64TACD2021

Between/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeal Commission (hereinafter "**the TAC**") as an appeal against amended Notices of Assessment to income tax for the tax years 1997/98, 1998/99, 1999/00 and 2000/01, which were raised by the Respondent on the 18th day of April, 2011.

B. Facts relevant to the Appeal

2. The appeal proceeded by way of oral hearing and I heard evidence from and submissions on behalf of the parties over the course of three days.

3. At the beginning of the appeal hearing, it was agreed between the parties that in deciding the preliminary issue of whether or not the assessments were raised outside the four-year time pursuant to section 955 of the Taxes Consolidation Act, 1997 as amended (hereinafter **"TCA1997"**), the burden of proof lay on the Respondent in relation to same and accordingly the Respondent entered into evidence first.

4. In circumstances where the question of whether or not the amended assessments were time-barred by operation of the relevant legislation was raised as a preliminary issue, I believe it is necessary and appropriate to set forth in some detail the history of the interchanges between the Appellant and the Respondent which took place prior to raising of the amended assessments, as disclosed by the documents and oral evidence presented to me in the course of the hearing.

5. The Appellant is a financial advisor and a director of [redacted] Limited (hereinafter referred to as "**the Company**").

6. In or around 2005, the Respondent began an inquiry into the Company on foot of having had sight of five cheques drawn on the Company's Bank of Ireland account and presented to **FINANCIAL INSTITUTION 1** in the Isle of Man, copies of which had been obtained by the Respondent on foot of a High Court Order. The five cheques all had dates in 1999 and came to a total of IR£40,861.00, and all were payable to **FINANCIAL INSTITUTION 1**.

7. On the 5th of May 2005, the Respondent wrote to the Secretary of the Company advising that its taxation affairs were the subject of an investigation and requesting certain information in relation to the Company's bank accounts.

8. Following an exchange of correspondence between the parties, the Company identified the beneficiary of the cheques as [redacted] Limited (hereinafter referred to as "**COMPANY 2**"), having an address at [redacted], Isle of Man, [redacted]. This prompted further enquiries from the Respondent, seeking information as to the nature of the relationship between the Company and **COMPANY 2**.

9. On the 28th of November 2005, the Company wrote to the Respondent and advised that it had been in a commission-sharing relationship with **COMPANY 2** on foot of **COMPANY 2** having introduced a business idea and design of a highly profitable **FINANCIAL** product to the Company. The letter set out details of the commission-sharing arrangement, along with the details of the increase in commissions which had come about as a result of **COMPANY 2**'s introduction of the business idea and **FINANCIAL** product to the Company. In addition, the letter concluded:-

> "*I do not and have not had any beneficial interest in* **COMPANY 2** *either directly or indirectly. When I paid the commission I sent a note of the amount earned and their split. Commission sharing ceased in 1999 as the scheme had run its course and the* **FINANCIAL** *product was no longer attractive to clients.*"

10. On the 7th of February 2006, the Respondent wrote to the Company seeking further information in relation to the Company's dealings with **COMPANY 2** and by letter dated the 3rd of March 2006, the Company responded, setting out details of previous commission-sharing arrangements that it was aware of, and also setting out details of the approach that it had received from **COMPANY 2** in 1997

in respect of the **FINANCIAL** product and details of the commission-sharing agreement it had entered into with **COMPANY 2**.

11. The letter identified **PERSON A** and P**ERSON B** as being two of the individuals with whom the Appellant had contact with in **COMPANY 2**. The letter also recounted how the Company and **COMPANY 2** had come to enter into the commission-sharing agreement, with discussions mainly taking place by phone and email, together with one face-to-face meeting in Dublin in late 1997. The letter further gave details of the Company's discussions with **FINANCIAL INSTITUTION 2** in relation to the marketing of the product, **FINANCIAL INSTITUTION 2** being the underwriter of the **FINANCIAL** product which the Company was marketing. The letter explained that payments on foot of the commission-sharing arrangement were made by the Company to **COMPANY 2** via cheques made out to **FINANCIAL INSTITUTION 1**, stating that the payments were sent to **FINANCIAL INSTITUTION 2** in the Isle of Man with a note that they were to be lodged to the account of **COMPANY 2**. The Appellant's letter also enclosed a commission statement from **FINANCIAL INSTITUTION 2** detailing commissions from January to December 1998, along with a copy of a statement of cheque deposits to its main Bank of Ireland current account.

12. A further letter dated the 3rd of March 2006 was sent by the Appellant's solicitor to the Respondent's Investigations & Prosecutions Divisions, Offshore Assets Group, in relation to a proposed voluntary disclosure which the Appellant intended to make. The letter stated that the Appellant had personally earned a one-off commission outside Ireland in the sum of IR£15,000 in May 1996, and that this sum was lodged in an Isle of Man deposit account with **FINANCIAL INSTITUTION 1**. The letter highlighted the existence of the ongoing investigation into commission payments made by the Company and the fact that the

investigation did not relate to the Appellant personally. The letter set out the **APPELLANT'S** circumstances which had led to the Appellant lodging the IR£15,000 to the **FINANCIAL INSTITUTION 1** account in the Isle of Man. The letter gave calculations of the Appellant's liability in respect of each tax year for which the voluntary disclosure was made and a cheque in the amount of €29,397.00 was enclosed.

13. On the 23rd of March 2006, the Company wrote to the Respondent enclosing bank statements for its Euro/Dollar and Sterling accounts which it held from the opening of the accounts to that date. In addition, the Company enclosed information in relation to lodgements to accounts other than its main trading account for 1999, and confirmed that it did not keep an "overall ledger" other than the individual account ledgers.

14. By letter dated the 27th of March 2006, the Respondent raised an issue in relation to a cheque made payable to the Company from **FINANCIAL INSTITUTION 3** in Jersey in the amount of IR£4,000, which had been presented to **FINANCIAL INSTITUTION 1** for encashment on the 18th of March 1999.

15. By letter dated the 6th of April 2006, the Company responded with its explanation for the said cheque, which it stated arose from the marketing of a Jersey investment fund by **FINANCIAL INSTITUTION 4** in which, the Company stated, one of its clients had invested. The letter went on to detail that subsequent to the investment being put in place, the Company became aware that the commission for the investment would be coming from Jersey, and explained that this presented a difficulty for the Company as there was some doubt regarding the Company's ability to receive commission from that source. The Company stated that it had engaged with the Central Bank Regulator at that time who advised that

that 'they would not be happy' with the Company receiving commission from Jersey. Correspondence with the Central Bank was enclosed with this letter.

16. The letter went on to explain that the Company operated a specific type of [redacted] system with its customers, and that the Company had become aware that one of its non-resident clients had [redacted]. As a result, the Company decided to allocate the Jersey cheque for IR£4,000 to this client and sent the cheque to **FINANCIAL INSTITUTION 1** in the Isle of Man to be credited to this client's account. While this was not normal procedure, the Company's understanding was that such a step was in compliance with the advices given by the Central Bank Regulator.

17. On the 22nd of June 2006, the Respondent wrote to the Company seeking documentary evidence confirming the information which the Company had given in relation to the IR£4,000 cheque, seeking copies of all letters and correspondence in relation to same and also confirmation of the identity of the non-resident client of the Company who was the recipient of the cheque.

18. Following an initial response from the Company advising that it did not have any documentary evidence of the transaction and that it was discussing the matter with **FINANCIAL INSTITUTION 1**, on the 25th of July 2006 the Company wrote to the Respondent enclosing a letter from **FINANCIAL INSTITUTION 1** in the Isle of Man which stated that to the best of its knowledge the proceeds of the IR£4,000 cheque payable to the Company were allocated to a third party (non-Irish resident) client investment on the instructions of the Company. The letter stated that **FINANCIAL INSTITUTION 1** was not in a position to provide a name or address for the client due to its obligations of client confidentiality.

19. Various correspondence between the Respondent and the Company was then exchanged regarding the nature of the privilege which the Company claimed over the identity of the third party, non-Irish resident client who was the beneficiary of the proceeds from the IR£4,000 cheque.

20. On the 25th of January 2007, the solicitors for the Company wrote to the Respondent with information which may be summarised as follows:

(a) The origin of the IR£4,000 commission was an investment made by a company called **COMPANY 3**;

(b) The IR£4,000 had been handled as an off-balance sheet transaction by the Company which was, in the Company's opinion, "*very clearly tax neutral*";

(c) From the Company's perspective, **FINANCIAL INSTITUTION 1** was the client that the Company passed the IR£4,000 on to, as they administered their client's investment and they had appointed the Company as investment advisor;

(d) The Company did not deal directly with the underlying client in relation to the matter and all of the Company's dealings were with **FINANCIAL INSTITUTION 1**;

(e) The commission cheque was used to enhance a third party, non-resident client transaction and this was a separate client, unrelated to the Irish client that generated the commission in the first place; and,

(f) The Company had included the client in a return of offshore investments to Revenue.

21. There followed further correspondence in which the Respondent sought confirmation of the identity of the eventual recipient of the IR£4,000. The Company's responses were to the effect that it was asserting a claim of privilege

over the identity of the recipient, and furthermore stating that **FINANCIAL INSTITUTION 1** had refused to allow the Company to divulge the identity of the recipient.

22. On the 26th of October 2007, the Respondent wrote to the Appellant, stating that the Company's assertion of privilege over the third party's identity was incorrect, and requiring:-

(a) The name and address of the non-resident third party client;

(b) Confirmation of whether other similar incidents had ever occurred; and,

(c) Confirmation of whether the Company had filed a third party return in relation to certain offshore products, as required by section [redacted] of TCA1997, and confirmation that the name and address of the said third party non-resident client was included therein.

23. By email dated the 7th of November 2007, the Company's solicitors advised that they had now received instructions to furnish the name of the third party, non-resident client, which was **COMPANY 2**. The Respondent replied on the 12th of November, seeking details of all commissions paid by the Company to **COMPANY 2** in the period from 1997 to that date.

24. On the 7th of December 2007, the Respondent wrote to the Company's solicitors seeking the following information:-

(a) The total commission paid by **FINANCIAL INSTITUTION 2** to the Company, supported by a statement from **FINANCIAL INSTITUTION 2**;

(b) The amount of commission which had been included in the Company's trading accounts;

(c) The amounts paid over by the Company to **COMPANY 2** in relation to the commission-sharing agreement;

(d) Identification of all payments which had been made from the Company's Bank of Ireland current account, or any other bank accounts, to **COMPANY 2** from the date the **FINANCIAL** product was first marketed to that present time, to include copies of all relevant bank account statements;

(e) Confirmation as to how the commission-sharing payments to **COMPANY 2** were treated in the preparation of the Company's trading accounts and confirmation as to how commissions payable by other insurance companies were treated in the Company's books and records;

(f) A list of all insurance companies for whom the Company had sold products in respect of the period from the **DATE OF ITS INCORPORATION** to that date;

(g) Confirmation of what business was carried out by **COMPANY 2** in the Isle of Man and confirmation of what **COMPANY 2**'s level of expertise was to enable it to design a **FINANCIAL** product of such a highly profitable nature;

(h) Confirmation as to why **COMPANY 2** did not market the **FINANCIAL** product directly to Irish consumers;

(i) Confirmation as to when and in what circumstances the Company first made contact with **COMPANY 2**;

(j) Copies of all correspondence between the Company and **COMPANY 2** which substantiated meetings held, agreements drawn up regarding commission sharing and payment of commissions via **FINANCIAL INSTITUTION 1**;

(k) A letter from **COMPANY 2** confirming their involvement in the **FINANCIAL** product;

(l) Confirmation of the CRO number for **COMPANY 2** in the Isle of Man;

(m) Confirmation of what other **FINANCIAL** products **COMPANY 2** had designed and which were marketed by the Company and confirmation of

what insurance companies were involved in underwriting such **PRODUCTS**;

(n) Confirmation as to whether the Company was aware of any other **FINANCIAL** products which were designed by **COMPANY 2** and marketed to other Irish insurance companies by other financial consultants on behalf of **COMPANY 2**;

(o) Confirmation as to why tax was not deducted on the commission payments made to **COMPANY 2**, which was a non-resident company, and confirmation as to whether there had been any further indents of payments to non-residents which were not subject to the appropriate tax deduction.

