



14TACD2018

BETWEEN/

[NAME REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondent

## DETERMINATION

### Introduction

1. This is an appeal pursuant to section 67 of the Capital Acquisitions Tax Consolidation Act 2003 ("CATCA 2003") against Notices of Assessments to Capital Acquisitions Tax (CAT) for the years beginning 1<sup>st</sup> September 2003 and ending on 31<sup>st</sup> August 2014 in respect of monthly payments of €2,539.68 (Payments) received by the Appellant from his parents.
2. The Appellant claims that the Payments constituted support and maintenance and therefore were not considered to be gifts pursuant to section 82(2) of the CATCA 2003.

### Background

3. Following a Revenue investigation into the tax affairs of the Appellant's father in 2013, the Respondent became aware of the existence of the Payments. The Payments received by the Appellant were as follows:

2003	€27,934
2004-2012	€274,284 (€30,476 x 9 years)
2013	<u>€25,937</u>
<b>Total</b>	<b><u>€328,155</u></b>



4. A Capital Acquisitions Tax Return was filed by the Appellant on 10 February 2002 declaring taxable gifts from his parents valued at €613,920. However, no Capital Acquisitions Tax returns were filed by the Appellant between 2003 and 2014 in respect of the Payments.
5. The Appellant submitted that the Payments did not constitute gifts for CAT purposes by virtue of the provisions of section 82(2) of the CATCA 2003 as it applied for the relevant years in question.
6. The Respondent was of the view that the Payments do not fall within the provisions of section 82(2) of the CATCA 2003 and on the 23rd February 2016 raised assessments for the periods 1 September 2003 up to 31 August 2014 inclusive.
7. The Appellant lodged appeals against the assessments for each period on the 16<sup>th</sup> March 2016.

### Legislation

#### *Capital Acquisitions Tax Consolidation Act 2003*

8. A charge to gift tax pursuant to section 4 of the CATCA 2003 arises *“on the taxable value of every taxable gift taken by a donee.”*
9. Section 82 of the CATCA 2003 provided exceptions to the general charge on gifts and inheritances. Subsection 2, as it applied to the years under appeal, excluded certain gifts by stating:

*“Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponent of money or money's worth—*

*(a) by—*

*(i) the spouse or child of the disponent, or*

*(ii) a person in relation to whom the disponent stands in loco parentis,*

*for support, maintenance or education, or*

*(b) by a person who is in relation to the disponent a dependent relative under section 466 of the Taxes Consolidation Act 1997, for support or maintenance,*

*is not a gift or an inheritance, where the provision of such support, maintenance or education, or such support or maintenance—*

*(i) is such as would be part of the normal expenditure of a person in the circumstances of the disponent, and*



(ii) *is reasonable having regard to the financial circumstances of the disponent.*

10. While section 4 of the CATCA 2003 imposes a charge to taxation on all gifts, monetary or otherwise, including from a parent to their child, section 82(2) of the CATCA 2003 excluded the provision of “*support, maintenance or education*” for one’s child if certain conditions as to normality and reasonableness were met.

#### *Statutory Interpretation*

11. Both parties to this appeal agreed that the words contained in section 82(2) of the CATCA 2003 were clear and unambiguous and should be given their ordinary and literal meaning. Correspondingly both parties relied on the same authorities namely *Revenue Commissioners v Doorley* [1933] IR 750 and *Inspector of Taxes v Kiernan* [1981] IR 117 in the approach to be taken in the interpretation of a taxation statute.

12. In this regard, both parties referred to the canons of construction for the interpretation of statutes as set out in *Kieran*, where Henchy J. at p.121 said:

*“A word or expression in a given statute must be given meaning and scope according to its immediate context, in line with the scheme and purpose of the particular statutory pattern as a whole, and to an extent that will truly effectuate the particular legislation or a particular definition therein.*

.....

*First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning.*

....

*Secondly, if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, 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...*

....

*Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use.”*



## Evidence

13. The Appellant was born on **REDACTED**. He worked in the UK for a number of years initially as a **REDACTED** manager before changing role to **REDACTED**. While in the UK he bought an apartment in Dublin prior to returning to Ireland.
14. He returned to Ireland in **REDACTED** when he was aged **REDACTED** and joined his father's company, **REDACTED**, a company engaged in **REDACTED**. He gave evidence that there were over **REDACTED** people working in the company. He said that he was "*one of the lowest salaried members of staff*". He married in **REDACTED** and has **REDACTED** children.
15. During the course of his evidence the Appellant, produced the following schedules and proceeded to give evidence of his income earning capacity and his expenditure for the years 2002 to 2012.

## Years 2002 - 2005

Year				2002	2003	2004	2005
<b>Net Salary</b>				31,045	31,112	37,267	43,180
Mortgage				(5,389)	(6,701)	(10,834)	(11,516)
Living Expenses				(37,028)	(49,115)	(84,040)	(65,509)
Car Purchase							(27,300)
<b>Rental Property</b>							
Property 1				15,173	11,500	14,950	14,150
Expenses				(16,067)	(17,352)	(16,489)	(15,694)
Property 2					16,200	15,438	15,900
Expenses					(16,636)	(17,940)	(19,541)
Interest in Property Porfolio				15,009	14,895	20,254	39,991
Expenses				(11,579)	(12,008)	(12,677)	(12,683)
Net Deposit Interest							3,001
				(8,836)	(28,105)	(54,071)	(36,021)





**Years 2006 – 2009**

<b>Year</b>				<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Net Salary</b>				44,125	45,701	46,135	44,169
Mortgage				(12,236)	(13,135)	(12,854)	(10,639)
Living Expenses				(55,632)	(44,517)	(50,305)	(45,853)
Car Purchase					(31,950)		
<b>Rental Property</b>							
Property 1				14,400	14,400	18,000	15,000
Expenses				(15,627)	(17,563)	(16,730)	(16,783)
Property 2				16,200	17,355	20,400	18,540
Expenses				(17,052)	(20,432)	(19,787)	(16,727)
Interest in Property Porfolio				26,734	28,210	22,505	33,250
Expenses				(20,534)	(8,254)	(9,586)	(5,253)
Net Deposit Interest				3,610	6,657	9,506	6,551
				(16,012)	(23,528)	7,284	22,255

**Years 2010 – 2012**

<b>Year</b>				<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Net Salary</b>				43,572	42,996	42,837
Mortgage				(10,433)	(10,570)	(10,375)
Living Expenses				(79,973)	(50,725)	(47,444)
Car Purchase						
<b>Rental Property</b>						
Property 1				11,850	13,400	11,200
Expenses				(15,007)	(16,075)	(15,220)
Property 2				14,250	15,000	16,250
Expenses				(18,061)	(17,812)	(15,428)
Interest in Property Porfolio				24,635	23,770	23,473
Expenses				(3,201)	(9,892)	(3,249)
Net Deposit Interest				6,283	3,930	13,740
				(26,085)	(5,978)	15,784



