



14TACD2024

Between

[REDACTED]

Appellant

and

CRIMINAL ASSETS BUREAU

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against Notices of Assessment to Income Tax. Those assessments which were issued by the Criminal Assets Bureau (hereinafter “the Respondent”) on 17th July 2020 were as follows:

Year of Assessment	Quantum €
2006	172,514
2008	3,262
2009	19,434
2010	19,013
2011	2,435
2012	8,576
2013	19,621
2014	28,893
2015	27,502
2017	4,866
Total	306,116

2. This appeal also relates to Notices of Assessment to Capital Acquisitions Tax (“CAT”) which were also issued by the Respondent on 17th July 2020 as follows:

Year of Assessment	Quantum €
2012	62,729
2014	20,787
Total	83,516

3. The hearing of the appeal occurred over two dates on 12th January 2023 and 16th May 2023.
4. The Appellant was represented by Counsel and her solicitor. The Respondent was represented by Counsel, its solicitor and two members of its staff. In addition, the Commissioner heard sworn testimony from the Appellant and her father, in addition to legal submissions from the parties’ representatives.

Background

5. The Appellant was not previously registered for Income Tax (including PAYE) and was in receipt of Jobseeker’s Allowance from the Department of Social Protection (“DSP”) during

the years under appeal. Jobseeker's Allowance¹ is a payment made by the DSP and it offers income support to people who are or become unemployed and are available for and seeking work. Jobseeker's Allowance is a means tested payment and is not liable to Income Tax, USC or PRSI.

6. By letter dated 17th July 2020, the Appellant was advised that the Respondent would carry out all functions reserved by law to the Inspector of Taxes and the Collector General until further notice. That letter further advised the Appellant that the Respondent had conducted an investigation into her taxation affairs for the years under appeal.
7. The Respondent considered all the evidence gathered in the context of that investigation. In particular, the Respondent examined the Appellant's bank accounts, properties and vehicles. The Respondent identified undeclared profits or gains chargeable to tax pursuant to section 922 Taxes Consolidation Act 1997 ("TCA 1997") for the tax years 2006, 2008, 2009, 2010, 2011 and 2012 and section 959AC TCA 1997 for the tax years 2013, 2014, 2015 and 2017.
8. Those undeclared profits or gains were quantified as follows:

Year	Miscellaneous Income €
2006	352,129
2008	20,850
2009	55,390
2010	53,517
2011	14,514
2012	32,669
2013	52,032
2014	68,241
2015	67,191
2017	23,390
Total	739,923

9. The Respondent taxed that income as "miscellaneous income" under Schedule D, Case IV and issued its Notices of Assessment in accordance with the provisions of section 58 TCA 1997 on 17th July 2020.
10. During the course of the investigation, the Respondent also became aware that the Appellant received two deemed taxable gifts which she did not return for tax purposes or pay any CAT liability on those gifts. The taxable amount of those gifts was as follows:

¹ <https://www.gov.ie/en/service/1306dc-Jobseeker's-allowance/>

Year	Amount of Gift
	€
2012	180,996
2014	49,000
Total	229,996

11. The Respondent raised CAT assessments under the provisions of section 49 Capital Acquisitions Tax Consolidation Act 2003 (“CATCA 2003”) on those undeclared gifts and issued its Notices of Assessments on 17th July 2020.
12. The Appellant who was not in agreement with the Notices of Assessment to Income Tax and CAT lodged her Notice of Appeal with the Commission on 11th August 2020.
13. The Appeal proceeded to hearing on 12th January 2023.
14. Following the commencement of that hearing, both parties’ Counsel requested the Commissioner to stay the proceedings for a period of three months to enable them to conclude settlement negotiations and to re-list the matter for hearing if those negotiations were unsuccessful. The Commissioner agreed to those requests in accordance with the provisions of section 949W (1) TCA 1997.
15. As those settlement negotiations were unsuccessful, the appeal hearing resumed on 16th May 2023.

Documentation presented to the Commission

16. Included within the documentation presented to the Commission was the following:

- 16.1. A document entitled “Rates of Payment 2006” from the DSP. Under the heading “child related payments” it stated:

	<i>Rate per month</i>	<i>Rate per month</i>
	<i>Before April 2005</i>	<i>From April 2005</i>
1 st and 2 nd child	€131.60	€141.60
3 rd and subsequent children	€165.30	€177.30
	<i>Rate per month</i>	<i>Rate per month</i>
	<i>Before April 2006</i>	<i>From April 2006</i>
1 st and 2 nd child	€141.60	€150.00

€30,000 was withdrawn in cash from that account on 5^h March 2008. In addition, further cash withdrawals of €6,000 were withdrawn from the account during 2008.

16.6. Analysis of an [REDACTED] Account, number [REDACTED] (“the [REDACTED] Deposit Account”), in the name of the Appellant and her brother [REDACTED] for the year 2008. This showed the sum of €30,000 was lodged into that account on 5^h March 2008 and that deposit interest, after DIRT², earned on that account to 31st December 2008 was €780.79. From the provided workings, it appears that the €30,000 lodgement came from the €30,000 withdrawn above from the [REDACTED] Account as both of the transactions occur on the same day.

16.7. Notes attached to those workings. These stated:

“Getting Jobseeker’s Allowance from SW which is not taxable collected from [REDACTED] Post Office.

€197.80 p/w x 52 = €10,286.

SW Income €10,286

Withdrawals 3,000

€13,286

ISI Figure €11,353

2008 Assessable Income

[REDACTED] Misc Income €20,850.”

16.8. Analysis of the [REDACTED] Account for 2009. This showed total lodgements of €71,744.09 which included deposit interest of €24.09, of which one half, excluding deposit interest, €35,860 was treated as the Appellant’s. The analysis also showed that the sum of €23,910 was withdrawn from this account during 2009.

16.9. Analysis of the [REDACTED] deposit account for 2009. This showed no movement on the account for 2009, save deposit interest earned of €858.

16.10. A spreadsheet entitled “Note”. This stated:

² DIRT is deducted by Irish financial institutions from deposit interest paid or credited to the accounts of Irish residents.

"23/2/2009 Bought 1 acre of non agri land at [REDACTED]. Seller [REDACTED] brother. Per ST21 this was a transfer in name only. No consideration paid. Market value €50,000.

1/4/2009 Bought [REDACTED] Ford [REDACTED], MV €19,530. No withdrawals. Getting Jobseeker's Allowance from SW which is not taxable. Collected from [REDACTED] Post Office. €204.30 p/w x 52 = €10,624.

SW Income €10,624

Withdrawals €11,955

€22,579

ISI Figure €11,648

2009 Assessable Income

[REDACTED] Misc Income €35,860

Ford [REDACTED] €19,530

Misc Income €55,390

CAT Liability

Gift from Brother [REDACTED] €50,000

Less: Small Gift Exemption 3,000

€47,000

Threshold B €54,254

Threshold Carry Forward €7,254"

16.11. Copy of a stamp duty return. This return was dated 23rd February 2009 and showed that the Appellant was transferred [REDACTED] from [REDACTED] on that date. The transfer/assignment value shown on that form was nil.

16.12. A report from the Respondent labelled "Integrated Business Intelligence". This report concluded that the lands under [REDACTED] were non-agricultural lands and measured 1 acre in area.

- 16.13. A further identically labelled report. This report detailed that the said lands were valued at €50,000 and the duty payable on those lands was €1,000.
- 16.14. A print-out from the Department of Transport. This showed the Appellant as owner of vehicle registration number [REDACTED] on 1st April 2009 and that ownership of that vehicle was transferred to [REDACTED] on 24th May 2011. That print-out showed 5 other subsequent owners of the vehicle, none of which were the Appellant. The vehicle was described as being a Ford [REDACTED] [REDACTED] commercial vehicle.
- 16.15. Analysis of the [REDACTED] Account for 2010. This showed total lodgements of €107,068.79 which included gross deposit interest paid of €34.91. Of those lodgements (excluding deposit interest), the sum of €53,517 was treated as referable to the Appellant. The analysis also showed withdrawals from that account of €33,514.69. These withdrawals were reduced by DIRT of €5.30 and a cheque to [REDACTED] of €17,000. Reducing the withdrawals by these two amounts gave net withdrawals from the account in 2010 of €16,509.39.
- 16.16. Analysis of the [REDACTED] Deposit Account for 2010. This showed no movement on that account, save net interest of €385.88 which was credited to the account.
- 16.17. Under the spreadsheet entitled Note, it stated:

“Getting Jobseeker’s Allowance from SW which is not taxable. Collected from [REDACTED] Post Office. €196 p/w x 52 = €10,192.

SW Income €10,192

Withdrawals €8,255

€18,447

ISI Figure €11,956

2010 Assessable Figure

[REDACTED] €53,517”

- 16.18. Analysis of a [REDACTED] Account number [REDACTED] (“the [REDACTED] savings account”) for 2011 in the sole name of the Appellant. This account recorded minimal transactions for the year 2011 and contained a further note which stated “No activity on this account prior to 2011”.

16.19. Analysis of the [REDACTED] account for 2011. This showed total lodgements of €29,073.13 which included deposit interest of €45.97. Of that amount, excluding deposit interest, the sum of €14,514 was deemed referable to the Appellant. The withdrawals from the account totalled €173,824.41 and from that amount was deducted cash transfer (€30,000), cheque to [REDACTED] (€13,288), cheque to [REDACTED] (€90,000) and cheque to [REDACTED] (€18,000). After deducting these sums, this gave revised withdrawals of €22,536.41.

16.20. Analysis of the [REDACTED] Deposit account for 2011. This showed a cash lodgement of €30,000 and deposit interest, after DIRT of €607.45. The cash lodgement of €30,000 appears to have come from the cash transfer in the same amount from the [REDACTED] account as both of these transactions occurred on the same day.

16.21. Under the "Note Section", it stated:

"24/5/2011 Sold [REDACTED] Ford [REDACTED] MV €19,530. WDV €14,648. Cash as no large withdrawals from A/C's.

Getting Jobseeker's Allowance from SW which is not taxable. Collected from [REDACTED] Post Office.

188 p/w x 52 = €9,776

2011 Assessable Income

[REDACTED] Misc Income €14,514"

16.22. Analysis of the [REDACTED] savings account for the year 2012. This showed lodgements of €1,280 for the year and withdrawals of €1,152.50.

16.23. Analysis of a [REDACTED] Current Account number [REDACTED] (the [REDACTED] current account") in the sole name of the Appellant for the year 2012. This showed lodgements into that account of €400.50 and withdrawals of €338.87.

16.24. Analysis of the [REDACTED] account for 2012. This showed lodgements of €61,991.19 including deposit interest of €13.23. Of this amount excluding deposit interest, one half, €30,988 was treated as the Appellant's. Withdrawals from that account in cash totalled €1,850 for 2012.

16.25. Analysis of the [REDACTED] deposit account for 2012. This showed no movement on the account save net deposit interest earned of €1,696.16.

