



145TACD2020

BETWEEN

[COMPANY A]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal against a Notice of Determination of the Revenue Commissioners dated 9 August 2016 on the payment of €200,000 by [*Company A*] to a spouse of a director of the company, on the death of the director.
2. In the determination of the Revenue Commissioners dated 9 August 2016 the Revenue Commissioners determined that the payment of €200,000 did not come within section 123 and section 201 of the Taxes Consolidation Act, 1997; that the payment should be regarded as a distribution under section 130 of the Taxes Consolidation Act, 1997 and if [*Company A*] incurred expense in connection with the provision of benefits to the spouse, section 436(3)(a) of the Taxes Consolidation Act, 1997 operated to treat an amount equal to the expense as a distribution to a participator of a close company. The Revenue Commissioners concluded that any income distribution, or any provision for the making of income distributions to the spouse, were not expenses incurred wholly and



exclusively for the purposes of the trade and allowable as a deduction under section 81 of the Taxes Consolidation Act, 1997.

3. At the hearing, the Revenue Commissioners stated that the position of the Revenue Commissioners was confined solely to whether the payment of €200,000 was allowable as a deduction under section 81. The Revenue Commissioners stated that the statements made by the Revenue Commissioners in the determination dated 9 August 2016 regarding section 123, section 201, section 130, section 486 were extraneous to the question to be determined in the appeal. The issue for determination was section 81(2)(a) -whether the payment of €200,000 was money wholly and exclusively laid out or expended for the purposes of the trade of [*Company A*]; and section 81(2)(b) -whether the payment of €200,000 was a disbursement or expense of maintenance or expended for a domestic or private purpose distinct from the purposes of the trade.

Background

4. The [*redacted*] family have operated a business at [*redacted*] for three generations. The business includes a public house. On [*redacted*], [*Company A*] was incorporated by [*Mr B*] and his brother, [*Mr A*] to continue the business commenced by their father. Both [*Mr B*] and [*Mr A*] worked in the business. As at 30 September 2012, [*Mr B*], [*Mr A*] and [*Mr C*] (son of [*Mr B*]) were directors of [*Company A*]. The company had [*redacted*] ordinary shares issued with [*Mr B*] holding [*redacted*] ordinary shares and [*Mr A*] holding [*redacted*] ordinary shares.
5. [*Mr A*] died on [*redacted*] at the age of 74 years. [*Mr A*] was married to [*Mrs A*]. [*Mr A*] and [*Mrs A*] did not have children. [*Mr A*] was born on [*redacted*]. At the date of incorporation of [*Company A*], [*Mr A*] was 20 years of age. The Inland Revenue Affidavit (Form CA24) sworn by [*Mrs A*] on [*redacted*] sought a grant of administration intestate. The estate of [*Mr A*] comprised:



Real and Leasehold Property ([<i>Property A</i>])	€515,000
Household Contents	€25,000
Car	€8,000
Assets with Financial Institutions	€18,000
Shares ([<i>Company A</i>])	€40,180

The Inland Revenue Affidavit identified property in the joint names of [*Mr A*] and [*Mrs A*] as being €10,000 in a financial institution since 2 June 2011. The Inland Revenue Affidavit states that [*Mr A*] was in receipt of social welfare payments. The sole beneficiary of the estate of [*Mr A*] was [*Mrs A*].

6. On [*redacted*] a letter was sent from [*Company A*] to [*Mrs A*] in the following terms:

“Re: [*Mr A*]

*Dear [*Mrs A*],*

I would like to firstly express my condolences on behalf of myself and the company for your loss recently.

*We have decided that in recognition of [*Mr A*]’s fifty four years as a director of [*Company A*], we are going to make a payment of €200,000 to yourself.*

*This is a payment we would have intended to make on [*Mr A*]’s retirement, but it is now being made to you under these sad circumstances.*

The company does not currently have the funds available to pay you this money in full at this time, and so, we are proposing that we will pay it to you when you require it. For whatever circumstances you require the money for, please



contact me directly and I will arrange to have a cheque issued promptly from the lump sum.

Should you require anything further please do not hesitate to contact us.

Yours sincerely,

[Mr C]

[Mr B]”

7. The Form B1 – Annual Return presented to the Companies Registration Office by [Company A] for the financial year 1 January 2013 to 31 December 2013, being a return made up to 30 September 2014, describes the following share transfers:

[redacted] 2013

[redacted] ordinary shares from [Mr A] to [Mrs A].

[redacted] 2013

[redacted] ordinary shares from [Mrs A] to [Mr B].

[redacted] 2013

[redacted] ordinary shares from [Mr B] to [Mrs B].

[redacted] ordinary shares from [Mr B] to [Company B].

[redacted] 2013

[redacted] ordinary shares from [Mrs B] to [Company B].

Following the above share transfers [Company B] held the [redacted] ordinary shares in [Company A]. The directors of [Company B] were [Mr B] and [Mr C].

8. On 3 March 2015 a revenue intervention on [Company A] commenced for the period 1 January 2013 to 31 December 2013. During the course of the revenue

intervention, the Revenue Commissioners queried the payment of €200,000 and the treatment of the payment as an accrual in the books of [Company A]. The payment was intended to be ongoing payments, as and when required by [Mrs A], rather than a lump sum payment. By letter dated 15 April 2015, the nature of the query from the Revenue Commissioners was that if the payment was an accrual rather than paid, the provisions of section 201(2)(a) TCA 1997 did not apply to the payment. On 13 May 2016, it was confirmed to the Revenue Commissioners that the amount paid to [Mrs A] in 2013 was €2,645 and the amount paid to date (to 13 May 2016) was €28,519.

Legislation

9. Section 81 of the Taxes Consolidation Act, 1997 provides:

“81 General rule as to deductions

(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of –

(a) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession;

(c) ..”

Evidence

[Mr C]

10. The witness gave evidence that he was the director and secretary of [Company A]. The witness stated that the business operated by [Company A] was commenced by his grandfather and continued by his father, [Mr B] and uncle, [Mr A] who incorporated [Company A]. The witness described the business as an old traditional family business and the public house as an old-fashioned Irish bar with the original [redacted] from [redacted]. The witness stated that the public house is well known in [redacted].

