17TACD2021

BETWEEN

REDACTED

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a decision made by the Respondent in refusing an application for sporting tax exemption on behalf of the Appellant under s.235 Taxes Consolidated Act (TCA) 1997.

2. By way of letters dated 27 May 2013 and 15 April 2014, the Respondent determined that the Appellant was not established for the sole purpose of promoting an athletic or amateur game or sport and whose income, as shown to the satisfaction of the Respondent, is income which has been or will be applied for the sole purpose of promoting an athletic or amateur game or sport.

3. The Appellant duly appealed to the Revenue Commissioners prior to the commencement of the Tax Appeals Commission (TAC) which came into effect on 21 March 2016. The appeal was transferred as part of a legacy group of cases to the TAC in January 2017.

4. This Appeal was determined by an oral hearing, which took place at the Tax Appeals Commission on 30 September 2020.

Background

5. The Appellant provides facilities for horse racing at its premises in REDACTED.

6. The matter of the exemption to tax had been the subject of extensive correspondence between the parties in advance of the formal determination by the Respondent of the company's application for exemption.

Agreed Facts

7. Horse Racing has been carried out in REDACTED since REDACTED.

8. REDACTED is a company limited by guarantee. It was incorporated on REDACTED, when it assumed the running of the racing from a local committee.

9. The property (at REDACTED) is partly owned and partly leased on a long-term lease. It consists of the usual infrastructure typical of any racecourse: racetrack, viewing stands, parade ring, restaurants, bars etc.

10. "REDACTED" as they are known throughout the country, is a premier horse racing event on the national calendar. Currently horse racing occurs REDACTED at REDACTED – in REDACTED. The REDACTED meeting attracts a huge attendance, with REDACTED on a single day. The REDACTED meeting extends over REDACTED continuous days.

11. Horse racing at REDACTED consists of the usual *"flat" and "national hunt"* type horse races. *"Flat"* racing is run over short distances of between 6 furlongs and a mile and does not involve any fences. *"National Hunt"* is racing over fences for distances between 2 and 3.5 miles.

12. The income of the company includes receipts received from the race meetings such as,

    - Admission tickets
    - Media Rights
    - Concessionaire receipts (food and beverage)
    - Race card sales
    - Race sponsorship by local businesses and others.

Legislation

13. The sporting exemption provision is contained in s.235 TCA 1997 and provides:

s. 235 Bodies established for promotion of athletic or amateur games or sports

(1)*In this section, "*approved body of persons*" means* –

(a)any body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports, and

(b)(i)any body of persons that, as respects the year 1983-84 or any earlier year of assessment, was granted exemption from income tax under section

349 of the Income Tax Act, 1967, before that section was substituted by section 9 of the Finance Act, 1984, or

(ii)any company that, as respects any accounting period ending before the 6th day of April, 1984, was granted exemption from corporation tax under section 349 (before the substitution referred to in subparagraph (i)) of the Income Tax Act, 1967, as applied for corporation tax by section 11(6) of the Corporation Tax Act, 1976;

but does not include any such body of persons to which the Revenue Commissioners, after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, give a notice in writing stating that they are satisfied that the body –

(I)was not established for the sole purpose specified in paragraph (a) or was established wholly or partly for the purpose of securing a tax advantage, or

(II)being established for the sole purpose specified in paragraph (a), no longer exists for such purpose or commences to exist wholly or partly for the purpose of securing a tax advantage.

(2)Exemption from income tax or, as the case may be, corporation tax shall be granted in respect of so much of the income of any approved body of persons that is income which has been or will be applied to the sole purpose specified in subsection (1)(a).

Evidence

Material Findings of Fact

14. From the evidence and subsequent cross-examinations, I have made the following material finds of fact:

Evidence of REDACTED ***medical officer*** REDACTED

(a) Jockeys riding in professional horse races work at the very upper limits of the physical requirements of an elite athlete while riding during racing, and jockeys do this on a daily repetitive basis as racing runs throughout a calendar year.

(b) There is no government funding for jockeys and any government funding is for the racecourses.

(c) There are 26 race tracks in the country, there are REDACTED.

(d) The tracks' racing programme is set by Horse Racing Ireland (HRI) which is the governing body for racing in the country.

(e) Racing is set by HRI and HRI regards the REDACTED as one of the most important meetings during the year.

(f) Most of the tracks around the country are run by voluntary or statutory bodies such as in the case of REDACTED. The exceptions are the five tracks operated by the HRI.

(g) Significant public funds are channelled through Horse Racing Ireland HRI pursuant to the Horse and Greyhound Racing Act 2001.

(h) Horse racing is a very big industry employing 35,000 people.

(i) All race meetings are regulated, including the schedules and the timings of racings by Horse Racing Ireland (HRI).

(j) The purpose of the Appellant, is to create a structure to allow professional horse racing occur at its premises.

(k) Racing is regulated in a manner that regulates and allows members of the public to attend and bet upon those races.

(l) Horse Racing Ireland regulates the turf accountants or the bookies who are even external to the races.

(m) Race meetings consist of around six and eight races per day, usually on average, six would be professional and one or two would be amateurs, consisting of a mixture of professional and amateur riders at all race meetings.

(n) The thrust of the purpose behind HRI is to enhance the industry.

Evidence of Mr REDACTED***, former chairman and current director of*** REDACTED ***Company***

(a) Sponsorship for races obtained by REDACTED Company is paid directly to HRI who in turn pay out the prize money (usually greater than that obtained in sponsorship) to the owners.

(b) Sponsorship income has no bearing on the profit and loss account of REDACTED Company. [*I accept the evidence of the director even though there is a mis-match in the accounts between sponsorship income and HRI income*]

(c) Surpluses made by the company are applied to its business which is the promotion of the horse racing meetings in REDACTED including the betterment and improvement of its facilities.

(d) The Company has a wholly owned subsidiary which developed and owns a viewing stand at the racecourse.

(e) Neither the Appellant Company nor its subsidiary has ever paid a dividend to its shareholders.