16.26. Analysis of a [REDACTED] account number [REDACTED] in the name of the Appellant and [REDACTED] (described as the Appellant's father) for the year 2012. This showed an opening lodgement into that account of €72,794.59 on 24th February 2012. In a note beside the spreadsheet, it stated "€22,500 AIB draft from [REDACTED] and €50,294.59 from [REDACTED] Savings Account". Underneath that note it stated "*treating €22,500 draft from [REDACTED] as a gift. [REDACTED] share €11,250. Appellant cash share €11,250*".

16.27. Under the "Notes section" it stated:

"21/2/2012 Sold [REDACTED] ... purchaser [REDACTED] sister in law. This appears to be just a transfer in name only. No consideration paid per ST21 details. The open market value €175,000.

Bought [REDACTED] ... for €180,000. Seller [REDACTED], brother. Open market value €180,000.

Getting Jobseeker's Allowance from SW which is not taxable. Collected from [REDACTED] Post Office. €188 p/w x 52 = €9,776.

SW Income €9,776

[REDACTED] Withdrawals €1,491

[REDACTED] Withdrawals €925

€12,192

ISI Figure €11,136

2012 Assessable Income

[REDACTED] Savings €1,280

[REDACTED] Current €400

[REDACTED] Share €30,988

€32,669

CAT Liability

Gift from brother [REDACTED] €11,250

Gift from brother [REDACTED] €180,000

	€191,250
<i>Less Small gift Exemption</i>	<i>3,000</i>
<i>Less Threshold B carry forward</i>	<u><i>7,254</i></u>
	€180,996
<i>CAT Rate 30%</i>	<u><i>€54,299</i></u>

- 16.28. Copy of a stamp duty return. This showed transfer of the property, [REDACTED], into the Appellant's name on 21/2/2012 from [REDACTED]. The open market value of the property was shown as €180,000 and stamp duty of €1,800 was paid on that transfer.
- 16.29. Copy of a second stamp duty return. This showed the Appellant transferred the property, [REDACTED] to her sister-in-law's name on 21st February 2012. The value of the transfer is shown as €175,000 and the document records €1,750 paid in stamp duty on the transfer.
- 16.30. Analysis of the [REDACTED] account for 2013. This shows minimal transactions on the account for that year.
- 16.31. Analysis of the [REDACTED] account for 2013. This also shows minimal transactions on the account for that year.
- 16.32. Analysis of the [REDACTED] account for 2013. This shows lodgements into that account for the year of €102,950 after the deduction of deposit interest of €24.43 and a cheque from "[REDACTED]" of €11,500. Of this amount, one half, €51,475 was treated as the Appellant's. The analysis also shows total withdrawals from the account during 2013 of €148,415.15. From those withdrawals the sum of €30,000 is deducted for "[REDACTED]" and the further sum of €76,000 for "[REDACTED]" to give revised withdrawals of €42,415.
- 16.33. Analysis of the [REDACTED] deposit account for 2013. This shows that there was no movement on the deposit account for 2013, save net deposit interest earned of €1,159.94.
- 16.34. Analysis of the [REDACTED] deposit account number [REDACTED] for 2013. This showed no movement on the account for that year save net deposit interest earned of €1,702.36.
- 16.35. Under the notes section it stated:

“Getting Jobseeker’s Allowance from SW which is not taxable. Collected from [REDACTED] Post Office.

2013 Assessment

[REDACTED] 8316	€51,475
[REDACTED] 361	<u>€557</u>
	<u>€52,032”</u>

16.36. Analysis of the [REDACTED] savings account for 2014. As in prior years, this showed minimal transactions.

16.37. Analysis of the [REDACTED] current account for 2014. This also showed minimal transactions for that year.

16.38. Analysis of the [REDACTED] account for 2014. This showed total lodgements into that account of €77,487.79 which included deposit interest of €20.79. After deducting the deposit interest, the sum of €38,733 which represented one half of the lodgements, was deemed referable to the Appellant. Withdrawals from that account which were largely in cash totalled €47,305.

16.39. Analysis of the [REDACTED] deposit account for 2014. This showed no movement on the account save net deposit interest paid of €1,155.50.

16.40. Analysis of the [REDACTED] account number [REDACTED]. This showed deposit interest received of €832.83 and one lodgement of €117,000. The lodgement of €117,000 was broken down as follows:

From [REDACTED]	€13,000
From [REDACTED]	€5,000
From [REDACTED]	€22,000
From [REDACTED]	€11,000
From [REDACTED]	€10,000
From [REDACTED]	€6,000
From [REDACTED]	€5,000
From [REDACTED]	€5,000

From [REDACTED]	€5,000
From [REDACTED]	€5,000
From [REDACTED]	€5,000
From [REDACTED]	€10,000
[REDACTED]	€5,000
[REDACTED]	€5,000
[REDACTED]	€5,000

Underneath that listing was a note which stated "Drafts from [REDACTED] treated as gifts to [REDACTED] and [REDACTED], €104,000. Attributing half to each person, [REDACTED] share €52,000, [REDACTED] Share €52,000".

16.41. Under the section entitled "notes", it stated:

"21/2/2014 - Bought [REDACTED] VW [REDACTED] MV €26,735. Cash as no large withdrawals around this time. Getting Jobseeker's allowance from SW which is not taxable. Collected from [REDACTED] Post Office. €188 p/w x 52 = €9,776.

2014 Assessment

[REDACTED]	€38,733
[REDACTED]	€1,200
[REDACTED]	€1,573
Cash for car	<u>€26,735</u>
Misc Income	€68,241

CAT Assessment

Gift from siblings	€52,000
<i>(Falls into Group B – already used up)</i>	
Less: Exemption	<u>3,000</u>
	€49,000
CAT Rate 33%	€16,170

10% Surcharge €1,617

Total Due €17,787

- 16.42. A print-out from the Department of Transport. This document showed that the Appellant acquired vehicle registration number [REDACTED] on 21st February 2014 and disposed of that vehicle to [REDACTED] on 12th January 2015. This also shows that there are three subsequent owners of that vehicle, none of which are described as the Appellant. The vehicle is described within that form as a Volkswagen [REDACTED] CL 1.6 TDI.
- 16.43. Analysis of the [REDACTED] savings account for 2015. This showed a lodgement on 4^h December 2015 in the sum of €800 described as "[REDACTED] C.O. for GP". Aside from that transaction, the account showed minimal movement for 2015.
- 16.44. Analysis of the [REDACTED] current account for 2015. This showed minimal transactions for that year.
- 16.45. Analysis of the [REDACTED] account for 2015. This showed total lodgements of €95,504.43 which included deposit interest paid of €15.92. Also included within those lodgements were reductions for "transfer" in the sum of €8,000 and "Money from [REDACTED]" €22,000. The total lodgements into this account for 2015 after the deduction of those two items was €65,488.51 of which one half, €32,744 was deemed referable to the Appellant. The withdrawals from that account totalled €177,676 for that year. From that sum was a number of deductions which included, "cheque to [REDACTED]" €48,000, "cheque to [REDACTED]" €33,000, cheque to "[REDACTED]" €12,400 and cheque to "[REDACTED]" €11,500. The total withdrawals from that account after those items and DIRT (€6.53) was €72,769.47.
- 16.46. Analysis of the [REDACTED] deposit account for 2015. This showed one transaction, a cheque withdrawal in the sum of €33,000, with the narrative "To [REDACTED]
[REDACTED]"
- 16.47. Analysis of the [REDACTED] deposit account number [REDACTED] for 2015. This showed no movement on that account for the year save net deposit interest credited of €2,029.38.
- 16.48. In the "notes" section it stated:

"8/1/2015 Bought [REDACTED] VW [REDACTED] MV €23,680.

12/1/2015 Sold [REDACTED] VW [REDACTED] MV €26,735 WDV €23,393.

Looks like she traded in the [REDACTED] for the [REDACTED]. Both with [REDACTED]
[REDACTED]

14/1/2015 Bought [REDACTED] Toyota [REDACTED] MV €32,392.

8/3/2015 Sold it to [REDACTED]

Getting Jobseeker's Allowance from SW which is not taxable. Collected from
[REDACTED] Post Office. €188 p/w x 52 = €9,776.

ISI figure €12,569.

2015 Assessment

[REDACTED]	€32,744
[REDACTED]	€840
[REDACTED]	€1,215
Cash for [REDACTED]	<u>€32,392</u>
Misc Income	€67,191."

- 16.49. Copy of a print-out from the Department of Transport. This document showed that the Appellant acquired [REDACTED] on 8th January 2015 and disposed of that vehicle on 13th January 2016. The print-out listed one subsequent owner which was not the Appellant. The vehicle is described as a grey Volkswagen [REDACTED] CL.
- 16.50. A similar document from the Department of Transport. This document showed the Appellant sold vehicle registration number [REDACTED] to a garage on 12th January 2015 and that there two subsequent owners none of which were the Appellant. The vehicle is described within that form as a Volkswagen [REDACTED] CL.
- 16.51. A third such document. This document showed that the Appellant acquired vehicle registration number [REDACTED] on 13th January 2015 and disposed of that vehicle to [REDACTED] on 8th March 2015.
- 16.52. Analysis of the [REDACTED] savings account for 2017. This showed minimal movement on that account for that year.

16.53. Analysis of the [REDACTED] current account for 2017. This showed the sum of €2,150 was lodged into that account in 2017 and the sum of €2,207 was paid out of that account, mainly to Vodafone.

16.54. Analysis of the [REDACTED] deposit account number [REDACTED]. This account showed one transaction for 2017, "Maturity interest €2,128.60" and confirmed that the account was closed on 31st March 2017 when the total funds were withdrawn from that account.

16.55. Under the "notes" section it stated:

"4/1/2017 Bought [REDACTED] Ford [REDACTED] MV €21,240

27/6/2017 Sold [REDACTED] Ford [REDACTED] MV €21,240

Getting Jobseeker's Allowance from SW which is not taxable. Collected from [REDACTED] Post Office. €193 p/w x 52 = €10,036

SW income €10,036

Car Sale €21,240

[REDACTED] A/C €2,207

€33,483

ISI Figure €11,932

2017 Assessable income

Car purchase €21,240

[REDACTED] A/C €2,150

Misc Income €23,390"

16.56. A print-out from the Department of Transport. This stated that the Appellant acquired vehicle registration number [REDACTED] on 4^h January 2017 and disposed of that vehicle to an unconnected person on 23rd June 2017. The vehicle is described as a Ford [REDACTED] Custom 260S Base.

16.57. Copy of a CAT assessment addressed to the Appellant in respect of a gift received on 24th February 2012. The Disponer of the gift is named as [REDACTED] [REDACTED]. Under the heading "Taxable value of all benefits", the sum of €180,996 is detailed. The CAT due on that return is shown as €54,299 and to that sum is

added a 10% surcharge, €5,430 giving a revised total of €59,729. Underneath the statutory charge for interest, is an item described as “*Penalties (as determined by Section 58 Capital Acquisitions Tax Consolidation Act 2003)* €3,000”, bringing the total payable (excluding interest) of €62,729.