11. The witness stated that [Mr A] worked in the business since the age of 11 or 12 years. The witness stated that there were different aspects to the business of [Company A] over the years including a [redacted] business, a [redacted] business and a public house. The [redacted] business and public house operated from the same premises. [Mr A] would have managed the [redacted] business and public house while his father, [Mr B], would have managed the [redacted] business. The witness stated that [Mr A] would have worked from nine o'clock to five o'clock on Monday to Friday, but had since reduced his hours from ten o'clock to two o'clock. The witness stated that he considered [Mr A] a father-figure and would have assisted [Mr A] in managing his domestic financial affairs. The witness stated that [Mr A] died unexpectedly of a heart attack.

12. The witness stated that the directors of [Company A], namely [Mr B], [Mr A] and [Mr C], would meet in the home of [Mr B], to discuss the business. At the meetings, it was suggested to [Mr A] that he reduce his involvement in the business, however, [Mr A] would react on the basis that he had few other pursuits and had only ever known working in the business. The witness stated that, to his knowledge, there was no agreement on when [Mr A] would retire from the business or the financial arrangements for his retirement. The witness stated that it was an unwritten rule that [Mr A] 'would be looked after' given



that it was a family business. The witness stated that no other director or employee of [Company A] received a lump sum payment, however, no other director or employee had the length of service of [Mr A]. The witness stated that on the death of his father, [Mr B], his mother, [Mrs B], did not receive a lump sum payment from [Company A].

13. The witness stated that the letter to [Mrs A] was intended to provide comfort to [Mrs A] that a payment was being made by [Company A] in recognition of the service given by her husband, [Mr A], to the business. The witness stated that [Mrs A] relied on [Mr A] to manage their domestic financial affairs, that [Mrs A] was inexperienced with regard to managing money, that she did not have a credit card and she did not drive. The witness stated that the reason for ongoing payments rather than a lump sum payment was to support [Mrs A] in managing her domestic financial affairs and, given previous incidents of [Mrs A] being misled into investing or purchasing products which were unsuitable, to minimise the potential opportunities to deplete her income. The witness stated that [Mrs A] had her own income and would be able to survive financially if [Company A] withheld the payment. The witness stated that the letter was to ensure that if anything happened to [Mr B] or the witness, that [Mrs A] could rely on the letter as she was on her own. The witness stated that [Mrs A] recently suffered a stroke and the witness was involved in organising and managing her affairs.
14. The witness stated that he could not recall if there were any minutes of meetings which discussed the payment either before or after the death of [Mr A]. The witness stated that as [Company A] was a family business it was managed more informally, like other small family businesses. The witness stated that his father, [Mr B], was old school and that if he shook your hand the deal was done. The witness repeated that meetings to discuss the family business took place between [Mr B], [Mr A] and the witness and it was not the practice of the directors to have written notes of the discussions. The witness stated that for the



purposes of securing a loan with a financial institution a minute of a meeting was provided as it was required as part of the loan documentation.

15. The witness stated that although his father, [Mr B], may have had the entrepreneurial skill to seek to expand the business and be a director of multiple other companies, including [Company B], that the business of [Company A] would not have survived without both [Mr B] and [Mr A] ‘*working hand in hand*’. The witness stated that unlike the siblings of [Mr B] and [Mr A], the brothers followed in the footsteps of their father to continue the family business. The witness stated that [Mr A] was left behind looking after the business when [Mr B] travelled abroad to work on other business interests of his own. The witness stated that [Mr B] moved on to other businesses, while [Mr A] was always there in [Company A].

16. The witness stated that, to his knowledge, there was no obligation to make the payment of €200,000, there was no written agreement between [Company A] and [Mr A] as to his retirement and that [Company A] did not have a policy which would bind the company with regard to making the payment. The witness could not recall how or why the amount of the payment was determined at €200,000. The witness stated that [Mr A] did not have a pension with [Company A]. The Inland Revenue Affidavit states that [Mr A] was in receipt of social welfare payments. The witness stated that the salary of [Mr A] would have been adjusted over the years in line with changes to the business, for example, when the [redacted] business closed the [redacted] business did not survive and was subsequently closed, and, as such, the salary of [Mr A] would have been adjusted.

17. The witness stated that the payments were made to [Mrs A] by cheque and subsequently into a bank account in the name of [Mrs A], which had been set up by the witness. The witness stated that [Company A] are uncertain as to how to process payments to [Mrs A] since the payment was queried by the Revenue Commissioners.



18. The witness stated that the gross turnover of [Company A] in 2012 was €[redacted], in 2013 was €[redacted] and in 2014 was €[redacted]. The witness stated that an expense of €200,000 would be significant for any business. The witness stated that the clientele of the public house included locals, domestic tourists and international tourists. The witness stated that the business had grown and developed under his stewardship. The witness could not provide details of the capacity of the public house.
19. The witness stated *‘The payment was made for [Mr A]. The payment was made for the length of service. The payment was phased because we were worried for [Mrs A].’* The witness stated that the payment was *‘To give something back to somebody that gave their life to the business’* and that it was *‘a payment for service’*. The witness stated that the payment was *‘to make sure that [Mr A] would be looked after for all he did’*.

Submissions on behalf of the Appellant

20. At the hearing, the Appellant submitted that the motivation for the payment of €200,000 was [Mr A] working in the business for fifty-four years and drawing moderate amounts from the business on the understanding that [Company A] would take care of his needs in his advancing years, and further that [Company A] would suffer reputational damage to the good name of the business if it became known that [Company A] were failing to take care of [Mrs A] following the death of [Mr A].
21. The Appellant submits that [Company A] was not motivated by the needs of [Mrs A] as she had other income. The Appellant submits that the motivation of [Company A] in making the payment must be distinguished from the payment being used in relation to the needs of [Mrs A].



