11TACD2018

BETWEEN/

[NAME REDACTED]

APPELLANT

V

REVENUE COMMISSIONERS

RESPONDENTS

DETERMINATION

Introduction

1. This is an appeal against a statement of liability issued to the Appellant on 22nd September 2011 in the amount of €23,970.96.

2. On agreement of the parties, this appeal is determined, in accordance with Taxes Consolidation Act 1997, section 949U, without the requirement to hold an oral hearing.

Background

3. The Appellant entered the employment of **REDACTED (EMPLOYER)** in February of **REDACTED**.

4. In or about **DATE REDACTED**, **EMPLOYER** commenced a Deferred Share Scheme for the purpose of incentivising employees.

5. On the **DATE REDACTED**, the Appellant was allocated **REDACTED** ordinary shares (Share Award) in **EMPLOYER**, which were held on his behalf pursuant to the Deferred Share Scheme. He was notified of the allocation by a letter from **EMPLOYER** on **DATE REDACTED**, which stated *inter alia* that: -

> *"a sum of €* **REDACTED** *which has been used to acquire* **REDACTED** *€* **REDACTED** *ordinary shares in the* ***EMPLOYER*** *which are to be held on your behalf at a price of €* **REDACTED**.
>
> *Provided you remain in the* ***EMPLOYER****'s employment these shares will be transferred into your name in* **DATE REDACTED**.
>
> *Tax at the appropriate rate will apply at the time of transfer."*

6. The tax return submitted by the Appellant for the year **REDACTED**, on **DATE REDACTED**, made no reference to the Share Award.

7. On **DATE REDACTED**, following the expiry of the 3-year Deferral Period (Deferral Period), shares were transferred into the name of the Appellant. As consequence of a share split, the number of ordinary shares transferred to the Appellant increased from **REDACTED** ordinary shares to **REDACTED** ordinary shares.

8. By letter dated **DATE REDACTED**, the Appellant was informed by **EMPLOYER** that:

> *"the shares which were purchased* **DATE REDACTED** *and which have since been held in trust on your behalf for a period of three years, have now been transferred into your personal name.*
>
> *A certificate for* **REDACTED** *shares in respect of the above is enclosed for your safekeeping.*
>
> *Please note that your tax liability in relation to the above shares will be payable on the total value of the shares at a rate of €* **REDACTED** *per share*."

9. The **YEAR REDACTED** tax return submitted by the Appellant on **DATE REDACTED**, made no reference to the Share Award.

10. The Appellant disposed of the shares in **YEAR REDACTED** and paid capital gains tax in **YEAR REDACTED**.

11. During **DATE REDACTED**, **EMPLOYER** provided the Appellant with an unsigned document entitled 'Deferred Share Scheme Rules' (the Rules) outlining the terms and rules of the share scheme.

12. On 22nd September 2011, the Respondents issued the PAYE balancing statement in respect of the Appellant's liability to income tax arising from the Share Award for the **YEAR REDACTED**.

Legislation

Taxes Consolidation Act 1997

13. The parties agreed that the relevant charge to taxation was pursuant to Taxes Consolidation Act 1997 (TCA), section 112 which provides:

> *(a) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.*
>
> *(b) (a) In this subsection, "emoluments" means anything assessable to income tax*

under Schedule E.

14. The Appellant contended that the assessment raised by the Respondents was out of time and invoked TCA, section 997 citing the following subsections:

(1) No assessment under Schedule E for any year of assessment need be made in respect of emoluments to which this Chapter applies except where –

(a) the person assessable, by notice in writing given to the inspector, requires an assessment to be made,

(b) the emoluments paid in the year of assessment are not the same in amount as the emoluments which are to be treated as the emoluments for that year, or

(c) there is reason to suppose that the emoluments would, if assessed, be taken into account in computing the total income of a person who is liable to tax at the higher rate or would be so liable if an assessment were made in respect of the emoluments;

but where any such assessment is made credit shall be given for the amount of any tax deducted from the emoluments.