25. By letter dated the 29th of February 2008, the Company's solicitors responded to the Respondent's queries as follows:-

(a) Details of the commission earned by the Company from **FINANCIAL INSTITUTION 2** for the period 01/01/97 to 31/12/07 were provided;

(b) Confirming that all commissions had been included in the Company's trading accounts and enclosing a letter from the Company's auditor to that effect;

(c) Providing a schedule of the amounts paid by the Company to **COMPANY 2** in relation to the commission-sharing agreement;

(d) Providing a schedule of all payments which had been made from the Company's Bank of Ireland current account and other bank accounts to **COMPANY 2** from the date the **FINANCIAL** product was first marketed to that present time;

(e) Pointing to the letter referred to at (b) above as confirmation of how the commission-sharing payments to **COMPANY 2** were treated in the preparation of the Company's trading accounts, and confirming that

commissions payable by other insurance companies were treated in the same manner;

(f) Providing a list of all insurance companies for whom the Company had sold products in respect of the period from the **DATE OF ITS INCORPORATION** to that date;

(g) Stating that the query which the Respondent had raised in relation to the business carried out by **COMPANY 2** in the Isle of Man and **COMPANY 2**'s level of expertise enabling it to design a **FINANCIAL** product of a highly profitable nature was a matter for **COMPANY 2**;

(h) Stating that the reason that **COMPANY 2** did not market the **FINANCIAL** product directly to the Irish consumer was because **COMPANY 2** was not licensed to sell such **FINANCIAL** products in the Irish market whereas the Company was so licensed;

(i) Quoting the letter dated the 3rd of March 2006 from the Company to the Respondent as confirmation as to when and in what circumstances the Company first made contact with **COMPANY 2**;

(j) Confirming that there had been no correspondence between the Company and **COMPANY 2** which substantiated meetings held, agreements drawn up regarding commission-sharing or payment of commissions via **FINANCIAL INSTITUTION 1** since 1997, and that any such records which may have existed were no longer held by the Company in accordance with recommended business practice;

(k) Stating that it was the Company's understanding that **COMPANY 2** no longer carried out business and it therefore could not provide a letter from **COMPANY 2** confirming their involvement in the **FINANCIAL** product;

(l) In relation to the CRO number for **COMPANY 2** in the Isle of Man, the Company stated that it had carried out searches to verify the company

registration number and status of **COMPANY 2** and enclosed an extract from the Isle of Man Companies Office website;

(m) Confirming that no other **FINANCIAL** products designed by **COMPANY 2** were marketed by the Company and confirming that no insurance companies were involved in underwriting such **PRODUCTS**;

(n) Confirming that the Company was not aware of any other **FINANCIAL** products which were designed by **COMPANY 2** and marketed to other Irish insurance companies by other financial consultants on behalf of **COMPANY 2**; and,

(o) Stating that it was the Company's view that as **COMPANY 2** provided a service, commission payments were not pure income profit and that therefore tax was not required to be deducted at source.

26. The Respondent sought further information by email dated the 6th of June 2008 and by letter dated the 21st of August 2008, the Respondent sought a mandate from the Company authorising it to approach **FINANCIAL INSTITUTION 2** for the purposes of clarifying issues surrounding commissions paid to the Company by **FINANCIAL INSTITUTION 2** and outlining the information which the Respondent intended to seek from **FINANCIAL INSTITUTION 2**.

27. On the 11th of September 2008, the Company's solicitors replied to the Respondent's queries of the 6th of June and the 21st of August, 2008 with the following information:

(a) Documentary evidence of third party investment portfolio with **FINANCIAL INSTITUTION 4** including details of the lodgement of £3,000 (converted to US$4,215);

(b) Copies of bank statements of **PERSON C** for Bank of Ireland to include details of three lodgements between the 24th of December 1999 and the 1st of September 2000;

(c) Confirmation that the Company's agent would send the letter of mandate proposed by the Respondent to **FINANCIAL INSTITUTION 2**, requesting that all available information would be sent to the Respondent directly;

(d) Clarifying that the Company did not design, structure or develop the **FINANCIAL INSTITUTION 2 FINANCIAL** product. Instead, the Company received commissions for selling the **FINANCIAL INSTITUTION 2 FINANCIAL** product an as integral part of an overall **FINANCIAL** product designed by **COMPANY 2** which the Company marketed to its own clients in 1997, 1998 and 1999;

(e) Clarifying that the Company discussed the **FINANCIAL** product in detail with **FINANCIAL INSTITUTION 2** in 1997/8 and negotiated approval for use of the **FINANCIAL INSTITUTION 2 FINANCIAL** product as part of the Company's **FINANCIAL** product;

(f) Stating that the **FINANCIAL INSTITUTION 2 FINANCIAL** product was re-priced in **DATE** and this effectively ended the usefulness of the Company **FINANCIAL** product;

(g) Stating that it would ask **FINANCIAL INSTITUTION 2** to provide independent confirmation of the commission breakdown which the Company records showed was paid at the rate of [redacted]% of initial [redacted] contribution to their **FINANCIAL** product and a further [redacted]% on conversion to [redacted];

(h) Stating that the **FINANCIAL INSTITUTION 2 FINANCIAL** product was, the Company understood, available to all **FINANCIAL INSTITUTION 2** brokers whereas the **FINANCIAL** product marketed by the Company was exclusive to the Company, but not legally exclusive as another advisor could have

copied the idea if they were aware of how it worked; however, the Company was the only broker in Ireland that the Company was aware of that actually used it or knew how to use it.

28. On the 3rd of October 2008, the Respondent detailed the information which it required from **FINANCIAL INSTITUTION 2** and by further letter dated the 7th of October 2008 the Respondent wrote again to the Company seeking information in relation to:-

(a) **FINANCIAL INSTITUTION 4**, and requesting an explanation as to why an investment of IR£3,000 (US$4,125) on behalf of a Company client was funded from the Appellant's personal account;

(b) Confirmation as to whether the Appellant held any other accounts with **FINANCIAL INSTITUTION 1** in the Isle of Man or any other offshore institution, either in his own name, jointly with others or in the name of any company or entity with which the Appellant was connected or associated, or in which he held any beneficial interest; and

(c) The identity of the payer of the IR$15,000 commission.

29. On the 12th of November 2008, **FINANCIAL INSTITUTION 2** (which by then had become [redacted]) responded and gave the following information:-

(a) **FINANCIAL INSTITUTION 2** had no active involvement in the design, marketing or sales of the **FINANCIAL PRODUCT** marketed and distributed by the Company. **FINANCIAL INSTITUTION 2** processed all **FINANCIAL** product applications from the Company in the normal way and exactly as it would treat such applications from any other intermediary;

(b) **FINANCIAL INSTITUTION 2** was not advised of any other product elements in the overall **FINANCIAL** product marketed and distributed by

the Company, save that it had sight of a letter of the 7th of January 1998 to **WITNESS 4** of the Revenue;

(c) **FINANCIAL INSTITUTION 2** did not grant approval for the marketing of the **FINANCIAL** product marketed and distributed by the Company and had no involvement in the management of the product. **FINANCIAL INSTITUTION 2** was not asked to grant approval and it would not be within its power to do so in any event;

(d) **FINANCIAL INSTITUTION 2** had no knowledge of how funds were allocated or divided between the product underwriters or who, apart from **FINANCIAL INSTITUTION 2**, was underwriting the Company **FINANCIAL** product. **FINANCIAL INSTITUTION 2** stated this was a matter entirely for the Company;

(e) **FINANCIAL INSTITUTION 2** was not aware of who designed, developed or structured the other elements to the **FINANCIAL** product marketed exclusively by the Company apart from the element that was in effect the **FINANCIAL INSTITUTION 2 FINANCIAL PRODUCT**; and,

(f) **FINANCIAL INSTITUTION 2** had no knowledge of **COMPANY 2** and to the best of its knowledge had never had any dealings with that company.

30. On the 20th of November 2008, the Respondent wrote to the Company seeking the following:-

(a) Specific details of the other products that were combined with the **FINANCIAL INSTITUTION 2 FINANCIAL PRODUCT** to make up the relevant **FINANCIAL** product designed by **COMPANY 2**;

(b) Specific details in relation to the identity of the providers at (a) together with details of the relevant underwriters;

(c) Confirmation as to whether the Company **FINANCIAL PRODUCT** had received approval from the [redacted] of the Revenue Commissioners and, if so, the Respondent also sought:

i. The [redacted] Forms;

ii. Revenue [redacted] Form for **FINANCIAL PRODUCT** Schemes; and,

iii. The Annual Audit Reports for the duration of the **FINANCIAL PRODUCT** Scheme;

(d) A copy of the letter dated the 7th of January 1998 to **WITNESS 4** of the Revenue Commissioners which had been referred to in the **FINANCIAL INSTITUTION 2** letter of the 12th of November 2008; and,

(e) Clarification as to whether the Company had shared commissions in relation to any products additional to those underwritten by **FINANCIAL INSTITUTION 2** with **COMPANY 2** or any other offshore entity.

31. The letter of the 20th of November, 2008 from the Respondent to the Company also raised the following issues in relation to **COMPANY 2**:-

(a) The Respondent expressed surprise that the Company contended that **COMPANY 2** had provided services to the Company in circumstances where **COMPANY 2** was not registered in the Isle of Man, was not licensed in Ireland and was unknown to **FINANCIAL INSTITUTION 2**. In relation to this, the Respondent noted that the Company had declined to provide any information with regard to the specific business conducted by **COMPANY 2**;

(b) The Respondent noted that the business address for **COMPANY 2** which the Company had provided was, until recently, the address of the **FINANCIAL INSTITUTION 1** in the Isle of Man; and,

(c) The Respondent noted that the Company, in response to queries raised by the Respondent, had given the names of **PERSON A** and **PERSON B** as people from **COMPANY 2** with whom it had dealt in relation to the commission-sharing agreement. The Respondent noted that these people were full time officers of **FINANCIAL INSTITUTION 1'S TRUST COMPANY** in the Isle of Man. The Respondent requested that the Company contact **PERSON A** and **PERSON B** to establish the CRO number and address of **COMPANY 2** and also request that they provide a narrative statement in relation to their involvement with the Company.

32. The letter of the 20th of November 2008 from the Respondent to the Company also raised the following queries in relation to **FINANCIAL INSTITUTION 3** (the Jersey cheque):-

(a) Clarification as to whether the Respondent was correct in its understanding that the cheque for IR£4,000 received by the Company from **FINANCIAL INSTITUTION 3** was lodged to an offshore account held by a non-resident client of the Company.