22. The Appellant submits that, in context of section 81(2)(b), the party to the assessment is [*Company A*] and consequently the payment could not be an expense of maintenance of [*Company A*]. The payment may be used for the maintenance of [*Mrs A*], however, this does not convert the payment to being a payment of maintenance of [*Company A*]. The payment was a termination payment with the payments being made on an ongoing basis having regard to the personal circumstances of [*Mrs A*].
23. The Appellant submits that generally a termination payment is wholly and exclusively for the purposes of the trade, and, consequently, the jurisprudence is limited to a denial for specific reasons and confined to their facts. The Appellant submits that the case law referred to by the Revenue Commissioners does not lay down general principles. The Appellant submits that the existence of an understanding of the practice of a termination payment being allowable as a deduction was evident throughout the communications with the Revenue Commissioners up to the hearing, in that, the focus of the Revenue Commissioners was on the wording of section 201 and that the wording of section 201 made clear that any claim for a deduction in respect of a lump sum payment made on the death of an office holder must be in respect of amounts paid, as accrued amounts did not qualify. Consequently, the import of the communications from the Revenue Commissioners was that a lump sum payment on the death of an office holder was deductible for tax purposes but only if the amount was paid, and as the payment by [*Company A*] was an ongoing payment, the payment did not qualify.
24. The Appellant submits that there was no obligation on [*Company A*] to have minutes of meetings, and to seek to compare a family business with one public house to a company with 1,200 public houses, as in *Watney Combe Reid & Co Ltd -v- Pike (Inspector of Taxes)* [1982] STC 733, was unrealistic, as it would be expected that a company with 1,200 public houses would have a considerable board of directors and non-executive directors.



25. The Appellant submits that the judgments in *J W Smith (Surveyor of Taxes) -v- The Incorporated Council of Law Reporting for England and Wales* [1914] 6 TC 477 and *Samuel Dracup & Sons Ltd -v- Dakin (Inspector of Taxes)* [1957] 37 TC 377 are confined to whether there was evidence upon which the Commissioners could have concluded that an expense was wholly and exclusively for the purposes of the trade, and the underlying facts are important to understanding the judgment. In *Smith* the evidence was the expectation that a lump sum payment would be made on retirement. The Appellant submits that this does not mean that for a payment to be allowable as a deduction under section 81 there must be an expectation of payment. In *Dracup* the evidence was the directors never threatened to resign or leave the business. The Appellant submits that this does not mean that for a payment to be allowable as a deduction under section 81 there must be a threat to resign or to leave a business, otherwise payments to shareholders or directors would not be deductible for tax purposes unless it was proven that the person did not need the payment, did not want the payment and the person would leave if they did not get the payment. The Appellant submits that even if [Mr A] was committed to working in [Company A] as a family obligation, this did not mean that payments were not wholly and exclusively for the purposes of the trade in the absence of a threat to resign or leave the business.
26. The Appellant submits that the quote from Lord Cave in *British Insulated and Helsby Cables Limited -v- Atherton* referred to in *B W Noble Limited -v- Mitchell (Inspector of Taxes)* [1927] 11 TC 372 conveys that not every payment must be to immediately earn more money for the trade.
27. The Appellant submits that the judgment in *Overy (Inspector of Taxes) -v- Ashford Dunn & Co Ltd* [1933] 17 TC 497 was based on the unusual circumstance that arising from a transfer of shares, the accumulated profits, which had accrued up to the date of the transfer, were to be given to the directors and shareholders and it was arranged as a payment of compensation for loss of office. In those circumstances, it was determined that the payment was not



wholly and exclusively for the purposes of the trade but was a distribution of profits which had been earned. The Appellant submits that the payment by [*Company A*] was not a payment from accumulated profits.

28. The Appellant submits that if the payment was structured in a tax efficient manner, with the amount of the payment of €200,000 being equivalent to the maximum amount under section 201, this did not mean that the payment was not wholly and exclusively for the purposes of the trade.

29. The Appellant submits that the reason the payment of €200,000 was made as an ongoing payment was prudent having regard to the resources of [*Company A*] and the personal circumstances of [*Mrs A*]. The Appellant submits that the reason the Revenue Commissioners queried the payment was that the €200,000 was not paid in full and this is reflected in the communications between the parties. Furthermore, the determination dated 9 August 2016 refers to a different basis as to why the payment of €200,000 was not deductible for tax purposes, namely any income distributions to [*Mrs A*], or any provision for making any income distributions to [*Mrs A*], were not expenses incurred wholly and exclusively for the purposes of the trade and a deduction under section 81 was not available for the €200,000 accrued expense. The Appellant submits that the Revenue Commissioners reconsidered the position in advance of the hearing and withdrew from the position conveyed in the determination, however, the Revenue Commissioners then proceeded to construct a position that the payment was not wholly and exclusively for the purposes of the trade on the basis of the absence of minutes of meetings or a documented business case for the payment.

Submissions on behalf of the Revenue Commissioners

30. At the hearing, the Revenue Commissioners submitted that the issue for consideration was the motivation of [*Company A*] in making the payment of €200,000. The Revenue Commissioners submit that it is irrelevant whether the payment should have been made by [*Company A*], rather the consideration for the Revenue Commissioners was whether in deciding to make the payment the motivating factor of [*Company A*] was the pursuit of profit or the furtherance of the trade, and, if so, the expense is allowable as a deduction. If there was a dual purpose for the payment, the expense is not allowable as a deduction. The Revenue Commissioners submit that the decision as to motive for the payment is a decision as to fact.
31. The Revenue Commissioners submit that the payment of €200,000 was made for a purpose other than for the purposes of the trade. The Revenue Commissioners submit that [*Mrs A*] was a shareholder of [*Company A*], either beneficially or otherwise, at the time of making the payment, as [*Mrs A*] was the sole beneficiary of the estate of [*Mr A*] from the date of death. The Revenue Commissioners submit that the evidence demonstrated that the payment was to provide financial support to [*Mrs A*] to ensure her personal needs were met.
32. The Revenue Commissioners referred to the following UK case law, however, the Revenue Commissioners submitted that regard should be had to the context of the case law in considering the relevance of the judgments as the case law related to the question of whether there was an error in law on the grounds of there being no evidence to support the conclusions of the Commissioners, rather than a judgment on the issue. The Revenue Commissioners submitted that what the case law did make clear was that the decision as to the motive for a payment is a decision as to fact.
33. In *Watney Combe Reid & Co Ltd -v- Pike (Inspector of Taxes)* [1982] STC 733 it was held that there was evidence to support the conclusion of the



Commissioners that there was an additional purpose outside that of the company trade which prevented the exclusivity test being satisfied in considering whether payments were made wholly and exclusively for the purposes of the trade. The company was a brewery who were embarking on a programme to increase the proportion of managed public houses to tied public houses. The company made ex-gratia payments as compensation to outgoing tenants of the tied houses. The following passage of Walton J. was referred to (at page 751)