(1A) Notwithstanding subsection 1 an assessment under Schedule E in respect of emoluments to which this Chapter applies shall not be made for any year of assessment–

(a) where paragraph (a) of that subsection applies, unless the person assessable has requested the assessment –

(i) in the case of any year of assessment prior to the year of assessment 2003, within 5 years, and

(j) in the case of the year of assessment 2003 or any subsequent year of assessment, within 4 years,

from the end of the year of assessment concerned, and

(b) where paragraph (b) or (c) of that subsection applies, at any time later than 4 years from the end of the year of assessment concerned."

15. The Respondent argued that the Appellant was a chargeable person defined by TCA, section 950(1) as:

"*a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person –*

(a) whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for

this purpose a person who, in addition to such source or sources of income, has another source or other sources of income shall be deemed for the chargeable period to be a person whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources is taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the chargeable period applicable to those emoluments, and, for the purposes of deciding whether such income should be so taken into account, the Revenue Commissioners may have regard to the amount for that, or any previous, chargeable period of the income of the person from that other source or those other sources before deductions, losses, allowances and other reliefs,

16. In the event that the Appellant was a chargeable person, further reliance was placed by the Respondents on TCA, section 995(2) which stated:

(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and
(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(b) Nothing in this subsection shall prevent the amendment of an assessment —

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),
(ii) to give effect to a determination on any appeal against an assessment,
(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,
(iv) to correct an error in calculation, or
(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804(3).

17. The Respondents also relied on the provisions of TCA, section 985A which placed the obligation on the person making the payment to deduct tax from certain perquisites other than emoluments:

> *"in the form of perquisites or profits whatever received by an employee in the form of shares (including stock) being shares or stock in-*
>
> *(a) the company in which the employee holds his or her office or employment, or*
>
> *(b) a company which has control (within the meaning of section 432) of that company."*

Evidence

18. The Appellant gave evidence that he received a letter from **EMPLOYER** dated **DATE REDACTED** informing him that he had been awarded shares which were "*held in trust for me, for my benefit until* **DATE REDACTED** *…. but I had to remain in the* ***EMPLOYER*** *and if I left I would forfeit those*". That letter also specified that "*Tax at the appropriate rate will apply at the time of transfer"*

19. The next letter that the Appellant received from **EMPLOYER** was on **DATE REDACTED** informing him that the shares "*which have since been held in trust on your behalf for a period of three years, have now been transferred into your personal name."* The concluding paragraph of that letter informed the Appellant that "*your tax liability in relation to the above shares will be payable on the total value of the shares at a rate of €* **REDATCED** *per share*." The Appellant subsequently sold those shares in **DATE REDACTED** and paid capital gains tax at that time.

20. In **DATE REDACTED**, the Appellant subsequently received correspondence from **EMPLOYER** informing him that the tax treatment of the Share Award in **DATE REDACTED** was liable to income tax as opposed to capital gains tax. However, the Appellant gave evidence that he had assumed that he was correct to pay the capital gains tax in **DATE REDACTED** as the **DATE REDACTED** correspondence from **EMPLOYER** did not refer to the Long Term Incentive Plan. The Appellant also confirmed that his only source of income in **YEAR REDACTED** was his salary. In addition to his salary in **YEAR REDACTED**, he also received dividends from shares and some deposit interest.

21. The Appellant confirmed that notification of the Share Award was contained in the initial letter that he received from **EMPLOYER** on **DATE REDACTED** which was headed up "Long Term Incentive Plan **YEAR REDACTED**". The Appellant also confirmed that he never made any enquiries as to the terms of the Long Term Incentive Plan. The Appellant also confirmed that notwithstanding that he was informed in the letter of **DATE REDACTED** that tax would apply at the time of the transfer of the shares in **YEAR REDACTED**, there was no explicit reference in that letter to confirm that the tax liability would only arise on the disposal of those shares.

22. Finally, the Appellant confirmed that during the Deferral Period, he had no entitlement to dividends or any right to vote at the annual general meeting.

Submissions - Appellant

Time Limit

23. The Appellant asserted that prior to **DATE REDACTED**, he did not receive any documentation concerning any deferred share scheme other than the letters from **EMPLOYER** of **DATE REDACTED** and **DATE REDACTED**.

