



**28TACD2021**

**APPELLANT**  
**(as executor of REDACTED deceased)**

**APPELLANT**

**V**

**REVENUE COMMISSIONERS**

**RESPONDENT**

## **DETERMINATION**

### **Introduction**

1. This appeal ('preliminary appeal') relates to a preliminary matter in advance of an appeal ('substantive appeal') against an assessment to capital gains tax ('CGT').
2. The substantive appeal concerns a notice of assessment to capital gains tax ('CGT'), in the sum of €138,372, for the year ended 31 December 2006. The assessment, dated 2 August 2013, was raised on the Appellant in relation to the disposal of a property at REDACTED ('the property') which sold on 6 June 2006 for a sum of €970,000.
3. The Appellant submits that the deceased, THE DECEASED, on whom the assessment was raised, was not the sole and beneficial owner of the property and also that she was not responsible for the payment of the CGT ('substantive issue').
4. A hearing was held by the Tax Appeals Commission ('TAC') on 2 February 2017. At the hearing, the Appellant submitted that the assessment was raised out of time ('time limit ground of appeal'). The Appeal Commissioner requested further submissions in relation to whether the CGT assessment under appeal was out of time in accordance with S.955 (2) (a) TCA 1997 and whether the Appellant was entitled to rely on this time limit argument, in the substantive appeal. At the hearing the Respondent agreed that if the time limit argument put forward by the Appellant is correct then the substantive appeal would be successful.
5. The Appellant's notice of appeal which was delivered by letter on 20 December 2013 had not raised the time limit ground of appeal. The agreed form AH1 dated 1 September 2014 submitted as part of the appeal makes no reference to the time limit ground of appeal.



6. The Respondent contends that the time limit ground of appeal is one which could reasonably have been included in the notice of appeal and in accordance with S.949I (6) TCA 1997, it is not now possible to allow the Appellant to rely on this ground of appeal.
7. On 19 November 2020, at a remote Case Management Conference held at the TAC, the parties agreed that, before proceeding to the substantive appeal, the 'preliminary issue' of whether or not to accept the time limit ground of appeal should be determined by the Appeal Commissioner at a preliminary appeal.
8. By agreement of the parties, the preliminary issue which is the subject of this preliminary appeal is adjudicated without a hearing in accordance with S.949U TCA 1997.

### **Background Facts**

9. The Appellant's notice of appeal which was delivered on 20 December 2013, did not contain a ground of appeal in relation to the time limit issue. Subsequently, the agreed form AH1 dated 1 September 2014, made no reference to the time limit ground of appeal.
10. The Respondent, by letter dated 5 September 2014, requested submissions from the Appellant in advance of a proposed hearing. This letter drew the Appellant's attention to S.957 (5) and (6) TCA 1997. The Appellant's submission was made on 30 October 2014 and made no reference to the time limit ground of appeal.
11. The Respondent, by letter dated 22 May 2015, requested the "full written submissions" from the Appellant in advance of a proposed hearing. This letter again drew the Appellant's attention to the exclusion provisions contained in S.957 (6) TCA 1997. The Appellant's full written submission was made on 21 July 2015 and again made no reference to the time limit ground of appeal.
12. The Appellant did not seek to raise the time limit ground of appeal until it was raised at the hearing held on 2 February 2017.

### **Submissions**

Submissions made by the Appellant and the Respondent are set out in **Appendix 1**.

## Legislation

13. Part 40A - Section 949I TCA 1997 – Notice of Appeal (effective from 21/03/16), provides as follows:

*“(2) A notice of appeal shall specify—*

*.....*

*(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and*

*.....*

*(6) A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.”*

14. Section 27 Finance (Tax Appeals) Act 2015, (effective from 21/03/16) provides as follows in respect of existing appeals filed with the Office of the Appeal Commissioner under Part 40 prior to 21 March 2016:

### ***Existing appeals: transition from procedures under Part 40 to those under Part 40A***

*“27.(1) In this section “steps” includes steps to be taken by the appellant or other persons (including the Appeal Commissioners and a court) and, in the case of the Appeal Commissioners or a court, includes the hearing of an appeal, but neither this subsection nor subsection (2) prejudices the operation of section 25(2) and (3).*