(b) Clarification as to whether this non-resident client was **COMPANY 2** and, if so, confirmation that the account to which the cheque was lodged was held with **FINANCIAL INSTITUTION 1** in the Isle of Man.

33. Finally, the letter of the 20th of November raised the following queries in relation to offshore funds and trust structures held by the Company and the Appellant, namely:-

(a) Whether the Company and the Appellant had at any stage since 6th April 1998 held funds offshore, either directly or indirectly, in his own name or jointly with any family members, past or current, or in the name of a company, a trust company or any other entity whatsoever, other than the

account with **FINANCIAL INSTITUTION 1** in the Isle of Man (which had held the funds which were the subject of the Appellant's voluntary disclosure);

(b) Whether the Company and the Appellant were, at any time since the 6th of April, 1998, a beneficiary of, or had received payments from, any offshore trust or company, and whether the Company and the Appellant had at any time acted as a shadow director or controller of an offshore company or had any offshore company operated under their direction or for their benefit, including companies managed by Trust Companies or nominee Directors; and,

(c) Asking the Appellant to complete Forms SA1 as at the 5th of April 1998, 5th of April 2000 and 31st of December 2007 and advising that these statutory Return Forms would be served personally on the Appellant in due course.

34. On the 8th of December 2008, the Company's solicitors responded as follows:-

(a) Enclosing Forms SA1 completed by the Appellant for 5th April 1998, 5th April 2000 and 31st December 2007;

(b) Setting out the details of the other products that were combined with the **FINANCIAL INSTITUTION 2 PRODUCT** to make up the relevant **FINANCIAL** product designed by **COMPANY 2**;

(c) Stating that the underwriting was not relevant in the context of the investments;

(d) Providing [redacted] from Revenue Commissioners and all [redacted] requirements including the letter of the 7th January 1998 to **WITNESS 4** from the Company together with the response from **WITNESS 4**, and confirming that each [redacted] would have required [redacted] and that accordingly a [redacted] Revenue [redacted] was not relevant;

(e) Confirming that [redacted] was required to be registered with the [redacted] and enclosing copies of sample documentation required to obtain [redacted] approval and to ensure that all reporting requirements were satisfied pursuant to [redacted] and Revenue requirements, namely:-

i. Application to Revenue for [redacted] together with Revenue [redacted] letter and copy [redacted];

ii. Trust Deed;

iii. [redacted] Asset register; and,

iv. Annual accounts;

(f) Confirming that the Company had not shared commissions in relation to any products additional to those underwritten by **FINANCIAL INSTITUTION 2** with **COMPANY 2** or any other offshore entity;

(g) Stating that the Company believed that it was inaccurate for the Respondent to suggest that it had declined to provide information in relation to the specific business conducted by **COMPANY 2**, and clarifying that it had merely stated that it was not in a position to respond on behalf of third parties and that it was only familiar with the business of **COMPANY 2** in the context of the dealings that it had with **COMPANY 2**;

(h) Observing that it would be unusual if **FINANCIAL INSTITUTION 2** and **COMPANY 2** would have been in direct contact as each was a separate service provider which did not require direct interaction;

(i) Clarifying that the only information it had been able to obtain in relation to **COMPANY 2** pursuant to the Respondent's request were **COMPANY 2**'s Memorandum and Articles of Association, which said documentation noted that the registered address of **COMPANY 2** was an address in the British Virgin Islands and that its correspondence address was the Isle of Man address previously supplied by the Company to the Respondent;

(j) Clarifying that the Company understood that **COMPANY 2** no longer carried out business and that it had attempted to obtain narrative statements from personnel who worked for **COMPANY 2** as requested by the Respondent. **PERSON A** no longer worked for **COMPANY 2** and, in keeping with that company's policy, was not in a position to provide any form of narrative, and **PERSON B** was not contactable;

(k) Confirming that the Respondent was correct in its understanding that the cheque for IR£4,000 received by the Company from **FINANCIAL INSTITUTION 3** was lodged to an offshore account held by a non-resident client of the Company and that the client was **COMPANY 2**. The Company confirmed that it had no specific information in relation to the bank account held but expected it was held with **FINANCIAL INSTITUTION 1** in the Isle of Man;

(l) Confirming that the IR£15,000 was the money which formed the basis of the Appellant's voluntary disclosure in 2006;

(m) Confirming that the Appellant was not directly or indirectly the beneficial owner of any other accounts with **FINANCIAL INSTITUTION 1** in the Isle of Man or with any other offshore institution or offshore trust or offshore company, save as follows:

i. His [redacted] fund which held two EU property investments which were situate in [redacted]; proper reporting had been made in respect of such investments;

ii. The Appellant continued as part of the Company to be trustee (joint or sole) for a number of [redacted] vehicles, which made investments in a number of jurisdictions. The Appellant was not a beneficial owner of any such funds in accordance with normal industry practice and proper reporting had been made in respect of such investments in accordance with requisite legislation;

(n) Stating that, historically, from a client base of approximately [redacted], the Company could only identify seven clients that had investments which were Isle of Man related, five of whom were non-Irish resident, non-Irish ordinarily resident and non-Irish domiciled at the time. It stated that the remaining two were [redacted] where [redacted] to enhance the value for money for the client and attached correspondence in relation to same. The letter confirmed that all fees in respect of this business had been fully disclosed in the Company accounts and that the Company had for a number of years only acted as adviser to Irish-resident clients in keeping with industry practice which had arisen due to the complexity of cross-border regulatory approvals.

35. On the 20th of January 2009, following a meeting between Mr. Oliver on behalf of the Respondent and the Company's solicitor, the Respondent wrote to the Company's solicitors setting out the central issues identified by its investigations to that date, those being:-

(a) Payments made from the Company bank account into an offshore bank account with **FINANCIAL INSTITUTION 1** in the Isle of Man;

(b) The conversion of a cheque, drawn in a **FINANCIAL INSTITUTION 3** account, made payable to the Company, into an offshore account with **FINANCIAL INSTITUTION 1** in the Isle of Man;

(c) The existence of an offshore account held in the names of the Appellant and [redacted] in the **FINANCIAL INSTITUTION 1** in the Isle of Man;

(d) An investment in the name of **COMPANY 2** with **FINANCIAL INSTITUTION 4** funded or partly funded by a withdrawal from the Appellant's **FINANCIAL INSTITUTION 1** bank account in the Isle of Man;

(e) The purported sharing of commission payments earned by the Company with **COMPANY 2**; and,

(f) The treatment in the Company trading accounts of the receipt of commission payments generally.

36. The Respondent's letter went on to state that the explanations offered by the Company and by the Appellant had given rise to concerns on the part of the Respondent that the Appellant had not been entirely candid or comprehensive in addressing the issues identified. The letter invited the Appellant to make a further comprehensive and conclusive disclosure or, failing that, sought the following information and explanations:-

(a) Details of the Appellant's self-administered pension fund, including full details of all lodgements and investments and asset acquisitions, and details of the source of the funds used for same;

(b) Details of the circumstances in which the German clients were referred to the Appellant by **COMPANY 2** in 1996, together with details of the company or person to whom the German clients were subsequently referred;

(c) Clarification of whether the commission payments received in relation to the onward referral of the German clients were received by the Company or by the Appellant and [redacted] personally;

(d) Details of the said commission payment and an authorisation for the Respondent to speak to the payer of the commission;

(e) Details of the Appellant's involvement in the management of the offshore account in the name of **COMPANY 2** with **FINANCIAL INSTITUTION 4**;

(f) Authorisation for the Respondent to speak with **PERSON A** and **PERSON B** in relation to their involvement with the Company and the marketing of **FINANCIAL** products in the State;

(g) The Appellant's views on whether **COMPANY 2** was licensed under any enactment to carry on business as an insurance company, insurance agent or insurance broker;

(h) An explanation as to the apparent conflict between the Appellant's assertion that the German clients had been referred in 1996, and that he had discussions with **COMPANY 2** representatives in 1997, when **COMPANY 2** had not been incorporated until the [redacted] of [redacted] 1998; and,

(i) Details of and copy statements from the bank accounts from which the £15,000 commission payment had been transferred into the Appellant's account with **FINANCIAL INSTITUTION 2** Isle of Man in 1996.

37. In the course of further correspondence, on the 12th of May 2009 the Appellant's solicitors requested clarification of some of the points which the Respondent had raised, and enclosed copies of searches carried out in the Isle of Man Companies Office which had revealed a number of companies with the name "**COMPANY 2** Investments". The letter stated that it was not possible to determine which of those entities the Company had been dealing with.

38. On the 12th of June 2009, the Company's solicitors furnished the Respondent with a substantive response to the aforesaid queries and gave the following information:-

(a) In relation to the commission payment of IR£15,000 to the Appellant, the letter stated:

i. The rationale for the opening of the **FINANCIAL INSTITUTION 1** account by the Appellant had already been set out in the letter containing the voluntary disclosure by the Appellant in March 2006;

ii. The commission payment of IR£15,000 was received from a client by the name of **PERSON D**. The Appellant was unsure if there was ever a formal written agreement in relation to the commission and in any event with the passage of time records would not have been retained;

iii. The investment was made by **PERSON D**, a German client, and that to the Appellant's recollection it was made in the name of either [redacted] Investments Ltd or [redacted] Investments Ltd which were investment entities of the client;

iv. **PERSON D** was referred to the Appellant by **FINANCIAL INSTITUTION 1** in the Isle of Man, who in turn had been recommended to use the Appellant by **FINANCIAL INSTITUTION 1** in Dublin as the Appellant had a long-standing relationship with the bank. This was the only investment by **PERSON D** which the Appellant had facilitated;

v. **PERSON D** had died on the [redacted] of September 2006. He was domiciled in Germany and lived alone at an address in [redacted] in the UK. He was survived by his wife, who the Appellant understood lived in Germany and had no children.

(b) In relation to **COMPANY 2**, the letter stated that prior to the incorporation of **COMPANY 2**, the Appellant dealt with various people at **FINANCIAL INSTITUTION 1** in the Isle of Man including **PERSON A** and **PERSON B**. These were the people the Appellant continued to deal with when they later formed **COMPANY 2**;

(c) The letter gave irrevocable authorisations for the Respondent to speak with **PERSON A** and **PERSON B**, with whom, the letter noted, the Appellant had no ongoing contact;

(d) In relation to **FINANCIAL INSTITUTION 4**, the letter stated that the withdrawal of IR£3,000 ($4,124) on the 27th of September 1998, which was invested by **COMPANY 2** with **FINANCIAL INSTITUTION 4**, was a refund by the Appellant of part of the IR£15,000 commission received by him in 1996. The letter stated that the reason the refund was made was twofold, namely (1) that the original commission **WAS EXCESSIVE IN THE PARTICULAR CIRCUMSTANCES**, and (2) that the refund was made to **COMPANY 2** as these were the same group of people who had introduced the tracker bond business to the Appellant in 1996. The letter also stated that the Appellant had been an intermediary for **FINANCIAL INSTITUTION 4** but that this was cancelled some time later due to lack of activity.

39. On the 11th of March 2010, the Company's solicitors forwarded to the Respondent copies of correspondence between the Appellant and **FINANCIAL INSTITUTION 1** in the Isle of Man in relation to the source of the funds for the IR£15,000 commission received by the Appellant in 1996. **FINANCIAL INSTITUTION 1** had stated that their records indicated that the account closed in October 2000 and that they no longer held records in relation to this account.

