TAX APPEALS COMMISSION

Ref: [redacted]

Between/

[redacted]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. The matter that arises for determination herein is a preliminary issue as to whether or not there is a valid appeal before me pursuant to section 956(2)(a) of the Taxes Consolidation Act 1997 (hereinafter "**TCA 1997**") against enquiries made by a Revenue Inspector into certain share disposals involving the Appellant. At least some of these share disposals occurred outside the 4-year limitation period prescribed in section 956(1)(c) in respect of enquiries made under that provision.

2. The matter proceeded by way of oral hearing before me at which both parties were represented by Counsel, who made helpful submissions on the legal and factual issues that arise herein.

B. Facts relevant to the Appeal

3. Most of the background to this matter was set out in correspondence between the Appellant's tax agents and the Respondent. The relevant correspondence is described in detail hereunder.

4. On the 28th of February 2013, the Respondent wrote a letter to the Appellant headed "*Offshore Enquiry*", which sought clarification of the extent of the Appellant's involvement in offshore financial transactions. The Respondent stated that it had reason to believe the Appellant was associated with such transactions because of information disclosed to it by a financial institution in compliance with a court Order. The Order had been obtained in the context of an investigation by the Respondent into offshore tax evasion and avoidance. The Respondent did not receive a reply to its correspondence of the 28th of February 2013.

5. On the 10th of December 2014, the Respondent wrote again to the Appellant, this time requiring the provision of a detailed explanation concerning his receipt of funds in five specified transactions in the years 2003, 2006, 2007 and 2008. This correspondence noted the Appellant's status as the settlor of a trust fund named the [redacted] Trust (hereinafter referred to as "**the Trust**") which owned a foreign-based company named [redacted] Limited (hereinafter referred to as "**the Company**") that was involved in the transfer of the aforesaid funds. The Respondent sought

detailed financial documentation relating to the Trust, the Company and each capital gains tax disposal included by the Appellant in his returns for the tax years 2003 and 2004.

6. On the 6th of February 2015, the Appellant's agents replied to the Respondent. In their response, they stated, *inter alia*, that the transactions in question concerned the disposal of shares in an Irish company called [redacted] Limited by the Company. The agents also stated that the disposals were not subject to capital gains tax because they came within the exemption contained in section 626B of TCA 1997, which exempts share disposals made by parent companies in certain circumstances. The agents acknowledged that they were not providing the full extent of the information sought by the Respondent on the 10th of December 2014 at that stage and sought confirmation that the Respondent was satisfied with the partial response before they proceeded to undertake the effort of making further investigations into the Appellant's returns.

7. By letter dated the 18th of February 2015, the Respondent informed the Appellant's agents that it did not accept that the exemption under section 626B could apply to transactions involving a non-resident company such as the Company and, moreover, that two of the transactions occurred prior to the enactment of that provision. The correspondence also queried why no capital gains tax returns had been made by the Appellant in respect of several share disposals in 2003 by the Company and by the Appellant personally. The Respondent also sought, *inter alia*, "*financial statements for both* [the Trust] *and* [the Company]….".

8. On the 14th of April 2015, the Respondent wrote to the Appellant's agent noting that it had furnished none of the information sought in the correspondence of the 18th of February 2015. The letter warned that unless this was furnished within 21 days, the

Respondent would exercise its powers under section 900 of TCA 1997 to require the production of the information.

9. On the 4th of September 2015, the agents for the Appellant wrote to the Respondent in the following terms:-

> *"We refer to previous correspondence in this case, in particular your letter of 18 February 2015. Please note we consider your enquiry as set out in the letter to be out of time in accordance with section 956(1)(c) TCA 1997.*
>
> *Please accept this late appeal under section 956(2)(a) as we have only recently had to hand a copy of the unapproved judgment of Mr Justice Binchy in the Lacey High Court Case."*

10. The Respondent replied on the 9th of September 2015 and stated, inter alia:-

> *"Section 956(2)(a) provides that an appeal can be made within 30 days of an inspector making an enquiry where an enquiry relates to a tax return filed outside the time limit (4 years) stipulated in section 956(1)(c). Revenue's enquiry was initiated in 2012 and consequently the 30 days period has expired. There is no provision within section 956 for a late appeal."*

11. It was not in dispute at hearing before me that the reference in the foregoing passage to 2012 was an error. The year to which the Respondent intended to refer in connection with the initiation of the enquiry was 2013. I am satisfied that nothing turns on this mistake.