*(2) Without prejudice to subsections (3) to (5), if, before the commencement date, one or more steps under Part 40 in relation to an existing appeal remain to be taken, then on and from the commencement date—*

*(a) no such steps shall be taken under Part 40, and*

*(b) the steps under Part 40A analogous to those steps shall be taken,*

*and the provisions of Part 40A relevant to the taking of those steps shall apply accordingly.*

*(3) Notwithstanding subsection (2), Chapters 1 and 3 of Part 40A shall apply to an existing appeal.*

*(4) Notwithstanding subsection (2), where, in relation to an existing appeal—*

*(a) a hearing has commenced but is not completed before the commencement date,*

*(b) a hearing has been completed but the Appeal Commissioners have not made a determination before that date, or*

*(c) the Appeal Commissioners have made a determination but the period specified in subsection (1) of section 942 of the Act of 1997 for the appellant to give the notice referred to in that subsection has not expired before that date,*

*sections 942 and 943 of the Act of 1997 shall continue to apply to the appeal.*

*(5) For the avoidance of doubt, where a hearing has not commenced in respect of an existing appeal before the commencement date, section 942 of the Act of 1997 shall not apply to the appeal."*

15. Part 41 - Section 957 TCA97 – Appeals, provides as follows and applies to assessments raised in respect of the years of assessment up to 2012 (inclusive):

*"(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal-*

*(a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and*

*(b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.*

*(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with subsection (4), the notice shall, in so far as it relates to that amount or matter, be invalid and the appeal concerned shall, in so far as it relates to that amount or matter, be deemed not to have been brought.*

*(6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice."*

### **Statutory Framework – Provisions regarding Grounds for Appeal**

16. The Capital Gains Tax assessment in this appeal was raised on 2 August 2013 in respect of the tax year ended 31 December 2006.

17. Part 40 TCA 1997 – Appeals, which prescribed the procedures in place in respect of appeals prior to 21 March 2016, is applicable in this appeal. These Part 40 sections did not contain any provisions, in respect of the grounds of appeal, setting out what must be included in the Notice of Appeal. Instead, such requirements were originally set out in S.957 TCA 1997 (since amended by Finance Act 2012) and S.959AJ TCA 1997 (since amended by Finance (Tax Appeals) Act 2015).
18. Subsequent to 21 March 2016, S.959AJ TCA 1997 was removed. Since the introduction of the Finance (Tax Appeals) Act 2015, from the same date, the provisions contained in Part 40 regarding the administration of appeals, were replaced by Part 40A.
19. As the assessment relates to the 2006 tax year, S.957 TCA 1997 prescribes the rules applicable to this submission. (S.959AJ TCA 1997, prescribes these rules for assessments raised in respect of the tax years from 2013 and is therefore not relevant). The Appeal Commissioner, through the Respondent (as that was the appeal process at that time), sought a full written submission from the Appellant on 5 September 2014. In this correspondence the requirements of section 957 TCA 1997, regarding the notification of the grounds of appeal in the submission, were set out.
20. S.27 Finance (Tax Appeals) Act 2015, states that where steps remain to be taken in accordance with Part 40, in the administration of appeals, these steps are replaced by the analogous steps contained in Part 40A (which includes section 949I).
21. There were no provisions prescribing the requirements regarding the notification of the grounds of appeal in Part 40. In respect of assessments relating to the 2006 tax year, these provisions were contained in Part 41 S.957 TCA 1997. Therefore, in this appeal, S.957 TCA 1997 is the relevant section prescribing the conditions regarding the notification of the ground of appeal and not S.949I TCA 1997, as submitted by both parties in their submissions.
22. However, notwithstanding the fact that S.957 TCA 1997 is the operative provision that is relevant in the determination of this preliminary issue, the relevant subsections of S.957 TCA 1997 are similar to the subsections of S.949I TCA 1997 quoted by the parties, and, as a result, the submissions based on section 949I TCA 1997 made by the parties are accepted by me as pertinent to the preliminary issue.