40. On the 26th of April 2010, the Respondent wrote to the Company's solicitors stating that having regard to all of the circumstances and explanations and in an effort to dispose of the matter without further protracted correspondence or action on the part of the Respondent, that the Respondent was prepared to accept a monetary settlement of €158,039.43 (inclusive of interest and penalties) which was calculated on the basis of tax on additional undisclosed profits of £82,032 and tax on annual payments to a non-resident amounting to €99,080.56.

41. The Respondent stated that the offer terms set out in the letter were available until close of business on 5th May 2010 after which time the offer terms would be treated as having been refused by the Company. The letter went on to state that thereafter the Respondent would take such further steps as he might be advised and that the position in relation to the Appellant's voluntary disclosure would be considered on receipt of the Company's reply.

42. By further letter dated the 4th of May 2010, the Respondent clarified the legal basis for its proposed treatment of commission paid. The letter further stated that it seemed clear, from the information and details provided, that the Tax Return form submitted in respect of the Company's trading results for the period ending 31/12/1997 were understated by £82,032 (€104,159). It further stated that, notwithstanding that trading accounts prepared by the Company's auditor showed receipts of commission net of any adjustment for payments made on foot of the commission-sharing arrangement, the return submitted should have recorded the gross commissions received by the Company.

43. The Company did not accept the terms set out in the Respondent's letter of the 26th of April 2010 and subsequently a meeting took place between the Respondent and the Company's solicitor, in the course of which the following documents were provided to the Respondent:-

(a) Letter from Irish Brokers Association dated [redacted] 2010;

(b) Section 45 Insurance Act 1989;

(c) Report of **WITNESS 4** on the Company **FINANCIAL PRODUCT**;

(d) Correspondence with Revenue in 1998; and,

(e) Company **FINANCIAL PRODUCT** – Recommendation and Cashflow [sic] calculation, 15 January 1998 – copy report from Company file.

44. No agreement was ultimately reached between the Company and the Respondent and on the 18th of April 2011 the Respondent raised amended assessments to Income Tax against the Appellant, which said assessments are the subject matter of the within appeal.

C. ***Grounds of Appeal***

45. The grounds of appeal advanced on behalf of the Appellant in the Notice of Appeal submitted on his behalf on the 20th of April 2011 were that the source of income and the amount assessed were without foundation and incorrectly brought in accordance with section 933(1)(a) of TCA1997.

46. The Respondent further advised the Appellant by letter dated the 21st of April 2011 that the tax charged by the assessments under appeal would carry interest pursuant to section 1082 of TCA1997, and the Appellant's solicitors advised that the Appellant would also appeal against the imposition of s. 1082 interest. The Respondent advised prior to the hearing of this appeal that it was no longer seeking to impose such interest, and so the question of the applicability of section 1082 does not require to be considered in this Determination.

47. In written submissions delivered on behalf of the Appellant on the 26th of November 2015, it was further argued as a preliminary point that the assessments under appeal were made outside the 4-year time limit provided for in Part 41 of TCA1997.

D. Legislation

48. The relevant statutory provisions which are applicable in the instant appeal are set forth hereunder.

49. Section 58 of TCA1997 provides as follows:-

Charge to tax of profits or gains from unknown or unlawful source.

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

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

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

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

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

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

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

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

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

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

(i) the assessment-

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

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

and

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

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

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

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

50. Section 955 TCA1997 provides as follows:-

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

(2) (a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period in which the return is delivered and no additional tax shall be payable by the chargeable person and no tax shall be repaid to the chargeable person after the end of the period of 4 years by reason of any matter contained in the return.

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

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

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

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

(iv) to correct an error in calculation, or

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

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804 (3).

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

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

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

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

draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

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

(5) *(a) In this subsection, "relevant chargeable period" means—*

(i) where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii) where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii) where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(b) Sections 919(5)(b) and 924 shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(c) For the purposes of paragraph (b), where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by

the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person.

E. Evidence and Submissions of the Respondent

51. As stated above, it was agreed between the parties that in deciding the preliminary issue of whether or not the assessments were raised outside the four-year time pursuant to section 955, the burden of proof lay on the Respondent in relation to same and accordingly the Respondent entered into evidence first.

52. Mr Oliver was the Inspector for the Respondent who carried out the investigation into the Company's and the Appellant's tax affairs and he gave evidence during the oral hearing. His oral evidence included reading into evidence much of the correspondence between the parties and commenting on same.

53. Mr Oliver stated that he began an investigation into the Company on foot of the receipt by the Respondent of copies of five cheques made payable to **FINANCIAL INSTITUTION 1** from the Company's bank account. He stated that during the course of his investigation he did not receive the following documents which he had requested from the Company:-

(a) a copy of the Company's standard commission-sharing agreement;

(b) a copy of discussion documents between the Company and **COMPANY 2**;

(c) copies of the notes sent with the Company cheques to **FINANCIAL INSTITUTION 1**, requesting that the cheques be lodged to the credit of **COMPANY 2**; or,

(d) **COMPANY 2** account details.

54. Mr Oliver stated that he viewed the Appellant's voluntary disclosure in relation to the IR£15,000 which he had lodged to his personal **FINANCIAL INSTITUTION 1** account in the Isle of Man with some degree of suspicion. He stated that this was because the voluntary disclosure had been made to another Revenue officer, despite the fact that it was known that Mr Oliver was investigating the Company. In addition, he stated that there was an issue regarding the source of the IR£15,000 the subject matter of the voluntary disclosure.

55. Mr Oliver stated that notwithstanding the fact that it was submitted as a voluntary disclosure, he would not have treated the disclosure as such on the basis that Revenue had run an incentive scheme for the holders of offshore bank accounts to deal with their liabilities, and it was incumbent on the Appellant to avail of that. He stated that anyone who did not avail of the incentive could not avail of a voluntary disclosure, whether qualifying or otherwise.

56. In relation to the IR£4,000 **FINANCIAL INSTITUTION 3** cheque payable to the Company and lodged to what eventually transpired to be **COMPANY 2**'s **FINANCIAL INSTITUTION 1** account in the Isle of Man, Mr Oliver stated that on receipt of the Company's letter of the 6th April 2006, he did not understand the situation having regard to the context of the five cheques which had been drawn on the Company's account and made payable to **COMPANY 2**, and further having regard to the context of the Appellant's voluntary disclosure in relation to his

personal **FINANCIAL INSTITUTION 1** account. He therefore sought further information from the Company.

57. Mr Oliver went on to state that matters were further confused by the information proffered on behalf of the Company in the letter dated the 25th of January 2007, which referenced a company by the name of **COMPANY 3**. Mr Oliver stated that he initially understood from the contents of this letter that **COMPANY 3** was the beneficiary of the IR£4,000 **FINANCIAL INSTITUTION 3** cheque, but that the information received from the Company in relation to **COMPANY 3** turned out not to have had any direct relationship with the question of the IR£4,000 Bank of Ireland cheque.

58. In addition, Mr Oliver stated that the explanation by the Company that the transaction relating to the IR£4,000 cheque was "*an off balance sheet transaction*" was one he did not understand. He stated that he had never heard of an off balance sheet transaction in his 43 years of working for Revenue and that the statement made him more suspicious. This, he stated, caused him to seek further information and clarification from the Company.

59. Mr Oliver stated that he was not satisfied with the responses that he subsequently received from the Company. He stated that following receipt of the email from the Company's agent on the 7th of November 2007, which identified the beneficiary of the IR£4,000 as being **COMPANY 2**, he now found there was a situation where **COMPANY 2** had been the beneficiary of not only the five Company cheques but also the **FINANCIAL INSTITUTION 3** cheque. He stated that at this stage he was confused, to put it mildly.

60. Mr Oliver stated that when he received the details for **COMPANY 2** from the Company, he immediately recognised the address given as being that of **FINANCIAL INSTITUTION 1** in the Isle of Man and he also immediately recognised the names of **PERSON A** and **PERSON B** as being directors of **FINANCIAL INSTITUTION 1 TRUST COMPANY** in the Isle of Man. This, he stated, was information which was known to him through his work.

61. Mr Oliver stated that he required further evidence in relation to the handling of commission payments by the Company and he stated that he did not accept the submission on behalf of the Company that, by reason of an accounting principle, it was preferable to only return the net commission received by the Company as opposed to a gross commission net of any commission-sharing payment. Mr Oliver stated that he would have liked to see a commission-sharing arrangement handled in the returns by way of all of the income generating the commission first being shown, and then any payments made in respect of commission-sharing being shown as a deduction. This was not done in the Company's returns.

62. Mr Oliver stated that the first time he learned the identity of the investor who generated the IR£15,000 commission was in June 2009, over four years after he had begun the investigation into the Company affairs. He stated that at that point he was not happy with the explanations that the Company and the Appellant had given in this regard, nor was he satisfied with the reasons given for why sums had be paid to **COMPANY 2** under a commission-sharing arrangement.

63. Mr Oliver stated that he never received any evidence which confirmed that **PERSON A** and **PERSON B** formed **COMPANY 2** or that they were in any way involved with **COMPANY 2**. He stated that, despite receiving authorisation from the Company that Revenue could contact **PERSON A** and **PERSON B** directly in

relation to the matter, he did not do so because his superiors did not give him approval to do so.

64. Mr Oliver stated that by 2010 he had formed the opinion that none of the information which the Company had submitted stood up to any degree of scrutiny and that he was still as wise in 2010 as he was in 2005 when he had started the investigation. At that point, Mr Oliver sought further information in the form of his letter dated the 4th of May 2010.

65. As stated above, the Company's solicitors had met with Mr Oliver on the 9th of June 2010 and had provided him with certain documents, including a letter from **WITNESS 5**, [redacted] Irish Brokers Association. In relation to this letter, Mr Oliver stated that the contents of it were "*grand*" but that it did not answer his query, which sought to know the reason for the payment of the sums to **COMPANY 2**.

66. The other documents furnished at that meeting were a report from **WITNESS 4** on the Company **FINANCIAL** product, correspondence with Revenue [redacted] in 1998 and a recommendation and cash flow calculation sheet in relation to the **FINANCIAL PRODUCT**. Mr Oliver stated that none of these documents assisted him in any way in confirming the existence of and identity of the owners of **COMPANY 2**.

67. Mr Oliver stated that he ultimately raised the amended assessments against the Appellant in April 2011. He stated that he had originally intended to pursue the liability to the Company, as set out in his letter of the 26th of April 2010, but that having further considered all of the information, or lack of information since 2005, he began to form the view that this was not so much corporation tax liability in

the hands of the Company as income in the hands of the Appellant. Mr Oliver stated that he therefore raised the amended assessments the subject matter of the within appeal.

68. Mr Oliver agreed that the amended assessments were raised outside of the four-year time limit provided for in section 955(2) of TCA1997. He stated that he formed the view that he was entitled to raise the assessments on the basis that he had at that point commenced an investigation into the Company four or five years earlier with a view to establishing the *bona fides* of the payments that were made by the Company to **FINANCIAL INSTITUTION 1** in the Isle of Man. He formed his view on the basis that throughout the period of time in which the investigation had run, he had not been supplied with any credible evidence to support the need for the payments. Mr Oliver stated that he basically formed the view that there had not been a full and complete disclosure of all facts by the Appellant in his tax returns and it was for that reason he input the amended assessments dated the 18th April 2011.