24. The Appellant submitted that TCA section 997(1A) applied to limit the ability to raise assessments outside of a statutory period of 4 years from the end of the tax year concerned. It specifically addressed assessments in relation to Schedule E and was introduced by section 17 of the Finance Act 2003, which also introduced general time limits in TCA section 955 and 956.

25. The amendment in the 2003 Finance Act was part of the 'balanced scheme', as noted in the decision of Laffoy J. in the *Revenue Commissioners v Hans Droog* [2011] IEHC 142 which held that the time limits introduced in the self-assessment rules prohibited Revenue from issuing an opinion under TCA, section 811.

26. It was submitted that the application of the time limits in TCA, section 997(1A) operated to prevent a revised assessment being made leading to a repayment of tax outside of the 4-year window and also to prevent the raising of assessments outside this period where a liability arose. This was particularly so in light of TCA, section 997(1A)(b) which applied the time limit to any assessment under TCA, section 997(1)(b).

27. The application of the time limits was required to avoid any discrimination between Schedule E taxpayers and Schedule D taxpayers which would offend against the 'statutory scheme', as highlighted by the Supreme Court in the *Quigley v Harris* [2005] IESC 79.

28. In the absence of TCA, section 997(1A) applying, and in light of the fact that the Appellant disclosed the 'gain' on the shares for capital gains tax, on the sale of such shares, enquiries made and the raising of the assessment by the Respondents were prohibited under TCA, sections 955 and 956.

29. It was submitted that the 'balanced scheme' prohibited the raising of the assessment by the Respondents, particularly in light of the fact that the Appellant disclosed the 'gain' on the shares for capital gains tax and paid capital gains tax on that basis.

Charge to Tax

30. It was accepted that the € **REDACTED**, described by the Appellant as a 'bonus', arose from the Appellant's employment and was therefore taxable as an emolument. However, it was submitted that the 'bonus' arose in the year of allocation as opposed to the year in which the shares were transferred into the Appellant's name and fell to be taxed in that year pursuant to TCA, section 112.

31. It was submitted that the tax treatment of the 'bonus' in the year of allocation must be based solely on the letter received from **EMPLOYER** as no further documentation was received by the Appellant in relation to the 'bonus'. That letter informed the Appellant of the allocation of a sum of €**REDACTED** and that the 'bonus' was being used to acquire **REDACTED** ordinary shares of €**REDACTED** each in **EMPLOYER** and was contingent on the Appellant remaining in the employment of **EMPLOYER** until **DATE REDACTED** when the shares would be transferred into his name. Notwithstanding such a condition, it was asserted that the 'bonus' was earned and beneficially owned by the Appellant with reference to the year of allocation.

32. The Appellant asserted that no restrictions applied in relation his ability to deal in the beneficial interest in the shares. No condition was made limiting the entitlement of the 'bonus' to any vesting arrangements. Furthermore, and notwithstanding that the Rules were formulated for subsequent awards and contained reference to vesting arrangements, there was no evidence that the Rules applied to the 'bonus' awarded to the Appellant.

33. As such, it was submitted that the taxation treatment of the 'bonus' must be considered under general principles and these indicated that as the Share Award arose in the year of allocation and fell to be taxed in that year of assessment.

34. The Appellant derived support from *MacKeown v Roe* 1ITR 214 which concerned the holder of an office who issued invoices for services in a later tax year that had been provided in a previous tax year. The taxpayer sought to argue that as the emoluments were not due or received by him until the later year, he did not fall to be assessable to tax until the later tax year. The High Court confirmed that the income paid in the following tax year was assessable for the earlier tax year on the basis that it was earned in the earlier year.

35. The Appellant also relied on *Bentley v Evans* 39 TC 132, a case concerning an employee who was granted the right to acquire certain shares in the employer company for a discount of 15% of the market value on a particular date. The shares were ultimately acquired by the appellant subsequently by way of interim payments. The Inland Revenue sought to assess the employee based on the market values at the dates the shares were acquired. The taxpayer succeeded in arguing that he fell to be assessed by reference to the initial date the entitlement to the discounted purchase was granted and then on the difference between the market value and the discounted price on that date. The basis of the decision was that the employee had received the 'pecuniary advantage' of the perquisite on the grant of the right to acquire the shares at the discounted price.