16. The Appellant's evidence was that in 2002 he received a gift of property valued at €460,000 in **REDACTED**. In that year, he also received cash gifts of €128,000, €25,000 and shares in company called **REDACTED** valued at €40,000. The aggregate amount of taxable gifts received from his parents in 2002 was approximately €613,920. All of the gifts were declared by the Appellant in his gift tax return.
17. He had money in 3 separate bank accounts during 2002 but was not able to quantify the exact amount. However, he estimated that there was approximately €25,000 in one account, €50,000 in another account and was not certain how much was in the third account but later confirmed that in 2002 he had approximately €150,000 in deposit accounts.
18. The Appellant said that the receipt of Payments commenced in 2003 with the intention of keeping him in a "*fairly decent lifestyle*". In 2003, the Appellant sold his residence in **REDACTED** which he acquired in 2001 and purchased **REDACTED**.
19. The expense deficits were funded by the monthly Payments of €2,539. In the year 2004, the deficit of €54,071 was funded from the sale of a property that he owned in London from which he derived a profit of approximately Stg£30,000 - Stg£40,000.
20. He is a beneficiary in a discretionary trust. This trust was set up by his father. It was a means to accumulate wealth for the family. Today the fund is worth about €4 million. He said that in 2015 he paid off his mortgage from funds provided by the trust in the sum of €90,000. He went to say that the purpose of the trust was to provide benefits to himself and other beneficiaries but it did not fund living expenses but capital payments to pay off mortgages on main residences and other investment properties.
21. He also has an interest in a holiday home in **REDACTED**.
22. He said that he never asked his parents for support. He confirmed that he had a lot of money at his disposal, was a man of considerable means and lived a comfortable lifestyle.

### ***The Appellant's Mother***

23. the Appellant's mother, gave evidence that she was not aware of financial position of her children.
24. She said that she was the co-disponer of the Payments together with her late husband **REDACTED** who passed away on **REDACTED**. All income that came into the household was treated as joint income in the family home.
25. From their joint income, a monthly stipend was paid to the Appellant from 2003 and continued to 2013 in the sum of €2,539.68. Such sums were given for the purposes of his support and maintenance and became part of their normal monthly expenditure.



26. Both she and her husband lived a modest lifestyle with regard to their means. While they had access to considerable income during the years 2003 to 2013, they were not ostentatious with spending and the stipend to the Appellant was relatively modest with regard to the sums of money which were at their disposal. She gave evidence that during the years under appeal, her and her husband's combined income was in excess of €12 million. Therefore, based on their financial means they were happy to be in a position to provide support to the Appellant.
27. She was not directly involved with the preparation of her late husband's accounts or tax returns and took professional tax advice in relation to the Payments made.
28. Finally, it was the understanding of the Appellant's mother that at all times that the Payments were exempt from CAT.

### ***The Appellant's Tax Adviser***

29. **REDACTED**, in his capacity as a tax expert, gave evidence that the Appellant's mother and her late husband had income of €12 million during the years under appeal.

### **Submissions**

#### ***Appellant***

30. The Appellant submitted that the payments in question came fully within the exemption provided for in section 82(2) of the CATCA 2003 for the following reasons:
  - (i) The payments were consistent and established over a long period of time;
  - (ii) The payments formed part of a settled pattern of expenditure adopted by the disponers;
  - (iii) The payments constituted support and/or maintenance of the Appellant;
  - (iv) The payments were part of the disponers' normal expenditure having regard to the financial circumstances of the disponers;
  - (v) The payments were reasonable having regard to the financial circumstances of the disponers, who were persons of considerable means;
  - (vi) Section 82(2) only takes into consideration the circumstances of the disponer and the financial circumstances of the recipient are irrelevant;
  - (vii) At the time the relevant provision was introduced, the Oireachtas made it clear that the circumstances of the recipient would not be relevant.
31. The Appellant submitted that the Payments constituted support and/or maintenance of the Appellant noting in particular that the terms "*support*" and "*maintenance*" are not defined in the CAT legislation and must therefore be given their ordinary meaning.
32. Recourse was thereafter made to the following dictionary definitions from the Oxford English Dictionary:



- a) “support” give assistance to, especially financially.
- b) “maintenance” - the provision of financial support for a person’s living expenses or the support so provided

33. It was submitted that the Appellant used the Payments to fund his family’s day to day living expenses. It was also highlighted that there was nothing in section 82(2) of the CATCA 2003 which indicated that the recipient must be in any way dependent on the sums provided. On the contrary, it was the financial circumstances of the disponent which were relevant for the purposes of excluding the gift from a charge to CAT.