69. Mr Oliver gave evidence as to how he calculated the assessments and stated that he classified the income as Miscellaneous Income because he did not know the origin of it, and that the income was in the name of the Appellant personally without any information as to its origin.

70. In cross-examination, Mr Oliver confirmed that he did not refer to the fact that he had obtained the five Company cheques through High Court Orders obtained under section 908 of TCA1997.

71. Mr Oliver further confirmed that his letter of the 4th of May 2010 drew the Company's attention to section 919 of TCA1997 and that this indicated that he

clearly believed that he was entitled to rely on section 919(5) because there had been fraud or neglect on the part of the Company. Mr Oliver agreed that this was the case.

72. It was put to Mr Oliver that what he was looking at was the tax treatment of the commission-sharing payments made by the Company. It was further put to Mr Oliver that in relation to those payments, he could not say that any fraud or neglect had been committed and that for the purposes of the letter which he wrote on the 4th of May 2010, he was saying that the Company was in default. Mr Oliver agreed with those assertions. Mr Oliver also stated that he had formed an opinion that there was neglect by virtue of the fact that, from a Revenue perspective, the gross commission should have been reflected in the trading accounts and thereafter any outgoings associated with the earning of those commissions should have been reflected as an outgoing, but that at that stage the *bona fides* of **COMPANY 2** had not been established.

73. Mr Oliver confirmed that in his letter of the 4th May 2010, he was at all times focussing on the Company and that he then believed the Company to be in default. He also confirmed that no assessments were raised against the Company.

74. Mr Oliver confirmed that the assessments raised against the Appellant reflected the figures put to the Company in his letter of the 26th of April 2010 and he confirmed that the assessments which were raised against the Appellant reflected the payments which the Company stated went to **COMPANY 2** under the commission-sharing arrangement. Mr Oliver also confirmed that the assessments raised against the Appellant did not reflect the IR£4,000 **FINANCIAL INSTITUTION 3** payment.

75. Mr Oliver confirmed that following his letter of the 26th April 2010, he received no new information in relation to the investigation and that he had no reason not to assess the Company at that time. He further confirmed that the Company had indicated in February 2011 that it was preparing submissions and that the next step taken by him was in April 2011 when the amended assessments were raised. Mr Oliver confirmed that the amended assessments were the first indication he had given to the Appellant that his income tax situation was being considered.

76. Mr Oliver confirmed that, having raised the amended assessments, the next letter that was sent personally to the Appellant was on the 21st of April 2011, informing the Appellant that the amended assessments would be subject to interest pursuant to section 1082 of TCA1997. Mr Oliver stated that he believed there was fraud or neglect on the part of the Appellant and he was satisfied that the Appellant came within section 1082 which provided for a 2% monthly interest rate for cases of fraud and neglect. The Respondent had in its written submissions confirmed that it was no longer pursuing this interest.

77. Mr Oliver confirmed that in 2011, when the amended assessments were raised, the matter of the Appellant's voluntary disclosure, which was made in 2006 and on which the tax had been paid in 2007, had still not been closed. He stated that there had been no question of an assessment needing to be raised in respect of the Appellant's voluntary disclosure.

78. Mr Oliver stated that in relation to the IR£15,000 the subject of the Appellant's voluntary disclosure, he suspected that these monies came from **COMPANY 2** and he wrote to the Appellant's agent on the 5th of December 2007 seeking confirmation of same. He confirmed that at that time he had no basis for that suspicion, although he stated that at that stage he felt he was being drip-fed

information and that nothing stood up to scrutiny. In relation to the 2011 amended assessments, Mr Oliver stated that there were no enquiries as such carried out in relation to the voluntary disclosure made by the Appellant and that the only issue in 2011 was his suspicion that the commission-sharing payments by the Company were closely aligned to the Appellant personally. In that regard, Mr Oliver confirmed that the Appellant had completed SA1 forms for the three years sought and that he had received confirmation from the Appellant that he had no interest in **COMPANY 2** or any offshore accounts save for the one associated with the Appellant's voluntary disclosure.

79. Under further questioning, Mr Oliver confirmed that no enquiries were made into the Appellant's SA1s or pension and he confirmed that he was not in a position to say that the Appellant had any unexplained income. Mr Oliver did however state that his suspicion lay in the fact that payments were made by the Company to an entity which was not incorporated, and for that reason he still had not been adequately satisfied as to the *bona fides* of the payments.

80. In relation to **WITNESS 4**'s report, Mr Oliver stated that, despite **WITNESS 4** having described the Company **FINANCIAL** product as being a unique product, in his opinion the product did not have any unique characteristics to warrant the payment of commission to an entity whose origin he thought was rather dubious. He confirmed the content of the Respondent's written submissions, which stated at paragraph 10 that "[t]*here was in fact nothing unique about this product*."

81. Mr Oliver was questioned about his position in relation to the tax treatment of the commission-sharing payments in the Company's accounts. He confirmed that he did not like the manner in which the accounts treated the commission-sharing payments and he asserted that Revenue are not bound to follow accounting

practices. Counsel for the Appellant referred Mr Oliver to section 76(a) of TCA1997 in this regard.

82. Mr Oliver confirmed that in 2010 he had made a proposal in relation to the Company, although no assessments were raised in relation to the Company. He confirmed that this proposal was made on the basis that at that time he believed the Company had committed fraud or neglect in connection with its corporation tax. He confirmed that following this proposal no further information was provided and that no further enquiries were made in relation to the Appellant or whether the Appellant had any unexplained source of income. He confirmed that there was no failure by the Appellant which would have triggered a Notice of Assessment in relation to commission-sharing arrangements.

83. It was put to Mr Oliver that, in terms of the basis of assessment of miscellaneous income, it was incorrect to say that the source of the income in the assessments was unknown. It was put to him that the source of the income was known, that it was the commission-sharing payments made by the Company. In response, Mr Oliver stated that the unknown aspect of the income was why a director of the Company was in receipt of the income, and that he had formed the view that the funds were leaving the Company and going to the Isle of Man for the benefit of the Appellant. He stated that the reason for the payments and the nature and the origin of same were unknown to him at the time when he raised the assessments.

84. The written and oral submissions of the Respondent can, I believe, be fairly summarised as follows:-

(a) The Respondent was entitled to raise the amended assessments on the Appellant outside of the four-year time limit provided for in section 955(2) of the TCA1997 as a result of the failure by the Appellant to make full and

true disclosure in his tax returns for the relevant periods. This was premised on the fact that the Appellant did not disclose the interest payments received during those periods in relation to the IR£15,000 which had been lodged to the Appellant's personal account with **FINANCIAL INSTITUTION 1** in the Isle of Man;

(b) There was no evidence to suggest that the Company had a commercial relationship with **COMPANY 2** and also no evidence to suggest that the Company had any *bona fide* reason to make any payments to **COMPANY 2**;

(c) None of the cheques written by the Company were made payable to **COMPANY 2** but instead were made payable to **FINANCIAL INSTITUTION 1**;

(d) There was no satisfactory explanation for the payments by the Company to or on behalf of **COMPANY 2** in the form of the **FINANCIAL INSTITUTION 3** cheque and the cheque drawn on the Appellant's personal account in **FINANCIAL INSTITUTION 1** in the Isle of Man;

(e) The income the subject matter of the assessment correctly fell to be described as miscellaneous income pursuant to section 58 of TCA1997 as the source of these profits or gains was not known to the Inspector. The Respondent further submitted that this income may have come from the Company but the Inspector was not aware as to why the Company diverted funds to the Appellant and therefore could not know the reason for the income in the hands of the Appellant. This, the Respondent submitted, was the reason why the amended assessments referred to Miscellaneous Income;

(f) The circumstances of the meeting between the Company and/or the Appellant with **PERSON A** who was representing **COMPANY 2** were not credible. It was not credible that **PERSON A** would divulge extremely

valuable information to the Company and/or the Appellant in such an informal setting and without any formal structure being put in place;

(g) The Respondent had been unable to test the veracity of documentary evidence in respect of the incorporation of **COMPANY 2** in the British Virgin Islands and that documentary evidence was hearsay;

(h) The Appellant's purported methods of doing business did not stand up to scrutiny; his explanation that he received a commission of £15,000 personally for an investment made by a non-Irish resident client which was lodged to his personal **FINANCIAL INSTITUTION 1** account in the Isle of Man in 1996 from which he subsequently wrote a cheque for £3,000 to the benefit of **COMPANY 2** was not credible. In addition, the apportionment of the **FINANCIAL INSTITUTION 3** cheque for £4,000 which was payable to the Company and which was lodged in the Isle of Man to the benefit of **COMPANY 2** did not stand up to scrutiny. The Respondent submitted that the evidence in relation to these transactions called the Appellant's credibility into question; and,

(i) There was a possibility that the Appellant came up with the **FINANCIAL** product himself and outsourced the [redacted] part of the product, and that there was no involvement from **COMPANY 2** in the matter.

F. Evidence and Submissions of the Appellant

85. The Appellant gave evidence at the oral hearing and stated that he had worked in the financial planning and advice area for many years prior to setting up the Company in late [redacted]. Having set up the Company, the Appellant stated that he – and by this the Appellant meant the Company - worked with **FINANCIAL**

INSTITUTION 1 as a deposit broker, and that at the peak of the business between the Company and **FINANCIAL INSTITUTION 1**, the Company would have placed somewhere in the region of €[redacted] million on deposit with **FINANCIAL INSTITUTION 1**. The Appellant stated that the clients he worked with were mainly private individuals but also to some extent corporations and pension funds. In addition, the Company ran a **FINANCIAL INSTITUTION 1** [redacted] scheme which the Appellant described as being an honour to get.

86. The Appellant gave evidence in relation to **CERTAIN CIRCUMSTANCES** in which he found himself during [redacted] and [redacted] and the impact of this situation on his financial position. In this context, the Appellant stated that he had caused IR£15,000 to be lodged to an account which he opened in **FINANCIAL INSTITUTION 1** in the Isle of Man. The Appellant stated that the IR£15,000 had been earned by him personally through a non-Irish client, **PERSON D**, who had been introduced to him by **FINANCIAL INSTITUTION 1** in the Isle of Man and who the Appellant had assisted in negotiating favourable rates for the investment of a large sum of money. The said money was invested through a structure or structures by the name(s) of [redacted] or [redacted], although the Appellant could not remember precisely the name.

87. The Appellant gave evidence that he had attempted to get documentary evidence in relation to the IR£15,000 and the account into which it had been lodged and referred to the letter from **FINANCIAL INSTITUTION 1** in the Isle of Man dated the 3rd of March 2010, wherein **FINANCIAL INSTITUTION 1** confirmed that they were unable to assist the Appellant in his enquiry as the account had been closed in October 2000 and that following closure of the account the records would have been archived and subsequently destroyed after seven years pursuant to local data protection regulations.

88. The Appellant confirmed that he subsequently made a return to Revenue in relation to the IR£15,000 and that he paid tax and penalties on same.

89. In relation to the Company's relationship with **COMPANY 2**, the Appellant stated that this began at a meeting in late 1997 at what he recalled to have been an event which **FINANCIAL INSTITUTION 1** was holding for brokers. He stated that he was introduced to **PERSON A** of **FINANCIAL INSTITUTION 1** and they had a discussion where **PERSON A** told the Appellant that he had a UK client who had done something in the UK that would possibly be of interest to the Appellant. **PERSON A** had given a broad description of the **FINANCIAL** product. The Appellant stated that **PERSON A** asked him whether this was something that would be of interest to him and if he would be interested in a commission-sharing arrangement if **PERSON A** gave the Appellant full details of the *modus operandi* of the scheme. The Appellant surmised that **PERSON A** had probably approached him in this regard because of the Appellant's reputation in the business of being [redacted] his fees and commissions.