## Analysis & Conclusion

### Additional Ground of Appeal

23. Section 957 TCA 1997 provides that a notice of appeal shall specify, inter alia;

*“(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal-*

*(a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and*

*(b) the grounds in detail of the chargeable person’s appeal as respects each such amount or matter...*

*(6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners ... is satisfied that the ground could not reasonably have been stated in the notice.”*

24. The Appellant’s notice of appeal which was delivered by letter on 20 December 2013 had not raised the time limit ground of appeal. The agreed form AH1 dated 1 September 2014 submitted as part of the appeal makes no reference to the time limit ground of appeal. The Respondent by letter dated 5 September 2015 drew the Appellant’s attention to section 957(5) and (6) TCA 1997.
25. The Appellant did not seek to raise a limitation period issue in this appeal until 2 February 2017. The Appellant first raised the limitation period issue with the Tax Appeals Commission on that date.
26. The Respondent contends that the time-limit ground of appeal is one which could reasonably have been included in the notice of appeal and accordingly, that it is not now possible to allow that ground of appeal (that the assessment is time-barred) to be relied upon by the Appellant in the appeal. The Respondent submitted that if the Appellant wished to include the time-limit in his grounds of appeal, there was no reason why he could not have done so in 2014.
27. The Appellant in his submission referred to a number of cases indicating that a Court has a broad discretion to allow pleadings to be amended and a new ground of appeal to be added. While this submission may carry merit in the context of an application pursuant to the Rules of the Superior Courts or other Court rules, the case law does not address the provisions particular to section 957 TCA 1997 (or section 949I TCA 1997) or a similarly worded statutory provision.

28. The powers of the Tax Appeal Commissioners derive from statute and the test contained in section 957(6) TCA 1997 must be met if an additional ground is to be permitted.
29. I am satisfied that I have no jurisdiction to admit the new ground of appeal unless the test contained in section 957(6) TCA 1997 has been satisfied. Thus, the Appellant will be prohibited from relying on a new ground of appeal unless he can satisfy the requirements of section 957(6) TCA 1997, that the new ground 'could not reasonably have been stated in the notice of appeal.
30. The Appellant was unable to identify a basis upon which the ground could not reasonably have been stated in the notice of appeal and for this reason, I determine that the statutory requirements of section 957(6) TCA 1997 have not been met and that the Appellant shall not be entitled to rely on the additional time limit ground of appeal.
31. Although I have not acceded to the Appellant's application to amend his grounds of appeal, I will for completeness address the limitation period issue.

### **Limitation Period**

32. The Appellant has argued that it is a matter for me as the Appeal Commissioner to be satisfied that an appeal is in time; that this then gives jurisdiction to hear the appeal; that only when an appeal is being heard are the "grounds of appeal" dealt with; that therefore an issue, as to time limit, is preliminary to "grounds of appeal" and does not fall within the restrictions of section 949(2) TCA 1997 (similar to section 957(2) TCA 1997).
33. The Respondent in this appeal raised the amended assessment approximately six and a half years after the relevant tax year, being 2006. The Appellant contended that the amended assessment was out of time in accordance with section 955 TCA 1997. The Respondent claimed that it was entitled to raise an amended assessment in accordance with section 955(2)(b) TCA 1997 on the grounds that the 2006 return filed did not contain a full and true disclosure of all material facts.
34. Section 955 (2) (a) of the TCA 1997 provided in 2007 as follows:

*"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"*

35. The Appellant accepts that the Appellant did not make a return as required under section 955 due to her belief, following a Court Order on the REDACTED, that her former spouse was responsible for reporting and paying any capital gains tax. The Appellant argues that the Respondent had enough information to raise such an assessment from:
- 1) Form CG50 dated the 21st September 2006
  - 2) Certificate issued under Section 980 TCA 1997 dated the 28th September 2006
  - 3) Contract for Sale of "THE PROPERTY"
36. The wording of section 955(2)(b) TCA 1997 relates to the matter of whether the chargeable person 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. In this appeal, the return in question contained an omission, in that, the return did not identify the 2006 disposal of "THE PROPERTY". In these circumstances it is clear that the return did not contain a full and true disclosure of the facts in accordance with section 955(2) (b) TCA 1997.
37. If it transpires in the substantive appeal that it is determined that the Appellant is not liable to the CGT under appeal then the limitation period issue will fall away and the absence of a disclosure under section 955 (2) (b) TCA 1997 will be no longer relevant.