- 16.58. Attached to that CAT assessment was workings from the above bank analysis which showed that the Appellant was deemed to receive two gifts on 24th February 2012. The first of these was the sum of €22,500 received from her brother, [REDACTED] and the second was the sum of €50,294.59 received from her father.
- 16.59. The second attachment to that assessment was the above stamp duty return dated 21st February 2012. This document showed the property, [REDACTED] being transferred from the Appellant’s brother, [REDACTED] to the Appellant for the sum of €180,000. In addition, that return confirms that the sum of €1,800 in stamp duty was paid by the Appellant on that date.
- 16.60. Copy of a second CAT assessment addressed to the Appellant in respect of a gift received on 24th February 2014. The Disponers of the gift are named as [REDACTED]. Under the heading “Taxable value of all benefits” the sum of €49,000 is detailed. The CAT calculated on that return is shown as €16,170 and including a surcharge of €1,617, the sum of €17,787 is shown as due. In addition, a sum of €3,000 under the heading “*Penalties (as determined by Section 58 Capital Acquisitions Consolidation Act 2003)*” is also shown on that form making a total payment due (before statutory interest) of €20,787.
- 16.61. Attached to that return is an extract from the bank statements (detailed at subparagraph 16.40 above). That extract shows that the Appellant received the sum of €13,000 from her father on that date and the further sum of €52,000 from her siblings on the same date.
- 16.62. Copy of a letter from the Appellant’s Solicitor to the Respondent dated 23rd February 2021. Attached to that letter were income tax returns submitted for the Appellant for the years under appeal and a copy of CAT returns for the years 2012 and 2014. The income tax returns all showed a “date signed” of 11th December 2020 and contained one income entry per return under the heading “Income From Sources Not Shown Elsewhere”. Beside the figure entered in that

section of the form on each of the returns was the description “Social Welfare Jobseeker’s Allowance”.

16.63. Copy of two CAT return forms. The first of these for the period ended 31st August 2012 was completed as “nil” and dated 11th December 2020. The second such return was for the period ended 31st August 2014, also dated 11th December 2020 and similarly completed as “nil”.

16.64. Copy of a letter from DSP dated 23rd September 2021. This letter confirmed that the Appellant received the following sums in respect of Jobseeker’s Allowance:

Year	Amount €
2014	9,823
2015	9,917

Attached to that letter was a further print-out which confirmed that the Appellant was paid unspecified amount of Jobseeker’s Allowance for the balance of the years under appeal.

16.65. Copy of an extract from the Land Registry. This document was dated 29th October 2021 and referred to folio number [REDACTED]. The document referred to the property “[REDACTED]” and sought to register that property into the Appellant’s name.

16.66. During the course of the hearing on 16th May 2023, the Commissioner and the Respondent were provided with sight of a Deed of Trust. Following the conclusion of the hearing the Commission were provided with a postal copy of that document on 25th May 2023. The document which was dated 8th January 2022 was entered into by the Appellant, who was described as the Trustee and [REDACTED] who collectively were described as “the Beneficiaries”.

The Deed related to the property “comprised in Folio [REDACTED] of the Register [REDACTED]” and confirmed that the Trustee held that property in trust for the Beneficiaries and at the request of the Beneficiaries she would transfer the property into their ownership.

The Deed was signed, sealed and delivered as a Deed by the Appellant in the presence of her solicitor but was unsigned by the remainder of the Beneficiaries.

Witness Evidence

The Appellant

17. The Appellant, having being sworn in by the Commissioner, stated that she was currently 43 years of age and that she was in receipt of payments from the DSP since she was 18 or 19 and that she had never held an employment or operated a trade.
18. As her only source of income was payments from the DSP, which averaged around €9,500 per annum, the Appellant submitted that the income assessed on her for the periods under appeal was erroneous.
19. The witness stated that while bank accounts were held in joint names with her brother [REDACTED] and her father during the periods under appeal that she could not have contributed funds to those bank accounts as, by virtue of her income, she did not have the means to so do.
20. In turning to the bank account with her brother [REDACTED] she advised that as he was only 17 in 2006 that a number of lodgements lodged into the [REDACTED] account in the sum of €141.60 would have related to children's benefit which he was then entitled to. The Appellant stated that as she did not contribute towards the rest of the lodgements into that account for the periods under appeal, she had no idea what those lodgements related to. The Appellant further advised that she never took any funds from the account she held with her brother [REDACTED] over the years as it was not her money.
21. The Appellant explained that her mother passed away in 2006 when she (the Appellant) was 15 years old. She stated that as she was the eldest female sibling, she was required to look after her siblings and that she did "everything" for [REDACTED] which included bringing him to and from school. The witness stated that as her mother was deceased and as her father had suffered with a heart attack in the past, her father requested that she be added to the bank account in his name so that if anything (health wise) happened to him, she would be able to access the funds in his account, which were necessary for the family's upkeep. She stated that all of the funds lodged into the joint account held with her father were from his sources and that she did not contribute any funds to that account. The Appellant further stated that she never took money from that account over the years as the money was "not hers".
22. When questioned about the [REDACTED] accounts in her sole name, the witness advised that she had deposited sums from her Jobseeker's payments into these accounts as she needed to have money in a bank account to pay her Vodafone bills and such like.

She further advised “the boys” often gave her money for her birthday or “something like that” and this is where she would have deposited that money to “try and save”.

23. In relation to the vehicles purchased in her name over the years under appeal, the witness stated that she never acquired the various vehicles and that they were put into her name by her brothers, [REDACTED]. She explained that while she was insured to drive those vehicles, she was unaware that the vehicles were legally registered in her name, and she understood that the insurance was in her name because she was entitled to cheaper insurance premiums than that of her brothers. As those vehicles were not hers, the Appellant stated that when they were sold, she did not receive any of the sales monies received.
24. With reference to the property acquired in her name in 2006 [REDACTED] the Appellant stated that her brother, [REDACTED], purchased the house and that he had placed the property into her name in trust. She explained that her understanding of the trust was that, if anything happened to [REDACTED] both she and her siblings and nephews and nieces were entitled to the property, but absent that the property was owned by [REDACTED]. The witness stated that she never lived in that property and could not have purchased it as her income from the DSP was insufficient for her to so do. The witness further stated that the property was not sold by her in 2012 but merely transferred from her name into her sister in law's name who was [REDACTED] wife.
25. In relation to the second property, [REDACTED], the witness stated that her brother [REDACTED] owned that property and it was only placed into her name in trust for similar reasons. She stated that she never lived in that property but lived in a caravan out the back garden of that property initially before moving into her father's house, on a rent-free basis, which was also situated in [REDACTED]. When asked by her Counsel as to why the two properties had been placed into her name in trust, the witness stated³:

“Because I'm not married and to hold it in trust for the rest of the family and I had no husband to get involved in, basically.”

26. The witness further stated that she was unaware that the lands acquired in 2009 at [REDACTED] were put into her name until after they had been so placed. She advised that her brother [REDACTED] had purchased those lands on his own behalf and that she never contributed nor acquired any monies in respect of that property.
27. Under cross examination, the witness stated that:

³ Transcript, page 22 at lines 22-24.

- 27.1. She was named on the various joint accounts with her brother and father for the periods under appeal.
- 27.2. She often lodged sums of cash into the account for [REDACTED] at his request. She stated that her brother [REDACTED] worked as a painter and that she understood this is where the money being deposited originated from. The witness stated that she was unsure whether [REDACTED] had returned that income for tax purposes.
- 27.3. She was not in possession of any corroborating evidence to prove that the money lodged into the various joint accounts was not hers.
- 27.4. The legal documentation in respect of the various properties and vehicles purchased and sold during the years under appeal were in her name.
- 27.5. Her brother [REDACTED] purchased the property, [REDACTED], for €346,500 from funds she assumed came from his work as a painter. When asked whether he returned that income for tax purposes, the witness stated⁴ *"I don't know, you'd have to ask him that, I don't know"*.
- 27.6. No paperwork existed for the referred to trusts to her knowledge.
- 27.7. She was unable to confirm the precise sources of any of the lodgements made into the accounts held jointly with her brother and father and she was unable to confirm by reference to any documentation that she did not acquire any funds from those accounts.

- [REDACTED]
28. The witness having being sworn in by the Commissioner stated that he was the Appellant's father. He advised following his wife's passing in 2006, that the Appellant "basically took her mother's place" in looking after her siblings, doing the messages and attending to the laundry. He stated as a result of these household chores that the Appellant had no time to do anything else.
29. The witness further advised that he never knew his daughter to work outside of the house and aside from her Jobseeker's Allowance, she never earned any income.
30. The witness stated that the property, [REDACTED], was not his daughter's but rather belonged to his son, [REDACTED]. The witness further advised that his son, [REDACTED] purchased that property with "two cheques" and "he can prove that". He stated that [REDACTED] requested his daughter put the property into her name on acquisition, as he [REDACTED] while not married

⁴ Transcript, page 43 at line 29.

at the time was living with his partner. He stated that it was always [REDACTED] intention to transfer the property back into his own name when he married, which he subsequently effectively did when he transferred the property into his wife's name.

31. Turning to the property at [REDACTED], the witness advised that property had previously been in his son [REDACTED] name before being transferred initially into his other son [REDACTED] name. He explained following his wife's death and his own health issues, that he took the decision to transfer that property into the Appellant's name, after his son [REDACTED] married, so that if anything happened to him ([REDACTED]), the family would have a "home place". He advised that property was the place that all his brothers and sisters came to from time to time and it was understood by all his family members that the "door was always open" to them.
32. The witness advised that he was of the understanding that the acre of lands purchased at [REDACTED] for €50,000 was bought by his son [REDACTED] and was only put into the Appellant's name for the same reason as to why the [REDACTED] property was put into her name. He stated that the property was currently in [REDACTED] name having been transferred to him recently.
33. The witness stated he never saw any of the vehicles acquired for the period under appeal being driven by the Appellant and he understood that his sons only registered the vehicles in the Appellant's name as she was older than her brothers and hence could get cheaper car insurance.
34. The witness stated that he added the Appellant onto his bank account so she could have access to the funds in that account in the event of anything adverse health wise happening to him. He stated that the money in the account was all his and "*sure [the Appellant] never earned a penny of that money, she never put anything into that account*"⁵.
35. Regarding the opening balance to that account the witness stated that this came from €50,000 lodged from his savings account and a further sum of €22,500 from his son [REDACTED]. He said that the sum from his son was repayment of a loan that he had previously lent him to buy a vehicle and as such it was not a gift as alleged by the Respondent.
36. Turning to the subsequent lodgement of €104,000 into that account, the witness advised that he deposited €13,000 from his own funds and the balance of that lodgement came from his sons and daughters repaying him loans that he had lent them. The witness

⁵ Transcript, page 87 at lines 10-12.

singled out his daughter, [REDACTED] for further explanatory narrative where he stated that she was doing up her rented house at the time and he lent her money for “stuff she was short of” and that subsequently she repaid those funds to him.