12. In addition to making the point that the time had expired for the Appellant to bring an appeal under section 956(2)(a), the Respondent also stated its belief in the aforesaid correspondence that, in any event, the time limit of four years relied on by

the Appellant was inapplicable on the grounds that the disposals the subject of enquiry had not been included on his tax returns for the relevant years.

13. On the 23rd of September 2015, the agents for the Appellant wrote to the Respondent requesting copies of returns and schedules submitted by the Appellant for the years in question and calling on the Respondent to give a detailed explanation as to why it had decided the exception under section 626B did not apply. The agents also disputed that their appeal under section 956(2)(a) was out of time. In this regard, they contended that the letter of the 28th of February 2013 was not a proper enquiry letter under section 956 and pointed to the absence of any express reference to this statutory provision in the letter.

14. In the same correspondence, the agents for the Appellant also stated their belief that any enquiry under section 956 would have been invalid. Their grounds for this was that the letter of the 28th of February 2013 marked the commencement of an enquiry into a return that was outside the four year time-limit prescribed in section 956(1)(c). While they accepted that the relevant Revenue inspector was entitled to commence an out of time enquiry where he had reasonable grounds for believing that the Appellant's return had been completed fraudulently or negligently, they said the terms of the correspondence of the 28th of February 2013 revealed that he had formed no such belief by or prior to this date.

15. On the 29th of September 2015, the Respondent wrote again to the Appellant. This correspondence asked for information concerning the offshore corporate structure of which the Company was a part and repeated the request for details of the circumstances of the disposals made by that company. It also asked the Appellant to explain the basis for the claim that section 626B applied and the inspector stated that

"*On receipt of this information I will give full consideration to your submission and will revert to you on the issue of section 626B.*"

16. On the 13th of October 2015, the agents for the Appellant replied to the Respondent in the following terms:-

> "*The information you now seek relates to periods which are outside the 4 year limitation period in section 956 TCA 1997. I now wish to appeal under section 956 (2) TCA 1997, against your right to make such enquiries. Please arrange to have this appeal listed for hearing before the Appeal Commissioners.*"

17. In correspondence dated the 19th of October 2015, the Respondent stated that the enquiry was no longer appealable because it was initiated on the 28th of February 2013. Consequently, the 30-day limit prescribed in section 956(2)(a) had expired. The Respondent further stated that the Appellant had failed to provide the information sought in its previous correspondence of the 18th of February 2015 and warned that if it was not provided, it would move to issue notices of assessment in relation to outstanding capital gains tax liabilities.

18. This prompted the Appellant's agents to write to the Respondent, repeating that an appeal under section 956(2)(a) lay against the enquiries described in the correspondence of the 29th of September 2015. They also claimed that the issues raised in the original correspondence of the 28th of February 2013 had been dealt with and pointed to section 956(2)(b), which suspends any action on the part of the Respondent under an enquiry until the determination of an appeal under section 956(2)(a).

19. On the 17th of November 2015 the Respondent wrote to the Appellant, indicating that its enquiry had terminated and that Amended Notices of Assessment to capital gains

tax would issue for the years 2003 and 2009. The Amended Assessments identified share disposals involving the Appellant in the amount of €5,056,030 for the tax year 2003 and €44,123,327.12 for the tax year 2009. The CGT liabilities for these years were assessed at €1,011,206 and €11,030,832 respectively.

20. By letter dated the 27th of November 2015, the agents for the Appellant stated their belief that the assessments were void and indicated that they wished to appeal the same. The Respondent replied on the 3rd of December 2015, stating that the appeal under section 956(2)(a) no longer arose in circumstances where the Respondent's enquiries had been terminated. It acknowledged the Appellant's appeal against the assessments. This separate appeal against the Respondent's Amended Assessment pursuant to section 955(3) of TCA 1997 remains extant and has not yet been heard; the findings reached herein do not in any way impact upon the appeal under section 955.