(f) The Appellant Company's income consists of:

- Payment from patrons for admission to the race meetings
- Rental receipts, catering income, pitch fees and a levy.
- Income from bookies for the entitlement to come in and effectively trade in the Company's racecourse.
- Tote Ireland stipend
- Receipts from HRI of € REDACTED in the REDACTED accounts.

(g) The racecourse is licenced by the racing regulatory body.

(h) The HRI is responsible for race programmes and race fixtures.

(i) It is the function of the HRI and not the function of the Appellant to decide what races it is going to have.

(j) The thrust of HRI is to create an environment that races can take place because it is part of an industry, promotes the breeding of horses, the enlargement of stud farms and the ancillary services that give rise to economic benefit.

(k) The activities of the Appellant are not amateur in nature.

(l) The primary objective for which the company is established is to promote and organise horse races for viewing by the public at REDACTED Racecourse, REDACTED.

(m) The Company has defined powers for the exclusive furtherance of the above primary objective.

Submissions

Appellant

15. Mr REDACTED, agent on behalf of the Appellant submitted that from the vast amount of case law, that in interpreting tax legislation, words are to be given their plain and ordinary meaning and quoted the very recent Bookfinders Case as well as the Kiernan case in support of this.

16. Mr REDACTED submitted that if there's a doubt or ambiguity ultimately in the interpretation of legislation the tax payer gets the benefit of that doubt. He pointed out that the Appellant is a guarantee company and the evidence which is not contradicted, is that all its income goes back into the company to develop its business and none of it is ever paid out either as directors' fees or indeed as dividends.

17. He suggested that the prize money for races is a contra entry in the records of the Appellant insofar as it goes in one side and out the other and has no residual permanent effect whatsoever. He stated the money is never received by the company but dealt with within HRI in some internal account that HRI keep. [*There followed some argument about whether or not the evidence of REDACTED supported this. I will refer to this in my analysis*]

18. Mr REDACTED submitted that the wording in the tax legislation, *"athletic or amateur games or sports",* for interpretive purposes are given their plain and ordinary meaning. He provided the analogy for a plain meaning as to what the proverbial guy on the Clapham omnibus would interpret as a particular expression.

19. Mr REDACTED stated that it is in the Respondent's submission and to an extent the very point raised by the Respondent in the hearing, about the industrial nature or the multi-industry nature of horse racing. He stated that horse racing may be an industry, nobody is denying that, but so is soccer and so is rugby. He pointed out that a person looking to see what horses are running would look to the sports sections of a newspaper rather than the fashion section or the news section or the religious section.

20. He outlined that soccer is an industry with vast amounts of money involved – literally billions. Soccer and rugby has vast amounts of money flowing through these sports. He opined that this level of activity is an industry but also a sport. The two things are not mutually exclusive. He concluded on this as follows:

> *"That taking again these six words and going to the last word we say indisputably horse racing is a "sport" and that is what the ordinary interpretation of that word means, what else is it?"*

21. Mr REDACTED then turned to look at the words themselves and discussed his views on how they should be interpreted. He suggested that the thrust of the Revenue submission, is that the exemption sought in this appeal applies only to amateur sports. He submitted that this is ridiculous. Mr REDACTED submitted that it could be either an amateur or professional sport. He opined that the reason that the Revenue seem to have adopted that theory is that *"going back to 1927, when undoubtedly at that point in time*

the only qualifying sports were hurling and football: - amateur sports. Camogie didn't even qualify then, just only hurling and football and that is correct in 1927". Mr REDACTED submitted that the law has been changed a number of times and that it changed to the current text. So, he submitted that whatever happened back in 1927 has no relevance to today.

22. He submitted that the words are simple, they are plain, that is how they came to be and there is no need to get involved in any historical analysis, because the words are plain and simple. He concluded on this by stating that to say that the legislation only applies today, to amateur sports is absolutely incorrect.

23. He submitted the need to look at the interpretation of the words and the phrase *"athletic or amateur game or sports".* Again he referred to the Revenue submission, in which he stated that it was Revenue's view that these words are conjunctive. In other words he stated, Revenue's view is that it's an amateur sport throughout and rather than what the Respondent is arguing, it's disjunctive. He submitted that it is the Appellant's view that within these formula of words, (these six words), there are three separate circumstances. The first one is an athletic game, the second one an amateur game, and the third one is sport, be it athletic or amateur. Athletic, or amateur games, or sports, is what the Appellant calls disjunctive.

24. Mr REDACTED submitted that this actually arose in the Supreme Court on a VAT case in the case of Bookfinders and the Revenue Commissioners delivered on 29th September 2020. Mr REDACTED supported this view in stating that the Appellant's argument in that case was that the words *"food and drink"* (in the VAT Acts) were conjunctive. In other words, (per Mr REDACTED) you had to be selling both food and drink. Mr REDACTED opined that the Supreme Court held no, they are disjunctive, it could be *"food or drink"*. So, Mr REDACTED suggested that the Supreme Court separated out food from drink, in its very recent decision.

25. Mr REDACTED submitted that by the logic of the word *"sports"* standing alone, the evidence of Dr REDACTED could be disregarded and if his proposition was accepted that the word *"sports"* can be interpreted disjunctively, then it doesn't matter be it amateur or athletic or whatever. Mr REDACTED asserted that the only question to look at is whether or not horse racing is a sport and the Appellant's view in this is in the affirmative.

26. Mr REDACTED referred again to the Revenue submission and asserted again that it was the Revenue submission that horse racing is an industry rather than a sport. Mr REDACTED submitted that the references, endless references to that legislation is consistent with this particular theory as advanced in its submission.

27. Mr REDACTED submitted that the decision required in the instant appeal has been largely determined for the TAC already by the Appeal Commissioner in a case 28TACD2019 concerning a conjunctive and disjunctive argument about the reading of

legislation. He stated that the relative words considered to be disjunctive rather than conjunctive by the Appeal Commissioner were:

"excluding shares or securities or other assets held for investment".

28. He concluded therefore that it is the Appellant's submission that the word "sports" in s.235 TCA 1997 stands alone. It is not governed by amateur or athletic on the Appeal Commissioner's determination. He submitted that one couldn't find a greater parallel.