90. Thereafter, the Appellant stated, there were follow up phone calls between the Appellant and **PERSON A** and he had agreed at an early stage that if the proposition worked out, there would be a 50/50 commission-sharing arrangement between the Company and **PERSON A**'s client. The Appellant stated that at that time 50/50 commission-sharing agreements were commonplace in the brokerage business. The Appellant stated that he dealt with a number of people during the initial stages of the arrangement, most of whom he would have had prior relationships with. He named **PERSON A**, **PERSON B**, **PERSON E** and **PERSON F** as being some, but not all, of the people he had dealt with.

91. The Appellant stated that he might have sent the Company's standard commission-sharing agreement to the other side during the initial stages of discussion but that he was not certain of that. He stated that this document would have been a one-way note which stated that there would be a 50/50 commission-sharing but that it would not have contained any great detail or specifics.

92. The Appellant tendered in evidence a document entitled '***THE COMPANY*** **FINANCIAL** ***PRODUCT*** *Recommendations and Cash Flow Calculations*' which was dated the 15th of January 1998. He stated that this was the output from a template document which the Company had adopted and which **PERSON A** had provided the Company. The Appellant stated that he presumed that **PERSON A** had received this template from his client.

93. The Appellant stated that during the initial stages of talks, he was not aware of the identity of the client **FINANCIAL INSTITUTION 1** was acting for, and he additionally stated that this would not have been unusual for **FINANCIAL INSTITUTION 1**.

94. The Appellant reiterated that commission-sharing arrangements were commonplace in the brokerage industry at that time and he gave evidence of various different commission-sharing arrangements that he had been involved in prior to the establishment of the Company. The Appellant stated that the Company only had one formal commission-sharing relationship in place and that this was with [redacted]. Outside of that single formal commission-sharing agreement, all of the Company's commission-sharing arrangements were informal agreements which were unlikely to be documented on paper, and that based on these the Company made commission-sharing payments to quite a number of people. The Appellant stated that the landscape in relation to

commission-sharing changed significantly at the beginning of the 2000's, when commission-sharing became limited to regulated entities and that, because of the complexity they now entailed, the Company no longer had any commission-sharing arrangements. He stated that commission-sharing arrangements had become too complicated and awkward.

95. In relation to the **FINANCIAL** product which **PERSON A** had brought to him and the Company, the Appellant stated that neither the Company nor he personally had the technical expertise, experience or ability to design the product. There were, he stated, actuarial skills required in designing the cash flow sheet associated with the **FINANCIAL** product. He stated that neither he nor the Company had designed the product or the idea behind it. He stated that he could see the benefits of the product immediately on being introduced to it.

96. The Appellant described the structure of the **FINANCIAL** product the subject matter of the commission-sharing arrangement and stated that the attraction of the product for clients was that it brought returns of 30% or 40% above what the market was paying. The Appellant gave evidence that the Company sought and received approval from Revenue in relation to the new **FINANCIAL** product. In addition, the Appellant gave evidence of correspondence which the Company had with **FINANCIAL INSTITUTION 2** in relation to the use of their **FINANCIAL** product in the **FINANCIAL** product. He stated that the agreement was that a 50/50 commission-sharing arrangement would apply to the **FINANCIAL INSTITUTION 2** element of the **FINANCIAL** product but that no commission would be shared in relation to the other elements which made up the **FINANCIAL** product.

97. The Appellant described that as a result of the new **FINANCIAL** product, the Company's commission from **FINANCIAL INSTITUTION 2** increased significantly from an amount of IR£[redacted] in 1997 to IR£[redacted] in 1998 and IR£[redacted] in 1999, and he submitted documentation from the Company and from **FINANCIAL INSTITUTION 2** in that regard.

98. The Appellant described the details and mechanics of the commission payments which the Company made in relation to the **FINANCIAL** product. In particular, the Appellant described that when the time came to make the first commission-sharing payment, he contacted **PERSON A** in **FINANCIAL INSTITUTION 1** to ask to whom the payments should be made. He stated that he was informed that the payment was to be made to **COMPANY 2** and that the Company wrote a cheque from its main trading account made payable to **FINANCIAL INSTITUTION 1** and sent it to **FINANCIAL INSTITUTION 1** in the Isle of Man with a note attached stating that it was to be lodged to the credit of **COMPANY 2**. This, he stated, occurred with all five of the cheques written by the Company in relation to the commission-sharing arrangement with **COMPANY 2** and which triggered the Respondent's investigation in May 2005.

99. The Appellant gave evidence as to how the Company calculated the fees it charged to clients and stated that it had always been Company policy that [redacted]. He stated that if a commission might [redacted], the Company would reduce the amount of commission it would take [redacted]. This, he stated, was done on a [redacted] basis for each client and he

testified that the Company kept detailed records of this information on which a reconciliation was made [redacted].

100. The Appellant went on to give evidence in relation to a separate relationship which the Company had with **COMPANY 2** whereby **COMPANY 2** was a client of the Company, and in particular in relation to correspondence which the Company had with **FINANCIAL INSTITUTION 1** in 2002. The Appellant read into evidence a letter from **FINANCIAL INSTITUTION 1** Isle of Man dated the 2nd of August 2002 which stated that the Company had been appointed as an investment advisor to a number of trusts and an investment company, to provide investment advice and valuations to the Trustees and Directors from time to time for the trusts and companies listed in the letter. One of the companies listed in the letter was **COMPANY 2**.

101. The Appellant further gave evidence that he or the Company would not have known the identities of the owners of the companies listed in that letter, and also that he did not know the identities of the shareholders or directors of **COMPANY 2**.

102. The Appellant stated that during the course of the Respondent's enquiry, he had attempted to get information as to the identity of the directors and the shareholders of **COMPANY 2**. He stated that **FINANCIAL INSTITUTION 1** in the Isle of Man provided him with the Memorandum and Articles of Association for **COMPANY 2** but nothing more helpful than that. He stated that he then approached **FINANCIAL INSTITUTION 5** for information on **COMPANY 2**, as the Company had placed business on behalf of **COMPANY 2** with **FINANCIAL INSTITUTION 5** previously. **FINANCIAL INSTITUTION 5** informed the Appellant that **COMPANY 2** had a correspondence address in the Isle of Man and was a

company registered in the British Virgin Islands. In addition, **FINANCIAL INSTITUTION 5** provided the Appellant with the account opening form that they held in relation to **COMPANY 2** which listed the directors of **COMPANY 2** and also provided the company registration number in the British Virgin Islands. The Directors of **COMPANY 2** were listed as being **PERSON G**, **PERSON H**, **PERSON A** and **PERSON B**. The Appellant stated that he had attempted to contact **PERSON A** and **PERSON B** in relation to these matters during the course of the Respondent's investigation but that he had been unsuccessful in that regard, and that he had subsequently provided the Respondent with an authorisation to contact **PERSON A** and **PERSON B** in relation to his tax affairs.

103. The Appellant stated that his involvement with **COMPANY 2** was through the Company which shared commission with **COMPANY 2**. In addition, he stated that the Company earned commission from **COMPANY 2**, all of which was disclosed in the Company's accounts.

104. Specifically referring to the Respondent's letter dated the 20th of January 2009, the Appellant denied that the Company had not been entirely candid or comprehensive in addressing the issues which had been raised by the Respondent during the course of its investigation. He stated that the Company had been totally open and honest with the Respondent and that the only thing that he personally had done incorrectly was failing to disclose the IR£15,000 which was the subject of the subsequent voluntary disclosure by the Appellant.

105. The Appellant stated that he was extremely surprised when the Respondent raised the amended assessments on him personally in April 2011. He stated that at that time he was aware that the Respondent had proposed a settlement with the Company in April 2010, which the Company and the Appellant as Director of

the Company did not accept. He stated that on the 10th of June 2010, a report by **WITNESS 4** along with a cash flow calculation was sent to the Respondent, and that the Company's agent had been dealing and corresponding with the Respondent in relation to making a technical submission. The Appellant stated that he was aware that the Company's solicitors had written to the Respondent in February 2011, stating that a submission in draft form would be submitted the following week and that he was taken completely by surprise when the amended assessments were raised on him personally in April 2011.

106. The Appellant stated that his reputation was everything to him. He stated that his word was his bond and that, from a client point of view, honesty was absolutely paramount in all his dealings with them. He stated that otherwise he would not be in the business he was in. He stated that he had made all returns to Revenue, both on behalf of the Company and behalf of himself personally, which he was obliged to make.

107. In cross-examination, the Appellant was asked to clarify why he had previously stated in correspondence that **COMPANY 2** had approached the Company in 1997, when in fact his evidence at the hearing was that **PERSON A** had approached him with the **FINANCIAL** product idea at an event in 1997. The Appellant stated that **PERSON A** had approached him in 1997 and that he had said that **COMPANY 2** had approached him because **PERSON A** was the **FINANCIAL INSTITUTION 1** representative of **COMPANY 2** who had discussed matters with him. He stated that he first came across the name of **COMPANY 2** when he asked where he should make the first commission cheque payable to in early- to mid-1998.

108. The Appellant was challenged in relation to his written description of his introduction to **COMPANY 2**, which stated that **COMPANY 2** had approached him, and his oral evidence, in which he stated that **PERSON A** had approached him. He stated that his oral evidence was correct and that **PERSON A**, as far as the Appellant was aware, was the public face of **COMPANY 2** and that **PERSON A** was representing his client **COMPANY 2** and its idea in relation to the [redacted] product. The Appellant further stated that he considered that if someone says that they met him in the course of business, they are in fact meeting with him as the public face of the Company. He stated that he did not mean to be misleading and that he had not meant to be so. He stated that he used the terms **PERSON A**, **FINANCIAL INSTITUTION 1** and **COMPANY 2** interchangeably even though he clearly understood that they were very distinct legal entities. He stated that when he met people from **FINANCIAL INSTITUTION 1**, he understood that they were representing third parties and that is what they did. **FINANCIAL INSTITUTION 1** was a trust company in the Isle of Man which represented third parties and in all of his dealings with **FINANCIAL INSTITUTION 1** they were representing third parties.

109. The Appellant was cross-examined in relation to **PERSON A** divulging the **COMPANY 2** concept to the Company in circumstances where no formal agreement had been put in place, and in circumstances where the Company and the Appellant had not even heard of **COMPANY 2** until the first commission-sharing payment was being made. The Appellant was asked how the Company could have been happy to pay over 50% of its commission to a company of which it had never previously heard, and on which it had not carried out its own independent research. In response, the Appellant stated that in the mid- to late-1990s, neither he nor the Company carried out any independent research and he was not aware of any of his peers who carried out independent research when

they had received an introduction. He stated that that did not happen at his level in the business, especially in the mid- to late-1990s. He stated that independent research did happen nowadays, and that was because the regulatory landscape had changed and the Central Bank now regulated commission-sharing arrangements. He stated that matters were rather more relaxed back then.

