04TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns whether an international prize awarded to an author for the author's literary work is taxable or not under Case II Schedule D as income arising from the author's profession as a writer.

2. By determination dated May 2018 the Respondent refused a tax repayment sought of Redacted in respect of an International Prize valued at Redacted received by the Appellant in 2012. The Appellant appealed to the Tax Appeals Commission.

3. This appeal is determined without a hearing, as agreed between the practices, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

4. Author won the Redacted prize in Redacted in the amount of Redacted in respect of the author's work "Redacted". Author received an Artists' Exemption relief on any profits or gains in respect of earnings as a writer, Redacted (Artists' Exemption is up to €50,000 p.a.). Author had availed of the full amount of Artists' Exemption during Redacted (before taking account of the Redacted prize) and any profit or gain from the author's profession or vocation, as a writer, in excess of the exemption limit is fully taxable. Revenue are of the opinion that any grants, awards or prizes , such as the Redacted Prize, received by an artist for their artistic work are generally taxable as income. The Appellant disputes this treatment and argues that the prize in question is not taxable.

5. The Appellant appealed this decision to the Tax Appeals Commission on the basis that the Revenue are incorrect in their treatment of the Redacted as taxable.

Legislation

a. Section 18 TCA 1997
b. Section 65 TCA 1997
c. Section 195 TCA 1997

6. As set out in Appendix I below, the relevant legislative provision is section Section 18 TCA 1997 and in particular subsection (2) which provides;

> *"Tax under Schedule D shall be charged under the following Cases:…*
> *Case II – Tax in respect of any profession not contained in any other Schedule;''*

Thus the Appellant is fully taxable on the author's earnings as a writer under Case II of Schedule D of s.18 TCA 1997.

7. Section 65 TCA 1997 sets out the basis of assessment of profits arising under Case II Schedule D. It states:

> "*Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment*"….

8. Section 195 TCA 1997 provides exemption of certain earnings of writers, composers and artists. Because the Appellant has already, in Redacted, received the full exemption limit of €40,000 Artists' Exemption relief for that year, before taking account of the Redacted prize, and because there is no dispute between the parties about the Appellant's entitlement to Artists' Exemption relief, it is not necessary to give further consideration to the provisions of s.195.TCA 1997 in determining the taxability of the prize of €30,716 received by the Appellant in 2012.

Appellant's Submissions

9. The Appellant, through the author's agent has asserted the following:

> *'The Appellant,* Redacted *is one of* Redacted *authors. Author's book "*Redacted*' was published in* Redacted *the book did win the* Redacted *award* Redacted'

The Appellant, through the Appellant's agent has asserted that the Appellant did not apply for any of these prizes.

10. The Appellant's agent states that the Appellant:

> '*Author wrote the books as part of the author's profession as a writer. Author received royalties in the normal course of the author's profession, and all of this income is taxable where applicable (subject to the first* Redacted *of royalties during* Redacted *being exempt under Section 195, Artist Exemption).'*

11. The Appellant's agent states:

> *'The prizes were awarded to the author as a mark of honour and public esteem in recognition of the author's outstanding achievement as an author.'*

12. The Appellant's agent further states:

> *'In the UK HMRC have decided, based on the Andrew Boyle case (UK Special Commissioners Case of Andrew Boyle 1979), that prizes paid to authors in*

the same circumstances as the author's are exempt. The prizes received by my client were unsolicited and are clearly not received in the course of the author's profession.'

'Andrew Boyle's circumstances were the same as Author and it was held that the income was exempt. The charging legislation in the UK is the same as Ireland's.'

'Based on this case HMRC in UK decided:

> *"A literary etc. prize which is unsolicited, and which is awarded as a mark of honour, distinction or public esteem in recognition of outstanding achievement in a particular field, including the field in which the recipient operates professionally, is not chargeable to tax."'*

13. The Appellant argues that two decisions made in UK Courts in respect of voluntary payments are relevant case law in respect of this appeal.

14. The Appellant states:

'Simpson & John Reynolds & Co Ltd. 1974, ChD and 1975 CA.

Voluntary payment made to trader, whether taxable or not.

It was held that:

> *"The Voluntary payment could not be treated as a receipt in ascertaining the profits arising from the trade, since it was not received in return for activities carried on by the trader in his trade, but was simply a windfall in the nature of a gift. Accordingly, since the payment ....was a purely voluntary payment, being in recognition of its past services, it was not taxable."'*

15. The Appellant states:

'Murray V Goodhews (1976) ChD and (1978) CA.