“I do not, however, think it would be right simply to leave the matter there. Suppose the analysis of counsel for the taxpayer companies is correct and that these payments are to be regarded as the price of preserving the taxpayer companies’ goodwills. Does any different result follow? I do not think so. On this analysis the payments were being made prophylactically to prevent an erosion of goodwill. But why was the goodwill in danger of being eroded at all? For whose benefit? It is here that I find a quite extraordinary feature of the present case: namely the total absence of minutes of either of the taxpayer companies from the evidence tendered to the Special Commissioners. When what is in question is the purpose for which a company has expended money, the starting point (I fully accept that in many cases the end result will have moved dramatically away from such a starting point) must, of necessity, be the purpose which is stated in the minutes of the directors authorising such expenditure. Of course, if one is dealing with small sums, one might well not be justified in expecting there to be a minute at all. But in the present case the sums in question were extremely large, and it cannot rationally be thought that they were expended – that the policy which led to their being expended – was not discussed and minuted by the respective boards. Further, if the companies had been acting solely in their own respective interests, one would have expected to find minutes of the financial considerations which would have led the company to consider expenditure of such considerable sums in relation to the benefits which were going to accrue to the company as a result of such expenditure. But there is not a word of any of this.”



34. The Revenue Commissioners submit that inferences should be drawn from the lack of documentation from [Company A]. As a considerable sum was being incurred by [Company A] it would be expected to have a record of why the sums were being incurred and the benefits which were going to accrue to [Company A].

35. In *J W Smith (Surveyor of Taxes) -v- The Incorporated Council of Law Reporting for England and Wales* [1914] 6 TC 477, Scrutton J. stated (at page 484) ‘*the question of whether money is wholly and exclusively laid out or expended for purposes of a trade is a question of fact*’ and in many cases the question ‘*must depend upon a knowledge of the facts of the trade.*’ The judgment refers to the different forms of language used by the parties and the Commissioners as being equivalent to the phrase money wholly and exclusively laid out or expended for the purposes of the trade, namely a necessary expense of the business (Respondent), a necessary expense of earning the profits (Appellant) and a business expense (Commissioners). Scrutton J. continued:

“The only remaining question is: Was there evidence upon which they could find that? What they find is that though the Reporters have no legal right to a payment on retirement, it has been the habit of the Respondents to give a gratuitous pension or to make a gratuity of a lump sum on retirement to a Reporter after long service. One cannot help using one’s ordinary knowledge of human nature to know that in some cases the expectation of gratuities may materially affect the amount of salary.”

36. The Revenue Commissioners submit that the judgment explores the circumstance of an incentive or inducement for a payment, whereby an employee has knowledge of the habit of making payments which provides motivation to remain in the employment, perhaps at less salary, and, consequently the payment is for business purposes. The Revenue Commissioners submit that the evidence of [Mr C] demonstrated that [Mr A] was not motivated to work in the business and absorb any salary adjustments by



the expectation of receiving a lump sum payment on retirement as [Mr A] had resisted the suggestion that he retire and continued to attend the business. The evidence further demonstrated that [Company A] did not have a habit of making such payments.

37. In *Samuel Dracup & Sons Ltd -v- Dakin (Inspector of Taxes)* [1957] 37 TC 377, Harman J. stated (at page 382):

“The Commissioners appear to have agreed that they probably were very good directors. But there is no suggestion anywhere in the Case Stated, or in the evidence which was given to the Commissioners, that the reason for taking out these policies was because otherwise the directors would resign and leave the business of the Company in the lurch. There is not any suggestion that either of them threatened to leave. The only suggestion is that it occurred to them that if they could have the insurance policies on their own behalf which did not cost them anything, it would be very nice for them; I dare say it would; money paid out by the Company which they controlled. Under those circumstances, it passes my comprehension that business men who have to review those activities are not entitled to say this is not a proper business expense; in other words, you were laying out this money for your own advantage and not for that of the Company, or at any rate, your own advantage came into it. If the Commissioners took that view, it seems that they were amply entitled to do so and even if I did not agree with it, which I do, I should be quite powerless to review it here.”

38. The Revenue Commissioners submit that the evidence of [Mr C] demonstrates that [Mr A] did not need the offer of a payment to be motivated as a director or an employee of [Company A].

39. In *B W Noble Limited -v- Mitchell (Inspector of Taxes)* [1927] 11 TC 372 Lord Hanworth M.R. referred to different formulations postulated by the courts in considering whether an expense was wholly and exclusively laid out or expended for the purposes of the trade including the words of Lord Cave in



British Insulated and Helsby Cables Limited -v- Atherton wherein he stated “.. a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of a business, may yet be expended wholly and exclusively for the purposes of the trade”, or the words of Lord Loreburn in *Strong & Company Limited -v- Woodfield* wherein he stated “I think only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself” or the words of Lord Davey in the same case “These words are used in other Rules, and appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade.” In relation to the payment made to the director in *B W Noble Limited*, Lord Hanworth M.R. concluded (at page 419):

“It seems to me that the directors had to handle a situation of both delicacy and gravity, and, their bona fides not being questioned, it is clear that they took a course which they were justified in taking and made a payment in the interests of the carrying on of their trade”.

40. In the case, Sargant L.J. stated (at page 421):

“..as to the question of whether this was a disbursement wholly and exclusively laid out or expended for the purposes of the trade, it seems to me that there is nothing at all to show that it was not so exclusively laid out. The object, as disclosed at paragraph 9 of the Case, was that of preserving the status and reputation of the Company, which the directors felt would be imperilled either by the other director remaining in the business or by a dismissal of him against his will, involving proceedings by way of action in which the good name of the Company might suffer. To avoid that and to preserve the status and dividend-earning power of the Company seems to me a purpose which is well within the ordinary purposes of the trade, profession or vocation of the Company.”



41. In the case, Lawrence L.J. stated (at page 423):

“I agree that the sum in question was wholly and exclusively expended by the Company for the purpose of its business, in the sense that the sole object with which the Company made the payment was to enable the Company to continue to carry on and earn profits in its business.”

42. The Revenue Commissioners submit that the payment of €200,000 was not necessary for [Company A] to carry on and earn profits in the trade. The Revenue Commissioners submit that [Mr C] could not recall whether the goodwill of [Company A] was in the mind when making the decision on the payment.