110. The Appellant was questioned as to why he did not just take the idea for himself or for the Company, and he was asked how **PERSON A** had such ownership of the product concept that the Company felt the need to give him or a mysterious random company 50% of the commission. In response, the Appellant stated that to do so would have been dishonourable, and that he had an agreement with **PERSON A** and his client. The Appellant stated that **PERSON A** and **PERSON B** were the public face of **COMPANY 2** and that the commission-sharing arrangement was with **COMPANY 2** because **COMPANY 2** was the entity the Company was instructed to pay money to.

111. The Appellant was questioned in relation to the nature of the **FINANCIAL** product and it was put to him that it was not a unique product or a complicated product but was instead quite a simple product. In response, the Appellant referred to the report by **WITNESS 4** and further gave an example of how the product worked and was structured. When asked how **COMPANY 2** could have been familiar with the Irish [redacted] rules given that the product they were familiar with was marketed and sold in the UK, the Appellant responded that he could only surmise that the rules in the UK were similar to those in Ireland.

112. The Appellant clarified that there was only ever one face-to-face meeting in relation to the **FINANCIAL** product, and that this meeting was the event which was held in 1997. Thereafter, he stated that there would have been a significant

number of telephone calls, faxes and emails during the setup of the **FINANCIAL** product and during the application for approval to Revenue.

113. The Appellant was then asked about his personal **FINANCIAL INSTITUTION 1** account which he held in the Isle of Man and into which the IR£15,000 was paid. He was asked whether he made returns of the interest earned on that account in his tax returns made for the periods 1997/98 to 2000/01, and he confirmed that he did not.

114. The Appellant was also asked to clarify how he had earned the IR£15,000 commission and he stated that the commission that he earned was based on the fact that the product was a one-off product for **FINANCIAL INSTITUTION 1** in the Isle of Man, and as a result he specifically negotiated the commission. He stated that as far as he was aware, his client had a number of different accounts in a number of different jurisdictions and in a number of different currencies. He stated that the client had agreed a 2% commission with him and that **FINANCIAL INSTITUTION 1** in the Isle of Man opened up a bank account for him into which the commission was paid. He stated that the reason that the commission was paid in two different tranches was because the product itself was purchased in two different tranches.

115. The Appellant stated that he used the money in his **FINANCIAL INSTITUTION 1** Isle of Man personal bank account to pay money on behalf of **COMPANY 2** because, as he saw it, this was difficult money for him to use. He saw the payment to **COMPANY 2** as reducing an obligation to **COMPANY 2** that he might have had in another way. When asked to clarify this, the Appellant stated that **COMPANY 2** had also been a client of the Company, and that the Company had earned significant commissions on **COMPANY 2**'s investment business which it had

placed with **FINANCIAL INSTITUTION 5**. He stated that **COMPANY 2** became a client of the Company in 1998/99 and that he had been approached by the people he had always dealt with on behalf of **COMPANY 2** in relation to **COMPANY 2** forming a client relationship with the Company. He stated that his investment advice or services to **COMPANY 2** consisted only of introducing **COMPANY 2** to **FINANCIAL INSTITUTION 5**, who shared the fees generated from this business with the Company. He stated that there was no work involved in this, it was simply an introduction of **COMPANY 2** to **FINANCIAL INSTITUTION 5**. He stated that because the Company had a healthy commission build up from the **COMPANY 2** introduction, he was happy to release some of his personal funds.

116. The Appellant stated that **COMPANY 2** ceased to be a client of the Company sometime in or around 2002 and that this coincided with the end of the **FINANCIAL INSTITUTION 2** business.

117. The following people also gave evidence on behalf of the Appellant:

(a) WITNESS 3

(b) WITNESS 4

(c) WITNESS 5

Evidence of WITNESS 3

118. **WITNESS 3** stated that he was the CEO of a **FINANCIAL** company based in [redacted] and that prior to that he worked for **FINANCIAL INSTITUTION 1**, having responsibility for the Isle of Man group, and also as Managing Director of the **FINANCIAL INSTITUTION 1 TRUST COMPANY** (hereinafter the **"Trust Company"**), a position which he held from 1999. He stated that the Trust Company was a fiduciary company managing and administering companies on

trusts on behalf of clients and that he typically had responsibility for between 200 and 300 companies at a time.

119. **WITNESS 3** gave evidence as to the meaning of the letter of the 20th July 2006, which was written by the Trust Company to the Company. He stated that he recalled providing the letter to the Company of foot of a meeting in the Isle of Man. He stated that he did not recall the nature of the research undertaken in order to confirm who the ultimate recipient of the IR£4,000 cheque was, but he stated that it would have involved examining whatever file was available at the time the letter was written. He stated that "*third party*" in the letter meant that the funds lodged would have been allocated to a completely unrelated party to the parties actually asking him to produce the correspondence. He also stated that his research would have satisfied him that the "*non-resident*" third party was not an Irish resident, prior to providing the letter.

120. **WITNESS 3** confirmed that to the best of his knowledge he was a director of **COMPANY 2**. He stated that he based this assertion on the fact that as Managing Director of the Trust Company, he would have assumed responsibility for all of the client companies when he took up his position. He stated that he was not surprised, and it was not unusual, that **COMPANY 2** was in fact registered in the British Virgin Islands, as sometimes companies choose the British Virgin Islands because of different corporate legislation there and simultaneously wanted their companies administered through the Isle of Man, which was a jurisdiction which they were more familiar with. He stated that there was a separate register for foreign companies in the Isle of Man Companies House which would have listed foreign companies that were administered in the Isle of Man. He stated that to the best of his knowledge neither the Appellant nor the Company had any interest, ownership or otherwise, in **COMPANY 2**.

121. In relation to **PERSON A** and **PERSON B**, **WITNESS 3** stated that when he joined the Trust Company in 1999, **PERSON A** was attached to **FINANCIAL INSTITUTION 1** and **PERSON B** was attached to the Trust Company.

122. In cross-examination, **WITNESS 3** clarified that he did not have any direct recollection of his directorship of **COMPANY 2** and that he was basing his evidence on the fact that **COMPANY 2** appeared to be managed and administered through the Trust Company. **WITNESS 3** was unable to provide any corroborative evidence that **COMPANY 2** was in fact managed and administered through the Trust Company. He stated that he vividly recalled the meeting in 2006 which he had with the Appellant, who had travelled to the Isle of Man, and that this would have prompted him to research the records held by the Trust Company in relation to **COMPANY 2** prior to providing the letter.

Evidence of WITNESS 4

123. **WITNESS 4** gave evidence that he is a [redacted] consultant and that prior to this he worked as [redacted] with the Revenue Commissioners and was the manager of the [redacted] Unit in Large Cases. He stated that he was familiar with the **FINANCIAL** product the subject matter of the commission-sharing arrangement and that he had prepared a report in relation to same in May 2010. He stated that the [redacted] product was registered with Revenue [redacted] in accordance with the Revenue rules which applied at the time. **WITNESS 4** explained the workings of the **FINANCIAL INSTITUTION 2 PRODUCT** and also explained why he described the Company **FINANCIAL PRODUCT** as "*a rather clever concept*". He stated that the particular product that the Company was offering, and which the Company

registered with Revenue, was not available from anyone else in the industry and that it was a unique product offering. He stated that he did not recall any similar product being submitted to Revenue [redacted] and in his view it was a unique product.

124. In cross examination, **WITNESS 4** further clarified that he would have [redacted] every product which was being registered with Revenue at that time and that, although there was nothing to stop any other [redacted] scheme offering the same **FINANCIAL PRODUCT** as the Company, he was fairly confident that there was no other product of this type being offered for sale. He also stated that, although the **FINANCIAL INSTITUTION 2** element of the **FINANCIAL** product was a core part of the product, and when the **FINANCIAL INSTITUTION 2** product was withdrawn the Company **FINANCIAL** product then became unattractive to investors, the **FINANCIAL INSTITUTION 2** element of the **FINANCIAL** product amounted to approximately 50% of the 'attractiveness' of the product, with the remaining 50% coming from the fact that it was being offered [redacted].

Evidence of WITNESS 5

125. **WITNESS 5** gave evidence that he was [redacted] the Irish Brokers Association, a position which he had held for some time, and that prior to that he had an extensive career in the finance and insurance industry in Ireland. **WITNESS 5** identified a document which he had written dated the 4th of July 2010 which set out the practice pertaining to commission-sharing arrangements in the 1990s. He stated that it was in the nature of small businesses and their growth that they would refer business to each other. He stated that in the 1990s, professional referrers such as accountants and solicitors would refer business to

brokers and on that basis it was very common practice that a portion of the commission would be ceded to or shared with those referrers. He stated that, in the main, referrals would have been made by professionals but there were times when commission was ceded back to clients. He went on to state that commission-sharing arrangements would generally have been very, very informal and that he himself had never seen a formal agreement in relation to commission-sharing. He described a situation where there was, in effect, a self-regulating system in place which meant that if a broker did not honour a commission-sharing agreement then the referrer would not refer any further business to them. He stated that the whole area of commission-sharing at that time in Ireland was based on trust.

126. **WITNESS 5** stated that the commission-sharing rates depended on the level of referrals being received from the particular referrer, but that it was not unusual to see rates of 50/50 or 60/40.

127. In cross-examination, **WITNESS 5** was asked whether he was aware of any advisors who had commission-sharing arrangements with companies where the advisor did not know the identity of the company's owners. He stated that he had not come across a situation like that.

128. The Appellant's written and oral submissions can be summarised as follows:-

(a) The Respondent's investigation began in 2005 and was at all times stated by the Respondent to be in relation to the Company;

(b) The Respondent's case at the outset was in factual terms that this was a diverted funds case;

(c) The Company had provided all documentation requested by the Respondent which was in its power or procurement;

(d) The evidence, documentary and oral, of the Appellant, the Company, **WITNESS 3**, **WITNESS 4** and **WITNESS 5** supported the Company's and the Appellant's position that:

i. The Company had received information from **COMPANY 2** and/or its representative in 1997 in relation to a lucrative **FINANCIAL** product which had, prior to that point, been sold in the UK with good success and profitability;

ii. **COMPANY 2** were seeking a partner who would market and sell the **FINANCIAL** product in Ireland and on that basis approached the Company in relation to same;

iii. The Company, on receipt of detailed information, recognised the extremely advantageous nature of the **FINANCIAL** product and began working towards [redacted] with Revenue and carried out discussions with **FINANCIAL INSTITUTION 2** whose product would subsequently form 50% of the **FINANCIAL** product which the Company sold;

iv. The Company agreed a 50/50 commission-sharing arrangement with **COMPANY 2** in relation to the **FINANCIAL INSTITUTION 2** element of the **FINANCIAL** product;

v. The Company's commission received from **FINANCIAL INSTITUTION 2** increased hugely in 1998 as a result of the selling of the **FINANCIAL** product;

vi. The Company first became aware of the existence of **COMPANY 2** when it first sought to pay over the 50% share of the commission as agreed;

vii. As far as the Company was concerned, **PERSON A** and **PERSON B** were representatives of a client who had shared the **FINANCIAL** product idea with the Company;

viii. All of the Company's dealings with **FINANCIAL INSTITUTION 1** were on behalf of clients of **FINANCIAL INSTITUTION 1**;

ix. The Company sent cheques to **FINANCIAL INSTITUTION 1** in the Isle of Man, which said cheques were lodged to the benefit of **COMPANY 2** on foot of a commission-sharing arrangement;

x. The Company was aware that the information it had received in relation to the structure and working of the **FINANCIAL** product was valuable and, even though no formal agreement was ever entered into between the Company and **COMPANY 2**, it was a matter of professional and personal honour that the commission was paid by the Company to **COMPANY 2**;

xi. The **FINANCIAL** product on which the Company had received information was a unique product and no other such product was being sold in Ireland at that time;

xii. The accounting treatment of the commission-sharing arrangement by the Company complied with accounting standards;

xiii. Commission-sharing arrangements were common place in the mid- to late-1990s.