29. He submitted also that horse racing is indisputably a sport and if the Appellant's interpretation or the Appeal Commissioner's interpretation is not accepted, then it is an athletic sport with two athletes, a jockey, and a horse. He accordingly submitted horse racing is a sport and it is an athletic sport.

30. Mr REDACTED submitted a sample list of organisations published by Revenue that qualify for the relief sought in this appeal which includes several well-known equestrian events and equestrian and other clubs, all with varying legal structures, in the list of approved bodies. He submitted that the list is replete with professional bodies. The IRFU, FAI and several other ones are in the list. So, he stated the Revenue's theory that s.235 TCA 1997 applies only to amateur bodies, is contradicted by its own list.

31. In reference to Mr REDACTED's (counsel for the Respondent)'s statement that HRI is the governing body for racing, he stated that, that relationship is no different from FIFA to UEFA to FAI to clubs. All sports, of whatever nature, have some kind of governing body that lays down the rules. In soccer it is FIFA, in boxing it's the Boxing Union of Ireland. In golf it's the GUI and they regulate the game quite strictly. In rugby it is World Rugby, so all of these sports have a governing body at the top. There are numerous layers of entities from FIFA to the "local soccer club out in wherever". All of these entities are involved in the promotion of the sport.

32. One cannot simply say that FIFA alone is involved in the promotion of soccer. No more than Revenue can say that the HRI is exclusively involved in the promotion of racing. So, what the Appellant has in place structurally, is the same as all sports. In examining the Revenue list of entities with the relief sought in this appeal, one will find entities from the smallest to the largest. All of them are involved in the promotion of the sport. He posed the question "*what else are they doing?*"

33. Mr REDACTED, addressed the issue of the objects of the company raised by the Respondent, in cross-examination of the previous witness (director) by submitting that the list of approximately 3,900 entities that qualify for the relief sought, has numerous legal entities within those. He submitted that the memo and articles of any of those entities are structured exactly the same way as that which the witness stated and read out, and indeed Mr. REDACTED referred to a primary object and a whole series of powers that are there to enable the initial object to be achieved. He submitted that the

first objective of an entity setting up a supermarket is to run a supermarket. The other powers contained in the legal structure are only the infrastructure to achieve the primary object.

34. He submitted that the Companies Act 2014 section 19 abolished the previous standard format of private companies containing powers to do many things. He submitted a standard constitution of a recently formed company to confirm the point being made. *"The constitution of companies today have a sample constitution and there is not a single reference to the object. It is gone. People have realised that this charade of putting in all sorts of objects that had no intention of ever being fulfilled was a waste of time. And the Companies Act, recognising that, has abolished the concept of objects".*

35. He submitted that the Revenue list has within it numerous legal entities, numerous companies limited by guarantee and some limited companies rather than guaranteed companies. He stated that guaranteed companies not unlike the Appellant, require that the income of the body be exclusively used for the purposes of the body. He submitted that on Mr REDACTED's (director) evidence there are no dividends paid or anything of that nature. The money was recirculated within the business for the eventual promotion and development of it. He acknowledged that it does remain for a small number of companies, particularly for guarantee companies that they still must have an object. But for 99.99 percent it is gone, illustrating that the concept of an object a company's memo and articles is now called a constitution, meaning an object is no longer relevant.

36. He submitted that the evidence of the witness confirmed the existence of the REDACTED as dating back to the REDACTED's and this illustrated that the company [and its obvious predecessor] in doing something for 160 years continuously, is much better evidence of what the company is about in life than something on a sheet of paper. He asserted that the real object, is to be ascertained from what the Appellant is actually doing. He illustrated the point, in stating that Mr. REDACTED 's emphasis and reliance on the memo and articles is misplaced. It is simply trumped not only by the words themselves, but also by real life as to what the Appellant is actually doing, that, is its real purpose in life. "*If you are doing that for 160 years, you have got to assume that that is what you are about."*

37. Mr REDACTED submitted in summary that the facts in this case are uncontroversial. "*We know what a race meeting is and what racing is"*.

38. He suggested, the primary function or primary debate, is the interpretation of those six words, and that's a matter purely of statutory interpretation, and that the Appellant bears no burden in relation to that. *"You can't by argument prove anything in a positive sense. All you can do is advance an argument and at the end of the day it is up to the court or the Appeal Commissioner in this case to decide what the interpretation is of those six words".*

39. In conclusion he submitted that the Appellant's case, is that the concept of Mennolly and so forth, have no relevance to statutory interpretation.

Submissions Continued

Respondent

40. Mr. REDACTED, counsel for the Respondent, submitted that the Appellant had said that this appeal simply revolves around six words and how the Appeal Commissioner considers how they ought to be interpreted. He agreed that there is some element to that and asserted that it's in fact not the case, it is not a true reflection of the exercise that I must bring upon myself.

41. He submitted that I have been asked really to consider the section in question and whether or not the Appellant comes within this exemption. To do so requires a full reading of the conditions as set out in s.235.1 (a) TCA 1997 and other parts to it.

42. He submitted that the first part, is that in order to avail of this exemption one has to be an approved body of persons. An approved body of persons is defined in 235.1(a) TCA 1997. And that is:

    "Any body of persons established for and existing".

    He accepted that a body of persons would include or could include a company, such as the Appellant.

43. In discussing the next words *"established for"* he submitted that the Appellant's agent seemed to have suggested, that nothing ought to be made of the articles of association of the company and had suggested that if one looks to the articles of any company, one will find various reasons for the establishment of the company which are far remote and to leave things as wide as possible.

44. He submitted as his first point that it is clear when you actually see why it was established that, in fact, the primary purpose was to facilitate racecourse meetings. But there were other reasons for its establishment. These included the improvement of the people of REDACTED. It included, activities including greyhound racing and the reduction of rates within the area. But those particular establishing reasons are reasons that were specific to the locality and to the area in question. Mr REDACTED submitted it cannot be suggested that a reference to reducing the rates for the people of REDACTED was something that was taken from some *pro forma* article of association. Consideration was put when the various members decided to come together and formulate this body of persons.