43. The Revenue Commissioners submit that the *Atherton* judgment conveyed that even if an expense does not give rise to an immediate return, if the overall purpose for the expense is ultimately to make a profit, and often ex-gratia payments come within this category as a mechanism to control salary as employees have an expectation of a payment on retirement, then the payment was wholly and exclusively for the purposes of the trade. The Revenue Commissioners submit that if [Mr C] had given evidence that at the time of making the decision on the payment there was a concern as to the goodwill of [Company A] and what people would say about [Company A], and that this would have a knock-on effect on the trade of [Company A], then the overall purpose enunciated in *Atherton* may have been relevant. The Revenue Commissioners submit that the *Atherton* judgment does not affect whether the expense was wholly and exclusively for the purposes of the trade, but simply there may be a long-term plan for expending the money.

44. In *Overy (Inspector of Taxes) -v- Ashford Dunn & Co Ltd* [1933] 17 TC 497 the issue was a payment to the retiring directors as compensation for loss of office. Finlay J. distinguished *Noble* on the basis that, in that case, the payment ‘was necessary for business purposes. It was necessary to pay that sum of money to



get rid of a director, and it was necessary to get rid of a director, of course, for business reasons, and quite bona fide the other directors conceived that that was necessary in the best interests of the carrying on of the business.’ With regard to the payment in this case, Finlay J. stated (at page 506):

*“Now, supposing they had resolved and determined...to receive this by way of dividends, no question could possibly have arisen; it would have been perfectly clear, of course, that this dividend was paid out of profits and was not a deduction to be made before the profits were arrived at. How can it make any difference, that it was done in this way, that it was done by declaring a sum as being compensation for loss of office? I do not think it can. The substance of the thing remains exactly the same. It seems to me to be utterly different from the case where it is necessary, for business reasons, to get rid of a director and, in order to get rid of him, it is necessary to pay him a sum of money, which was the case of *Mitchell v Noble*.”*

45. Finlay J. concluded:

“That was simply a sum of money which was available under the terms of agreement for the shareholders and directors and if they, as I said a moment ago, divided it as dividend, no question could or would arise. It seems to me that it is impossible, under those circumstances, to say that that £3,000 was an expenditure necessary to earn the profits or an expenditure in the course of carrying on the business. It was not. It was a distribution of the profits which had been earned, and I think it was nothing else.”

46. The Revenue Commissioners submit that the payment of €200,000 was, in a similar way, sharing the profits of [Company A], as there was no obligation or agreement, and no business case considered, for making the payment. The Revenue Commissioners submit that what [Company A] did was simply take money out of the company and give the money to [Mrs A]. The payment was



not necessary for the business and should be treated in a similar manner as a dividend.

47. The Revenue Commissioners submit that while the evidence of [Mr C] was specific as to the purpose of the payment in general terms, namely, because of the death of [Mr A] and the length of service, the witness could not recall many other aspects of the payment including the date of the decision and the location at which the decision was made. The Revenue Commissioners submit that it was incredible there was no record of the decision-making process particularly given the significant sum being expended by [Company A] and the uncertainty as to whether [Company A] did or did not have sufficient funds to make the payment. The Revenue Commissioners submit that although [Mr C] could not recall how a figure of €200,000 was arrived at, it was an interesting coincidence that the amount of the payment was equivalent to the maximum amount under section 201. The Revenue Commissioners submit that there was a selective presentation of evidence by [Mr C] in relation to the business, in that the witness gave specific details on turnover, on his efforts to grow the business, however, the witness could not give details on the business case for the payment or the capacity of the public house. The Revenue Commissioners submit that the evidence should be evaluated as between a blanket statement that the only purpose of the payment was the good of the company against the lack of any specifics on how the payment would benefit the company.
48. The Revenue Commissioners submit that if the business case for the payment was goodwill, [Mr C] would have been examined on why the figure of €200,000 was arrived at for the goodwill and who in the business was being informed about the payment to [Mrs A]. The Revenue Commissioners submit that if the business case for the payment was an agreement or policy that the payment would be made and this may have motivated [Mr A] to work, the evidence of [Mr C] was that [Mr A] was involved in the business as it was his life, it was a family business, and, as such, the Revenue Commissioners submit the payment was not a motivating factor for [Mr A] to work. Furthermore, the Revenue



Commissioners submit that as [Mr A] was a shareholder of [Company A], if the business performed well the value of the shares increased, and, this may have been a motivating factor for [Mr A] to work. Consequently, the Revenue Commissioners submit that while it may be commendable that [Company A], as a family business, wished to make the payment, if the family relationship and the moral obligation of taking care of [Mr A] and his widow was a factor in the decision-making process, then the pursuit of profit was not the exclusive purpose and the payment is not deductible for tax purposes. If the motivation for the payment was other than for the purposes of the trade, namely for the purpose of supporting [Mrs A] as a widow or being a payment to a shareholder, then the expense is not exclusively for the purposes of the trade of [Company A].

49. The Revenue Commissioners submit that even if the payment was made in connection with the termination of the holding of an office or employment on the death of the holder, this does not mean the payment is allowable as a deduction under section 81. The Revenue Commissioners referred to the UK case law as illustrating the considerations in deciding whether a payment is deductible for tax purposes. In that regard, the examples provided by the Revenue Commissioners included if there is a habit or policy that a payment will be made, which has implications for other aspects of the business such as the level of salary, it is a business expense; if the motivation for the payment is to protect the company from something a director may otherwise do, it is a business expense. The Revenue Commissioners stated that while lump sum payments made on the death of an office holder may be deductible for tax purposes, the consideration of whether such payments are allowable as a deduction under section 81 is a consideration of whether the payment is wholly and exclusively for the purposes of the trade, and, in relation to [Company A], a payment to a family member on a death with no business case does not meet this statutory test. The Revenue Commissioners submit that whether a payment is deductible for tax purposes is a matter of fact depending on the circumstances giving rise to the payment.



50. The Revenue Commissioners submit that the issue for determination in the appeal is whether the payment is deductible for tax purposes, meaning a consideration of the purpose for making the payment, and all other issues, including the tax consequences under section 123 or section 201, do not form part of the submission of the Revenue Commissioners. The Revenue Commissioners submit that the Appeal Commissioners have to consider the motivating factor in the mind of the directors when the decision was made on making the payment. The Revenue Commissioners submit that as the payment was to a director, who was also a shareholder, it should be considered differently to a payment to an employee, as it was understandable why a payment to an employee was unlikely to be challenged as not being wholly and exclusively for the purposes of the trade. The Revenue Commissioners submit that there is no presumption that every termination payment is wholly and exclusively for the purposes of the trade but rather it is a determination on the facts as to the purpose of the payment.
51. The Revenue Commissioners accepted that the communications from the Revenue Commissioners confused the tax effect of the payment on the recipient, [Mrs A], and the tax effect on [Company A]. The communications were distracted by section 201(2)(a).