Voluntary payment made to trader, whether taxable or not.

It was held:

> *"The nature of the receipt in the recipient's hands, for it was the character of the receipt that was significant; the motive of the payer was only significant so far as it bore, if at all, on that character and that the amount of the payment had had no connection with the profits earned ... and that the calculation had not been linked with any future trading relationship between the parties."'*

The Respondent's Submissions

16. The Respondent has argued:

> *'that awards, prizes or grants received by artists for their work are generally taxable as they are "part of the exercise of a profession" and counted as part of the Artists income. There is nothing in the legislation which would exclude a prize of this nature from the tax net. Revenue take the view that an artistic prize or award which relates directly to a particular artistic work is income directly related to the work. Therefore, if the work is covered by the exemption then the prize or award would come within the exempt income subject to the maximum annual €50k. There are exceptions and these are specifically mentioned in the legislation – Section 195 TCA 1997.*
>
> *As the* Redacted *Competition is not exempted under Section 195 TCA 1997 any prizes from this competition received by persons resident for tax purposes in Ireland are taxable under Schedule D Case III subject to the Artists' Exemption mentioned above.*
>
> *The Appellant has quoted The UK Special Commissioners Case of Andrew Boyle 1979 to support their appeal. However, the UK and Ireland are two different tax jurisdictions under separate tax authorities and when the question of taxation of income arises, we must look to our own relevant legislation and interpretation*

of same first. In this instance our legislation does not exclude prizes won by Artists from the tax net and as such are classed as income and chargeable to tax.'

Material findings of fact

17. There are no material facts in dispute between the parties. What is at issue is their respective and differing interpretation of the law as it applies to the taxability of the prize awarded to the Appellant in 2012.

Case Law

18. The Appellant has quoted from three tax cases in support of his appeal.

The Andrew Boyle case *(UK Special Commissioners Case of Andrew Boyle 1979)*, A summary of this case is set out in Appendix 2.

Simpson & John Reynolds & Co Ltd. 1974, ChD and 1975 CA. A summary of this case is set out in Appendix 3.

Murray V Goodhews (1976) ChD and (1978) CA. A summary of this case is set out in Appendix 4.

In addition, I consider the Irish Supreme Court Case *Wing v O'Connell* [1926] IR 84 to be relevant. Neither the Appellant nor the Respondent referred to this Irish Case. A summary of the case is contained in Appendix 5.

Analysis

Redacted

"Redacted

19. No information was submitted in this Appeal as to how the prize giver came to select the Appellant's work "Redacted" as the winner in Redacted. Neither was there any evidence presented as to how the winning book came to the attention of the judging panel in Redacted in the first place.

20. The Appellant asserts that the prize, which is the subject of this appeal, was not solicited. This is not disputed by the Respondent.

In support of his case, the Appellant refers us to the case before the UK Special Commissioners *(UK Special Commissioners Case of Andrew Boyle 1979)*,

This case relates to a past winner of the Whitbread (Literary) Award, Andrew Boyle, who won his appeal to the Special Commissioners over an assessment for income tax on the prize, then worth £1,000. A key element of the decision by the Special Commissioners was that the award did not represent the proceeds of exploitation of the book by him or his publishers.

21. The Appellant's agent in the author's submissions states:

> *'In the UK HMRC have decided, based on the Andrew Boyle case (UK Special Commissioners Case of Andrew Boyle 1979), that prizes paid to authors in the same circumstances as Sebasian's are exempt.*
>
> *The prizes received by my client were unsolicited and are clearly not received in the course of the author's profession.*
>
> *Andrew Boyle's circumstances were the same as Author's and it was help that the income was exempt. The charging legislation in the UK is the same as Ireland's.*
>
> *Based on this case HMRC in UK decided:*
>
> > *"A literary etc. prize which is unsolicited, and which is awarded as a mark of honour, distinction or public esteem in recognition of outstanding achievement in a particular field, including the field in which the recipient operates professionally, is not chargeable to tax"*

22. The following is an extract from Lexis Nexis on "Taxation of Literary Prizes";

> *"It is a common feature of the profession of author to enter competitions for prizes and HMRC consider that an award, grant, bursary or prize from such a competition is normally taxable as a professional receipt. This applies whether the entry is made by the author himself or by his publisher. However, a literary prize which is unsolicited and which is awarded as a matter of honour,*

distinction or public esteem for work in the profession of author is not taxable. There was a decision of the Special Commissioners in connection with a literary award where the entry was made by a publisher without the author's consent; it was held that the publisher was not acting as the agent of the author, that the prize was an unsolicited voluntary payment to the author and was not assessable. However, HMRC consider that that decision turned very much on its own facts."