34. As such, section 82(2) of the CATCA 2003 required that the “support” or “maintenance” must form part of the normal expenditure of a person in the circumstances of the disponent. However, the legislation contained no definition of the phrase “normal expenditure”. In this regard recourse was made to a number of UK cases which considered the meaning of “normal expenditure” in the context of a similar provision in the UK Inheritance Tax Act 1984. Section 21(1) of the Inheritance Act 1984 reads:

*“A transfer of value is an exempt transfer if, or to the extent that, it is shown—*

- a) that it was made as part of the normal expenditure of the transferor, and*
- b) that (taking one year with another) it was made out of his income, and*
- c) that, after allowing for all transfers of value forming part of his normal expenditure, the transferor was left with sufficient income to maintain his usual standard of living.”*

35. In *Bennett & Ors v CIR* [1995] STC 54, the term ‘normal expenditure’ was taken to mean expenditure which, when it took place, accorded with the settled pattern of expenditure adopted by the donor and that the existence of such a settled pattern might be established by the donor having made such payments in the past or that the donor had assumed a commitment, but that there was no fixed minimum period during which the expenditure had to occur, nor that the expenditure needed to be fixed in amount. In that case, Lightman J. acknowledged that a single payment may be sufficient to qualify and stated at p.58:

*“For an expenditure to be ‘normal’ there is no fixed minimum period during which the expenditure shall have occurred. All that is necessary is that on the totality of evidence the pattern of actual or intended regular payments shall have been established and that the item in question conforms with that pattern. If the prior commitment or resolution can be shown, a single payment implementing the commitment or resolution may be sufficient. On the other hand, if no such commitment or resolution can be shown, a series of payments may be required before the existence of the necessary pattern will emerge. The pattern need not be immutable; it must, however, be established that the pattern was intended to remain in place for more than a nominal period and indeed for a sufficient period (barring unforeseen circumstances) in order for any payment fairly to be regarded as a regular feature of the transferor’s annual expenditure.”*





## Finance Act 2014 Amendment

36. Prior to its amendment by section 81 of the Finance Act 2014, section 82(2) of the CATCA 2003 referred to payments for “*support, maintenance or education*” and “*support or maintenance*”. The Appellant submitted that these phrases were not qualified or quantified in any way and there was no age restriction in relation to the reference to the child of the disponent.
37. It was submitted that the amendment in 2014 made clear that section 82(2) of the CATCA 2003 as it stood prior to the amendment, exempted from CAT payments such as those made to the Appellant.
38. The Appellant also emphasised the clear distinction between subsections 2 and 4 of section 82. Subsection 2 as it stood prior to the 2014 amendment contained no age restriction in relation to the reference to the child of the disponent. By way of contrast subsection 4, which exempts post-death payments (for support, maintenance or education) to children after the death of both parents, clearly confined the exemption to minor children of the deceased. Like subsection 4, the Oireachtas could have specified that subsection 2 should only apply to minor children but it did not do so. In the circumstances, it was submitted that it is not open to the Appeal Commissioners to modify the words used so as to construe section 82 of the CATCA 2003 in the manner suggested by the Respondent.

## Respondent

39. Section 82(2) of the CATCA 2003, as it applied to the Payments received by the Appellant, can be broken down into 5 constituent elements:
- a) the payment of money or money’s worth must be from a parent to a child, or from spouse to spouse
  - b) the disponent must be alive at the time of the payment
  - c) the payment or benefit must be received by the donee for the purpose of support, maintenance or education.
  - d) the provision of such support, maintenance or education must be such as would be part of the normal expenditure of a person in the circumstances of the disponent and
  - e) the provision must be reasonable having regard to the financial circumstances of the disponent.
40. The Respondent submitted that the five requirements cannot be interpreted in isolation from each other, or in isolation from their context of the statute as a whole. The onus, therefore, was on the Appellant to demonstrate entitlement to the relief against taxation, and such relief “*must be given expressly and in clear and unambiguous terms*”. (*Revenue Inspectors v Doorley* [1933] IR 750 at p. 766 and Keane C.J. in *Patrick O’Connell (Inspector of Taxes) v Fyffes Banana Processing Limited* (Supreme Court, 24th July 2000 at p. 8)
41. The Respondent went on to argue that the principal and overriding requirement for relief under section 82(2) of the CATCA 2003 was that the receipt should be for “*support, maintenance or*



*education*". The question of education in this case was not relevant however the use of that word was nevertheless of some significance in construing what was meant by "*support*" and by "*maintenance*".