37. Under cross examination, the witness stated that:

37.1. The €13,000 lodged into the bank account (see paragraph 36 above) held jointly with the Appellant came from his father but he was unsure when his father gave him that money. He stated that his father died in 2007 but as the administration of his Estate went on for some ten years, he was unsure of the exact date he received his share of his father’s estate.

37.2. While he had documentary evidence to confirm that position, he was not in possession of it “today” as he didn’t think he was going to be confronted with that question.

37.3. He did not charge interest on the loans advanced to his children and had no documentary evidence in respect of those loans. He further advised that he could not detail the dates when he lent the funds to his various children. When further questioned about the dates, the witness stated⁶ “*I’m nearly 70 years of age, I can’t remember dates*”.

37.4. He had accumulated the funds in the joint bank account and the funds he lent his children from savings he accumulated from “horses and scrap and whatever”.

37.5. While he was of the view that a solicitor in [REDACTED] drafted a trust document in relation to the family home, he was not in possession of that document.

37.6. He could not provide an explanation as to why the trust document presented to the Commission (see above at sub-paragraph 16.66) dated 8th January 2022 was unsigned by the parties to that agreement.

Submissions

Appellant

38. The Appellant acknowledged in line with *Menolly Homes v The Appeal Commissioners and Anor* [2010] IEHC 49 (“*Menolly Homes*”) that the onus of proof in proving her appeal rested on her.

⁶ Transcript, page 92 at line17.

39. However, the Appellant submitted that this onus did not extend to the Respondent automatically treating unidentified deposits as taxable income. In support of this submission, the Appellant opened the United Kingdom (“UK”) case of *Miss Mead Ali v Commissioners for Revenue and Customs* [2012] UKFTT 289 (“*Mead Ali*”).
40. In *Mead Ali*, the Appellant, who was a Muslim pharmacist, gave evidence to the First-tier Tribunal⁷ (“FTT”) in the course of which she explained the provenance of the various sums deposited by her over a period of five years. The FTT accepted that there was, within the Appellant’s community, often ‘communal use’ of bank accounts by family members, and this had occurred in connection with the Appellant’s accounts. The FTT was satisfied, on the balance of probabilities, that the Appellant had discharged the burden of proof on her to show that the various deposits in her bank accounts did not represent undeclared taxable income and the FTT allowed the appeal.
41. The Appellant submitted further proposition that the required level of proof was “on a balance of probabilities” standard was contained in the FTT case of *Romark Jewellers Limited v Commissioners for Revenue and Customs* [2012] UKFTT 432 (“*Romark*”).
42. In *Romark*, the Appellant was a company which carried on a retail jewellery business. HMRC became aware that Mr. Krempel, the sole director and shareholder of the company, had made cash deposits of £114,250 into an offshore savings account in 2003 and 2004. Mr. Krempel, when questioned by HMRC, stated that the deposits were the proceeds of sales of jewellery which his mother had given to him. Mr. Krempel produced a handwritten list of the items of jewellery which he said his mother had given to him. The value of the items of jewellery amounted to £146,000. HMRC did not accept Mr. Krempel’s explanation and issued assessments.
43. HMRC contended that an admitted failure to include all tax in the return for 2002-2003 and unexplained amounts paid into an offshore bank account by Mr Krempel indicated that there was undeclared income in the business. Mr Krempel contended that the amounts were the proceeds of the sale of jewellery given to him by his mother to sell on her behalf and that the company had declared all the proceeds of sale by the business in the years under appeal.
44. The FTT held that the outcome of the appeal turned on whether the Tribunal accepted Mr. Krempel’s evidence that the amounts assessed were the proceeds of sales of jewellery belonging to his mother. The Tribunal was satisfied having heard the evidence,

⁷ The First-tier Tribunal have responsibility for handling appeals against some decisions made by His Majesties’ Customs & Excise (“HMRC”). Broadly speaking, it is the UK equivalent of the Commission.

on the balance of probabilities that the amounts assessed were the proceeds of sales of jewellery given to Mr. Krempel by his mother and the appeal against the assessments was allowed.

45. Furthermore, the Appellant submitted that *ON v Refugee Appeals Tribunal & Ors* [2017] IEHC 13 is authority for the proposition that the standard of proof is the balance of probabilities coupled with, where appropriate, the benefit of the doubt being given to the Appellant. At paragraph 63 of that judgment, O'Regan J held:

"In light of the foregoing principles and having regard to the fact that the balance of probabilities is the civil standard of proof in this jurisdiction, I am satisfied that the principle of equivalence and the principle of effectiveness are both safeguarded by the application of the standard of proof – being the balance of probabilities – coupled with, where appropriate the benefit of doubt. Until such time as the State might introduce more favourable standards as contemplated by Article 3 of the 2004 Directive, this is the appropriate standard to apply, i.e. the balance of probabilities, coupled with, where appropriate, the benefit of the doubt".

46. The Appellant advised the Commission that she was a member of the traveller community and a culture within that community exists whereby family monies move "here, there and everywhere" and that properties are often held in trust on behalf of family members.
47. The Appellant submitted that as her sole source of income was derived from Jobseeker's Allowance for the periods under appeal, then the Respondent's claim that she had taxable income for those years was misconstrued and ill-founded.
48. The Appellant submitted that as her entitlement to claim Jobseeker's Allowance was never questioned to any meaningful degree by the DSP that it was contradictory for the Respondent to assess the Appellant to other sources of income (as Jobseeker's Allowance is a means tested payment).
49. The Appellant submitted that her case is very straightforward. In the first instance, the Appellant submitted that the sums deposited into the bank account with her brother were merely held by her in trust on his behalf. The Appellant further advised that she was only added to her father's bank account so she could access those funds in the event of his ill health and never lodged any funds into that bank account nor received any funds from it.
50. The Appellant stated despite several vehicles being registered in her name over the years of appeal, that those vehicles did not belong to her nor did she contribute towards the purchase of those vehicles or benefit from their sales proceeds. The Appellant submitted

that the only reason those vehicles were put into her name was to facilitate her siblings obtain lower insurance premiums than they would have obtained if they placed the vehicles into their own names.

51. The Appellant further submitted that she never owned any properties and when properties were transferred into her name, they were only transferred in trust on behalf of her family. The Appellant stated that owing to her culture, it was common for property to be held in the name of an unmarried family member so as to protect the property from “outsiders”.
52. The Appellant submitted as she held the properties in trust on behalf of family members, and as she only held the property for the benefit of others, then it was incorrect for the Respondent to treat those properties as hers and to further seek to impose taxation in respect of those properties.
53. The Appellant opened a quotation from a leading Irish text book on Irish Land Law⁸. At pages 429 and 430 of that publication at sub-paragraphs 9.004 and 9.005, it states:

“For the moment, it is sufficient to say that the trustees are obliged not to secure for themselves any personal advantage from their position as legal owners of trust property. They are obliged to hold that legal ownership in the property for the benefit of the persons who form the third basic feature of a trust the beneficiaries or cestuis que trust. The beneficiaries, so long as the trust survives have equitable interests only. Their interest will, however always be enforced by the courts against the trustees or their parties, subject only to the limitations such interests involve.

Finally, there is the feature of the trust property, held by the trustees as to the legal title for the beneficiaries, who have equitable title. The important point to note here is that any kind of property capable of private ownership can be held on trust”.

54. In noting that the written Trust Deed in respect of the property known as [REDACTED]” was completed retrospectively, the Appellant submitted that she was entitled to rely on equitable principles to prove that the Trust were in operation prior to the written deed coming into existence. In support of this submission, the Appellant opened pages 437 and 438 of Irish Land Law which states:

“In the case of land, however, section 4 of the Statute of Frauds (Ireland) Act 1695 requires that the trust be evidenced in writing signed by some person able to declare the trust, or by his will. There are several points to note about this provision. First, it

⁸ Irish Land Law, Professor John Wylie, 5th Ed.

does not require the declaration of trust itself to be in writing. All that is required is that some written evidence (be it contained in a letter, memorandum or even recital in a deed) exists to evidence the declaration (which may have been oral) before any action is brought connected with that trust. Thus the written evidence may come into existence long after the declaration and operation of the trust (Per Sugden L.C. ibid. pp 682-3 and Donohue v Conrahy (1845) 8 IR.Eq.R.679”.

... Secondly, lack of written evidence may not be fatal to the establishment of a trust, enforceable in court, because the principle of equity outlined by Lord Westbury in the Irish case of McCormack v Grogan⁹”.

55. The Appellant concluded her submissions by stating that her case is very straightforward and it is that the sums lodged did not represent undeclared taxable income. The Appellant submitted that she had explained the provenance of the sums lodged to the Respondent and as these explanations confirmed that the lodgements came from numerous sources which were not liable to taxation, then the Commission should allow the Appellant's appeal. The Appellant further submitted that as the various vehicles were held in her name only to assist her siblings obtain cheaper vehicle insurance, then the Commission should find that she neither contributed nor benefited from those vehicles. Furthermore, the Appellant submitted that as she did not have the means to purchase either of the properties held in her name during the years of the appeal, and as she only held them in trust on behalf of other family members, then the Commission should find that she neither acquired nor disposed of those properties.

56. In conclusion, the Appellant submitted that as she had no income aside from her DSP payments, then the Commission should allow her appeal and vacate the Notices of Assessment to Income Tax and CAT.

Respondent

57. The Respondent opened paragraph 20 of *Menolly* in which Charleton J expressly approved the following extract from the judgment of Gilligan J. in *TJ v Criminal Assets Bureau* [2008] IEHC 168:

“The whole basis of the Irish taxation system is developed on the premise of self-assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self-assessment on the basis of any income and/or gains that

⁹ 1868 WL 9931 (1869).

arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self-assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self-assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."