23. Laddie, Prescott & Vitoria: "The Modern Law of Copyright" (5th ed.) makes the distinction between awards where an author writes a piece specifically for a prize competition and one who does not:

> *"The professional income of an author will include all receipts in relation to copyright, whether by way of royalty or capital sums for sale or partial sale of copyright. Payments for public lending right are brought into account in the same way as copyright. A prize or gift to an author may perhaps not be taxable on the basis that it does not arise from the exercise of the author's profession… The Booker prize and other literary prizes are normally tax free. It is open to HMRC to argue that a prize is really from the exercise of the author's profession and should be brought into the computation of his profits. If, for example, an author writes a piece specifically for a prize competition, it would be difficult to argue that any prize he receives is not really a profit from his profession"*

24. The following is an extract from the UK Inland Revenue's manual (BIM50710 Authors and Awards and Bursaries):

> *"A literary etc. prize which is unsolicited, and which is awarded as a mark of honour, distinction or public esteem in recognition operates professionally, is not chargeable to tax."…..*

25. Based on the above I am of the view that the Appellant has reasonably established that unsolicited literary prizes, similar to the Redacted prize Redacted, would be treated in the UK as tax exempt, were they within the ambit of UK tax.

26. The Appellant then goes on to quote two UK Appeal Court cases in support of the author's appeal.

27. The first case is *Simpson & John Reynolds & Co Ltd. 1974, ChD and 1975 CA.* A summary of this case is set out in Appendix 3.

STAMP LJ. in his judgement in the Court of Appeal stated:

> *"…The payments were promised to be made by the former customer after the relationship of customer and broker had terminated. They were not made to satisfy any legal liability, real or imagined, to which the customer was or believed itself to be subject*" ….
>
> "*The payments were not made by way of additional reward for any particular service rendered by the brokers or for their services generally. They were not made pursuant to the terms of a trading contract or as compensation for the breach of any such contract ….*"
>
> *"..there is no doubt a convenient way of describing them to say that they came to the taxpayer 'by virtue of its trade' because the taxpayer would never have got them had it not for many years carried on the trade and performed valuable services to the donor. But the words 'by virtue of the trade' are not in the section, and it is in my judgment inappropriate to describe the payments as arising from the trade"…*

WALTON J. in his judgement in this case stated:

> *"... To my mind, these payments have none of the indicia of trading receipts whatsoever. Counsel for the Crown, however, relied on six indicia which he said showed that they were trading receipts: (1) that the occasion of the payment was on the termination of a trading relationship; (2) the method by which the amount of the payments was calculated; (3) the method of payment; (4) the method of treatment of those payments in the accounts of the company; (5) the fact, as he said, that the gifts were made merely because the company was a trader; and (6) the fact that the gift was to a limited liability company"….*

What the Court was ruling in this UK appeal case was that the receipt by the trader in question had none of the attributes of a trading receipt and therefore was not taxable.

28. The second case is *Murray V Goodhews (1976) ChD and (1978) CA.* A summary of this case is set out in Appendix 4.

BUCKLEY LJ. in his judgement in this case stated:

> *"…. In my opinion a perusal of these authorities leads to the conclusion that every case of a voluntary payment, and we are only concerned with cases of that kind in the present appeal, must be considered on its own facts to ascertain the nature of the receipt in the recipient's hands. All relevant circumstances must be taken into account …"*

SIR JOHN PENNYCUICK in his judgement in this case stated:

> *"…. In the present case the payments are not related to any specific transaction; they represent compensation for the loss of a long established and valuable trading connection. I do not myself see how a gratuitous receipt of this character could properly be brought into a trading account made up on the ordinary principles of commercial accountancy. There is no commercial outgoing of a revenue character, even in the widest or most indirect sense, in return for which it could be said that payment was received by Goodhews"...*

Before going forward I want to acknowledge that I agree with the Appellant that the equivalent charging provisions for taxing earnings from a profession in the UK are very similar to the legislation in Ireland.

29. Let us now put these two cases in the context of the current appeal, concerning the taxability in Ireland of the literary prize received by the Appellant.

30. On the face of it, and assuming for the moment there is no divergence between Irish tax law and UK tax law on the taxation of literary prizes, the two cases cited above support the Appellant's contention that the literary prize received by the author in 2012 is not taxable. I say this for the following reasons:

The following are the attributes of that prize in the hands of the Appellant:

- The work "Redacted" was created, undertaken and published without reference to the Redacted prize.
- There is no contractual relationship between the Appellant and the Foundation awarding the Prize.