42. The Respondent acknowledged that the test of what is normal and what is reasonable is to be determined with reference to the circumstances of the disponent. However, that did not mean that the circumstances of the disponent also determined whether the gift was received by the donee for "*support, maintenance or education*".
43. The Respondents also accepted, that the provision of the gift, if it was for "*support, maintenance or education*," would have been reasonable having regard to the financial circumstances of the disponent. The position of the Respondents, however, was that the Appellant failed to establish that the gifts were received for any of the three purposes provided for in the legislation, namely "*support, maintenance or education*," and that therefore the Payments were not subject to the statutory exemption provided by section 82(2) of the CATCA 2003.
44. The legislature, in the form of Paragraph 1 of Schedule 2 of the CATCA 2003, saw fit to apply a differentiated tax-free allowance to a gift or payment simpliciter from a parent to a child. In contrast to gifts simpliciter from a parent to a child, which are subject to full taxation, payments from a parent to a child which are received for the purpose of "*support, maintenance or education*" are specifically exempted from CAT. It was the clear and plain intention of the legislature, manifest in the statute's treatment of receipts from parents, to differentiate between receipts simpliciter, which are taxed but enjoy the generous allowance, and receipts for the purpose of "*support, maintenance or education*" which enjoy an absolute exemption if they meet the other requirements of section 82(2) of the CATCA 2003.
45. The purpose of the section, it was argued, was not to facilitate transfers of wealth. It was to prevent any risk of day-to-day payments by a parent for the benefit of his or her child from being taxable in the hands of the child. This was expressly provided for through the stipulation that the payment or payment-in-kind was tax-exempt if it was received for support or maintenance. It would therefore be absurd to interpret "*support*" or "*maintenance*" in a manner that would allow all transfers of wealth from wealthy parents to an adult child to be exempt from CAT.
46. Similarly, the legislature included the requirement that the purpose of the receipt of the payment must be "*for support, maintenance or education*". To ignore the needs of the donee is to render the expression meaningless.
47. It was therefore submitted that the ordinary meaning of "*support*" and "*maintenance*", involves some element of a requirement or need for upkeep. A payment received by a donee for "*support*" implied that the donee needed or required the payment to meet living expenses or a similar expense. A payment received for "*maintenance*" implied that it was part of a series of payments made for the purpose of upkeep or to meet living expenses. Both words, in their ordinary sense, and in the context of the 2003 Act, implied that the payment was made to help the donee meet living expenses, or meet a challenge or expense that had arisen; both words therefore implied an element



of need. This interpretation gave the words their normal and natural meaning, and reflected the plain intention of the legislature.

48. The Respondent noted that for a payment to qualify as support, the child did not have to be dependent in the legal sense of a “dependent relative”. However, the donee must have received the payment to meet a living expense, or must be financially dependent on the payments for his upkeep.
49. The Respondent also relied on the accepted principle of interpretation that a word should be construed *noscitur in sociis*, that is to say that the interpretation of a word or phrase is affected by the words with which it is grouped. Furthermore, no word or phrase or section is surplus, that is to say in this context that the words “support” and “maintenance” cannot be interpreted in manner which would render themselves, or the word “education,” or section 82(2) redundant.
50. As such, the legislature saw fit to exempt a payment received for one of three purposes. The first was a payment made to support the adult child. The second was a payment made to maintain the adult child. The third was a payment towards the education of the adult child. In construing the first and second terms, “support” and “maintenance”, and in doing so *noscitur in sociis*, it was submitted that the legislature exempted payments made for the education of one’s adult child, plus payments made for support and for maintenance. The clear intention was to allow tax-free payments to be made by a parent to tackle life’s necessities plus education, not to allow tax free transfers of wealth in all cases in which the financial circumstances of the disponent allowed it.
51. This interpretation was further supported by the exclusion of the education purpose, but not the other two purposes, when applying the exemption to elderly adult dependents.