Burden of Proof

52. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 22) Charleton J. stated: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*”.



53. The Appellant, being the person with access to the facts and documents relating to their tax affairs, and the taxation system developed on the premise of self-assessment, must present evidence and produce documents in support of the appeal in order to meet the burden of proof.

Analysis and Findings

54. This is an appeal against a Notice of Determination of the Revenue Commissioners dated 9 August 2016. The determination in relation to the payment of €200,000 by [Company A] is described in the following terms:

“1. Ex-Gratia Payment

With regard to the ex-gratia payment of €200,000, following consultation with Revenue’s Legislative Division, I am advised that payments made by the company to [Mrs A] do not fall within the scope of S123/S201 TCA 97. Furthermore, I am advised that any payments made to [Mrs A] should be regarded as distributions under S130 TCA 97 and if the company incurs an expense in connection with the provision of benefits or facilities to [Mrs A], then in accordance with section 436(3)(a) TCA 1997, the company is treated as making a distribution to [Mrs A]. Any income distribution made to [Mrs A], or any provision for the making of income distributions to her, are not expenses incurred wholly and exclusively for the purposes of the company’s trade and therefore a corporation tax deduction under section 81 TCA 1997 is not available for the €200,000 accrued expense. The company is obliged to operate Dividend Withholding Tax on distributions made to [Mrs A].”

55. As described above, the Revenue Commissioners determined that the payment of €200,000 was not a termination payment under section 123 and did not qualify for exemption under section 201. The Revenue Commissioners determined that the payment was a distribution. The Revenue Commissioners determined that the payment was not an expense wholly and exclusively for the



purposes of the trade of [Company A] on the basis that the payment of €200,000 to [Mrs A] was an income distribution or to be treated as an income distribution.

56. The communications presented by the Revenue Commissioners at the hearing comprised letters dated 15 April 2015 (from Revenue Commissioners), 20 May 2015 (from Appellant), 12 June 2015 (from Revenue Commissioner), 23 July 2015 (from Appellant), 3 February 2016 (from Revenue Commissioners) and 12 May 2016 (from Appellant). In relation to the payment of €200,000 there is no reference in the communications from the Revenue Commissioners to section 130 or section 436. The position of the Revenue Commissioners with regard to the relevance of section 201, in the context of section 81, is set out in the letter dated 12 June 2015 as: *‘The position in relation to the ex-gratia payment of €200,000 remains as previously outlined and Revenue contend that Section 201(2)(a) TCA 1997 is by no means irrelevant to the claim for a deduction in respect of an ex-gratia lump sum payment made on the death of an office holder.’* and *‘It is not accepted that the intention to pay [Mr A]’s widow funds as she needs them to meet household and other bills, qualifies for a €200,000 deduction in the 2013 Accounts.’*
57. In a letter from the Revenue Commissioners dated 31 January 2020 the position of the Revenue Commissioners is stated as the payment of €200,000 was not expended wholly and exclusively for the purposes of the trade (section 81(2)(a)), and was a disbursement for maintenance of [Mrs A] (section 81(2)(b)) and therefore not an allowable expense for corporation tax purposes. The Revenue Commissioners stated *‘without prejudice to the question of whether it is an allowable deduction, my client [Revenue Commissioners] accepts for the purposes of the within appeal that if the liability is an allowable deduction, then the liability can be accrued in full in the 2013 accounts in accordance with generally accepted accounting practice.’* This meant that the previous distinction drawn by the Revenue Commissioners between paid and accrued did not arise.



58. At the hearing, the Revenue Commissioners submitted that the issue for determination in the appeal was whether the payment was deductible for tax purposes, meaning a consideration of the purpose for making the payment, and all other issues, including the tax consequences under section 123 or section 201, did not form part of the submission of the Revenue Commissioners. The Revenue Commissioners submitted that the Appeal Commissioners have to consider the motivating factor in the mind of the directors when the decision was made on making the payment.
59. In my view, the nature of the communications from the Revenue Commissioners was more than a confusion on the tax effect or tax consequences of the payment. The communications were framed with a focus on section 201. It is unsatisfactory that the basis upon which the Revenue Commissioners made the determination dated 9 August 2016 was not the position advanced at the appeal hearing. Section 949AL of the Taxes Consolidation Act, 1997 provides that the Appeal Commissioners shall, if they consider that the determination of the Revenue Commissioners ought to be varied, determine that the determination be varied, even if such variation is not to the advantage of the Appellant; otherwise they shall determine that the determination of the Revenue Commissioners stand. In circumstances where the Revenue Commissioners did not pursue, at the hearing, the position as described in the determination dated 9 August 2016, it may be problematic as to whether the Appeal Commissioners could determine that the determination of the Revenue Commissioners stand. While the Revenue Commissioners may submit that the determination referred to whether the payment of €200,000 was wholly and exclusively for the purposes of the trade, which was the position advanced at the hearing, it is clear from the determination that this position was premised on the payment being considered by the Revenue Commissioners as income distributions to [*Mrs A*].
60. The Revenue Commissioners submit that whether a payment is allowable as a deduction under section 81 is a matter of fact depending on the circumstances giving rise to the payment. The Appeal Commissioners have to determine the



purpose of the payment. The Revenue Commissioners submit that the motivating factor in the mind of the directors when making the payment is a decision of fact.