- There was no evidence of any completion of an entry form with specific rules or rubric for qualification to win the prize.
- There was no pre-commissioning of the work "Redacted", either directly or indirectly by the awarding foundation.
- There was no solicitation of the prize by the Appellant. (the completion of a submission form, if any, would not in my view necessarily amount to solicitation)
- The prize was gratuitous by the awarding foundation.
- The prize has none of the characteristics of the receipts received by the Appellant in relation to "Redacted", such as royalties from the sale of the book.
- Redacted

31. To my mind the prize has none of the typical indicia of a "taxable receipt" arising from the exercise of the author's profession as a creative writer. viz., a contract; delivery of a service or product; computation of amount due; collection of amounts due. However, that may not be sufficient to take it outside the ambit of Irish tax.

32. The Respondent has argued:

> *'that awards, prizes or grants received by artists for their work are generally taxable as they are "part of the exercise of a profession" and counted as part of the Artists income.' (emphasis added) .*

33. The use of the word "*generally*" implies that there may be exceptions to this general rule. The Respondent does not elaborate on what exception, if any, might apply.

However, in order to determine whether Irish law does or does not diverge from UK law we must look at the case of *Wing v O'Connell* [1927] IR 84.

Wing v O'Connell – Irish legal principles

34. The facts of *Wing v O'Connell* were as follows; Mr. Wing earned his livelihood as a jockey. His emoluments, consisting mainly of fees receivable, were regulated by a scale set by the Turf Club and varied according to success and the value of the stake. When a jockey was engaged to ride a horse, his engagement ended on the completion of the race. In this instance however, Mr. Wing, having won the race, received a

'*present*' of £400 from Colonel Charteris. The letter enclosing the cheque of £400, drawn and signed Colonel Charteris, provided;

> *'Dear Sir,*
>
> > *Please accept the enclosed present, with my very best thanks, for your very fine riding of Ballyheron in the Irish Derby. It was a very fine performance, and did you the greatest credit. I hope you will soon ride him again to victory.*
> >
> > *Believe me,*
> >
> > > *Faithfully yours,*
> > >
> > > *Richard B Charteris'*

35. The question for consideration was whether the payment was an emolument which arose from Mr. Wing's vocation or profession as a jockey and was thereby subject to income tax within the requisite provisions of the Income Tax Act 1918. The Irish Supreme Court found that the payment was an emolument and was subject to income tax accordingly.

36. The legal principles that arise from *Wing v O'Connell* were summarised by Commissioner Lorna Gallagher in a recent Tax Appeals Commission hearing relating to the taxability of a receipt under Schedule E, *Appellant v Revenue Commissioners 29TACD2019* as follows;

> *"(i) <u>Payment in excess of salary</u> - the fact that an employee has been paid fully for his/her work does not have the effect of taking an additional payment, received by the employee, outside the scope of the income tax statute.*
> *(ii) <u>The personal equation</u> - where an employee receives a payment in recognition of the work that he or she has done or the success that he or she has achieved in the work that he or she has done, this is not a basis upon which to suggest that the payment was purely personal and that the payment does not arise from the employment.*
> *(iii) <u>Contractual obligation and voluntariness</u> - there does not need to be a contractual obligation to make the payment in order for the payment to be taxable as income arising from employment. A payment may be voluntary and be taxable as an emolument.*

(iv) Expectation - a payment may be unexpected and be taxable as an emolument.
(v) Exceptionality - the fact that a payment may be extraordinary or a one-off does not take the payment outside the scope of the income tax statute."

These principles have equal applicability to the taxation of professional or vocational income under Case II of Schedule D as Mr. Wing was taxable under Case II Schedule D.

37. An application of those legal principles, in the context of the within appeal is set out as follows;

(i) Payment in excess of salary

The case of *Wing v O'Connell* proceeded on the basis that Mr. Wing had been fully remunerated for riding the race by the payment to him of professional fees and charges as a jockey and that the £400 sum was paid in addition to his professional fees. The Court held that the payment of £400 was taxable as an emolument which arose or accrued to Mr. Wing by reason of his vocation as a jockey.

The Appellant in this appeal contended that the payment was *'awarded to the author as a mark of honour and public esteem in recognition of the author's outstanding achievement as an author'* rather than in respect of royalties or otherwise, received in the normal course of the author's profession as a writer. Thus, the incidence of the Appellant's remuneration as normally arising in the form of royalties is not determinative of the character of the payment made (prize received) and does not preclude a finding that a payment other than royalties constitutes a taxable profit or receipt.