### **Determination**

38. Having considered the evidence, facts, the relevant legislation and case law, I determine, for the reasons set out above, that the statutory requirements of section 957TCA 1997 have not been met and that the Appellant shall not be entitled to rely on the additional ground of appeal when the appeal on the substantive appeal is heard.
39. I determine that the Respondent was entitled to raise the assessment in accordance with the provisions of section 955 TCA 1997 and that the assessment was not out of time.
40. This determination is made in accordance with the provisions of section 949AK TCA97.



**PAUL CUMMINS**  
**APPEAL COMMISSIONER**  
*Designated Public Official*

**18<sup>th</sup> JANUARY 2021**



## Appendix 1

### Submissions – Appellant

#### Grounds for Appeal as stated by the Appellant on Form AH1

*"The premises at **THE PROPERTY**, was sold on foot of a court order. The Divorce Court Order was a property adjustment order which extinguished any interest **THE DECEASED** had in the property, which included the family home and business premises, another private residence and the property at REDACTED. **THE DECEASED** was to receive a sum of money regardless of the sale price. The proceeds of sale net of costs of sale and tax liabilities were to be distributed to the deceased's husband. The effect of the court order was that **THE DECEASED** was not the sole and beneficial owner of the premises or indeed any of the other property assets of the marriage. She was also not responsible for the payment of the capital gains tax."*

#### **(Letter from Revenue Commissioners (05/09/14) and response from Appellant's agent – 30/10/14)**

##### **(Respondent's letter 05/09/14)**

*"Please note that failure to make the said submissions prior to the expiry of a two month period from the date of this letter will, unless exceptional circumstances exist, result in the Appeal Commissioners applying the provisions of subsections (4) and (6) of Section 957 Taxes Consolidation Act 1997:*

*(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal...*

*(b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter...*

*(6) The chargeable person shall not be entitled to rely upon any grounds of appeal that is not specified in the notice of appeal unless the Appeal Commissioners or the Judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice."*

##### **(Appellant's Response – 30/10/14)**

*"Further to yours of the 5<sup>th</sup> September 2014 addressed to our client **APPELLANT** as personal representative of **THE DECEASED** kindly note that we wish to add the following to the grounds of appeal;*

*We submit that the computation is incorrectly computed. We attach computation. The notional gain has been computed on the basis of the current use value of the property at €287,720.00. The overall gain of € 64,291 has then been excluded from this. The deduction of the notional PPR gain*



*should be for the period which the house was the principle private residence of the deceased i.e. 228 over 291 which is € 225,430.00.*

*In relation to the actual liability itself we would submit the deceased is not liable. Under the Family Law (Divorce) Act 1996 the court ordered, REDACTED 2006, that the property REDACTED be sold and that the deceased receive a sum of € 700,000.00 regardless of the sale price with the balance net of costs and tax liabilities to go to THE BENEFICIARY. The effect of this was to transfer the deceased's beneficial interest in the property to THE BENEFICIARY.*

*This transfer constituted a disposal of the property by her. Under Section 1031 Tax Consolidation Act 1997 the transaction is treated for the purposes of Capital Gains Tax as if the asset was acquired by THE BENEFICIARY from the deceased for a consideration such that neither a gain nor a loss would accrue to the deceased. The consideration for the disposal of the asset is therefore not subject to tax in her hands.*

*THE BENEFICIARY is deemed to have acquired the asset at the original cost and on the subsequent disposal any Capital Gains tax liability is a matter for him."*

**(Letter from Revenue Commissioners (22/05/15) and response from Appellant's agent – 21/07/15)**

**(Respondent's letter 22/05/15)**

*"I refer to previous correspondence in relation to the above matter.*

*Further to this offices letter to you of 4<sup>th</sup> November 2014 (copy enclosed), I am instructed by the Appeal Commissioners to request that you forward this office, within one month, the full written submissions on behalf of the Appellant.*

