCA1997. In *Corcoran* the parties in that case agreed that, "*at a minimum*", trading expenses under section 81 of the TCA1997 must be deducted from world-wide income for the purposes of the Domicile Levy. The Commissioner also notes that the Respondent's position in this regard in these appeals diverges with the position it adopted in *Corcoran*.

68. At the hearing of these appeals, the Commissioner asked Senior Counsel for the Respondent whether the Respondent was seeking to put forward a different position from that as set out by Egan J in her judgment in *Corcoran*. In response Senior Counsel for the Respondent distinguished the judgment in *Corcoran* on the basis that the *Corcoran* case was focussed on the deductibility of wear and tear allowances of the taxpayers' hotel trade in computing world-wide income. Senior Counsel for the Respondent correctly pointed out that *Corcoran* concerned itself with deductions pursuant to section 81 of the TCA1997 and not with deductions pursuant to section 97 of the TCA1997 with which this appeal is concerned.

69. The Commissioner notes the Respondent's position that *Corcoran* may be distinguished from these appeals. As previously set out, section 97 of the TCA1997 concerns itself with the computational rules and allowable deductions in relation to Schedule D Case V income. Section 81 of the TCA1997 sets out the general rule as to deductions when computing profits or gains arising under Schedule D Case I which relates to quarries, mines and ironworks and Schedule D Case II which relates to tax in respect of any profession not contained under any other Schedule.

70. The position adopted by the Respondent in this regard in these appeals was surprising given the position which it had adopted in *Corcoran*. It is noted that in her decision at paragraph 51 Egan J expressed in a definitive manner that: "*Both the* [taxpayer] *and revenue are agreed that total income is not the same as gross income…*". The position adopted by the Respondent and the attempt to distinguish *Corcoran* from the within appeals did not find favour with the Commissioner.

71. In her judgment in *Corcoran* Egan J addressed the definition of world-wide income in section 531AA of the TCA1997 as being broken into two parts. Egan J further examined

the treatment of deductions therein: (a) "*without regard to*" deductions and (b) "*having regard to*" deductions and stated:

> "*35. Pursuant to the definition of* "world-wide income" *in s. 531 AA, one has to determine whether each respondents'* "income… from all sources as estimated in accordance with the Tax Acts" *exceeds €1 million*.
>
> *36. Slightly unpacking this definition, one sees that* "world-wide income" *is defined as (A) "income... from all sources as estimated in accordance with the Tax Acts", and (B) "without regard to any amount deductible from or deductible in computing total income". Where convenient, I will distinguish between parts (A) and (B) of the definition of "world-wide income".*
>
> *37. The part of the definition at (A) is, effectively the definition of* "total income" *as per s.3 TCA. This defines* "*total income" as "income from all sources as estimated in accordance with the Income Tax Acts"."*

72. The Commissioner has found that the combined effect of sections 75 and 97 of the TCA1997 means that is that it is not gross revenue that is charged to tax under Schedule D Case V. It is rather profits or gains estimated after the deduction of, in these appeals, the cost of repairs, maintenance, interest and other expenses, which said deductions are authorised by section 97 of the TCA1997 that are charged to tax under Schedule D Case V. This then feeds into the calculation of total income as defined in section 3 of the TCA1997. The Commissioner's finding in this regard is supported by paragraph 37 of the decision in *Corcoran* which found that part (A) of the definition of world-wide income at section 531AA of the TCA1997 is effectively the definition of total income at section 3 of the TCA1997, that is to say "*income from all sources as estimated in accordance with the Income Tax Acts*".

73. The Commissioner does not agree with the Respondent's submission that the findings of Egan J in *Corcoran* are *obiter dictum*. The findings in *Corcoran* in relation to the meaning of world-wide income were central to the final decision of Egan J in the case and this is affirmed at paragraph 31 of the judgment where she stated:

> "*The task of this court therefore is to determine what is the purpose of the legislature in enacting the relevant provisions pertaining to the domicile levy and what is the meaning of "world-wide income.*"

74. As a result of the above, the Commissioner cannot and does not accept the Respondent's submission that the judgment in *Corcoran* is not applicable to these appeals.

75. The Commissioner notes that the decision in *Corcoran* is under appeal to the Court of Appeal by the Respondent. However, as no judgment overturning the High Court findings in *Corcoran* has been delivered at the date of the making of this determination and which would affect this appeal, the findings in *Corcoran* in relation to the calculation of total income for the purposes of the definition of world-wide income defined in section 531AA of the TCA1997 are stated law. The Commissioner is bound by the High Court decision in *Corcoran.*

76. Therefore, the Commissioner finds that the Appellant was entitled to deduct repairs, allowable interest and other expenses from the rental income which he received in the relevant years for the purposes of computing his world-wide income as defined by section 531AA of the TCA1997 and for the purpose of the imposition of the Domicile Levy pursuant to section 531AB of the TCA1997.

77. There is no dispute between the Parties as to the figures returned by the Appellant in his Form 11s for the relevant years. Therefore the Commissioner finds that the amounts of chargeable income after expenses but before capital allowances and losses in relation to the Appellant's Irish and foreign rental income, that is to say his Schedule D Case V profits or gains, in the relevant years were as follows:

2010	€ 28,933
2011	€ 81,997
2012	€ 0
2014	€ 655,474
2016	€ 512,021

78. The Commissioner therefore finds that the Appellant was not a "*relevant individual*" as defined in section 531AA of the TCA1997 in the tax years 2010, 2011, 2012, 2014 and 2016.

79. The Commissioner agrees with the Respondent's submission that sections 531AA of the TCA1997 and 531AM of the TCA1997 are stand-alone provisions and the definition sections contained therein are expressly referable to different parts of the TCA1997 (Part 18C and 18D respectively). Therefore, no finding is made on the submissions made in relation to section 531AM of the TCA1997 and the calculation of USC as they do not relate to the issue before the Commissioner in these appeals.

Determination

80. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

> *"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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."*

81. The Commissioner determines that the Appellant has discharged the burden of proof in the above appeals and that he has succeeded in showing that the relevant tax was not payable.

82. The Commissioner therefore determines that the Notices of Assessment to Domicile Levy raised by the Respondent on 26 October 2018 for the tax years 2010, 2011, 2012, 2014 and 2016 in relation to the Appellant shall be reduced to nil.

83. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA1997.

Clare O'Driscoll
Appeal Commissioner
02 November 2022