45. The next point raised by him is:

"And existing for the sole purpose of promoting athletic or amateur games or sports".

46. He submitted that based on the evidence regarding the activities and the functions of the Appellant, that it was a purpose of the Appellant to provide effectively gambling or betting facilities and structures and that that was one of the purposes for which patrons visited their facilities and that was one of the purposes that the Appellant's existence was geared towards.

47. He submitted that that it was accepted in evidence that HRI, as a regulatory body, has quite an amount of involvement, in terms of the organisation of the race meetings that occur on a bi-annual basis, including the timing of the races and the prize money in respect of the races.

48. He submitted that the reason why he took the witness and the appeal through the legislative provisions relating to the functions of HRI was to bring my attention to the focus and purpose of HRI as a body to promote the horse racing industry, oversee races, to facilitate betting on races and to promote the breeding and ancillary activities that are part of the horse racing industry.

49. He submitted that the Appellant's submissions included evidence of the monies that come in and the moneys that are paid out. He submitted that monies are applied for purposes other than for the purpose of what the Appellant alleges is their purpose. He opined that was, it was accepted and it is in the accounts that, for instance, in REDACTED there was some €REDACTED applied to prize money, that amounted to some REDACTED percent of the receipts.

50. He submitted that Mr REDACTED seemed to suggest that the money that came from HRI was some form of contra item. This view was not accepted by the Respondent. Even if one was to accept this, one can see there was a deficit of REDACTED Euro in terms of the funds that come in from HRI vis-à-vis the amounts that were paid out in prize money. So he contended, it is clear that there was an application of funds and receipts into the entity that are not directed for the sole purpose of promotion of the sport but rather to encourage betting, and to reward people who have chosen to bet.

51. He submitted that in sub-section 2 of s.235 TCA 1997 there is an acceptance that the money has to be applied for that sole purpose. He compared his use of the words *"sole purpose"* to the importance placed on the six words ["*athletic or amateur games or sports"*] by the Appellant.

52. He submitted further, regarding the word *"promoting"* in s.235 (1) TCA 1997, in terms of the activities of the Appellant. He submitted that what we see is REDACTED race meetings organised on an annual basis, to provide structure for the horse racing industry to involve itself, and for punters to have a regulated opportunity to bet on horse races.

53. Mr REDACTED then addressed the words *"athletic or amateur games or sports"* in terms of whether they should be read conjunctively or disjunctively. He submitted that the Appellant's view was that the words should be read disjunctively. In other words, that you separate out each of those words and therefore the Appellant's suggestion seems to be that the wording that is included, in particular the words "or" would give rise to an interpretation that they stand alone.

54. He opined that a disjunctive interpretation would suggest reading the legislation as meaning *"promoting athletic any athletic or any amateur game or any sport whatsoever".* If such an interpretation was adopted it would be necessary therefore to consider the definition of sport.

55. Mr REDACTED made reference to the proposition put forward by Mr REDACTED that the Respondent seemed to lay its hat on it not being a sport. Mr REDACTED made reference to the fact that the article relied upon by Dr. REDACTED refers to it as an industry. He submitted that it's unusual in the first reference to an activity to describe it as an industry rather than a sport. He suggested that this was indicative of the wide scale involvement, in respect of the activity of breeding horses, racing horses as just one aspect of that activity.

56. He submitted that, "athletic" or "amateur" would be words that would be used in conjunction to denote an amateur sport such as whether it be a track and field sport/event or the type of such sports that the common man on the street would recognise as not being professional in nature. These are athletic or amateur sports, and it's that phraseology that has to be interpreted, being mindful of the wording.

57. He referred to the TAC determination relied on (28TACD2019) by the Appellant. He stated that, the case referenced was dealing with completely different provisions and, in fact, was interpreted in the context of the section in question. He further stated there was a contradiction in terms if it was construed conjunctively. He opined that because the Commissioner referred to another part of the section, he felt that in fact a conjunctive interpretation wouldn't make sense if one views that aspect.

58. Mr REDACTED suggested that the above determination sets out in great detail the various aspects of legislative interpretation that I ought to have consideration of when going through these submissions. He opined that what is clear from all of those decisions is the general thrust, in that one starts at a literal interpretation. He concluded by saying to the wording that is there, that "athletic or amateur games or sports" is an inclusive phraseology that in the normal parlance would be considered conjunctively. It would not be broken up.

59. Mr REDACTED then brought attention to the historical nature of the legislation going back to 1927.

> *s.8 Finance Act 1927*
> *"Exemption shall be granted from tax under schedule D of the Income Tax 1918 in respect of so much of the income of any body of persons established for the purpose of promoting the games of Gaelic football, hurling and handball or any of them as the Revenue Commissions are satisfied has been or will be applied to such purpose".*

60. He stated that this is obviously restricted to those three games under the auspices of the GAA.

61. He quoted then from:

> *s. 2 Finance Act 1963*
> *"Exemption shall be granted from income tax in so much of the income of any body established for the sole purpose of promoting athletic or amateur games or sports as is shown to the satisfaction"*

62. He stated that this is repeated again in the Income Act 1967 where the wording remains the same.

63. Mr REDACTED opined that this, referring to the promotion of athletic or amateur games or sports is an inclusive description. He suggested, there would be contradictions if read separately - for instance, the whole athletic or amateur would be superfluous. Athletic or amateur in terms of the description that is there is interchangeable, and indeed could also be said in terms of the sports but if it was disjunctively interpreted, it would be nonsensical given the phraseology that is in being.

64. Mr REDACTED then addressed the cannons of interpretation, in stating that it is the ordinary meaning that ought to be taken from the legislation. In addition, he said that the wording that is there is clear. *"There is nothing particularly, there is no hurdle within it. It is athletic or amateur games or sports" and has to be interpreted as one".*

65. He pointed to the decision of O'Donnell J in Book Finder's Ltd v The Revenue Commissioners [2020] IESC 60. Mr REDACTED interpreted that O'Donnell J revisited his comments in O'Flynn and said that his comments in respect of statutory interpretation were obiter in the O'Flynn case. Mr REDACTED opined that O'Donnell J clarified that, he felt that the purpose of interpretation, as provided for in section 5 (Interpretation Act), didn't necessarily apply to a taxing statute. But he (O'Donnell J) goes on then to clarify that, in fact, he endorses a decision (at paragraph 53) of Mr. Justice McKechnie in the Dunnes Stores, the plastic bag case. In support of this view Mr REDACTED quoted from paragraph 65 of that decision included in paragraph 53 of Bookfinders, the decision of Mr. Justice McKechnie:

> *"When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of*

construction. One of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker".