C. ***Relevant Legislation***

21. Part 41 of TCA 1997 governed the self-assessment tax system until 2013, when it was replaced by Part 41A. As the returns in question relate to the tax years 2003 and 2009, it is the provisions contained in Part 41 that are relevant to this appeal.

22. Section 955 is entitled "*Amendment of and time limit for assessments*". The relevant subsections thereof provide as follows:-

> *"(1) Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of*

the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

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

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

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

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii) to give effect to a determination on any appeal against an assessment,

(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv) to correct an error in calculation, or

(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person

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

(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine—

(a) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(b) that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4) (a) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by

specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(b) This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question."

23. Section 956 is entitled "*Inspector's right to make enquiries and amend assessments*" and it provides as follows:-

"(1) (a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—

(i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.

(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a)(i) shall not preclude the inspector—

(i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself

or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to section 955(2), from amending or further amending an assessment in such manner as he or she considers appropriate.

(c) Any enquiries and actions referred to in paragraph (b) shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at the time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2) *(a) a chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in subsection (1)(c) in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of subsection (1)(c) may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.*

(b) Any action required to be taken by the chargeable person and any further action proposed to be taken by the inspector pursuant to the

inspector's enquiry or action shall be suspended pending the determination of the appeal.

(c) Where on the hearing of the appeal the Appeal Commissioners—

(i) determine that the inspector was precluded from making the enquiry or taking the action by reason of subsection (1)(c), the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or

(ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action."

D. Submissions of the Appellant

24. The Appellant submitted that there was a valid appeal before me under section 956(2)(a) of TCA 1997 against an enquiry made by the Respondent into his tax returns outside the four year period prescribed in section 956(1)(c).

25. The Appellant submitted that, in compliance with section 956(2)(a), the appeal was brought within 30 days from the making of an enquiry by the Respondent into his returns. The Appellant argued that the enquiry under appeal was that made on the 29th of September 2015, when the Respondent sought details in correspondence of the share disposals and asked for reasons supporting the Appellant's contention that

section 626B applied to those disposals. The Appellant submitted that his agent's letter exercising his right to appeal was sent within time on the 13th of October 2015.

26. In the course of the hearing, Counsel for the Appellant made detailed submissions to me about numerous matters relating to the Respondent's enquiries and the decision to issue Amended Assessments for the years 2003 and 2009. These included submissions on the scope of the power of an inspector to enquire under section 956, the relationship between this enquiry power and the power of an inspector to amend returns under section 955, the lawfulness and validity of the decision of the inspector in this case to commence his enquiry into the Appellant's returns (in particular, whether he had reasonable grounds for believing that returns were insufficient due to their having been completed in a fraudulent or negligent manner), whether the issues into which the Respondent was enquiring had been resolved in the course of a 2008 interaction between the Appellant and the Respondent and, lastly, the lawfulness and validity of the decision by the inspector to issue Amended Assessments in relation to the tax years 2003 and 2009. Particular reliance was placed by the Appellant in the context of these submissions on the judgments of the High Court and the Supreme Court in ***Revenue Commissioners -v- Droog*** **[2011] IEHC 142** and **[2016] IESC 55**.

27. However, in relation to the issue for determination at this preliminary stage, namely whether there is a valid appeal under section 956(2)(a) for me to consider, the Appellant's case rested primarily on the submission that the chain of correspondence between the Respondent and the Appellant's agents, which began on the 28th of February 2013, encompassed more than a single appealable enquiry made by the Respondent into the share disposals in [redacted] Ltd. The other arguments and submissions made by Counsel for the Appellant will only fall to be considered if I am first satisfied that there is a valid section 956 appeal before me.

28. The Appellant argued in relation to the early correspondence of the 28th of February 2013 and the 10th of December 2014 that neither in fact amounted to the initiation of an enquiry under section 956, because there was no express reference therein to that provision. The consequence of this absence or omission, according to the Appellant, was that the 30-day time limit for appeal did not run from either date.

29. Counsel for the Appellant further submitted that irrespective of whether the letters of the 28th of February 2013 and the 10th of December 2014 could be construed as enquiry letters, the correspondence of the 29th of September amounted to an entirely new enquiry into the Appellant's tax affairs, from which the time to appeal under section 956(2)(a) ran afresh.