36. In the case of *Abbott v Philbin* 39 TC 32, the grant of an option right to acquire shares was viewed as being chargeable to tax on the date of grant of the option (and not the date of its exercise) on the basis it was a perquisite that had value. The fact that the option was non-transferable only impacted on this value but did not change the fact that it was a perquisite on the date of grant.

37. As such it was submitted that the Appellant received a 'bonus' of € **REDACTED** which had been applied to the purchase of shares. Although the terms of the letter of grant indicated the shares

were not in the Appellant's name until **DATE REDACTED**, they did not incorporate any terms restricting the Appellant's right to deal with the beneficial interest in the shares or undermine the argument that the 'bonus', which was a perquisite, had a value from the date of the letter confirming the 'bonus' award.

38. The Appellant further relied on *Dolan v K* 1 ITR 656. In that case, the appellant, who was a teacher and member of a religious congregation, sought to argue that her income was not assessable to income tax on the basis that she had applied the income to her congregation. The High Court President, citing case law from the UK as support, followed the view that once the income was earned, then it fell to be taxed irrespective of the application of that income.

39. The Appellant also argued that the 'bonus', as a pecuniary amount, fell to be paid under deduction of PAYE. This was an obligation that fell on the Appellant's employer.

Submissions - Respondents

Time Limits

40. The **YEAR REDACTED** PAYE balancing statement issued in accordance with the provisions of Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001). TCA, section 997(3) provides that such a statement: -

> *"...shall, if the inspector so directs and gives notice accordingly in or with the statement sent to the employee, be treated in all respects as if it were an assessment raised on the employee"*

41. In the instant case, the **YEAR REDACTED** PAYE balancing statement issued to the Appellant included the following wording: -

> "*In accordance with the provisions of section 997(3) TCA 1997, this statement is to be treated as a Notice of Assessment"*

42. Accordingly, the **YEAR REDACTED** PAYE balancing statement must be treated in all respects as if it were an assessment raised on the Appellant.

43. For the tax years up to and including 2012, section 950(1) defined a 'chargeable person' as: -

> *"...as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person-*
>
> *(a) whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies..."*

44. In year the shares were transferred into the Appellant's name, the Appellant was in receipt of income in the form of the **EMPLOYER** shares which were vested in him pursuant to the

provisions of the Deferred Share Scheme. Until the introduction of TCA, section 985A(1B) in 2011, such amounts were not subject to tax under TCA, Chapter 4 of Part 42. Therefore, as the Appellant was in receipt of income in that year, other than emoluments to which TCA, Chapter 4 of Part 42 applied, he was a chargeable person and was within the self-assessment system.

45. As a chargeable person, the Appellant filed a tax return for the **YEAR REDACTED** on 21st **DATE REDACTED**, which made no reference to the shares which had vested in the Appellant on **DATE REDACTED**. The return filed was a Form 12, which is a prescribed return under section 879 of TCA 1997. The Appellant ought to have submitted a Form 11 return, which was the prescribed form required by section 950(1). Accordingly, the Appellant technically failed to discharge his filing obligations as a chargeable person.

46. The wording of the TCA s.955(2)(a), the general 4-year time limit for the making or amending an assessment, was only applicable where the chargeable person delivered a return and made in the return "*a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period*". As such, there was no time limit on the making of or amending an assessment where the chargeable person had not made a full and true disclosure.

47. The Respondents submitted that the Appellant's return for **YEAR REDACTED**, could not, by any standards, be said to have contained a full and true disclosure of all material facts in circumstances where it made no reference whatsoever to the vesting of shares in the Appellant.

48. As the time limit imposed by TCA, section 955(2)(a) did not apply by reason of the Appellant's failure to make a full and true disclosure of all material facts in his **YEAR REDACTED** return, it followed that the **YEAR REDACTED** PAYE balancing statement was not issued outside the time limits imposed by TCA 1997.

Charge to Tax

49. The Rules made clear that the Appellant was never entitled to a cash sum, either in the amount of €**REDACTED**, or any amount. The sole entitlement of the Appellant under the Rules was, in the event of a Share Award being made, the right to receive the Share Award as fully vested shares on the expiry of the Deferral Period, provided that he remained an Eligible Employee for the duration of that period.