58. The Respondent further opened *Bi-Flex Caribbean Limited v The Board of Inland Revenue* (1990) 63 TC 515, in which the Privy Council clarified that the basis for the rule that the taxpayer bears the onus of proof, as in this jurisdiction, is that the facts are within the knowledge of the taxpayer. At page 522 Lowry L stated that:

"The element of guess-work and the almost unavoidable inaccuracy in a properly made best of judgment assessment, as the cases have established, do not serve to displace the validity of the assessments, which are prima facie right and remain right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right. It is also relevant, when considering the sufficiency of evidence to displace an assessment, to remember that the facts are peculiarly within the knowledge of the taxpayer." (emphasis added)"

59. The Respondent submitted that despite the Appellant acknowledging that the onus of proof rested with her, and the above jurisprudence confirming that position, that the Appellant had failed to discharge that burden.
60. The Respondent submitted that there were essentially three components to the Appellant's appeal, which are the lodgements into the bank accounts held with her brother and father, the acquisition of a number of vehicles by the Appellant and the acquisition of properties by the Appellant.
61. The Respondent submitted that unlike the position in *Mead Ali*, where the source of the funds lodged into her account was apparent, that was not the case with the Appellant. Furthermore, unlike *Romark*, where a sworn affidavit and independent corroboration of the jewellery being gifted and this being verified by staff members, the Respondent submitted that the Appellant had produced no evidence on the source of the lodgements into the various bank accounts for the periods under appeal.
62. Turning to the bank accounts held with the Appellant's brother, [REDACTED], the Respondent advised the Commission that [REDACTED] had not submitted any tax returns for the years under appeal which lead to an investigation into his taxation affairs and the issuance of Notices of Assessment to him.
63. The Respondent explained while it could not disclose further details of [REDACTED] taxation affairs for privacy reasons, it was important to note, for the purpose of the Appellant's appeal, that he had only been assessed on one half of the monies lodged into the joint accounts held with the Appellant. As such, the Respondent stated it was seeking to tax, and had raised its assessments on the Appellant based upon the remaining unaccounted for half share of the monies held in the joint accounts with her brother.
64. The Respondent stated that despite [REDACTED] being given the opportunity to account for the full amount of the lodgements deposited into the joint accounts held with the Appellant, he had failed to do so. In place, the Respondent submitted that [REDACTED] had insisted during his investigation that he was only liable to one half of the income deposited into the joint accounts held with the Appellant. The Respondent further submitted that, as [REDACTED] had failed to present himself as a witness at the Appellant's appeal, then the source of the lodgements into the joint accounts held with his sister remained unidentified. The Respondent submitted that as [REDACTED] had failed to take ownership of the funds so deposited and as the source of those funds remained unexplained, then it was incumbent on the Commission to uphold the portion of the assessments referable to that income.

65. The Respondent further submitted as the source of the lodgements into the Appellant's own bank accounts and the bank accounts held with her father were similarly unexplained and not verified with any evidence, then the Commission should endorse the treatment it had adapted and uphold the associated portion of the tax due on the CAT and Income Tax Assessments.
66. The Respondent submitted that as the Appellant had acquired six vehicles during the years covered by the Appeal, and had failed to produce any evidence which established where the funds came from to acquire those vehicles, then it followed that the source of the funding required to purchase those vehicles remained unexplained. As such, the Respondent submitted that the Commission should further uphold the portion of the assessments referable to the funds required to have purchased those vehicles.
67. The Respondent further submitted that as the Appellant had acquired the property, [REDACTED] in 2006 and had not disputed the valuation of that property nor provided any details on the source of funds necessary to acquire that property, then the Commission should uphold the applicable portion of the 2006 income tax assessment.
68. Furthermore, the Respondent submitted that as the Appellant had also acquired the lands in [REDACTED] k, the property in [REDACTED] and the monetary gifts from her father and siblings, as detailed in its CAT computations, then the Commission should uphold the entirety of the CAT assessments it had raised.
69. In conclusion, the Respondent submitted that that as the Appellant had received income and assets for the years under appeal and had failed to provide the Commission with any evidence of the source of those funds or the funds necessary to acquire those assets, then the Commission should refuse the Appellant's appeal.

Material Facts

70. The Commissioner finds the following material facts:
- 70.1. In the years under appeal, the Appellant was named as a joint owner on an [REDACTED] bank account held with her brother, [REDACTED].
- 70.2. The opening balance on that account as at 3rd January 2016 was €22,159.31.
- 70.3. A number of lodgements were deposited into that bank account for the periods under appeal. The source of those lodgements is unexplained.
- 70.4. That bank account earned deposit interest on the balance deposited into it.

- 70.5. The Appellant was also named as joint owner, along with her brother, [REDACTED], on a deposit account held with the EBS.
- 70.6. That bank account paid deposit interest on the balances held within it.
- 70.7. The Appellant held bank accounts in her own name with [REDACTED]. Those accounts were a current account and a savings account. The funds deposited into those bank accounts during the period were relatively modest aside from a lodgement described as "[REDACTED] C.O. for GP" in the sum of €800 on 4^h December 2015.
- 70.8. In 2012, the Appellant became a joint owner of a [REDACTED] account with her father.
- 70.9. The opening balance on that account, €72,794.59 was deemed to have derived from a lodgement by her father of €50,294.59 described as "[REDACTED] Savings Account" and €22,500 from her brother [REDACTED].
- 70.10. The Commission were not provided with a copy of the "[REDACTED] Savings Account" nor any explanation of where the funds lodged into that bank account derived from.
- 70.11. No evidence was provided to the Commission as to where the sum of €22,500 lodged into that bank account by her brother [REDACTED] derived from.
- 70.12. A further lodgement of €117,000 was lodged into that bank account on 24th February 2014. €13,000 of that deposited sum came from the Appellant's father, €89,000 from the Appellant's 4 siblings and €15,000 in drafts from unidentified sources.
- 70.13. No evidence was provided to the Commission as to where those lodgements derived from.
- 70.14. That bank account paid deposit interest on the funds within it.
- 70.15. The Respondent assessed the Appellant to CAT on some of the lodgements made into the joint account held with her father.
- 70.16. The Respondent assessed the Appellant on 50% of the balance of those funds lodged into the bank account (excluding interest) held by the Appellant with her father as being chargeable to the Appellant under Schedule D, Case IV.

- 70.17. The Respondent also assessed the Appellant to 50% of the lodgements made to the bank account, excluding interest, held with her brother for the periods under appeal under Schedule D, Case IV.
- 70.18. The Respondent did not assess the Appellant on her 50% share of deposit interest from the bank accounts she held with her father and brother for the years under appeal.
- 70.19. The Appellant was in receipt of a DSP payment known as “Jobseeker’s Allowance” for the periods under appeal. This income is not liable to income tax, PRSI or USC.
- 70.20. The Respondent income taxed the Appellant on funds deposited into her [REDACTED] [REDACTED] accounts during the periods under appeal.
- 70.21. For a portion of the years under appeal, the Appellant’s brother was entitled to a DSP payment known as children’s’ allowance. This payment is not taxable.
- 70.22. The Appellant acquired a property known as “[REDACTED]” on 20th December 2016. The market value of this property as at that date was €346,500 and as the Appellant had no funds to acquire the property on that date, the Respondent assessed the Appellant to income tax on the purchase price of the property.
- 70.23. No details were provided to the Commission of the previous owner of that property.
- 70.24. That property was transferred to the Appellant’s sister in law on 21st February 2012 at a value of €175,000. The stamp duty return evidencing that transfer records no consideration exchanged between the Appellant and her sister in law.
- 70.25. On 23rd February 2009, the Appellant acquired 1 acre of lands at [REDACTED]. Those lands were transferred to the Appellant by her brother, [REDACTED] for no consideration.
- 70.26. The Respondent valued those lands at €50,000 and treated the transfer of those lands as a gift received by the Appellant from her brother. Stamp duty of €1,000 was chargeable on that transfer but was not paid.
- 70.27. The Appellant did not dispute the value placed on those lands by the Respondent.
- 70.28. On 21st February 2012, the Appellant acquired a property known as “[REDACTED] [REDACTED]” from her brother, [REDACTED]. The stamping documentation records that

property as being worth €180,000 at that time and stamp duty of €1,750 was paid on that transfer.

70.29. The Respondent treated that transfer as a gift received by the Appellant from her brother.

70.30. The Commission was presented with a Deed of Trust dated 8th January 2022 by the Appellant. This document was signed by the Trustee but not signed by the beneficiaries.

70.31. The Appellant acquired the following vehicles in her own name during the period under appeal:

<i>Date</i>	<i>Vehicle</i>	<i>Reg No.</i>	<i>Value/Cost</i>
1/4/2009	Ford [REDACTED]	[REDACTED]	€19,530
21/2/2014	VW [REDACTED]	[REDACTED]	€26,735
8/1/2015	VW [REDACTED] *	[REDACTED]	€23,680
12/1/2015	VW [REDACTED] **	[REDACTED]	€23,393
14/1/2015	Toyota [REDACTED]	[REDACTED]	€32,392
4/1/2017	Ford [REDACTED]	[REDACTED]	€21,240

*This vehicle was traded in or swapped for the VW [REDACTED] marked **

Analysis

71. As noted, the appropriate starting point for analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in *Menolly Homes* where Charleton J held at paragraph 22:-

“The burden of proof in this appeal process is ... 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.”

72. This burden of proof was reiterated in the recent High Court case of *O’Sullivan v Revenue Commissioners* [2021] IEHC 118, (“*O’Sullivan*”) where Sanfey J. held at paragraph 90:

“...The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer’s position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position...”

73. The Commissioner notes that the Respondent assessed the Appellant under two tax heads that is Income Tax and CAT. The Commissioner considers the Appellant’s position under each of these tax heads separately.

Income Tax Assessments

74. The Commissioner notes that the Respondent assessed the Appellant to income tax under Schedule D, Case IV on the basis that the Appellant had “unexplained” income for the years under appeal. Therefore, for the Appellant’s appeal to succeed, it is first necessary for the Appellant to establish that the income received by her was not from unexplained sources but rather came from some other verifiable source.
75. For the periods under appeal, the Appellant was named on “sets” of bank accounts that is the accounts held in her own name, those held with her brother and those held with her father.
76. From those bank accounts, the Respondent has established what lodgements were deposited by the Appellant in her own right and those lodged into the bank accounts held by the Appellant and her father and the Appellant and her brother. The Respondent seeks to tax the Appellant on the full amount of the lodgements made into her bank accounts and 50% of the unexplained amounts deposited into the accounts held with her brother and father, since the Appellant was the joint owner of those latter bank accounts.
77. The Respondent as also examined the withdrawals from the bank accounts held by the Appellant with her father and brother for the years under appeal. Of the unexplained lodgements into those accounts, the Respondent treats one half as being referable to the Appellant on the grounds that she is the joint owner of these bank accounts.
78. The Commissioner notes that once the sum of the withdrawals from the bank accounts in calculated, the Respondent adds the Appellant’s other income (the DSP payments) to derive at the Appellant’s total available cash for the year. Once calculated, the Respondent then compares this figure to the Insolvency Service of Ireland’s (ISI)

“Reasonable Living Expenses Calculator¹⁰” and where a shortfall occurs (as happened in 2016), treats the ISI figure as being the taxable figure on the Appellant since that is the minimum deemed income that she would have needed to “survive”. For reasons that will become evident, the Commissioner does not favour this calculation for 2016 and in place finds that the Appellant should be taxed on sums deposited into the bank accounts held with her father and brother.