66. Mr REDACTED continued that it is not that a purposeful approach is not adopted. One looks at the literal interpretation of it in terms of the scheme and the context that it is within. In addition if there are any difficulties in terms of coming to a realisation as to what exactly it means as it is stated, one then looks to the purpose behind the interpretation. So, in fact, it is a little bit of a contradiction because that in effect is to a large extent what section 5 had provided for. He opined that what he is saying that before you do that it is important to take the step of going through the literal interpretation first.

67. Accordingly he submitted that if one takes the literal interpretation, when one looks at or compares that to the determination relied on by the Appellant, the legislative provisions and the phraseology that were involved, are entirely different. The phraseology here of *"athletic or amateur games or sport"* is an intertwined description, to suggest to the contrary would not be doing justice to the intention of the legislature.

68. Mr REDACTED referred to the Respondent's written submissions reproduced here for clarity.

[The Appellant suggests that s. 235 is a very simple provision, such that a sport will qualify if it is either an "athletic" or "amateur" sport. The Appellant's interpretation of S. 235 suggests that "athletic or amateur games or sports" should be read disjunctively (i.e. that the words 'athletic sports' would stand alone and without the tag of "amateur"). The Appellant gives no justification for such an interpretation and furthermore it is respectfully submitted that such an approach is incorrect and misleading. Rather, the wording "athletic or amateur games or sports" must be read together. Consequently, the tag of "amateur" applies to athletic, games and sports. To suggest otherwise would be nonsensical and would not reflect the intention of the legislator. It is respectfully submitted that the s.235 is clear in its wording and intention and there is no ambiguity arising therefrom. If, as may be suggested, there is any ambiguity (which is denied) the Supreme Court in ***Revenue Commissioners v O'Flynn Construction Limited & Others [2011] ITR 113*** *confirmed that the same principles of statutory interpretation apply to taxation statutes as to other non-criminal statutes. O'Donnell J. giving the majority judgment of the Court, said (at paragraph 69):*

> *"In that decision (McGrath) Finlay C.J. restated the orthodox approach to statutory interpretation at the time when he adverted to the obligation of the courts in cases of doubt or ambiguity to resort to 'a consideration of the purpose and intention of the legislature' at page 276. Indeed, if McGrath stands for any principle of statutory interpretation it implicitly rejects the*

contention that any different and more narrow principle of statutory interpretation applies to taxation matters."]

69. He concluded that the submission is set out in terms that ought to be a conjunctive reading of these words, and to disjunctively approach it would be nonsensical given the phraseology involved.

70. Mr REDACTED submitted that horse racing in the mind of the general public would not be considered an athletic sport. Horse racing is an activity that involves the breeding stock of the horse, the training and the blood line and all of that. Certain horses can be worth large sums of money and obviously they require a jockey.

71. Mr REDACTED referred to the Respondent's submissions in relation to the word athletic reproduced here for clarity:

> *[The Appellant in its Outline of Arguments contends that "athletic" simply means "physical exertion". This is not so. "Athletic" is defined in the Sixth Edition 2006 Collins English Dictionary as "physically fit or strong; of, relating to or suitable for an athlete or for athletics"*
>
> *"Athletics" is defined as "track and field events; sports exercises engaged in by athletes"*
>
> *It is respectfully submitted that the natural meaning of athletic games or sports relates to a person competing in a physical activity of track and field events. It is further respectfully submitted that the common meaning of the word would not extend to cover the racing of a horse'.]*

72. Mr REDACTED submitted that he couldn't see how riding a horse could be described as athletics in the normal parlance and meaning of the word. He stated that the Appellant put much store on their case and in their submissions to the horse racing being an athletic sport. He opined that horse riding does not come within the normal language in terms of the meaning of an "athletic activity".

73. He submitted that in normal parlance, athletic or amateur sports are an interchangeable description. He suggested that the Appellant has accepted that it is not involved in amateur activities and that is conceded in their submissions.

74. Mr REDACTED addressed the issue of exemptions from tax and referred to the TAC determination 22TACD2020 in support of his submissions and quoted from the Appeal Commissioner's reference to Kennedy CJ in Revenue Commissioners v Doorley (1933) IR 750 contained in paragraph 173 as follows:

"I have been discussing tax and legislation from the point of view of the imposition of tax. Now, the exemption from tax, with which we are immediately concerned is governed by the same considerations. If it is clear that a tax is imposed by the act under consideration then exemption from that tax must be given expressly and in clear and unambiguous terms. Within the letter of the statute, as interpreted with the assistance of the ordinary cannons for the interpretation of statutes, this arises from the nature of the subject matter under consideration and is complimentary to what I have already said in this regard. The court is not by greater indulgence in delimiting the area of exemptions to enlarge their operation beyond what the statute clearly and without doubt and in express terms accepts for some good reason from the burden of tax thereby i imposed generally on that description of subject matter. As the imposition of so above so the exemption from the tax must be brought within the letter of Taxing Act as interpreted by the established cannons of construction".

75. Mr REDACTED in further support of his submissions also outlined parts of paragraph 175 of that same determination in what he termed a helpful extract from the **O'Flynn Construction** case in relation to the duty of the court:

    (i) "the duty of the court is to establish the intention of the Oireachtas by reference to the language used.
    (ii) in so doing and such provisions are directed to the public at large at least generally, the normal rules of interpretation apply which mean that the words used should be given their ordinary and natural meaning having regard where appropriate to the context in which they are employed.
    (iii) to create a tax charge the same must be founded within the clear unambiguous and express terms of the provision relied upon if the liability comes within the "wording" of the provision, that's an end to the matter the taxpayer must be taxed".
    (iv) the principle last mentioned equally applies where an exemption to tax is asserted, such exemption and in scope must likewise be so founded as otherwise the basis of liability may be impermissibly enlarged".