50. There was no provision in the Rules for an employee to elect to receive cash rather than an Award of shares. If the Appellant had not received a Share Award, he would not have received the cash amount of €**REDACTED**, in its stead.

51. The Respondents submitted that this ground of appeal cannot succeed because, as a matter of fact, the Appellant never had an entitlement to a cash amount of €**REDACTED**.

When was the bonus taxable?

52. The Appellant did not acquire the Share Award in the year of allocation. Rather, he received the right to receive shares on the expiry of the 3 year Deferral Period.

53. As such, the Appellant did not acquire any beneficial entitlement to the shares until the year in which the shares were transferred into the Appellant's name. It was also of relevance that throughout the Deferral Period, the Appellant had no right to receive dividends, and had no right to attend meetings of members or vote thereat.

54. It is well established that the grant to an employee of a right to receive or acquire shares will only give rise to a taxable event if the right is capable in some way of being turned to pecuniary account by the employee. Judicial support for this interpretation was set out in *Abbott v Philbin (Inspector of Taxes*) 1961 AC 352 and *UBS AG v Revenue* and Customs Commissioners [2013] STC 68).

55. The Respondents submitted that there was no means by which the Appellant could have derived a pecuniary benefit from his conditional right to receive shares at a future date unless he remained an employee of **EMPLOYER** until the Deferral Period that expired in 3 years after the date of allocation.

56. The Respondents further submitted that regard must be had to the decision of Denning LJ in *Abbott v Philbin,* where he concluded:

> *"My Lords, in all the cases hitherto when a servant has been granted by his employer a purely personal right to receive in the future a benefit during his service, the judges have with one accord held that he receives the "perquisite " or "profit" when the thing is actually transferred to him and not before. So said Danckwerts J in Bridges (Inspector of Taxes) v Hewitt, Bridges (Inspector of Taxes) v Bearsley ... and both Jenkins and Sellers LJJ agreed with him on this point. So said all the judges in Forbes' Executors v Inland Revenue Comrs. And I must say that I agree with them. It is the same point as I have insisted on throughout, Tax is not payable on the right in the future to receive "salaries, fees, wages, perquisites or profits " but only on those things when received.*

57. While Lord Denning was in the minority of the House of Lords in *Abbott v Philbin* on the specific issue of whether a taxable event occurred on the grant of an option to acquire shares, the Respondents submitted that the foregoing statement was a correct statement of general principle in cases where no immediate pecuniary benefit can be derived from a future right, and was relevant and applicable in the instant case.

58. While not determinative, it was also of relevance that **EMPLOYER** understood at all material times that the operation of the Share Award would result in a tax liability for participating employees on the date the shares vested in the employees by the Trustees following the expiry of the Deferral Period, and not on the date that the Share Award was made. **EMPLOYER** notified participating employees of this fact, and the Appellant was so advised both in **DATE REDACTED** and **DATE REDACTED**.

59. The Respondents submitted that the Appellant's liability only arose when the shares were vested in him after the 3 year Deferral Period.

Analysis

60. In considering this issue, I have not relied on Rules received by the Appellant on **DATE REDACTED**, approximately 5 years after he was originally notified of the Share Award. Furthermore, both parties accepted that the Share Award constituted emoluments and fell within the charge to tax pursuant to TCA, section 112.

61. The **EMPLOYER'S** letter received on **DATE REDACTED** made clear that the Appellant was allocated a sum of €**REDACTED** which was used solely to acquire **REDACTED** ordinary shares of €**REDACTED** in **EMPLOYER.** Furthermore, it is not possible to draw any inference from that letter that there was an immediate entitlement to a cash bonus or any right to determine how the cash sum of €**REDACTED** could be utilised. It was also clear that the Appellant had no involvement in the investment decision to acquire shares as at the time he was notified of the Share Award, the shares had already been acquired.

62. The Appellant confirmed that during the Deferral Period, he had no entitlement to dividends or any right to vote at the annual general meeting. Furthermore, he confirmed that if he left **EMPLOYER**'s employment before the expiration of the Deferral Period he would not have received the Share Award. Furthermore, no evidence was adduced as to how the Share Award could be turned into pecuniary account in the year of allocation.