(ii) The personal equation

A payment is not assessable to tax as an emolument if it is made for purely personal reasons i.e. if it forms part of the '*personal equation'*. The '*personal equation'* is described concisely by Maguire on *Irish Income tax 2018* as '*a payment made on purely personal, compassionate or altruistic grounds.'*

In *Wing v O'Connell*, on page 102 of the report Kennedy C.J. stated;

> *"Now, the sum in question was either a profit of Mr Wing's vocation or it was a mere gift or present, not a subject-matter of taxation.*
>
> *By "a mere present" I mean something given without consideration, something not earned by professional services, something not paid for on Mr Wing's part by professional work"*

Returning to *Wing v O'Connell*, at page 107 of the report, Fitzgibbon J., addressing the question of whether the £400 was a profit or earning of Mr. Wing's vocation, stated;

> *'The third main contention of the respondent is that the £400 was not a profit or earning of his employment or vocation. Prima facie, the capacity in which he received it is a question of fact, and the Commissioners have found that it was "an emolument which arose or accrued to the appellant" (as he then was) "by reason of his vocation as jockey," and in my opinion the letter of Colonel Charteris enclosing the cheque furnished ample evidence to support that finding: "Please accept the enclosed present, with my very best thanks, for your very fine riding of Ballyheron in the Irish Derby. It was a very fine performance, and did you the greatest credit." The profession or vocation of the respondent was to ride horses in races, and he received the present "for his very fine riding" of a race-horse in an important race. The "fine performance'' was a feat of jockeyship, and it was as a jockey that it did him the greatest credit. I confess that I can find no evidence that he received this gift upon any consideration other than that of his professional services. It is not found, or even suggested, in the case that Colonel Charteris and Wing were upon terms which would influence the former to make a gift upon any other ground than that of a desire to reward exceptional merit as a jockey, or that there was any previous acquaintance between them.'*

In terms of this appeal, no evidence was put forward on behalf of the Appellant that the payment was made on compassionate or altruistic grounds or on grounds of ill-health or indigence or any grounds in the '*personal equation*' category set out above albeit, the examples cited above do not comprise an exhaustive list. Rather, it was contended that the payment was made to the author *"as a mark of honour and public esteem in recognition of the author's outstanding achievement as an author."* and was not subject to income tax as a result.

In *Wing v O'Connell*, at page 103, Kennedy C.J. questioned how one separates the individual from the professional when he stated;

> *'The vocation of a professional jockey is to engage himself for hire to ride horses in races with the professed object of winning or trying to win those races. He is paid by fees according to a scale framed by a governing authority, the Turf Club. The scale varies according to the results, success in winning the amount of the stakes. All jockeys cannot win all races but winning or trying to win is the professional objective of every racing engagement, so that there is, in my opinion, no foundation in fact for the attempt to separate the success as something purely personal from the riding, which is admittedly professional. Mr Leonard's metaphysics transcend the facts with which we have to deal.'*

A similar dilemma arises in this appeal in terms of whether it is possible to separate the Appellant's individual excellence from the author's excellence as REDACTED novelist.

Turning to the words of the statute, section 18 TCA 1997 provides that income tax under Schedule D shall be charged under the following Cases:

> *'Case II-Tax in respect of any profession not contained in any other Schedule'*

(iii) Contractual obligation and voluntariness

The fact that a payment is made gratuitously, voluntarily or without solicitation does not mean that the payment is not taxable in Irish Law as income under Schedule D. The absence of a legal obligation on the payor to make the payment does not prevent it being taxable as earnings. The mere fact that a payment involves generosity on the part of the payor does not prevent the payment being assessable to tax as an emolument.

On page 103 of *Wing v O'Connell*, Kennedy C.J. stated;

> *"I am of opinion that it makes no difference in arriving at this view that the payment was on the part of Colonel Charteris voluntary in the sense that he was not bound by any legal contractual obligation to give it."*

Fitzgibbon J. at page 108, in *Wing v O'Connell*, quoted the following from *Cooper Blakiston*

> *'First, it is immaterial that these offerings were made voluntarily. There are many professions and callings in which income is derived from payments voluntarily made.*
>
> *The question is not what was the motive of the payment, but what was the character in which the recipient received it? '*

Based on the Irish Supreme Court authority of *Wing v O'Connell*, the absence of a contractual obligation to make the payment does not determine the nature of the payment and a payment may be entirely voluntary and be taxable as an emolument, notwithstanding.