76. Mr REDACTED opined that the exemption sought by the Appellant is not a taxing provision, but a relieving provision. He posited that the Appellant's view is that if it is a penal provision it goes in the taxpayer's interest. The issue in this case is providing for an exemption and if there is ambiguity you have to consider it in the context of the intention and not to be effectively enlarging what might have been impermissible by the legislation.

77. He submitted that if there was ambiguity and if I was to consider that there is merit either way (and Mr REDACTED said that is not the case), this is provided for in Doorley and endorsed furthermore by O'Donnell in the Bookfinders case and is accordingly accepted principle. If there is ambiguity in a relieving provision, it is interpreted so as not to widen or to provide for an exemption that wasn't clearly provided for.

78. Mr REDACTED again reiterated that the wording goes all the way back to 1927. And the parlance that is used by this legislature is a parlance that the phraseology is so intertwined, it would be nonsensical to deal with it in a disjunctive manner. He posited why would the word "amateur" ever have been there at all as an example? It wouldn't make any sense because there is interchangeability about them.

79. Mr REDACTED suggested that it was clear from the evidence and the case that he was putting to the witnesses, certainly, was that this is an industry, and that it is an industry that is regulated and that horse racing, is one component of the industry and that there is horse racing, breeding and the ancillary activities, options and other livestock activities that are auctions, overseen by HRI. *"Then there is the whole issue of the betting and gambling that takes place that is regulated."*

80. Mr REDACTED in conclusion submitted that when one looks at all of that, one must go back then to "*sole purpose and promoting athletic or amateur games or sports"*. He opined that one could but interpret those words anything other than as conjunctively, to do otherwise, would completely undermine the legislative intention. Finally he drew attention to the title of s. 235 TCA 1997 in using the same phraseology *"promotion of athletics or amateur games or sports"*. It is a phraseology. He submitted that to do otherwise would make no sense.

Analysis

81. The issue between the parties is whether or not REDACTED Company Ltd. is "*a body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports"* in accordance with the provisions of section 235 of the TCA 1997.

82. The Appellant has submitted that the wording in the tax legislation, *"athletic or amateur games or sports",* for interpretive purposes are given their plain and ordinary meaning. The Appellant posited that the italicised words should be read disjunctively rather than conjunctively and thus the activity of horse racing being a sport is entitled to the exemption

83. The Appellant has further submitted that the activity of horse racing is an athletic endeavour and thus qualifies for the exemption as an athletic activity.

84. On the other hand the Respondent has submitted that the words should be read conjunctively meaning that the Appellant being involved in horse racing is not carrying out activities that qualify for the exemption.

85. The Respondent further submitted that the activities are not athletic or amateur or are sports. Rather the company is engaged in an industry of horse racing and this fails the test for the exemption.

Statutory Interpretation

86. Both parties to this Appeal have relied on TAC determinations which include extracts from several higher courts and to judgements handed down by other courts concerning statutory interpretation.

87. The Appellant argued that the words in the TCA 1997 providing for the exemption should be interpreted disjunctively and quoted from the TAC determination 28TACD2019. The Appeal Commissioner in that case was dealing with the words *shares or securities* in s.598 TCA 1997 concerning disposals of business or farm on retirement.

88. The Appeal Commissioner clearly stated, and supported his views with settled case law, that it is clear from the definition of *'chargeable business asset'* that the word *"or"* is used repeatedly as a disjunctive, so that each classification of asset comprising *"shares or securities or other assets held as investments"* must be considered separately.

89. The Appeal Commissioner concluded in that case that such a disjunctive cannot be ignored, its use must be reflected in the interpretation. Accordingly, the only interpretation of the provision which gives meaning and context to the word *"shares"* is one that distinguishes *"shares"* from the meaning of *"or other assets held as investments"* irrespective of whether the *"shares"* were held as investment or otherwise. Therefore, the asset classification *"shares"* is specifically excluded as a category of asset and falls outside the definition of "chargeable business asset".

90. The Appellant has sought a parallel disjunctive interpretation and has compared the grammatical structure of the wording in s.598 and in s.235 TCA 1997 to mean that the word *"sports"* stands alone and is not governed by the accompanying words *amateur or athletic games*.

91. The Appellant has further supported its argument in relation to a disjunctive reading by referring to the recent Supreme Court decision in the Bookfinders Ltd and the Revenue Commissioners case delivered by Mr Justice O'Donnell on 29 September 2020.

92. The words "food and drink" appeared for VAT purposes in that case and the Appellant has opined that the Appellant's argument (in the Bookfinders case) was that these words were conjunctive. In other words, you had to be selling both food and drink. The Appellant then posited that the Supreme Court held no, they are disjunctive it could be "food or drink" and so separated out food from drink.

93. The Respondent argued that the words in the TCA 1997 providing for the exemption should be interpreted conjunctively and quoted extensively from the TAC determination 22TACD2020.

94. The Respondent has also further supported its argument in relation to a disjunctive reading by referring to the recent Supreme Court decision in the Bookfinders Ltd and the Revenue Commissioners case delivered by Mr Justice O'Donnell on 29 September 2020.

95. The Respondent has opined that if there is ambiguity in a relieving provision it is interpreted so as not to widen or to provide for an exemption that wasn't clearly provided for.

Other

96. The Appellant has also stated that the activity is a sport and it is also an athletic sport. The Appellant introduced credible evidence that a jockey partaking in race horse racing must attain levels of fitness matching that of an elite athlete.

97. The Respondent in addition to its view on the conjunctive reading of the legislation has relied on its views in the sole purpose argument and in the industry v sport argument.

Conclusion

98. In this appeal the Appellant seeks an exemption from corporation tax in respect of its activities as meeting the criteria set out s.235 of the TCA 1997. It is worthwhile restating the wording of the section for relevance to my conclusions in the matter.