*Please be advised that if the required submissions are not received in this office within one month from the date of this letter of notification, the Appeal Commissioners will apply the provisions of Section 957(6) of the Taxes Consolidation Act 1997 when hearing the appeal in this matter."*

**(Appellant's Response – 21/07/15)**

*"We acknowledge receipt of yours of the 22<sup>nd</sup> ult. Our written submissions are as follows;*

*We submit that the computation is incorrectly computed. We attach further computation. The notional gain has been computed on the basis of the current use value of the property at € 287,720.00. The overall gain of € 64,291 has then been excluded from this. The deduction of the notional PPR gain should be for the period which the house was the principal private residence of the deceased i.e. 228 over 291 which is € 225,430.00,*

*In relation to the actual liability itself we would submit the deceased is not liable. Under the Family Law (Divorce) Act 1996 the court ordered, on the 27<sup>th</sup> April 2006, that the property be sold and that the deceased receive a sum of € 700,000.00 regardless of the sale price with the balance net of costs and tax liabilities to go to THE BENEFICIARY. The effect of this was to transfer the deceased's*



beneficial interest in the property to **THE BENEFICIARY**. The further effect was that the deceased's beneficial interest in all other assets of the marriage was extinguished. These included a mobile home, the family home and shop, another shop and a private dwellinghouse.

This transfer constituted a disposal of the property by her, Under Section 103 1 Tax Consolidation Act 1997 the transaction is treated for the purposes of Capital Gains Tax as if the asset was acquired by **THE BENEFICIARY** from the deceased for a consideration such that neither a gain nor a loss would accrue to the deceased. The consideration for the disposal of the asset is therefore not subject to tax in her hands.

**THE BENEFICIARY** is deemed to have acquired the asset at the original cost and on the subsequent disposal any Capital Gains tax liability is a matter for him."

The Appellant submitted the following in his **Outline of Arguments**:

APPELLANT AS EXECUTOR IN THE MATTER OF THE ESTATE OF **THE DECEASED** (DECEASED)  
and  
THE REVENUE COMMISSIONERS

*In relation to the above, on the 2nd February 2017, following the commencement of this matter and discussion between the parties, the Appeal Commissioner sought submissions in relation to two matters:*

- (1) *Can the Appellant rely on the "time bar" argument which was not part of the original appeal and*
- (2) *The nature of the "time bar" argument.*

**(1) IS IT PROPERLY CONSIDERED TO BE A NEW GROUND OF APPEAL**

*Section 9491(2) of the TCA 1997 as inserted by section 34 of the 2015 Act provides that a party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not have been reasonably stated in the notice. The Appellant in the circumstances of this case has raised at the outset of the proceedings a preliminary matter wherein it is submitted that the Revenue Commissioners were outside the appropriate time limit to raise an assessment in relation to CGT. This is not a mere ground of appeal rather it goes to the very root of whether there is a valid assessment at all. If an assessment is not made in time it is not valid under the statute. Revenue and the TAC are creatures of statute and the authority to proceed to raise an assessment (or hear an appeal on foot of an assessment) is statutory,*

*It is a matter for the Appeal Commissioner to be satisfied that an appeal is in time, This then gives jurisdiction to hear the appeal. Only when an appeal is being heard are the "grounds of appeal"*

*dealt with, Therefore an issue as to time limit is preliminary to that and does not, it is submitted fall within the restrictions of Section 949(2) TCA 1997.*

*Further this is not a matter for judicial review as is evident from Menolly v Revenue Commissioners wherein Mr Justice Charleton made clear that full jurisdiction is given to the Appeal Commissioners (now TAC) in non VAT cases with a more limited jurisdiction as to quantum in VAT cases.*

*The Appellant informed the Revenue Commissioners on the 20th December 2013 that they were appealing the assessment for Capital Gains Tax and submitted the appropriate Form AHI on the 21st July 2015,*