(iv) Expectation

In Wing v O'Connell, at page 103,Kennedy C.J. stated;

> '*I am, therefore, of opinion that the sum of £400 in question in this case was not paid to or received by Mr Wing as a pure gift or present, but that it was given to him for, that is to say, in consideration of, professional work done and vocational services rendered in successfully steering the horse, Ballyheron, to victory, in other words, for successfully accomplishing the object of his professional engagement, and that it was in the nature of a bonus or voluntary addition to the prescribed fee under the regulation scale.'*

Irish law does not treat expectation on the part of the recipient as relevant to the question of whether the payment is taxable in the hands of the recipient as arising from employment. The UK authorities, which differ from Irish law in this respect, must give way to the binding Irish Supreme Court authority of *Wing v O'Connell*.

(v) Exceptionality

In *Wing v O'Connell*, Fitzgibbon J. on page 111 of the report stated;

> *'Two minor points remain to be noticed. It has been suggested that a voluntary gift of the description in question cannot be liable to taxation unless it is*

> *recurrent, or unless it is of a kind which the recipient has a reasonable expectation that he may receive. I admit that in some of the judgments which reversed the decisions of the Commissioners or of a Court of first instance there are expressions indicating that reliance was placed either upon the recurrence of the grant, or, as in the case of the cricketer, upon the probability of a benefit match; but I cannot find that they are founded upon any question of principle. If a sum of money is a profit of a trade, it must be so each time it accrues; and I cannot see, upon principle, why a second windfall should be taxable if the first is not, or why, if the second, third, and fourth be taxable, the first is not equally so. Nor can I understand why, if a man receives extraordinary remuneration for his professional services, it should be any the less an earning of his profession because he did not expect such liberal treatment.'*

The Appellant's evidence was that the author did not solicit the prize.

In conclusion on this point and as a matter of Irish law, the one-off nature of the payment is not a factor of significance having regard to the dicta of Fitzgibbon J. in *Wing v O'Connell*.

(vi) Motivation

The intention or motivation of the payor is not determinative of the nature or character of that payment for tax purposes and this principle is supported by the dicta of Fitzgibbon J. in *Wing v O'Connell* where at page 108, he quoted the following from *Cooper v Blakiston; 'The question is not what was the motive of the payment, but what was the character in which the recipient received it?'*

Divergence in Irish and UK law

41. As set out above, in accordance with *Wing v O'Connell*, it matters not that the payment made was spontaneous, unexpected or voluntary.

The Supreme Court authority of *Wing v O'Connell* per the dicta of Kennedy C.J. provides: '*there is .... no foundation in fact for the attempt to separate the success as something purely personal from the riding, which is admittedly professional*.'

The prize made to the Appellant in this appeal was not made on grounds of compassion, altruism, ill-health, indigence or other similar reasons. Rather it was

made to the author as a professional writer who had excelled professionally in the literary genre to which the Prize Foundation sought to provide patronage.

42. The Irish Supreme Court case of *Wing v O'Connell* [1926] IR 84 is binding Supreme Court authority and unless set aside by another decision of the Supreme Court under the principles in *Mogul of Ireland Limited v Tipperary (North Riding) County Council* [1976] IR 260, it remains binding authority.

    In *Mogul of Ireland v Tipperary (North Riding) County Council (1976) IR206*, the Supreme Court of 1976 refused to depart from a judgment of the Supreme Court of 1948 as the applicants to the case before them had failed to establish that the previous Supreme Court decision was clearly wrong. In *Mogul*, Henchy J. at page 272, stated;

    > *'A decision of the full Supreme Court (be it the pre-1961 or the post-1961 Court), given in a fully-argued case and on a consideration of all the relevant materials, should not normally be overruled merely because a later Court inclines to a different conclusion. Of course, if possible, error should not be reinforced by repetition or affirmation, and the desirability of achieving certainty, stability, and predictability should yield to the demands of justice. However, a balance has to be struck between rigidity and vacillation, and to achieve that balance the later Court must, at the least, be clearly of opinion that the earlier decision was erroneous.'*

Conclusion

43. While I believe the arguments put forward by the Appellant are a fair statement of UK law as it operates in relation to literary prizes, because of the supremacy in Irish law of the principles enunciated by the Irish Supreme Court case of *Wing v O'Connell* [1927] IR 84, the Appellant has not demonstrated why, under Irish tax Law, the Redacted prize received by the author should not form part of the author's profits from the author's profession as a writer.