79. The Commissioner notes the Appellant’s evidence and the quantum of the lodgements into the bank accounts held in her own name. As the quantum of the lodgements into those bank accounts are predominately small sums of money (save for the lodgement of €800 described as “██████████ C.O. for GP” in 2011, which is most likely not taxable) and are explainable by the Appellant’s evidence, the Commissioner finds that the lodgements into those bank accounts do not represent taxable income and the issued income tax assessment should be reduced on a pro-rata basis in respect of that income.
80. Turning to the bank accounts held jointly with the Appellant’s brother, ██████████, the Commissioner notes the Appellant’s evidence in relation to the payment of children’s allowance, which is not taxable. Having examined the bank accounts for the periods under appeal, the Commissioner finds that three amounts of child benefit totalling €424.80 (being €141.60 x 3) were paid to the Appellant in 2006 and therefore the assessment for that year should be reduced by the amount of income referable to those payments.
81. However, as the Appellant failed to produce any evidence on the source of the balance of the funds deposited into the account held with her brother, the Commissioner finds the source of those lodgements remained unexplained and must therefore, uphold the portion of the raised assessments referable to them.
82. In addition, as the sum of €22,159.31 was held in the ██████████ Account with her brother on 3rd January 2006 and as the source of that opening balance, remains unexplained, the Commissioner finds that the Appellant should be further assessed in 2006 to one half of that opening balance, €11,080. As the Appellant is deemed to have received those funds in 2006, this displaces the Respondent’s substitution of the ISI figure utilised.
83. As the Appellant was the legal owner of six vehicles, during the period under appeal, and as the Appellant produced no evidence to the Commission on the source of the funds necessarily required for the purchase of those vehicles, it follows that the Commissioner

¹⁰https://backontrack.ie/?gclid=EAlaIqobChMI0uG639KgggMVhMftCh15XQdcEAAAYASAAEgIEk_D_BwE

is further required to uphold the portion of the income tax assessments referable to those funds.

84. The Commissioner further notes that the Appellant acquired the property, [REDACTED] on 20th December 2006 for the sum of €346,500. As the Commission were not provided with details of who owned this property prior to acquisition and as the Appellant would have needed the sum of €346,500 to acquire that property, it follows that the property falls to be assessed upon the Appellant in the year 2006.
85. Furthermore, the Commissioner notes that the Appellant was entitled to a 50% share of the deposit interest on the accounts held with her father and brother but the Respondent did not assess this income on the Appellant. As the Commissioner is required to ensure that his determination is issued in accordance with the provisions of the TCA 1997, and as some of the deposit interest did not have DIRT deducted from it and/or may be liable to Universal Social Charge (“USC”), it follows the Commissioner is required to include the amount of the deposit interest received by the Appellant in calculating her liability due under the assessment.
86. Owing to the modifications to the Respondent’s issued Notices of Assessment to income tax, the Commissioner sets out at **Appendix One** details of the Appellant’s taxable income for the periods under appeal. It is for the Respondent to calculate the income tax payable on that taxable income.
87. Subject to those variations, the Commissioner finds that the Notices of Assessment to income tax for the years of assessment 2006, 2008 to 2015 (inclusive) and 2017 are upheld with the variation that the Schedule D, Case IV income is to be adjusted in accordance with the figures set out in Appendix one. As noted, it is for the Respondent to calculate the Appellant’s final liability to income tax based upon the provided figures.

Capital Acquisitions Tax Assessments

88. The Commissioner notes that the Appellant became a joint owner of a bank account with her father in 2012 and the opening lodgement into that bank account came from a number of lodgements attributed to the Appellant’s father, siblings and unknown sources. As the source of those funds are not identified and as the Respondent has treated those funds as being liable to CAT, in the absence of contradictory evidence, the Commissioner is required to uphold the CAT assessment, subject to the associated CAT liability being correctly calculated.

89. The Commissioner further notes that the Appellant acquired two additional properties for the periods under appeal. That is the lands acquired at [REDACTED] on 23rd February 2009 at a valuation of €50,000 from her brother [REDACTED] and the property at [REDACTED] acquired from her other brother, [REDACTED], on 21st February 2012 in the sum of €180,000. As the Appellant was unable to explain the source of funds necessarily required to acquire these properties, it follows that the portion of the CAT assessments referable to these properties must be upheld.
90. In coming to the finding in respect of the [REDACTED] property, the Commissioner considered the provided Deed of Trust dated 8th January 2022 which he notes is not signed by the Beneficiaries nor is any details of the purchaser/previous owner of that property revealed within the Trust Deed. Therefore as that Deed is not in compliance with the requirements of the Statute of Frauds Act 1695, the Commissioner finds that he is unable to attach any weight to this document.
91. In relation to the lands at [REDACTED], the Commissioner notes that stamp duty was chargeable in the sum of €1,000 but apparently was not paid on that transfer. However, as the Commissioner's jurisdiction is confined to increasing, decreasing or upholding the Respondent's assessments under section 949AK (1) TCA 1997 and as the Respondent did not raise an assessment in relation to this apparent omission, the Commissioner is unable to make a finding in relation to the potential underpayment of stamp duty.
92. As such, the Commissioner is required to uphold the Respondent's assessments to CAT for the years 2012 and 2014 subject to confirming that those liabilities have been correctly calculated. As there are some errors contained within the Respondent's calculations (primarily the incorrect aggregation of the sibling gifts and the incorrect calculation of the "small gift allowance"), the Commissioner sets out at **Appendix Two** a copy of the revised calculations for assistance to the parties.
93. The Commissioner notes that the Respondent charged the Appellant a 10% surcharge on the late submission of her CAT returns under the provisions of section 53A CATCA 2003 on the grounds that the Appellant did not submit her CAT returns within two months of the date they were so due. The Commissioner further notes that the Respondent also charged the Appellant a penalty under the provisions of section 58 CATCA 2003.
94. The latter section requires a penalty to be imposed on a taxpayer on grounds which include the default in the delivery of a tax return or negligently submitting a tax return. As the Appellant submitted her tax return and as she did not negligently complete it (on the grounds that she believed at the time it was submitted she did not have any taxable

liability and as the matter was under appeal), it follows that the Commissioner is unable to uphold the penalty imposed by the Respondent under the provisions of section 58 CATCA 2003. However, the Commissioner finds that the surcharge imposed under section 53A CATCA is upheld as the Appellant did not submit either of her CAT returns within a period of two months from the date they were due.

95. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes* "the burden of proof ...is on the taxpayer". As confirmed in that case by Charleton J at paragraph 22:-

"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

96. As the Appellant's father failed to disclose the source of the lodgements to the joint account held with his daughter and as the Appellant's siblings failed to claim ownership of, or provide details of the source of the funds necessarily required to acquire the various assets for the periods under appeal, it follows that the income and assets received by the Appellant remain unidentified. As such, the burden of proof has not been discharged to satisfy the Commissioner that the taxation liabilities sought by the Respondent are not due.

Determination

97. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the tax is not payable.

98. Therefore, the Notice of Assessments to Income Tax issued by the Respondent on 17th July 2020, are upheld subject to the variation as provided at paragraph 87 above. The final calculation of the income tax liability for the years under appeal is for the Respondent to compute. In addition, the Commissioner determines that the Notices of Assessment to CAT for the years 2012 and 2014, as provided at Appendix Two in the sum of €66,578 (inclusive of a 10% surcharge) for 2012 and €22,394 (inclusive of a 10% surcharge) for 2014 are upheld by the Commissioner.

99. The Commissioner appreciates that the Appellant will be disappointed with this determination but she was correct to seek legal clarity on her appeal.

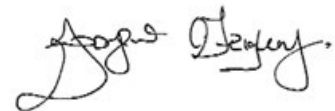
100. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

101. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ (6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

102. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Andrew Feighery

Appeal Commissioner

3rd November 2023

Appendix 1 – Income Tax Calculations

Calculation of Schedule D, Case IV income	
2006	€
Account opening Balance as at 3/1/2016	22,159
Lodgements into Account, excluding Deposit Interest	7,775
Less: Reduction for DSP payments	425
	29,509
50% Share	14,755
Funds For Purchase of	346,500
Schedule D Case IV, unidentified income	361,255
<i>50% Share of Deposit interest*:</i>	
Account	24
Schedule D, Case IV, deposit interest	24
Total Assessable Schedule D, Case IV income	361,279
<i>*Note: The Appellant is to be allowed a credit for DIRT deducted for the years 2006 and subsequent</i>	
2008	€
Lodgements into Account, excluding Deposit Interest	41,700
	41,700
50% Share	20,850
Schedule D Case IV, unidentified income	20,850
<i>50% Share of Deposit interest*:</i>	
Account	185
Deposit Account	488
Schedule D, Case IV, deposit interest	673
Total Assessable Schedule D, Case IV income	21,523
2009	€
Lodgements into Account, excluding Deposit Interest	71,744
	71,744

50% Share	35,872
Funds for purchase of Ford [REDACTED]	19,530
	<hr/>
Schedule D Case IV, unidentified income	55,402
	<hr/>
<i>50% Share of Deposit interest*:</i>	
[REDACTED] Account	12
[REDACTED] Deposit Account	429
Schedule D, Case IV, deposit interest	441
	<hr/>
Total Assessable Schedule D, Case IV income	55,843
	<hr/>
<u>2010</u>	€
Lodgements into [REDACTED] Account, excluding Deposit Interest	107,034
	<hr/>
50% Share	53,517
	<hr/>
Schedule D Case IV, unidentified income	53,517
	<hr/>
<i>50% Share of Deposit interest*:</i>	
[REDACTED] Account	17
[REDACTED] Deposit Account	257
Schedule D, Case IV, deposit interest	275
	<hr/>
Total Assessable Schedule D, Case IV income	53,792
	<hr/>
<u>2011</u>	€
Lodgements into [REDACTED] Account, excluding Deposit Interest	29,027
	<hr/>
50% Share	14,514
	<hr/>
Schedule D Case IV, unidentified income	14,514
	<hr/>
<i>50% Share of Deposit interest*:</i>	
[REDACTED] Account	23
[REDACTED] Deposit Account	416
Schedule D, Case IV, deposit interest	439
	<hr/>
Total Assessable Schedule D, Case IV income	14,953
	<hr/>

2012

€

Lodgements into [REDACTED] Account, excluding Deposit Interest

61,978

50% Share

30,989

Schedule D Case IV, unidentified income

30,989

50% Share of Deposit interest:*

[REDACTED] Account

7

[REDACTED] Deposit Account

1,212

[REDACTED] Account

0

Schedule D, Case IV, deposit interest

1,218

Total Assessable Schedule D, Case IV income

32,207

2013

€

Lodgements into [REDACTED] Account, excluding Deposit Interest

102,950

50% Share

51,475

Schedule D Case IV, unidentified income

51,475

50% Share of Deposit interest:*

[REDACTED] Account

12

[REDACTED] Deposit Account

866

[REDACTED] Account

851

Schedule D, Case IV, deposit interest

1,729

Total Assessable Schedule D, Case IV income

53,204

2014

€

Lodgements into [REDACTED] Account, excluding Deposit Interest

77,467

50% Share

38,734

Funds for VW [REDACTED] [REDACTED]