99. Section 235 TCA 1997

> *In this section, "*approved body of persons*" means* –
>
> *(a)any body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports, and….*

100. The arguments put forward for consideration of a conjunctive or disjunctive reading are compelling as are the arguments for a purposeful reading or a reading discernible to an ordinary person.

101. The TAC cases presented by the parties are most useful in tracing these issues and are well illustrated with relevant settled case law underpinning the determinations.

102. The very recent decision in Bookfinders Ltd and the Revenue Commissioners delivered by O'Donnell J on 29th September 2020 brings an amount of conclusion to the traditional canons of interpretation.

103. Previous suggestions made that the Supreme Court altered the literal approach to statutory interpretation in the case of O'Flynn Construction Ltd. in favour of a purposive approach. In that case the Supreme Court did adopt a purposive approach and rejected a purely literal one. However, O'Donnell J has clarified this somewhat in the Bookfinders case where at paragraph 42 he says:

> *42. It is clear that my observations on the issue of statutory interpretation in the O'Flynn case were obiter. On reflection, they were, I think, unnecessary, incautiously expressed, and made without the benefit of opposing arguments. In particular, I think it was wrong to use the loaded word "purposive" and to further suggest that the Interpretation Act mandated such an approach in respect of taxation legislation. There has been a tendency to set the debate as one between two rather extreme positions: one, a purposive or teleological approach akin to that employed in the field of European law, and in which words and text are of lesser importance than the apparent objective of the legislation; and, at the other extreme, an approach where the only focus of the inquiry, and the question of interpretation, is conducted almost by microscopic analysis of words set upon a transparent slide and stripped of all their context and where, if any ambiguity can be detected, the provision must be given an interpretation favourable to the taxpayer, however unrealistic that interpretation may be.*

104. The Appellant seeks to draw on the conclusions of O'Donnell J in Bookfinders that the words *food and drink* should be read disjunctively rather than conjunctively as contended by Bookfinders. It is worth introducing the text of the judgment in relation to what O'Donnell J said in relation to food and drink.

> ***B. Food and Drink***
>
> *83. The next argument that Bookfinders advance in this respect is to contend that the phrase "food and drink" in para. (iv) of the Sixth Schedule should be given a conjunctive rather than disjunctive meaning, so that it would only capture a supply of food and drink when supplied together, and not food or drink if supplied separately.*
>
> *84. It should be said that Bookfinders do not contend that the ordinary meaning of the word "and" means that the phrase must be read conjunctively. They accept that the words can, on occasion, be read disjunctively, and indeed concede that this is how the same phrase "food and drink" should be read in para. (xii) of the Second Schedule because it is followed immediately by a list of individual items. They argue, however,*

that in para. (iv) of the Sixth Schedule, it should be given its more common conjunctive meaning, so that it only captures circumstances in which food and drink are supplied together. In this regard, they also point out that the phrase in question was amended by the Finance Act 1992, and that, prior to that amendment, the phrase had read "food or drink". This change, they argue, is indicative of a deliberate legislative intent that the phrase should be read conjunctively.

85. I do agree with Bookfinders that the pre-existing statutory provision may sometimes provide helpful guidance as to the interpretation of a subsequent amending provision, since it can often indicate the state of the law which it is intended to alter and suggest a rationale for the amendment, which may in turn assist in its interpretation. I agree also that the decision in Cronin, which considered that subsequent amendments could not be used as a guide to the construction of the prior statutory provision, is not applicable in this case, and is somewhat different. In that case, Griffin J. rejected the argument that the amendment was indicative of a view on the part of the Oireachtas that the original provision bore the interpretation which the taxpayer was asserting. As Griffin J. pointed out, such amendments may be made for a variety of reasons and, in any event, the question was not what view the Oireachtas or, more plausibly, those promoting the amendment, understood the previous provision to mean, but what the Court considered it to mean.

86. In construing a phrase or provision in an Act which is unclear, it is often a misguided detour to seek to interpret an earlier provision, perhaps equally unclear, and draw conclusions as to the unexpressed views of the Oireachtas on the earlier provision, which views (even if held collectively and expressed, which itself is rare) are neither admissible nor, in any event, determinative. However, what is sought to be done here is to refer to the law which applied prior to 1992 with a view to interpreting a phrase introduced for the first time in that year, for whatever weight that might have, and to that extent I think it is permissible, remembering, however, that the primary task of the Court is to interpret the words of the operative provision.

87. However, I cannot accept Bookfinders' interpretation of the phrase. First, it is, I think, permissible to observe that the construction would make little sense. It is difficult to conceive of any reason why the supply of food with drink should attract the intermediate rate of VAT, and the supply of the same food or the same drink (without the other product) by the same establishment to the same person, would not. "Food and drink" is, moreover, a phrase in common use to describe, for example, establishments where it is possible to buy and consume food or drink or both. The alteration in the statutory language, it might be observed, may have been for no other reason than to avoid the opposite argument to that which is advanced here, namely, that the statute captured only the supply of one or the other, but not both. To that extent, speculation on the reason for the amendment is not particularly helpful.

105. O'Donnel J goes on to say at paragraph 88 that the proper acceptance by Bookfinders is that the phrase may be read disjunctively on occasions;

> *88. In my view, however, proper acceptance by Bookfinders that the phrase may be read disjunctively on occasions, if the context so permits, and that it was so used in the same Act at para. (xii) of the Second Schedule – which is closely linked to the terms of para. (iv) of the Sixth Schedule – is a useful approach to interpretation and, in the event, fatal to this argument. It is apparent from other provisions of the Act to which reference is made and where the phrase is found that no added conjunctive significance is to be attributed to the word "and" in the phrase "food and drink". For example, para. (ii) of the Sixth Schedule refers to the "provision of food and drink of the kind specified in para. (xii) of the Second Schedule … in the course of operating any other business in connection with the carrying on of which facilities are provided for the consumption of the food or drink supplied" (emphasis added), and appears to make it clear that "food and drink" is used in the Act as a generic term to cover the supply of any individual item or items that can come within that broad category.*