The burden of proof

44. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. This accords with the general law in civil cases that the burden of proof falls on he who asserts. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that he/she/it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

45. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another,* [2010] IEHC 49, at para. 22, Charleton J. stated:

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."*

46. In this Appeal, I believe the Appellant has not proven that an assessment for Redacted raised on the Appellant by the Respondent is incorrect because the assessment treats the prize as taxable, which it is.

DETERMINATION

47. Having considered the evidence and facts, the relevant legislation and related case law,
    - I determine that the Appellant has not succeeded in discharging the burden of proof in this appeal.
    - I determine that the Redacted prize received by Author in Redacted is taxable under Schedule D of S.18 TCA 1997.
    - I determine that the Redacted prize is taxable under Case II Schedule D and not Case III Schedule D of S.18 TCA 1997, as stated by the Respondent.

- I determine that the assessment raised on the Appellant for Redacted by the Respondent should not be amended so as to exclude the sum of Redacted.

- I determine that a refund of Redacted should not be made to the Appellant.

48. This appeal is hereby determined in accordance with s.949AK TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

19th December 2019

APPENDIX 1

Irish Tax Legislation

Section 18 TCA 1997

(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 I – Tax in respect of –

(a)any trade;

(b)profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns –

> *(i)quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,*
>
> *(ii)mines of coal, tin, lead, copper, pyrites, iron and other mines, and*
>
> *(iii)ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of any lands, tenements or hereditaments;*

Case II – Tax in respect of any profession not contained in any other Schedule;

Case III – Tax in respect of –

(a)any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Case V of Schedule D;

(b)all discounts;

(c)profits on securities bearing interest payable out of the public revenue other than those charged under Schedule C;

(d)interest on any securities issued, or deemed within the meaning of section 36 to be issued, under the authority of the Minister for Finance, in cases where such interest is paid without deduction of tax;

(e)income arising from securities outside the State except such income as is charged under Schedule C;

(f) income arising from possessions outside the State except, in the case of income from an office or employment (including any amount which would be chargeable to tax in respect of any sum received or benefit derived from the office or employment if the profits or gains from the office or employment were chargeable to tax under Schedule

E), so much of that income as is attributable to the performance in the State of the duties of that office or employment;

Case IV – Tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule;

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 65 TCA 1967

"Cases I and II: basis of assessment

(1) Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment….."

APPENDIX 2

<u>UK Special Commissioners Case of Andrew Boyle 1979</u>

A past winner of the Whitbread (Literary) Award Andrew Boyle won his appeal to the Special Commissioners over an assessment for income tax on the prize then worth £1,000. A key element of the decision by the Special Commissioners was that the award did not represent the proceeds of exploitation of the book by him or his publishers.

APPENDIX 3

Simpson & John Reynolds & Co Ltd. 1974, ChD and 1975 CA.

The background to this case was as follows: The taxpayer company, which carried on business as insurance brokers, had for many years acted as adviser to C Ltd on all its insurance matters including pension schemes. In 1965 ICI Ltd acquired a large shareholding in C Ltd and required the latter to place all its insurances with another insurance company. Thereupon C Ltd informed the taxpayer company that its services would no longer be required. In or about September 1965 C Ltd wrote to the taxpayer company volunteering to pay the latter £1,000 per annum for a period of five years commencing in March 1966. The letter stated that the payment was in recognition of the taxpayer company's past services as insurance brokers and was calculated on the basis that in the past the annual earnings of the taxpayer company by way of commission in respect of C Ltd's business had been in the order of £2,000. The taxpayer company was assessed to corporation tax for the accounting period ended 31 March 1970 on the basis that the annual instalment of £1,000 received by the taxpayer company from C Ltd was a trading receipt liable to tax under the Income Tax Act 1952, ss 122a, 123(1)(b)(Sch D, Case 1). On appeal the commissioners held that the payment from C Ltd was not chargeable to tax and discharged the assessment. On 21 March 1972 *Pennycuick V-C* ([1974] 2 All ER 545) upheld the decision of the commissioners on the ground that, since the payment by C Ltd to the taxpayer company was a purely voluntary payment made in recognition of its past services, it was not trading income in the hands of the taxpayer company. The Crown appealed contending that the payment had the character of a trading receipt because (i) the gift had arisen on the termination of a trading relationship; (ii) it had been calculated by reference to past premiums; (iii) the total sum was being paid in instalments over a period of five years; (iv) the payment had been entered into the taxpayer's accounts as a trading receipt; and (v) it had been paid as a consolation for the termination of the profits of a trading connection.