26,735

Schedule D Case IV, unidentified income

65,469

50% Share of Deposit interest:*

[REDACTED] Account

10

[REDACTED] Deposit Account

1,396

Account	0
Schedule D, Case IV, deposit interest	1,406
<hr/>	
Total Assessable Schedule D, Case IV income	66,875
<hr/>	
2015	€
Lodgements into Account, excluding Deposit Interest	65,488
50% Share	32,744
Funds for Toyota	32,392
Schedule D Case IV, unidentified income	65,136
<hr/>	
<i>50% Share of Deposit interest*:</i>	
Account	8
Deposit Account	0
Account	1,015
Schedule D, Case IV, deposit interest	1,023
<hr/>	
Total Assessable Schedule D, Case IV income	66,159
<hr/>	
2017	€
Funds for Ford	21,240
Schedule D Case IV, unidentified income	21,240
<hr/>	
<i>50% Share of Deposit interest*:</i>	
Account	0
Deposit Account	0
Account	1,064
Schedule D, Case IV, deposit interest	1,064
<hr/>	
Total Assessable Schedule D, Case IV income	22,304
<hr/>	

Appendix 2 – Capital Acquisitions Tax Calculations

CAT Calculations			
Gifts Received from Father			€
2012			
24/02/2012	Bank Account (1/2 share)		25,147
	Group A Threshold Amount		<u>250,000</u>
	CAT Chargeable		<u>0</u>
2014			
24/02/2014	Lodgement to Bank Account (1/2 share)		6,500
Add:	Previous Gift on 24/2/2012		<u>25,147</u>
	Total Gifts from Father		31,647
	Group A Threshold Amount		<u>225,000</u>
	CAT Chargeable		<u>0</u>
Gifts Received from Siblings		Disponer	€
2009			
23/02/2009	Land at [Redacted]	[Redacted]	50,000
Less:	Small Gift Exemption		<u>3,000</u>
			47,000
	Class B Threshold		<u>54,254</u>
	CAT Chargeable		<u>0</u>
	2009 Total Amount Due		<u>0</u>
2012			
21/02/2012	[Redacted]	[Redacted]	180,000
24/02/2012	Bank Account (1/2 share)	[Redacted]	<u>11,250</u>
			191,250
Less:	Small Gift Exemption		<u>3,000</u>
			188,250
Add:	Prior Gift on 23/2/2009		<u>47,000</u>
			<u>235,250</u>

	Class B		
	Threshold		33,500
	Taxable Value		<u>201,750</u>
	CAT @ 30%		60,525
<i>Add:</i>	Surcharge for late submission (10%)		<u>6,053</u>
	2012 Total Amount Due		<u><u>66,578</u></u>
2014			
	24/02/2014	Account (1/2 share) *Siblings	52,000
<i>Less:</i>		Small Gift Exemption** (4 x €3,000)	<u>12,000</u>
			40,000
<i>Add:</i>		Prior Gifts in 2009 and 2012	<u>235,250</u>
		Total Gifts from siblings	275,250
		Class B	
		Threshold	<u>30,150</u>
		Taxable Value	<u>245,100</u>
		CAT @ 33%	80,883
<i>Less:</i>		CAT charged in 2012	<u>60,525</u>
		CAT Chargeable in 2014	20,358
<i>Add:</i>		Surcharge for late submission (10%)	<u>2,036</u>
	2014 Total Amount Due		<u><u>22,394</u></u>

*While three of the lodgements in the sum of €15,000, the Commissioner is treating these in a like manner to the Respondent's calculations and treating them as being received from the Appellant's siblings.

**As the Appellant is deemed to have received gifts from four of her siblings, she is entitled to the Small Gift Allowance of €3,000 in respect of each of those gifts.

Appendix 3 – Legislation

Taxes Consolidation Act 1997

Section 949W – Staying Proceedings.

(1) The Appeal Commissioners may, at any stage, stay proceedings in an appeal (in this section referred to as a “stayed appeal”) where—

- (a) they wish to provide an opportunity for the parties to settle the matter under appeal by agreement with each other,*
- (b) they wish to give a party additional time in which to prepare for a hearing,*
- (c) they wish to allow a determination to be made in another appeal that raises issues of fact or law that are common or related to those in the stayed appeal (in sections 949AN and 949AO referred to as “common or related issues”), or*
- (d) in the interests of justice, they consider it appropriate to do so.*

(2) The Appeal Commissioners shall stay proceedings by giving a direction in accordance with section 949E (1), which direction shall specify a date by which the proceedings are to be resumed.

Section 950 TCA 1997 (which applies to 2012 and earlier years of assessment).

“chargeable person” means, 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...*
- (b) who for the chargeable period has been exempted by an inspector from the requirements of section 951 by reason of a notice given under subsection (6) of that section, or*
- (c) who is chargeable to tax for the chargeable period by reason only of section 237, 238 or 239,*

but paragraph (a) shall not apply to a person who is a director or, in the case of a person to whom section 1017 or 1031C applies, whose spouse or civil partner is a director (within the meaning of section 116) of a body corporate...”

Section 959A TCA 1997 (which applies to 2013 and subsequent years of assessment).

“chargeable person” means, 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 [...]

Section 922 (3) TCA 1997 (which applies to 2012 and earlier years of assessment).

Where—

(a) a person makes default in the delivery of a statement in respect of any income tax under Schedule D or F, or

(b) the inspector is not satisfied with a statement which has been delivered, or has received any information as to its insufficiency,

the inspector shall make an assessment on the person concerned in such sum as according to the best of the inspector’s judgment ought to be charged on that person.

Section 959AC (2) (a) TCA 1997 (which applies to 2013 and subsequent years of assessment).

[...] where in relation to a chargeable person [...] the person fails to deliver a return for the chargeable period [...] then a Revenue Officer may, at any time, make a Revenue assessment on the chargeable person in such sum as, according to the best of the officer’s judgment, ought to be charged on that person.’

Section 959 AC (3) TCA 1997 (which applies to 2013 and subsequent years of assessment).

‘Where a Revenue officer makes a Revenue assessment on a chargeable person under this section in the event of the failure of the person to deliver a return, it shall not be necessary to set out in the notice of assessment any particulars other than the amount of tax payable by the person for the chargeable period on the basis of that assessment.’

Section 58 TCA 1997 -Charge to tax of profits or gains from unknown or unlawful source.

(1) Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made—

(a) the source from which those profits or gains arose was not known to the inspector,

(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or

(c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.

(2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) or charged to tax by virtue of or following any investigation by any body (in this subsection referred to as “the body”) established by or under statute or by the Government, the purpose or one of the principal purposes of which is—

(a) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the purposes mentioned in paragraphs (a) and (b),

shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as “miscellaneous income”, and in respect of such profits and gains so assessed—

(i) the assessment—

(I) may be made solely in the name of the body, and

(II) shall not be discharged by the Appeal Commissioners or by a court by reason only of the fact that the income should apart from this section have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity,

and

(ii) (I) *the tax charged in the assessment may be demanded solely in the name of the body, and*

(II) on payment to it of the tax so demanded, the body shall issue a receipt in its name and shall forthwith—

(A) lodge the tax paid to the General Account of the Revenue Commissioners in the Central Bank of Ireland, and

(B) transmit to the Collector-General particulars of the tax assessed and payment received in respect of that tax.

Capital Acquisitions Tax Consolidation Act 2003.
Section 6 – Taxable Gift.

(1) In relation to a gift taken under a disposition, where the date of the disposition is before 1 December 1999, “taxable gift” in this Act means—

(a) in the case of a gift, other than a gift taken under a discretionary trust, where the disponent is domiciled in the State at the date of the disposition under which the donee takes the gift, the whole of the gift,

(b) in the case of a gift taken under a discretionary trust where the disponent is domiciled in the State at the date of the disposition under which the donee takes the gift or at the date of the gift or was (in the case of a gift taken after that donee's death) so domiciled at the time of that donee's death, the whole of the gift, and

(c) in any other case, so much of the property of which the gift consists as is situate in the State at the date of the gift.

(2) In relation to a gift taken under a disposition, where the date of the disposition is on or after 1 December 1999, “taxable gift” in this Act means—

(a) in the case of a gift, other than a gift taken under a discretionary trust, where the disponent is resident or ordinarily resident in the State at the date of the disposition under which the donee takes the gift, the whole of the gift,

(b) in the case of a gift taken under a discretionary trust where the disponent is resident or ordinarily resident in the State at the date of the disposition under which the donee takes the gift or at the date of the gift or was (in the case of a gift taken after the death of the disponent) so resident or ordinarily resident at the date of that death, the whole of the gift,

(c) in the case where the donee is resident or ordinarily resident in the State at the date of the gift, the whole of the gift,

Section 46 – Delivery of Returns.

(1) In this section—

(a) notwithstanding anything contained in sections 6 and 11 a reference, other than in subsection (13) or (14), to a gift or a taxable gift includes a reference to an inheritance or a taxable inheritance, as the case may be, and

(b) a reference to a donee includes a reference to a successor.

(2) Subject to paragraph (e) of section 21 , any person who is primarily accountable for the payment of tax by virtue of section 45 (1), or by virtue of paragraph (c) of section 16 shall, within 4 months after the relevant date referred to in subsection (5)—

(a) deliver to the Commissioners a full and true return of—

(i) every gift in respect of which that person is so primarily accountable,

(ii) all the property comprised in such gift on the valuation date,

(iii) an estimate of the market value of such property on the valuation date, and

(iv) such particulars as may be relevant to the assessment of tax in respect of such gift;

(b) notwithstanding section 49 , make on that return an assessment of such amount of tax as, to the best of that person's knowledge, information and belief, ought to be charged, levied and paid on that valuation date, and

(c) duly pay the amount of such tax.

...

(4) Subsection (2) applies to a charge for tax arising by reason of section 15 and to any other gift where—

(a) the aggregate of the taxable values of all taxable gifts taken by the donee on or after 5 December 1991, which have the same group threshold (as defined in Schedule 2) as that other gift, exceeds an amount which is 80 per cent of the threshold amount (as defined in Schedule 2) which applies in the computation of tax on that aggregate, or

(b) the donee or, in a case to which section 32 (2) applies, the transferee (within the meaning of, and to the extent provided for by, that section) is required by notice in writing by the Commissioners to deliver a return,

and for the purposes of this subsection, a reference to a gift includes a reference to a part of a gift or to a part of a taxable gift, as the case may be.

(5) For the purposes of this section, the relevant date shall be—

(a) the valuation date, or

(b) where the donee or, in a case to which section 32 (2) applies, the transferee (within the meaning of, and to the extent provided for by, that section) is required by notice in writing by the Commissioners to deliver a return, the date of the notice.

(6) Any person who is accountable for the payment of tax by virtue of subsection (2) or (9) of section 45 shall, if that person is required by notice in writing by the Commissioners to do so, comply with paragraphs (a), (b) and (c) of subsection (2) (as if that person were a person primarily accountable for the payment of tax by virtue of section 45 (1)) within such time, not being less than 30 days, as may be specified in the notice.