61. The position described by Geoghegan J. in *MacAonghusa -v- Ringmahon Company* [2001] 2 IR 507 was the making of “*a finding of fact as to the purpose of the payment and in the light of that finding of fact it [will be] reasonably clear whether as a matter of law the payment [is] deductible or not*”. I accept that whether a disbursement or expense is wholly and exclusively laid out or expended for the purposes of the trade is a question of fact to be considered on the particular facts and circumstances pertaining to an Appellant. I further accept that the expense must be for the purposes of the trade and not other purposes. The purpose of making a payment should be distinguished from the effect of a payment. A payment may be made exclusively to serve the purposes of the trade, but it may have a consequential private effect. The existence of that consequential private effect does not necessarily preclude the exclusivity of being for the purposes of the trade.
62. There have been various formulations developed in considering wholly and exclusively laid out or expended for the purposes of the trade. In *Strong & Co. of Romsey Ltd -v- Woodfield (Surveyor of Taxes)* [1906] AC 448 Lord Davey in the House of Lords stated (at page 453)

“I think that the payment of these damages was not money expended ‘for the purpose of the trade’. These words are used in other rules, and appear to me to mean for the purpose of enabling a person to carry on and earn profits in the trade, &c. I think the disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade.” [emphasis added]



63. In *J W Smith (Surveyor of Taxes) -v- The Incorporated Council of Law Reporting for England and Wales* [1914] 6 TC 477, Scrutton J. stated (at page 484 and 485)

“Now it being a question of fact, in my opinion, what have the Commissioners found? The Commissioners are a very distinguished body, and I must assume that when they use different words about the same question they mean the same thing. As I have pointed out, they had to answer the question: Was this £1,500 money wholly and exclusively laid out or expended for the purposes of such trade? They state their case in this way: ‘The respondents contended that the money was a necessary expense of their business’. ‘The appellant contended that it was not a necessary expense of earning the profits’. The Commissioner's find it is allowable as a business expense. Now the three very distinguished names which are affixed to this report must all have looked at the statute that they were interpreting and I must take it that when they use those four different forms of language they were using them all as equivalent to the phrase ‘money wholly or exclusively laid out or expended, for the purposes of such trade’, which they shortened into the phrase in their finding ‘a business expense’.

Under those circumstances, I think the Commissioners have found what, I think as I have pointed out, is a fact. That the £1,500 was money wholly and exclusively laid out expended for the purposes of the trade.” [emphasis added]

64. In *British Insulated and Helsby Cables Limited -v- Atherton* [1926] AC 209 Viscount Cave in the House of Lords stated (at page 211 and 212):

*“I think it clear that the deduction from the profits of the above-mentioned sum of 31,784l. is not prohibited by the first rule applicable to Cases I. and II., which prohibits the deduction of a disbursement not being money wholly and exclusively laid out or expended for the purposes of the trade. It was made clear in the above cited cases of *Usher's Wiltshire Brewery v. Bruce (1)* and *Smith v. Incorporated Council of Law Reporting for England and Wales (2)* that a sum*



of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade; and it appears to me that the findings of the Commissioners in the present case bring the payment in question within that description. They found (in words which I have already quoted) that the payment was made for the sound commercial purpose of enabling the company to retain the services of existing and future members of their staff and of increasing the efficiency of the staff..” [emphasis added]

65. In *MacAonghusa -v- Ringmahon Company* [2001] 2 IR 507, which involved a question of whether interest payable in respect of a loan applied to redeem preference share capital of a company was an expense incurred wholly and exclusively for the purposes of the trade, Geoghegan J. in the Supreme Court concluded (at page 512):

“I think that the respondent successfully demonstrates that the interest on an ongoing basis must be regarded as being laid out wholly or exclusively in earning of the profits of the particular accounting year. I have already indicated that I arrive at that view as a matter of principle on the arguments put before the court and without recourse to case law.” [emphasis added]

66. It is not surprising that the cases in which the Courts have been called upon to say whether a particular deduction is or is not allowable for tax purposes are numerous and not always easy to reconcile. And while various formulations of ‘wholly and exclusively for the purposes of the trade’ may assist in explaining whether a particular deduction is allowable on the facts before a Court, they may prove inconclusive or insufficient when applied to the facts of another case. It can be difficult to extract the boundary line between deductions which are allowable and deductions which are not allowable from the jurisprudence.



67. The Appellant submits that the payment was for the length of service given by [Mr A] and was for the purposes of the trade of [Company A]. The Revenue Commissioners submit that the Appellant has not demonstrated that the payment was wholly and exclusively laid out or expended for the purposes of the trade, and that other purposes for the payment are identifiable, including that the payment related to [Mrs A] being a shareholder of [Company A], or that the payment related to providing financial support and assistance to [Mrs A] to ensure her personal needs were met on the death of her husband.
68. The Revenue Commissioners submit that the payment of €200,000 was made for a purpose other than the purposes of the trade. The Revenue Commissioners submit that [Mrs A] was a shareholder of [Company A], either beneficially or otherwise, at the time of making the payment, as [Mrs A] was the sole beneficiary of the estate of [Mr A] from the date of death. In my view, in considering whether the purpose of the payment was related to the shares, the timing of events, the legal position on the devolution and vesting of an intestate estate and the value of the shares, as reflected in the following, are relevant: The Form B1 – Annual Return made up to 30 September 2013 describes the shareholders as [Mr B] ([redacted] ordinary shares) and the Estate of [Mr A] ([redacted] ordinary shares). The Form B1 – Annual Return made up to 30 September 2014 describes that [Mr A] transferred his shares to [Mrs A] on [redacted] 2013. The Inland Revenue Affidavit (Form CA24) was sworn on [redacted] seeking a grant of administration intestate. In the Inland Revenue Affidavit, the gross market value of the [redacted] ordinary shares in [Company A] is €40,180. The Succession Act, 1965 prescribes the manner for the devolution and vesting of the real and personal estate of a deceased person on an intestacy. The Inland Revenue Affidavit was sworn on [redacted]. The Grant of Administration would issue subsequent to the Inland Revenue Affidavit. According to the Companies Registration Office the transfer of shares was on [redacted] 2013. The letter to [Mrs A] was dated [redacted]. Furthermore, the value of shares in the Inland Revenue Affidavit was €40,180, whereas the payment was €200,000.