Held – The £1,000 received by the taxpayer company could not be properly described as 'annual profits or gains arising or accruing' to the taxpayer company from its trade, within s. 122 of the 1952 Act, in view of the circumstances that the payment was a wholly unexpected and unsolicited gift, it had been made after the business connection had ceased, it was in recognition of past services rendered to C Ltd over a long period, it had been made as consolation for the fact that those remunerative services were no longer to be performed by C Ltd for the taxpayer company and there was no suggestion than the business connection would ever be renewed. The appeal therefore would be dismissed.

APPENDIX 4

Murray V Goodhews (1976) ChD and (1978) CA.

The background to this case was as follows: The taxpayer company ('Goodhews') was the tenant of a number of tied public houses owned by another company ('Watney'). In 1968 Watney decided to terminate 13 tenancy agreements with Goodhews over a period of two years as from January 1969. Although there was no provision in any of the tenancy agreements that Watney should give more than three months' notice of termination in respect of any of the relevant tenancies, they nevertheless chose to make voluntary payments, amounting to £81,651, to Goodhews during the accounting periods ending on 31 March 1970 and 31 March 1971. Goodhews was assessed to corporation tax on the basis that the payments represented compensation for loss of profits arising from the loss of the tenancies and accordingly were profits or gains arising from its trade. On appeal, the Special Commissioners found (a) that when the representative of Watney had visited Goodhews to explain the change of policy he had mentioned that there would be an *ex gratia* payment, but had said nothing about the amount or basis of calculation; (b) that there had been no bargaining or negotiation about the amount of the payments; (c) that Watney had made the payments to acknowledge a long and friendly association with Goodhews and to maintain its name, goodwill and image in the brewing industry; (d) that the payments were not linked with any future trading relationship between the parties; and (e) that they had been computed by reference to the rateable values of the relevant public houses and had no connection with the profits which any of those houses had earned. On the basis of their findings, the commissioners held that the payments were not chargeable to tax as trading receipts and on appeal their decision was affirmed by Walton J.. The Crown appealed, contending that the payments were trading receipts in the hands of Goodhews since, although not made in pursuance of any legal obligation, they constituted compensation made in recognition of the injury suffered by Goodhews in consequence of the interruption of their trade.

Held– Every case of a voluntary payment had to be considered on its own facts to ascertain the nature of the receipt in the recipient's hands, for it was the character of the receipt that was significant; the motive of the payer was only significant so far as it bore, if at all, on that character. On the findings of fact made by the commissioners, in particular the findings that there had been no disclosure by Watney to Goodhews of the way in which the payments had been calculated, that there had been no subsequent negotiation about the payments, that the amount of the payment had had no connection with the profits earned by Goodhews, and that the calculation had not been linked with any future trading relationship between the parties, the commissioners had been fully justified in finding that the sums paid to Goodhews.

Appendix 5

Appellant v Revenue Commissioners 29TACD2019

The matter in dispute related to whether payments to the Appellant of €1,076,467.11 and €1,223,526.65 from the two main shareholders in the AB Group (namely XY Capital Partners Global Aggregator LP ('XYCPGALP') and AB Feeder GP Limited 'ABFGP') are subject to income tax as emoluments in accordance with section 112 TCA 1997 or whether the payments comprised a gift from the shareholders to the Appellant, taxable in accordance with the Capital Acquisitions Tax Consolidation Act 2003, as amended ('CATCA2003').

In 2007, the Appellant as Group Chief Executive Officer of the AB Group, was notified of the payments by letter dated 14 June 2007 from XY Partners and by letter dated 29 June 2007 from ABFGP. The June 2007 letters described each payment as a '*gift*'. The payment, totalling approximately €2.3m was made in March 2011 proportional to the respective shareholdings of XYCPGALP and ABFGP at that time.

The Appellant took the view that the sum received was a gift and in September 2011 the Appellant discharged capital acquisitions tax ('CAT') of €596,350 by filing a capital acquisitions tax return (form IT38) for the period 1 September 2010 to 31 August 2011, in respect of the receipt of the sum of €2.3m.

The Respondent contended that the payment was within the charge to tax under Schedule E based on the provisions of section 18(2) Case III(f) of the Taxes Consolidation Act 1997, as amended (hereafter 'TCA 1997'). The basis of assessment of persons chargeable to tax under Schedule E is contained in section 112 TCA 1997.

Held

It was determined that the payment of €2.3 million made to the Appellant constitutes a taxable emolument assessable to income tax in accordance with section 112 TCA 1997.