63. On the basis that the Appellant had no involvement in the decision to acquire the **EMPLOYER** shares, could not demand immediate payment of cash in the year of allocation or lawfully dispose of those shares before the share were transferred into his name, I have determined that Share Award notified to the Appellant on **DATE REDACTED** could not have been turned into pecuniary account until the year the shares were transferred into the Appellant's name, the date the beneficial interest in the **EMPLOYER** shares vested in the Appellant. As such, the Appellant was assessable to tax on the Share Award in the year the shares were transferred into his name as a perquisite or profit that arose from having or exercising an office or employment pursuant to TCA, section 112.

64. It is also clear that TCA, section 985A(1A) specifically excluded the requirement to deduct tax on share awards in a company in which the employee holds an office or employment. Therefore, there was no obligation on **EMPLOYER** to deduct tax from the Share Award in the year the shares were transferred into his name.

Time Limits

65. As the Share Award could only be turned into pecuniary account in the year the shares were transferred into the Appellant's name, the Appellant was in receipt of income other than emoluments to which TCA, Chapter 4 of Part 42 applied. Furthermore, as tax from the emoluments comprising the Share Award was not "*taken into account in determining the amount of his or her tax credits and standard rate cut-off point for the chargeable period applicable to those emoluments*", the provisions of TCA, section 950 determined that the Appellant was a chargeable person in in the year the shares were transferred into his name. As

such, there was an obligation on the Appellant to disclose the Share Award in the tax return in respect of the year the shares were transferred into his name. The Appellant's failure to include the Share Award in the **YEAR REDACTED** tax return rendered that return incomplete.

66. While the Appellant sought to rely on the decision of Laffoy J. in the *Revenue Commissioners v Hans Droog* [2011] IEHC 142 which was subsequently approved by the Supreme Court in *The Revenue Commissioners v Droog* [2016] IESC 55, such reliance is misplaced. It is clear that the Appellant failed to file a return containing "*a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period".* As observed by Clarke J., at paragraph 7.4, the protection afforded by TCA, section 955(2)(a) only applied "*in the case of a person who has made a fully compliant return."* In this case, the Appellant failed to make a fully compliant return.

67. Therefore, in light of the Appellant's failure to report details of the Share Award in **YEAR REDACTED** when the shares vested in him, there was no statutory impediment preventing the Respondents from amending the assessment in 2011. As such the Appellant was unable to rely on the protection afforded by TCA, section 955(2)(a) preventing the Respondents amending the **YEAR REDACTED** balancing statement which for the purposes of TCA, section 997(3) constituted "*an assessment raised on the employee"*.

68. On this basis, I have determined that the Respondents in 2011 were entitled to amend the balancing statement for the **YEAR REDACTED** to include the Share Award within the charge to tax as an emolument pursuant to TCA, section 112.

Conclusion

69. In this regard, I have determined that:

    (a) the Share Award granted in the year of allocation could not be turned into pecuniary account at that time,
    (b) the beneficial ownership of the shares only vested in the Appellant in the year the shares were transferred into his name**,**
    (c) the shares received by an employee in a company in which he or she *"holds his or her office or employment",* were not emoluments for the purposes of the TCA, section 985A as it applied in **YEAR REDACTED**,
    (d) there was no obligation on **EMPLOYER** to operate PAYE on the Share Award,
    (e) the Appellant received sufficient notice from **EMPLOYER** that the Share Award was taxable in **YEAR REDACTED** and
    (f) the Appellant was a chargeable person who failed to make a fully compliant return in **YEAR REDACTED**.

70. Therefore, the charge to tax pursuant to TCA, section 112 applied to the Share Award in the year the shares were transferred into the Appellant's name as opposed to the year of allocation. Furthermore, the Respondents were lawfully entitled to amend the balancing statement for **YEAR REDACTED** on 22nd September 2011 due to the failure of the Appellant, as a chargeable person, to disclose the Share Award rendering his return for **YEAR REDACTED** to be incomplete.

71. This appeal is therefore determined in accordance with TCA, section 949AK and as a consequence the amended balancing statement dated 22nd September 2011 for the year ended **YEAR REDACTED** shall stand.

_____

Appeal Commissioner
May 2018

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