(7) (a) Any accountable person shall, if that person is so required by the Commissioners by notice in writing, deliver and verify to the Commissioners within such time, not being less than 30 days, as may be specified in the notice—

(i) a statement (where appropriate, on a form provided, or approved of, by them) of such particulars relating to any property, and

(ii) such evidence as they require,

as may, in their opinion, be relevant to the assessment of tax in respect of the gift.

(b) The Commissioners may authorise a person to inspect—

(i) any property comprised in a gift, or

(ii) any books, records, accounts or other documents, in whatever form they are stored, maintained or preserved, relating to any property as may in their opinion be relevant to the assessment of tax in respect of a gift,

and the person having the custody or possession of that property, or of those books, records, accounts or documents, shall permit the person so authorised to make that inspection at such reasonable times as the Commissioners consider necessary.

(8) The Commissioners may by notice in writing require any accountable person to—

(a) deliver to them within such time, not being less than 30 days, as may be specified in the notice, an additional return, if it appears to the Commissioners that a return made by that accountable person is defective in a material respect by reason of anything contained in or omitted from it,

(b) notwithstanding section 49 , make on that additional return an assessment of such amended amount of tax as, to the best of that person's knowledge, information and belief, ought to be charged, levied and paid on the relevant gift, and

(c) duly pay the outstanding tax, if any, for which that person is accountable in respect of that gift,

and

(i) the requirements of subparagraphs (ii), (iii) and (iv) of subsection (2) (a) shall apply to such additional return required by virtue of paragraph (a), and

(ii) subsection (3) shall, with any necessary modifications, apply to any payment required by virtue of paragraph (c).

(9) Where any accountable person who has delivered a return or an additional return is aware or becomes aware at any time that the return or additional return is defective in a material respect by reason of anything contained in or omitted from it, that person shall, without application from the Commissioners and within 3 months of so becoming aware—

(a) deliver to them an additional return,

(b) notwithstanding section 49 , make on that additional return an assessment of such amended amount of tax as, to the best of that person's knowledge, information and belief, ought to be charged, levied and paid on the relevant gift, and

(c) duly pay the outstanding tax, if any, for which that person is accountable in respect of that gift,

and

(i) the requirements of subparagraphs (ii), (iii) and (iv) of subsection (2) (a) shall apply to such additional return required by virtue of paragraph (a), and

(ii) subsection (3) shall, with any necessary modifications, apply to any payment required by virtue of paragraph (c).

(10) Any amount of tax payable by an accountable person in respect of an assessment of tax made by that accountable person on a return delivered by that accountable person (other than an amount of that tax payable by the transfer of securities to the Minister for Finance under section 56) shall accompany the return and be paid to the Collector.

(11) Any assessment or payment of tax made under this section shall include interest on tax payable in accordance with section 51.

(12) The Commissioners may by notice in writing require any person to deliver to them within such time, not being less than 30 days, as may be specified in the notice, a full and true return showing details of every taxable gift (including the property comprised in such gift) taken by that person during the period specified in the notice or, as the case may be, indicating that that person has taken no taxable gift during that period.

(13) As respects a taxable gift to which this subsection applies, any accountable person who is a disponent shall within 4 months of the valuation date deliver to the Commissioners a full and true return—

(a) of all the property comprised in such gift on the valuation date,

*(b) of an estimate of the market value of such property on the valuation date,
and*

(c) of such particulars as may be relevant to the assessment of tax in respect of the gift.

(14) Subsection (13) applies to a taxable gift, in the case where—

(a) the taxable value of the taxable gift exceeds an amount which is 80 per cent of the group threshold (as defined in Schedule 2) which applies in relation to that gift for the purposes of the computation of the tax on that gift,

(b) the taxable value of the taxable gift taken by the donee from the disponent increases the total taxable value of all taxable gifts and taxable inheritances

taken on or after 5 December 1991 by the donee from the disponer from an amount less than or equal to the amount specified in paragraph (a) to an amount which exceeds the amount so specified, or

(c) the total taxable value of all taxable gifts and taxable inheritances taken on or after 5 December 1991 by the donee from the disponer exceeds the amount specified in paragraph (a) and the donee takes a further taxable gift from the disponer.

...

Section 49 – Assessment of tax.

(1) Subject to section 46, assessments of tax under this Act shall be made by the Commissioners.

(2) If at any time it appears that for any reason an assessment was incorrect, the Commissioners may make a correcting assessment, which shall be substituted for the first-mentioned assessment.

(3) If at any time it appears that for any reason too little tax was assessed, the Commissioners may make an additional assessment.

(4) The Commissioners may serve notice in writing of the assessment of tax on any accountable person or, at the request of an accountable person, on that accountable person's agent, or on the personal representative of an accountable person if that person is dead.

*(5) Where the place of residence of the accountable person or of that accountable person's personal representative is not known to the Commissioners they may publish in *Iris Oifigiúil* a notice of the making of the assessment with such particulars of that assessment as they shall think proper and on the publication of the notice in *Iris Oifigiúil* the accountable person or that accountable person's personal representative, as the case may be, is deemed to have been served with the notice of the assessment on the date of such publication.*

(6) Any assessment, correcting assessment or additional assessment under this section may be made by the Commissioners from any return or additional return delivered under section 46 or from any other information in the possession of the Commissioners or from any one or more of these sources.

(7) The Commissioners, in making any assessment, correcting assessment or additional assessment, otherwise than from a return or an additional return which is satisfactory to them, shall make an assessment of such amount of tax as, to the best of their knowledge, information (including information received from a member of the Garda Síochána) and belief, ought to be charged, levied and paid.

(8) Nothing in section 46 shall preclude the Commissioners from making an assessment of tax, a correcting assessment of tax, or an additional assessment of tax, under the provisions of this section.

Section 53A – Surcharge for Late Returns.

(1) In this section “specified return date” means—

- (a) in relation to a valuation date occurring in the period 1 January to 31 August in any year, 31 October in that year, and*
- (b) in relation to a valuation date occurring in the period 1 September to 31 December in any year, 31 October in the following year,*
- (c) in the case of an inheritance referred to in section 15(1) or 20(1), the last day of the period of 4 months referred to in section 46(2C).*

(2) For the purposes of this section—

- (a) where a person fraudulently or negligently delivers an incorrect return on or before the specified return date, that person shall be deemed to have failed to have delivered the return on or before that date unless the error in the return is remedied on or before that date,*
- (b) where a person delivers an incorrect return on or before the specified return date, but does so neither fraudulently nor negligently and it comes to that person’s notice (or, if he or she has died, to the notice of his or her personal representative) that it is incorrect, the person shall be deemed to have failed to have delivered the return on or before the specified return date unless the error in the return is remedied without unreasonable delay, and*
- (c) where a person delivers a return on or before the specified return date, but the Commissioners, by reason of being dissatisfied with any information contained in the return, require that person, by notice in writing served on him or her under section 46(7), to deliver such statement or evidence as may be required by them, the person shall be deemed not to have delivered the return on or before the specified return date unless the person delivers the statement or evidence within the time specified in the notice.*

- (3) *Where a person fails to deliver a return on or before the specified return date, any amount of tax which would have been payable if such a return had been delivered shall be increased by an amount (in this section referred to as “the surcharge”) equal to—*
- (a) *5 per cent of the amount of tax, subject to a maximum increased amount of €12,695, where the return is delivered before the expiry of 2 months from the specified return date, and*
 - (b) *10 per cent of the amount of tax, subject to a maximum increased amount of €63,485, where the return is not delivered before the expiry of 2 months from the specified return date.*
- (4) *If the assessment to tax made on a return is not the amount of tax as increased in accordance with subsection (3), then, the provisions of this Act and Part 42 of the Taxes Consolidation Act 1997 shall apply as if the tax contained in the assessment were the amount of tax as so increased.*

Section 58 – Penalties.

- (1) (a) *Any person who contravenes or fails to comply with any requirement or provision under section 46 shall be liable to a penalty of €2,535.*
- (b) *Where the contravention or failure referred to in paragraph (a) continues after judgment has been given by the court before which proceedings for the penalty have been commenced, the person concerned shall be liable to a further penalty of €30 for each day on which the contravention or failure so continues.*
- (2) *Where, under, or for the purposes of, any of the provisions of this Act, a person is authorised to inspect any property for the purpose of reporting to the Commissioners the market value of that property and the person having custody or possession of that property prevents such inspection or obstructs the person so authorised in the performance of that person's functions in relation to the inspection, the person so having custody or possession is liable to a penalty of €1,265.*
- (3) *Where an accountable person fraudulently or negligently—*
- (a) *delivers any incorrect return or additional return,*
 - (b) *makes or furnishes any incorrect statement, declaration, evidence or valuation in connection with any property comprised in any disposition,*

(c) makes or furnishes any incorrect statement, declaration, evidence or valuation in connection with any claim for any allowance, deduction, exemption or relief, or

(d) makes or furnishes any incorrect statement, declaration, evidence or valuation in connection with any other matter,

on the basis of which the amount of tax assessable in respect of a taxable gift or taxable inheritance would be less than it would have been if the correct return, additional return, statement, declaration, evidence or valuation had been delivered, made or furnished, that person is liable to a penalty of—

(i) €6,345, and

(ii) the amount, or in the case of fraud, twice the amount, of the difference specified in subsection (5).

(4) Where any such return, additional return, statement, declaration, evidence or valuation as is mentioned in subsection (3) was delivered, made or furnished neither fraudulently nor negligently by a person and it comes to that person's notice that it was incorrect, then, unless the error is remedied without unreasonable delay, such matter is treated, for the purposes of this section, as having been negligently done by that person.

(5) The difference referred to in subsection (3) is the difference between—

(a) the amount of tax payable in respect of the taxable gift or taxable inheritance to which the return, additional return, statement, declaration, evidence or valuation relates, and

(b) the amount which would have been the amount so payable if the return, additional return, statement, declaration, evidence or valuation as made or submitted had been correct.

(6) For the purpose of subsection (3), where anything referred to in that subsection is delivered, made or furnished on behalf of a person, it is deemed to have been delivered, made or furnished by that person unless that person proves that it was done without that person's knowledge or consent.

(7) Any person who assists in or induces the delivery, making or furnishing for any purposes of the tax of any return, additional return, statement, declaration, evidence or valuation which that person knows to be incorrect shall be liable to a penalty of €1,265.

(8) This section shall not affect any criminal proceedings.

(9) Subject to this section, sections 987 (4), 1061 , 1062 , 1063 , 1064 , 1065 , 1066 and 1068 of the Taxes Consolidation Act 1997 , shall, with any necessary modifications, apply to a penalty under this Act as if the penalty were a penalty under the Income Tax Acts.

Section 69 – Exemption of Small Gifts.

- (1) In this section, “relevant period” means the period of 12 months ending on 31 December in each year.*
- (2) The first €3,000 of the total taxable value of all taxable gifts taken by a donee from any one disponent in any relevant period is exempt from tax and is not taken into account in computing tax.*