30. In support of this contention, Counsel for the Appellant pointed to the wording of section 956, and specifically the reference in subsection (1)(c) to "*enquiries*" and in subsection (2)(a) to *"any enquiry".* This, he argued, demonstrated that the drafters of the legislation had contemplated that there could be a series of enquiries, any one of which could be appealed. The Appellant's agents, Counsel submitted, had fully and properly dealt with the Respondent's previous enquiries into his returns and the Respondent had subsequently come back seeking further information outside the statutory four-year period on the 29th of September 2015. For this reason, he submitted that the Appellant had brought a valid appeal against an out of time enquiry within the time allowed by statute.

E. Submissions of the Respondent

31. Counsel for the Respondent made two main arguments as to why there was no valid appeal pursuant to section 956 before me. Firstly, it was submitted that there was never any enquiry under this section in respect of which the four-year time limit applied. In support of this argument, Counsel emphasised the wording of sections 956(1)(a) and (b), which refer to an assessment and enquiry under this heading being in relation to *"a statement or particular contained in a return".* Enquiries into such matters outside the four-year limit are prohibited under section 956(1)(c) unless the inspector has reasonable grounds for believing there was fraud or negligence on the part of the taxpayer in the completion of the return.

32. In the instant appeal, no reference to the share disposals was included by the Appellant in his tax returns for the years in question. This, Counsel submitted, meant that the qualified prohibition on the commencement of an enquiry outside the four-year limit was inapplicable.

33. Counsel further submitted that even if the Respondent was wrong in this regard, there had been only one, single enquiry made by the Respondent, in respect of which the Appellant failed to lodge an appeal within time. The legislation made no provision for an extension of this period, and consequently there was no valid appeal.

34. On this point, the exact position taken by the Respondent in legal argument diverged from that which was outlined in its Statement of Case. At the hearing, it was contended that the enquiry was commenced by the letter of the 10th of December 2014 (which was the first to identify the share disposals), whereas the Statement of Case identified the 28th of February 2013 "offshore enquiry" letter as commencing the enquiry. At hearing, this initial correspondence was accepted by Counsel as being "*general*" in nature, rather than specific to section 956.

35. This did not affect the core submission of the Respondent, which was that the correspondence of the 29th of September 2015 raised nothing that had not been raised before. What it did, according to the Respondent, was to continue to seek detailed information concerning the share disposals and the applicability of the section 626B exemption which had not been provided by the Appellant up to that stage.

36. The Respondent pointed also to the Appellant's correspondence of the 4th of September 2015, which referred to the correspondence of the 18th of February into the share disposals and requested that the Respondent "*accept this late appeal under section 956(2)(a) as we have only recently had to hand a copy of the unapproved judgment of Mr Justice Binchy in the Lacey High Court Case."* It was submitted that matters dealt with in the correspondence of the 18th of February 2015 differed in no substantive way from that of the 29th of September 2015. Consequently, the Respondent submitted that the Appellant was incorrect in his argument that it was a fresh enquiry capable of re-starting the clock.

F. Analysis and Findings

37. It is important to stress that the sole question for determination at this preliminary hearing was whether there is a valid appeal under section 956(2)(a) before me. For the reasons set forth below, I find that there is not.

38. In relation to the first argument made by the Respondent, it is indeed arguable from the wording of section 956 that an enquiry thereunder must relate to some statement or particular contained in a return. If I was to accept this submission, there would be

no section 956 enquiry in this appeal, and consequently no right of appeal under subsection 2(a), because the Appellant did not make any reference to the share disposals in his returns.

39. However, it is in my view equally arguable from the wording of section 956 that an inspector who has reasonable grounds for suspecting that a taxpayer fraudulently or negligently failed to disclose or include details of a taxable transaction in a return may be empowered to commence an enquiry pursuant to that section outside the four-year period. This is because such a failure would clearly give rise to the possibility that the return was insufficient for being negligently or fraudulently completed within the meaning of section 956(1)(c).