*It is submitted that the Appellant, in the circumstances of this case, has inherently a valid appeal and the appeal is not without substance or foundation.*

*The Revenue Commissioners, on the 2nd of February, accepted that if the "Time Limit" argument is correct then the appeal would be successful.*

*Accordingly, it is submitted that not to allow this preliminary matter would severely prejudice the Appellant in the course of the appeal:*

*While of course the TAC is not governed by court rules it is worth noting that Order 61 Rule 8 of the Rules of the Superior Court provides*

*"Where any party desires to submit fresh evidence upon the hearing of an appeal in any action or matter at the hearing or for the determination of which no oral evidence was given, he shall serve and lodge an affidavit setting out the nature of the evidence and the reasons why it was not submitted to the Circuit Court Any party on whom such affidavit has been served shall be entitled to serve and lodge an answering affidavit or to apply to the Court on the hearing of the appeal for leave to submit such evidence, oral or otherwise, as may be necessary for the purpose of answering such fresh evidence, provided, however, that the Court may at any time admit fresh evidence, oral or otherwise on such terms as the Court shall think fit, and may order the attendance for cross-examination of the deponent in any affidavit used in the Circuit Court or the High Court"*

*Further, Order 58, Rule 6 of the Rules of the Superior Court provide:*

*"Any notice of appeal may be amended at any time on such terms as the Supreme Court may think fit"*

*[n that respect, in appropriate circumstances an amendment may be allowed notwithstanding the fact that it may result in the addition of parties and additional grounds of appeal (Balkanbank -v- Taher SC 19 May 1994 and Carlton -v. DPP (2000) 3 IR 269)*

*In the circumstances of this case and in consideration of the significant impact of this matter upon the Appellant, it is respectfully requested that the Appellant be allowed to rely on the aforementioned time limit point.*

## *(2) TIME LIMIT*

*Section 17 of the Finance Act, 2003, made changes to the time limits within which an assessment or an amended assessment can be made on a person. The section made a number of changes, which effectively provide for reductions in time limits to 4 years for the making of an assessment and enquiries with effect from 1 January 2005.*



In the circumstances of this case, **THE DECEASED** (hereinafter referred to as the Deceased) died on the **REDACTED** 2011.

On the **REDACTED** 2006 and pursuant to the Family Law (Divorce) Act 1996, the Court ordered that the property known as "**THE PROPERTY**", the subject matter of the Revenues assessment, be sold and that the Deceased receive a sum of €700,000 regardless of the price received for **THE PROPERTY** with the balance of the proceeds of sale (net of costs of sale and tax liabilities) to be paid to the Deceased's former spouse,

It has been submitted that the Deceased's former spouse is responsible for the Capital Gains Tax liability in relation to the aforementioned property and not the Deceased as submitted by the Revenue Commissioners,

However, if the Revenue Commissioners still maintain that the Deceased is liable for the Capital Gains Tax for the aforementioned property, it is further submitted that they are out of time to have made such an assessment.

In that regard, "**THE PROPERTY**" was disposed of on the 6th June 2006 and the appropriate return for Capital Gains Tax would have been delivered on the 31st October 2007.

The Tax Consolidated Acts 1997 (hereinafter referred to as the TCA 1997) as amended, provided in 2007 at section 931 (2):

"The provisions of the Income Tax Acts relating to the assessment of income tax shall, subject to any necessary modification, apply in relation to capital gains tax as they apply in relation to income tax chargeable under Section D"

Further, Section 955 2 (a) of the TCA 1997 provided in 2007:

"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."

It is accepted that the Deceased did not make a return as required due to her belief, following the aforementioned Court Order on **REDACTED** 2006, that her former spouse was responsible for same.