69. The Revenue Commissioners submit that the evidence demonstrates that the payment was for the purpose of providing financial support to [Mrs A] to ensure her personal needs were met with the payments being made on an ongoing basis, as and when required by [Mrs A]. Consequently, as the payment of €200,000 was for a purpose other than the purposes of the trade, the payment is not allowable as a deduction under section 81. As noted above, a payment may be made exclusively to serve the purposes of the trade, but have a consequential private effect. In my view, in considering whether the purpose of the payment was the needs of [Mrs A], the following is relevant: In his evidence, [Mr C] stated that [Mrs A] would survive financially if the payment from [Company A] was withheld, that [Mrs A] had her own sources of income including a fund with [redacted] and the state pension. The Inland Revenue Affidavit describes the total net estate of [Mr A] as €600,699. It also describes [Mr A] having an account in a financial institution with [Mrs A] with a total value of €10,000.
70. The Revenue Commissioners submit that inferences should be drawn from the failure of [Company A] to produce documents, particularly the absence of minutes of meetings discussing the payment. The Revenue Commissioners submit that there are no contemporaneous documents setting out the potential benefits to the company of making the payment and no record of any likely profits that may come to the company from the payment. The Appellant submits that there is no requirement to have minutes of meetings. The evidence of [Mr C] was that [Company A] was a family business and was managed more informally. The witness stated that it was not the practice of the directors of [Company A] to have written notes of discussions. In those circumstances, the absence of minutes or other written records does not mean that the purpose of the payment cannot be ascertained, but may be a consideration in evaluating the burden of proof on an Appellant in a tax appeal.
71. The Revenue Commissioners submit that it was an interesting coincidence that the amount of the payment was equivalent to the maximum amount under



section 201 and that as [Mr C] could not recall how the figure was arrived at, there was no opportunity to examine the witness on the matter. The Appellant submits that if the payment was structured in a tax efficient manner this did not mean that the payment was not wholly and exclusively for the purposes of the trade. In my view, the absence of an explanation on the computation of the €200,000 and the fact the amount is equivalent to the amount in section 201, does not mean that the payment must be disallowed under section 81, but may be a consideration in evaluating the burden of proof on an Appellant in a tax appeal. The question is whether the payment, in whatever amount, was wholly and exclusively laid out or expended for the purposes of the trade of [Company A].

72. The Revenue Commissioners submit that there was no binding agreement between [Company A] and [Mr A] with regard to making a payment. There was no policy which would bind [Company A] with regard to making a payment. There was no habit of making a payment by [Company A]. The Revenue Commissioners submit that the evidence demonstrates that [Mr A] was not motivated by the payment to work in [Company A], as [Mr A] continued to work in [Company A] because it was a family business, it was his family obligation, and when it was suggested that he reduce his involvement in the business, [Mr A] reacted on the basis that he had few other pursuits and had only ever known working in the business. The Revenue Commissioners submit that [Mr A] may have been motivated because of his shares in [Company A], in that if [Company A] performed well the value of his shares increased. The evidence of [Mr C] was that there was no policy with regard to making the payment and no other director or employee of [Company A] had received a lump sum payment. [Mr C] had no knowledge of whether [Mr B] and [Mr A] had an agreement, however, [Mr C] stated there was an understanding or unwritten rule that [Mr A] would be looked after by [Company A]. As regards the understanding, in the letter to [Mrs A] dated [redacted], it is stated that [Company A] had intended on making the payment on the retirement of [Mr A]. The letter was co-signed by [Mr B], who had been involved in the business with his brother, [Mr A], since



incorporation in [redacted]. In my view, it is also relevant that the only directorship held by [Mr A] was in [Company A], whereas [Mr B] had multiple directorships. [Mr C] stated that [Mr A] was left behind looking after the business when [Mr B] travelled abroad to work in other business interests of his own. [Mr C] stated that [Mr B] moved on to other businesses and that [Mr A] was always there in [Company A]. Furthermore, [Mr A] had a minority shareholding, meaning he did not control [Company A], whereas [Mr B] had a majority shareholding.

73. In establishing the purpose of the payment by [Company A], the evidence of [Mr C] and the contemporaneous document relating to the payment, namely the letter to [Mrs A] dated [redacted], are relevant. In my view, the evidential value of the letter should be weighed by the fact that it was sent less than four weeks after the death of [Mr A] on [redacted]. The communication conveys that [Company A] were making the payment in recognition of [Mr A]'s fifty-four years as a director of [Company A] and that [Company A] had intended on making the payment on the retirement of [Mr A]. [Mr C] was the person with knowledge of the facts of the trade. The evidence of [Mr C] conveyed the strong work ethic of the [redacted] family and their commitment to a family business. The witness gave evidence that [Mr A] worked in the family business all his life, that the business survived by [Mr A] working hand in hand with [Mr B] and that the payment was made for the length of service given by [Mr A] to the business. The witness gave evidence that [Mr A] assumed responsibility for the business while [Mr B] pursued other business interests of his own. The witness gave evidence that the salary of [Mr A] would have been adjusted over the years in line with changes to the business.

74. Based on the submissions made by the parties, and having regard to the jurisprudence, the following may provide a framework for the issue - Was the purpose of the payment to enable or facilitate the carrying on of the trade of [Company A]? Was it for the purpose of benefiting the trade or protecting the interests of the trade of [Company A]? Was [Company A] wholly and



exclusively directed to the furtherance of the trade? Was the earning of the profits of [Company A] impacted?

75. Having carefully considered the facts, evidence, materials and submissions, I am satisfied that the purpose of the payment of €200,000 by [Company A] was for the length of service given by [Mr A] to the trade of [Company A], with the payment being made on the death of [Mr A] to his widow, [Mrs A]. In that regard, it is significant that [Mr A] worked in the business his entire life, that he was a director of [Company A] only and that he held a minority shareholding in [Company A]. The evidence adduced was that there was an understanding between [Mr A] and [Company A] and that he would ‘be looked after for all he did’. The letter from [Company A] dated [redacted] refers to a recognition of service and an intention to make a payment on retirement, which was sent less than four weeks after the death of [Mr A]. I determine that the payment of €200,000 was money wholly and exclusively laid out or expended for the purposes of the trade of [Company A]. The payment was made to enable the carrying on and earning of the profits of the trade of [Company A], having regard to the service of fifty-four years in the trading operations of one company, the duties performed, the adjustments in salary and the responsibilities assumed particularly enabling [Mr B] to pursue other business interests of his own.

Determination

76. In respect of the appeal against the Notice of Determination of the Revenue Commissioners dated 9 August 2016, and based on a review of the facts and a consideration of the evidence, materials and submissions of the parties, I determine that the determination should be varied with regard to the payment of €200,000; the variation being that the payment of €200,000 was a disbursement or expense wholly and exclusively laid out or expended for the purposes of the trade of [Company A].



77. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

25 MAY 2020