### Analysis

52. The net issue between the parties is whether the Payments fell within the exclusion from charge to CAT as monies received by the Appellant as “support” and “maintenance” pursuant to section 82(2) of the CATCA 2003.

### Evidence

53. On his return to Ireland in **REDACTED** at the age of **REDACTED**, the Appellant was employed by **REDACTED**, a profitable company controlled by his parents. He worked in the office and in his own words was “one of the lowest paid salaried members of staff” notwithstanding that he is a **REDACTED** having previously worked in the UK engaged in the same activity.
54. The Appellant’s expenditure exceeded his salary from **REDACTED**. Furthermore, while it would appear that the Appellant’s rental income exceeded the associated running costs of those properties, the tax on the rental income further compounded the Appellant’s financial position. Therefore, the receipt of the Payments ensured that the Appellant was not in financial difficulty.



55. It is therefore clear that the Appellant was living beyond his means and far in excess of the salary paid to him in a company controlled by his parents. The Payments would have also assisted the Appellant in maintaining his rental property portfolio. As such an inference could be drawn that the Appellant's salary was suppressed and the shortfall in his income was financed by the Payments from his parents.
56. It is also significant that the Appellant acquired cars in 2005 and 2007 for €27,300 and €31,950 respectively without recourse to borrowings. Someone in a comparable situation on the same salary level would have ameliorated the cost of acquiring a car by borrowings and thereby spread the financial burden over a number of years.
57. Finally, when considering whether the Payments constituted "*support*" and "*maintenance*", it is very relevant that the Appellant had previously received a gift of cash from his parents in 2002 and had approximately €150,000 in bank accounts which could have funded his annual expenditure deficit. However, none of the monies held on deposit were used to fund the Appellant's lifestyle or indeed assisted in purchasing the cars in 2005 and 2007. It is also relevant that the Appellant derived net deposit interest in the years 2005 to 2012 amounting to approximately €50,000 which infers that he held a significant sum on deposit. Therefore, it is clear that the Payments preserved the Appellant's ability to retain substantial sums in deposit accounts that could have been utilised for purposes other than for his support or maintenance.

#### *Divergence with Submissions*

58. It is the Appellant's submission that I ignore that Appellant's financial situation and focus on the financial means of his parents and whether such payments constituted "*normal expenditure*". I disagree with that approach as it is incumbent on me to satisfy myself that the Payments constituted "*support, maintenance*".
59. The Respondent argued that "*support, maintenance or education*" should be construed collectively. The Appellant submits the use of the conjunction "*or*" ensures that education is a standalone condition. I agree with the Appellant, the statutory inclusion of the word "*or*" provides an alternative otherwise the Oireachtas would have inserted "*and*" between "*maintenance*" and "*education*".

#### *Statutory Approach*

60. I agree with the parties that the approach to statutory interpretation, when directed to the public at large, is as set out in *Kiernan* and requires that I apply the ordinary meaning to the words "*support*" and "*maintenance*".
61. As such the general application of the word "*support*" as applied in a financial context, is to provide assistance. Similarly, the statutory use of the word "*maintenance*" within section 82(2) of the CATCA



2003 connotes ongoing financial support. As such, both words involve some element of a requirement or need for upkeep. A payment received to “*support*” a person implies a need or requirement to meet living expenses or a similar expense. Correspondingly use of the word “*maintenance*” denotes a series of payments made for the purpose of upkeep or to meet living expenses. This interpretation gives the words their normal and natural meaning, and reflects the plain intention of the legislature.