106. The Appeal Commissioner in 28TACD2019 determination referred to by the Appellant considered the use of a disjunctive interpretation in relation to chargeable business assets at paragraphs 32 to 37 and concludes in his determination at paragraph 41 a):

> *41. Based on a consideration of the evidence and the submissions, I have found that the Appellant is not entitled to the refund of capital gains tax paid in 2010 on the basis that:*
>
> > *a) A 'chargeable business asset' used for the purposes of farming includes "goodwill" but excludes "shares or securities or other assets held as investments." In accordance with settled law, it is not permissible to delete or ignore words when interpreting a statute. It is therefore clear from the definition of 'chargeable business asset' that the word "or" is used repeatedly as a disjunctive, so that each classification of asset is a separate matter requiring separate consideration. As such a disjunctive cannot be ignored, its use must be reflected in the interpretation. Accordingly, the only interpretation of the provision which gives meaning and context to the word "shares" is one that distinguishes "shares" from the meaning of "or other assets held as investments" irrespective of whether the "shares" were held as investment or otherwise. Therefore, the asset classification "shares" is specifically excluded as a category of asset and falls outside the definition of "chargeable business asset".*

107. Kennedy, C. J. in Revenue Commissioners v Doorley [1933] IR 750 at 765.

> *"The duty of the Court … is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms,*

on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.

I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."

108. In considering whether or not a conjunctive or disjunctive reading of the legislation would conclude definitively for either party it is worth reading the legislation both conjunctively and disjunctively as follows:

Conjunctive reading
any body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports

Disjunctive reading
any body of persons
established for
and existing for the sole purpose of
promoting athletic
or amateur games
or sports

109. The Respondent has sought to outline the activities of the Appellant as being part of an industry rather than "*established for and existing for the sole purpose of promoting athletic or amateur games or sports".* The Appellant submitted that it is a sport within an industry in the same way as professional football is so regarded.

110. The HRI strategic plan for 2020 – 2024 states:

"Horse Racing Ireland ("HRI") is the national authority for thoroughbred racing in Ireland with responsibility for the governance, administration, development and promotion of the industry".

111. The Respondent and the Appellant have agreed that the activities of the Appellant are professional and not amateur.

112. The Respondent has pointed to the evidence that the horse racing activity at the racecourse is completely under the control of HRI whose business include many other activities such as the control of betting and bookmakers.

113. The Respondent has pointed to the memo and articles of the Appellant company which allows it to do many other things other than providing facilities for racing. The Appellant has however outlined that its activities as an exclusive venue for horse racing was displayed by its very existence as a company since REDACTED and for a hundred years before that through a local committee.

114. The Respondent has pointed to the evidence that the Appellant is in receipt of financial assistance from HRI. However the evidence of the director was that the income entries in its accounts from HRI represents a contra for prize money paid out in its accounts.

115. The Respondent was not completely satisfied that the accounts presented actually represented such evidence, simply from the fact that the entry for receipts do not match the entry for prizemoney paid out. In fact the Director in evidence was unsure of the facts in this regard.

Conclusion

116. In making my determination in this Appeal I have found that the Appellant's favoured disjunctive reading of the legislation, that relies on the latter six words and the contention that its activities as being either sports or athletic sports fails to properly address the earlier tests set in the legislation for qualification.

117. In my view the activity is still subject to further tests whether a conjunctive or disjunctive reading is applied to the legislation. The legislation requires for a number of tests to be achieved before attaining the desired exemption.

118. This is attained in regard to first test i.e. a body of persons. However the greater hurdle to attain is in the tests of whether or not the Appellant is established for and existing for the sole purpose of promoting [per the Appellant] athletic games or sports.

119. I have found that the Appellant cannot be said to exist for the "*sole purpose of promoting…..*

120. The Appellant provides facilities in which HRI carry on the activity of horse racing. HRI controls every element of the activity of Horse Racing from the entries, type of race, weights, jockeys, trainers, prize money, bookmakers, SIS and media access, Tote Ireland etc.

121. The Appellant provides a first class facility for horse racing to take place at its premises in REDACTED. It does not exist for the sole purpose of promoting horse racing even if one was to regard horse racing as a sport, as argued by the Appellant, rather than an industry as argued by the Respondent, in the context of the legislation governing the exemption from tax.

122. The parties have agreed as a fact that the Appellant Company's income consists of:

- Admission tickets
- Media Rights
- Concessionaire receipts (food and beverage)
- Race card sales
- Race sponsorship by local businesses and others.

123. The evidence presented adduced that the Appellant is also in receipt of income as follows:

- Rental receipts, catering income, pitch fees and a levy.
- Income from bookies for the entitlement to come in and effectively trade in the Company's racecourse.
- Tote Ireland stipend
- Receipts from HRI of € REDACTED in the REDACTED accounts.

124. In making this determination I am mindful of the Supreme Court dicta in Inspector of Taxes v Kiernan [1981] 1 I.R.117, applied by Donnelly J. in Coleman v Revenue Commissioners [2014] IEHC 662. The Supreme Court dicta provides as follows;

> *'Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily'*

And

> *'[W]hen the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or*

other literary sources should be looked at only when alternative meaning, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed.'

125. In considering whether the activities the subject of this appeal satisfies the requirements for exemption, I must have regard to the decision of Kennedy CJ in Commissioners of Inland Revenue –v Doorley [1933] 1 I.R. 750, where he stated: -

"The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."

126. I have also taken into consideration a more recent event, in a case stated by the Appeal Commissioners to the High Court in relation to the artists' exemption, Donnelly J in Coleman –v- Revenue Commissioners [2014] IEHC 662 held that: -

"On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist's exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes."

Determination

127. The exemption from income tax or in this case corporation tax provided in s.235 TCA 1997 set out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, I determine that the Appellant does not satisfy the requisite legal tests, in particular being a body of persons established for the sole purpose of promoting athletic or amateur games or sports and I determine that the Appellant is not entitled to avail of the exemption pursuant to s.235 TCA 1997.

128. This appeal is determined in accordance with s.949AL TCA 1997.

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CHARLIE PHELAN
APPEAL COMMISSIONER
24 OCTOBER 2020

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.