40. I believe that the interpretation of section 956(1) contended for by the Respondent is overly narrow. It seeks in effect to limit the protection afforded to taxpayers by that subsection against having their tax affairs enquired into by the Respondent once the four-year time limit has expired to cases where the taxpayer has included in his tax return a positive statement or piece of information into which the inspector wishes to enquire. The Respondent submits that, in contrast, no protection is afforded by section 956 where the inspector is enquiring into an omission from a tax return.

41. I believe that the Respondent's suggested interpretation of section 956 in this regard is incorrect. I believe that both the wording of section 956, when given its ordinary and natural meaning, and the intention of the legislature gleaned when considering sections 955 and 956 together indicate that section 956 is applicable to enquiries made by a Revenue inspector to satisfy himself as to the accuracy of any return, irrespective of whether the inspector believes that the return is inaccurate by reason of the inclusion of an incorrect statement or particular or by reason of the failure to include in the return a relevant statement or particular. My views in this regard are,

I believe, supported by the decision of the Supreme Court in ***Hans Droog*** where Clarke J stated at paragraphs 4.7 and 4.8:-

> *"*[T]*he structure is clear. A person who makes a full and true disclosure and pays their tax on foot of an assessment raised thereon cannot have their tax affairs reopened after four years have elapsed. An inspector is given wide power to inquire into the accuracy of any return but is precluded from engaging in such inquiry outside the four year period unless the inspector has reasonable grounds for believing that the original return was fraudulent or negligent and thus not a full and true disclosure. An inspector is not, therefore, entitled to engage in a purely "fishing" exploration of whether old returns (i.e. returns more than four years previous) were inaccurate but rather is required to have some reasonable basis for considering that the return was fraudulent or negligent before embarking on inquiries. Section 956(2)(a) allows a tax payer who feels that an inspector is making inquiries outside the time limit in circumstances not permitted to appeal to the Appeal Commissioners.*
>
> *It follows that, at least in general terms, ss.955 and 956 are designed to prevent the reopening of the tax affairs of a tax payer in respect of the types of tax covered by Pt 41 outside of a four year period except in circumstances where the original return was, or was reasonably suspected to be, fraudulent or negligent. Even if such a reasonable suspicion exists no ultimate exposure to adverse tax consequences can be placed on the tax payer concerned unless it is ultimately established that the relevant return was in fact not full and true in its disclosure.*

42. Accordingly, I find that the enquires made by the Respondent the subject of this appeal are enquiries to which section 956 applies, and consequently the Appellant enjoyed the right to bring an appeal against those enquiries pursuant to section

956(2)(a). I must therefore proceed to determine whether the Appellant has successfully invoked that right.

43. Section 956(2)(a) makes it clear that any person aggrieved by an enquiry by the Respondent into a tax return after the expiry of the four-year time limit has 30 days in which to appeal. No provision is made in the section for an extension of this period.

44. The Respondent accepted at the hearing before me that the "offshore enquiry" letter of the 28th of February 2013 was general in nature and did not seek to argue that it constituted an enquiry under section 956. The Respondent submitted instead that the inspector's enquiries had commenced on the 10th of December 2014.

45. The Appellant contended that the letter of the 10th of December 2014 was incapable of constituting an enquiry under section 956, because no express reference was made in that letter to that section or to the powers conferred thereby. I do not accept this argument. All that is necessary in my view for the making of an enquiry under section 956 is for an inspector acting on behalf of the Respondent to seek information so as to satisfy themselves as to the accuracy or the sufficiency of a return. There is no requirement in the legislation that an inspector seeking such information make express reference to the statutory power pursuant to which the information is sought, and to imply such an obligation into the wording of section 956 would amount, in my view, to an impermissible addition of a condition or requirement to the exercise of the power.

46. It is clear to me that the letter of the 10th of December 2014 amounted to the making of an enquiry into the sufficiency of returns made by the Appellant. This correspondence sought **(a)** information concerning five specific transactions in the years 2003, 2006, 2007 and 2008, **(b)** financial statements from the Trust and from the Company from the date of their creation/incorporation until the end of 2013, and

(c) a "*detailed analysis of each capital gains tax disposal included by your client in his 2003 and 2004 tax returns…".*

47. If the Appellant wished to appeal against this enquiry, he had 30 days in which to do so. In the event, he chose instead to reply to the Respondent by letter dated the 6th of February 2015. This reply included the claim that the transactions in question were not subject to capital gains tax because of the exemption contained in section 626B relating to disposals by parent companies. Contrary to what was submitted by the Appellant, I find that this correspondence did not provide information and explanations dealing in full with the matters raised in the Respondent's enquiry of the 10th of December 2014.