62. There is no doubt that the Appellant required the Payments to subsidise his lifestyle and help finance his property portfolio. However, the Appellant’s dependency on his parents arose as a consequence of being “*one of the lowest paid members of staff*” in a successful company owned and controlled by his parents, notwithstanding his age, qualification and prior experience.
63. From the evidence adduced, the Appellant acquired several investment properties and was unable to fund his lifestyle and also to discharge the costs associated with such properties from his salary and his rental income. Furthermore, rather than rely on monies that he held in 3 separate bank accounts, he used the Payments to fund his annual expenditure deficit.
64. I would therefore concur with the submission of the Respondent that the purpose of the gift exclusion is not to facilitate transfers of wealth. It was enacted to prevent any risk of day-to-day payments by a parent for the benefit of his or her child from being taxable in the hands of the child. This is expressly provided for through the stipulation that the payment or payment-in-kind is tax-exempt if it is received for support or maintenance. It would therefore be contrary to the clear statutory purpose to interpret “*support*” or “*maintenance*” in a manner that would allow all transfers of wealth from wealthy parents to an adult child to be exempt from CAT.
65. Correspondingly, the legislature, in the form of paragraph 1 of Schedule 2 to the CATCA 2003, saw fit to apply a differentiated tax-free allowance to a gift or payment from a parent to a child. In contrast to such gifts which are subject to full taxation, payments from a parent to a child which are received for the purpose of “*support, maintenance or education*” are specifically excluded from CAT. It was the clear and plain intention of the legislature, manifest in the statute’s treatment of receipts from parents, to differentiate between receipts simpliciter, which are taxed but enjoy the significant allowance, and receipts for the purpose of “*support, maintenance or education*” which enjoy an absolute exemption if they meet the other requirements of section 82(2) of the CATCA 2003.
66. The only interpretation capable of meeting those propositions is that a “*support*” payment is a payment received to meet living expenses or other necessities, and that a “*maintenance*” payment is a periodic payment to meet those requirements. The interpretation proffered by the Appellant, that the fact alone of receipt is evidence that the payments were received for support, would mean that all transfers of wealth, if they were reasonable and normal in the circumstances of the disponent, can be considered as support payments. This would render irrelevant the clear purposive requirement contained in section 82(2) of the CATCA 2003.
67. In this regard, it is my determination that the Payments to the Appellant from 2003 to 2013 do not fall within the provisions of section 82(2) of the CATCA 2003 as “*support*” and “*maintenance*” but





rather cash gifts to finance the lifestyle and assist in maintaining the Appellant's rental property portfolio when he had ample resources in the form of significant sums in deposit accounts.

### **Conclusion**

68. The Payments received by the Appellant from his parents in respect of the years 2003 to 2013 inclusive did not constitute sums received for "*support*" or "*maintenance*" as required under section 82(3) of the CATCA 2003. While an inference could be taken that the Appellant's salary, derived from an employment in a company owned and controlled by his parents, was not commensurate with his qualifications and experience, it was the evidence of the previous gifts from his parents and the significant element of those gifts which had been retained in deposit accounts which were more than sufficient to finance not only his ongoing living requirements but also to cover any deficit from his rental property portfolio that persuaded me that the CAT exemption was not available. I am therefore of the view that the ostensible purpose of the exemption from CAT in respect of "*support*" and "*maintenance*" as expressed in the wording of section 82(2) of the CATCA 2003 is to provide support and maintenance to a child that required financial assistance with ongoing living requirements and not to subsidise children who have visible means of supporting themselves or indeed to assist in the purchase and retention of a rental portfolio comprising of 5 properties.
69. This appeal is therefore determined in accordance with TCA, section 949AK and as a consequence the assessments for the years beginning 1<sup>st</sup> September 2003 and ending on 31<sup>st</sup> August 2014 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.**