However, it is submitted that the Revenue Commissioners had enough information to raise such an assessment from

- (i) Form CG50 dated the 21st September 2006
- (ii) Certificate issued under Section 980 TCA 1997 dated the 28th September 2006\*
- (iii) Contract for Sale of "**THE PROPERTY**"

In that regard the Section 954 (2) and (3) of the TCA (1997) in 2007 provide:

"(2) Subject to subsection (3) an assessment made on a chargeable person for a chargeable period shall be made by the Inspector by reference to the particulars contained in the chargeable person's return

(3) where -

(a) a chargeable person makes default in the delivery of a return for a chargeable period.. ';

*Accordingly it is submitted that the Revenue Commissioners should have made this assessment for Capital Gains Tax by the 31st October 2011.*

*Further, the Revenue Commissioners cannot rely on the provisions of Section 1048 where in :*

*"(1) Where a person dies, an assessment may be made for any year of assessment for which an assessment or an additional assessment could have been made on the person immediately before her death or could be made on the person if she were living in respect of the profits or gains which arose or accrued to such person before her death, and the amount of the income tax on such profits or gains shall be a debt due from and payable out of the estate of such person, and the executor or administrator of such person shall be assessable and chargeable in respect of such tax.*

*(2) No assessment under this section shall be made later than 3 years after the expiration of the year of assessment in which the deceased person died \*,*

*Further, it is submitted that if it is accepted that the Revenue Commissioners were out of time on the 31st October 2011 then the assessment cannot be made pursuant to Section 1048 from date of the death of the Deceased, the REDACTED onwards, wherein they could have made said assessment pursuant to Section 594 as above.*

## **Submissions – Respondent**

The Respondent submitted the following in their **Outline of Arguments:**

### *1. Overview*

- 1 .1 . *The Appellant failed to include the 'out of time' ground of appeal in his notice of appeal. The Appellant has failed to provide any reason as to why this new ground of appeal "could not reasonably have been stated in the notice", in particular, as he was professionally advised at the time of making the appeal. In the absence of any reason as to why this ground of appeal was not included by the Appellant, the Respondents submit that the Appeal Commissioners cannot be satisfied that the new ground of appeal "could not reasonably have been stated in the notice" in accordance with s9491 of the Taxes Consolidation Act 1997 (the TCA), and as such, there is no basis to admit this ground of appeal now.*
- 1.2. *Even if the Appellant could somehow overcome this significant hurdle, the Appellant would ultimately fall at the final hurdle because the four year time limit prescribed by s 955(2) of the TCA only applies from the date a return has been delivered and as the deceased, REDACTED, failed to deliver a return declaring this liability before this assessment was raised, the four year time limit cannot apply. A taxpayer who fails to comply with her statutory obligations to file a return cannot then seek to rely on the statutory protections provided within the same provision she herself fails to comply with. The effect of the Appellant's submission would be to put the defaulting taxpayer in the same position as a compliant one, which would be manifestly unfair.*

2. *Can the Appellant rely on the 'time bar' argument which was not part of the original appeal?*

2.1 . *The Appellant's grounds of appeal were set out in the letter from his solicitors, **SOLICITOR**, by letter dated 20 December 2013, wherein no reference was made to the fact that this assessment may have been raised out of time.*

2.2 *The agreed AHI dated 1 September 2014 made no reference either to the fact that this assessment may have been raised out of time.*

2.3 *Section 9491(2) of the TCA states that a taxpayer's notice of appeal to the Tax Appeals Commission must state "the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds". Subsection (6) goes on to provide.*

*"A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.."*

2.4 *The Respondents submit that the only matter which the legislation requires the Appeal Commissioner to take into account in considering whether or not the Appellant can now rely on a ground of appeal which was not stated in his original grounds of appeal, is whether that ground of appeal could have reasonably been included in the original notice of appeal, or not. The TCA makes no provision for the Rules of the Superior Court to be considered and any suggestion that these Rules, or the High Court cases which may have considered these Rules, are in any way relevant to the Appeal Commissioner's determination on this point, is disputed by the Respondents.*

2.5 *At the time of making his appeal, the Appellant appears to have been professionally advised by two different firms of solicitors and the Appellant's submissions advance no reason as to why this new ground of appeal "could not reasonably have been stated in the notice". Section 9491 prescribes the statutory conditions to be met for a notice of appeal to be valid and the Appellant must now accept the consequences of failing to comply with these statutory conditions.*