48. In my view, the subsequent correspondence from the Respondent and the requests contained therein were a continuation of the original enquiry commenced on the 10th of December 2014. This includes the correspondence of the 29th of September 2015, which the Appellant sought to appeal under section 956(2)(a). In this regard, Counsel for the Appellant argued forcefully at hearing that, whereas the Respondent had rejected the applicability of section 626B to the share disposals on the 18th of February 2015, it had evidently come to have doubts on this question by the 29th of September 2015 because it asked for submissions on the matter to which it would "*give full consideration".* I do not accept that this statement is evidence or even indicative of a new enquiry, and I agree with Respondent's submission that what the inspector was doing was merely stating that while he did not believe section 626B was applicable, he was willing to give due consideration to whatever arguments the Appellant had to make to the contrary. This was an entirely reasonable and sensible approach and did not, in my view, constitute a new enquiry in respect of which a fresh appeal period could begin to run.

49. I also reject the Appellant's submission that the wording of section 956, and more particularly the distinction between the use of the words *"enquiries and actions"* in section 956(1) and "*any enquiry made or action taken*" in section 956(2), means or at least suggests that each individual request for information relevant to a return by the Respondent constitutes a fresh enquiry that is capable of being appealed. If, as in this appeal, a taxpayer fails to provide some or all of the information sought, he or she must assume that the Respondent may pursue its request for information further, and potentially exercise powers found elsewhere in TCA 1997 to compel the provision of the same. If a taxpayer wishes to appeal against an enquiry made after the expiry of the four-year period allowed by section 956(1) by way of appeal under s.956(2)(a), he must exercise that right of appeal within 30 days of the enquiry first being made.

50. I should make it clear, for the avoidance of any doubt, that I fully accept that an inspector of taxes might seek information or explanations pursuant to section 956 in relation to a particular return or returns and might subsequently request further information or explanations, again under section 956, in relation to the same return or returns. It is a question of fact to be determined in each appeal as to whether a subsequent request for information is a continuation of the original request or instead amounts to a new enquiry, in which latter case a new 30-day period within which an appeal can be brought will commence.

51. As stated above, I am satisfied and find as material facts that in the instant appeal the Respondent commenced an enquiry pursuant to section 956 by its letter of the 10th of December 2014, and that all of its subsequent requests for information were a continuation of that original enquiry and did not amount to new enquiries.

52. The Appellant therefore had 30 days from the 10th of December 2014 during which he could have successfully invoked his right of appeal pursuant to section 956(2)(a). He did not do so and instead waited until the 4th of September 2015, when he asked

the Respondent to *"accept this late appeal under s.956(2)(a) TCA"* in respect of the enquiries communicated on the 18th of February 2015. Even if the Respondent had been minded to accept such a late appeal, which it was not, it did not have the statutory power to do so.

G. ***Conclusion***

53. The findings above can be summarised as follows:-

(a) The enquiry made by the inspector of taxes regarding the Appellant's tax returns which gave rise to this appeal was an enquiry pursuant to section 956 of TCA 1997.

(b) Accordingly, the Appellant had the right to appeal against the making of that enquiry provided that he exercised that right within the 30-day period allowed by statute.

(c) The enquiry was commenced by the Respondent's letter of the 10th of December 2014 and all subsequent requests for information made by the inspector were a continuation of the enquiry and did not amount to new enquiries.

(d) In particular, the Respondent's letter of the 29th of September 2015 did not amount to a new enquiry in respect of which a fresh 30-day appeal period began to run.

(e) The Appellant did not seek to exercise his right of appeal under section 956(2)(a) until the 4th of September 2015 by which time the statutory period for seeking such an appeal had expired.

54. I therefore find that there is no valid appeal pursuant to section 956(2)(a) before me.

Dated the 20th of August 2021

MARK O'MAHONY
Appeal Commissioner