2.6 *The suggestion being made in the Appellant's submissions is that the fact that the CGT assessment was made outside of the four year time limit is not a "mere ground of appeal rather it goes to the very root of whether there is a valid assessment at all". The suggestion is apparently being made that the Appellant does not need to meet the test prescribed by s9491(6) of the TCA because "[it] is a matter for the Appeal Commissioner to be satisfied that an appeal is in time.."*



2.7 *The Respondents contend that the question of the admissibility of the new ground of appeal falls to be determined by the Appeal Commissioner pursuant to Section 9491 of the TCA.*

3. *The nature of the 'time bar' argument*

3.1 *Without prejudice to the Respondents' contention that the Appeal Commissioners should not be satisfied that the new ground of appeal "could not reasonably have been stated in the notice", even if this hurdle did not exist for the Appellant, the Appellant would ultimately face an insurmountable hurdle to the argument he raises; the four year time limit does not apply to the estate of **THE DECEASED** because **THE DECEASED** never filed a return declaring the gain she made.*

3.2 *Section 955(2)(a) of the TCA provides:*

*"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.."*

*(Emphasis added)*

3.3 *The Appellant accepts that the late **THE DECEASED** did not deliver a return for the purposes of CGT. Accordingly, the four year time limit set down in s 955(2) (a) cannot apply because the provision clearly requires a taxpayer to have "delivered a return for a chargeable period'. In the absence of such a return, the effect of s 955(2) (a) is that the four-year time limit does not apply to the Appellant. A taxpayer who fails to comply with her statutory obligations to file a return cannot then seek to rely on the statutory protections provided within the same provision she herself fails to comply with. The*

*effect of the Appellant's submission would be to put the defaulting taxpayer in the same position as a compliant one which would be manifestly unfair.*

3.4 *The Appellant contends that the Respondents had enough information at the time of the disposal to raise assessments under s 954(3), which states.*

*"Where -*

- (a) a chargeable person makes default in the delivery of a return for a chargeable period, or*
- (b) the inspector is not satisfied with the return which has been delivered, or has received any information as to its insufficiency,*

*nothing in this section shall prevent the inspector from making an assessment in accordance with section 919(4) or 922, as appropriate.."*

3.5 *Section 954 permits the Respondents to raise an assessment to tax in the absence of a return being filed by the taxpayer. Section 954 does not place a positive obligation on the Respondents to try and ascertain whether or not **THE DECEASED** had a CGT liability merely on the basis that she had applied for a CG50. The tax system is a self-assessment system and it was for **THE DECEASED** to declare her liability to the Respondents; it was not for the Respondents to attempt to ascertain on the basis of the limited information provided by **THE DECEASED** in 2006 as to whether she had a CGT liability. A taxpayer cannot look to shift the onus of responsibility to the Respondents. **THE DECEASED** has a statutory obligation to file a return in respect of the gain she made and she failed to do so. Accordingly, she is not entitled to benefit from the four year time limit available to those tax payers who do comply with their statutory obligations and file returns.*

3.6 *Finally, the Respondents dispute the Appellant's interpretation of s 1048 of the TCA. The 'out of time' argument is not accepted nor is the Appellant entitled to rely upon it.*

#### *4. Conclusion*

4.1. *The Appellant failed to include the 'out of time' ground of appeal in his notice of appeal. The Appellant has failed to provide any reason as to why this new ground of appeal "could not reasonably have been stated in the notice". As such, the Appeal Commissioners should not be*

*satisfied that the new ground of appeal "could not reasonably have been stated in the notice, in accordance with s9491 of the TCA.*

*4.2. Even if the Appellant could somehow overcome this significant hurdle, the Appellant would ultimately fall at the final hurdle because the four year time limit prescribed by s955(2) of the TCA only applies from the date a return has been delivered and as the deceased, REDACTED, failed to deliver a return declaring this liability, the four year time limit cannot apply.*

*4.3. These submissions are made without prejudice to the evidence to be adduced by the parties and the Respondents reserve the right to make further submissions, either orally or in writing, on matters arising prior to or during the course of the hearing and by way of closing oral submissions at the conclusion of the appeals.*