(e) The Respondent formed the view that the Company was guilty of fraud and neglect and it was on that basis that it proposed a settlement with the Company in 2010;

(f) The Respondent did not raise assessments against the Company at any point;

(g) The Respondent subsequently changed its mind in relation to its view that the Company was guilty of fraud and neglect and without warning raised the amended assessments the subject matter of the within appeal on the Appellant personally;

(h) The Respondent delayed in dealing with the Appellant's 2006 voluntary disclosure until 2011 which was contrary to the Revenue Customer Service Charter;

(i) In coming to the view that the Appellant was guilty of fraud and neglect, the Respondent had not made any separate enquiries into the Appellant's tax affairs and had not established any grounds for coming to that view;

(j) The assessments raised against the Appellant were based on conjecture, supposition and mere suspicion;

(k) The Appellant's 2006 voluntary disclosure did not qualify as a method to determine that there had not been full and true disclosure by the Appellant and therefore was not a basis on which the Respondent could rely to reopen the Appellant's affairs beyond the four year time limit contained in section 955(2) of TCA1997;

(l) The assessments under appeal were based on the commission payments made by the Company and so they were incapable of assessment under section 58 of TCA1997 as they were not profits or gains from an unknown or unlawful source, and that they were further related to the Company and not to the Appellant; and,

(m) By reason of the aforesaid, the Appellant was not a chargeable person in respect of the matters under appeal.

G. ***Preliminary question of time limitation for amending assessments***

129. The Appellant has raised as a preliminary issue an argument that the assessments were made outside the four-year time limit specified in Part 41 of the TCA1997.

130. It is therefore appropriate and necessary that prior to considering the substantive appeal, I consider the preliminary question of time limitation for the raising of amended assessments.

131. The Appellant has submitted that once a taxpayer has filed his tax returns in accordance with section 951 of TCA1997, he is protected from any enquiry into his tax affairs or to a claim to tax outside the four-year time limit contained in section 955(2) unless the provisions of section 955(2)(b) are applicable. The Appellant submitted that after he made a disclosure in 2006 in respect of the tax years in issue – 1997/98 to 2000/01 inclusive – he had complied with his obligations to make a full and true return in respect of those years. The Appellant submitted that there was no question of fraud or neglect on his part and that the amended assessments raised by the Respondent in 2011 were time barred and consequently void.

132. The Respondent in turn has submitted that the Appellant failed to provide a full and true disclosure of all material facts in the returns he made for the periods in question.

133. The Appellant admitted, through his own voluntary disclosure made in March 2006, that he received a commission payment of IR£15,000 in May 1996 and that this sum was lodged in an Isle of Man deposit account with **FINANCIAL INSTITUTION 1**. The Appellant further admitted in his March 2006 voluntary disclosure that he had received interest payments in the sum of IR£4,302.58 on

the said sum whilst it had been held in the **FINANCIAL INSTITUTION 1** Isle of Man account and that the said account was opened on the 23rd of May 1996 and was closed on the 16th of October 2000.

134. The amended assessments under appeal are for the periods 1997/98, 1998/99. 1999/00 and 2000/01.

135. I am satisfied that the voluntary disclosure made by the Appellant in March 2006 demonstrates that the Appellant had neglected to include in his returns for the relevant periods both the initial commission payment of IR£15,000 and the interest amounts which accrued on the initial amount lodged between May 1996 and October 2000.

136. I am satisfied that, as a result of the failure by the Appellant to include the above mentioned matters in his returns for those periods, the Respondent was entitled to rely on the provisions of section 955(2)(b)(i) of TCA1997 and was accordingly entitled to amend the Appellant's assessments for the periods 1997/98, 1998/99, 1999/00 and 2000/01.

137. The Appellant's preliminary objection in respect of the time limit for the raising of the amended assessments by the Respondent therefore fails.

H. Analysis and findings – substantive issue

138. The Respondent entered into evidence first on the basis that a preliminary issue had been raised by the Appellant in respect of the time limitation for the raising of the amended assessments by the Respondent. In relation to the substantive issue, however, this is the Appellant's appeal and it is well-established that the onus of proof in any appeal to the TAC lies with the Appellant.

139. It is clear from the correspondence which I have set out at some length *supra* that there was extensive engagement between the parties prior to the raising of the amended assessments now being appealed.

140. By way of preliminary observation, it seems to me that throughout the correspondence between the parties there appears to have been an intermingling of identities. Both the Appellant and the Respondent appear at times to have fallen into the trap of conflating the Company and the Appellant as being one and the same legal entity. The Appellant in his evidence admitted that he fell into this trap when referring both to himself and the Company and also when referring to **PERSON A**, **FINANCIAL INSTITUTION 1** and **COMPANY 2**. It appears to me that this may have played a part in the development of the Respondent's enquiries.

141. There are two main issues of fact which I have to decide on a balance of probabilities basis, namely:-

(a) whether a commission-sharing arrangement existed between the Company and another entity in relation to the **FINANCIAL** product; and,

(b) whether **COMPANY 2** was the beneficiary of the five Company cheques lodged to **FINANCIAL INSTITUTION 1** in the Isle of Man.

142. To succeed in his appeal, the Appellant must satisfy me that both of those questions should be answered in the affirmative. The burden of proof rests with

the Appellant in relation to both issues and the evidence put forward by him and on his behalf must satisfy me on a balance of probabilities basis.

(a) Did a commission sharing agreement exist between the Company and another entity in relation to the FINANCIAL product?

143. Having carefully considered all of the evidence put before me, I find that the evidence of the Appellant during the hearing before me was generally truthful and accurate. I accept on the balance of probabilities that the initial contact between the Company and **PERSON A** on behalf of **COMPANY 2** occurred as described by the Appellant. The Appellant in his evidence stated that by 1997 he had a long-standing business relationship with both **FINANCIAL INSTITUTION 1** and **PERSON A**. The Appellant's evidence was that such was his relationship with **FINANCIAL INSTITUTION 1** that the Company operated the **FINANCIAL INSTITUTION 1** [redacted] scheme, and that he considered it an honour to have been selected as the provider for that scheme. This supports the Appellant's evidence that he and the Company had a long-standing business relationship with **FINANCIAL INSTITUTION 1** and it also supports the Appellant's contention that this was the reason that **PERSON A** divulged valuable information to the Appellant and the Company at a social gathering. I note and can understand the Respondent's suspicions in relation to this; however, on the balance of probabilities I accept the Appellant's explanation in this regard.

144. The Appellant's and the Company's contention that the **FINANCIAL** product was unique and that no other company in Ireland was selling such a product is supported by **WITNESS 4**'s report and evidence. **WITNESS 4** gave evidence that he was the [redacted] in Revenue who personally [redacted] which were required to [redacted] in

accordance with the regulations in place at that time. **WITNESS 4** gave evidence that, while the product itself may not have been extremely complex in nature, it was innovative in its construction and operation and that, to the best of his knowledge, it was the only product of this type that had [redacted] with Revenue. The Respondent did not put forward any evidence which countered **WITNESS 4**'s evidence. I accept **WITNESS 4**'s evidence in this regard on the balance of probabilities.

145. I further accept as correct **WITNESS 5**'s evidence that, although commission-sharing arrangements were commonplace at the time, he personally had never seen a formal commission-sharing arrangement. The Respondent did not put forward any evidence which countered **WITNESS 5**'s evidence. I accept **WITNESS 5**'s evidence in this regard on the balance of probabilities.

146. I also accept the Appellant's evidence that, following [redacted] with Revenue and the Company beginning to sell the **FINANCIAL** product, the Company's commission from **FINANCIAL INSTITUTION 2** increased at an extraordinary rate from an amount of IR£[redacted] in 1997 to IR£[redacted] in 1998 and IR£[redacted] in 1999. The Appellant submitted documentation from the Company and from **FINANCIAL INSTITUTION 2** in that regard. The Respondent did not produce any evidence which countered this assertion. I accept this evidence on the balance of probabilities.

147. It is trite to say that business in the mid- to late-1990s was conducted in an entirely different atmosphere than it is today. The regulatory landscape was radically different then, and it is widely accepted that light touch regulation was the regime generally in place during that period. In my opinion, it would not be correct to impose today's regulatory standards in relation to commission-sharing

and the operation of commission-sharing arrangements on an arrangement which was in operation from 1997/98.

148. All of the above leads me to accept on the balance of probabilities that a commission-sharing arrangement did exist between the Company and another entity in relation to the **FINANCIAL** product. Therefore the answer to the question at (a) is yes, and I so find as a material fact.

(b) Was COMPANY 2 the beneficiary of the five Company cheques lodged to FINANCIAL INSTITUTION 1 in the Isle of Man?

149. The Respondent's investigation began in May 2005 when it came into possession of five Company cheques dated in 1999 and which were made payable to **FINANCIAL INSTITUTION 1** in the Isle of Man. The Respondent naturally wished to establish the identity of the ultimate beneficiary of those cheques.

150. While the Company and the Appellant provided certain information in relation to **COMPANY 2** during the Respondent's investigation, it is clear from the correspondence that the Respondent was not satisfied with the extent of the information given, and it is not difficult to see why such dissatisfaction was expressed.

151. In attempting to satisfy the Respondent that **COMPANY 2** was the beneficiary of the cheques, the Company and the Appellant explained that they only became aware of the existence of **COMPANY 2** when it came time to make the first commission-sharing payment. The Appellant stated that his contact **PERSON A**, or another individual in **FINANCIAL INSTITUTION 1** in the Isle of Man, informed

him in early- to mid-1998 that the commission-sharing payments were to be for the benefit of **COMPANY 2**.

152. The Appellant stated that he and the Company were limited in their ability to shed further light in relation to **COMPANY 2** as the relationship between the Company and **COMPANY 2** had ceased sometime in or around 2002 when **COMPANY 2** ceased being a client of the Company. The Appellant stated that the **FINANCIAL INSTITUTION 2** product was removed from the market in late 1998 and that consequently the commission-sharing relationship with **COMPANY 2** ceased sometime in late 1999 or early 2000, when the commissions in relation to the **FINANCIAL INSTITUTION 2** product ceased to be received.

153. In support of his assertion that **COMPANY 2** was the beneficiary of the five cheques, the Appellant submitted the following documentation and evidence:-

(a) Memorandum and Articles of Association for **COMPANY 2** which was registered in the British Virgin Islands;

(b) an extract from the Isle of Man Companies Office website;

(c) authorisations allowing the Respondent to engage with **PERSON A** and **PERSON B** in relation to the Company's tax affairs;

(d) the evidence of **WITNESS 3**, who confirmed that to the best of his knowledge he was a director of **COMPANY 2** in the context of his position in **FINANCIAL INSTITUTION 1 TRUST COMPANY** in the Isle of Man;

(e) the evidence of the Appellant that **FINANCIAL INSTITUTION 5** provided him with the account opening form that they held in relation to **COMPANY 2**, which listed the directors of **COMPANY 2** and also provided the company registration number in the British Virgin Islands.

154. In considering the credibility of the Appellant in this regard, I have also considered the Appellant's overall credibility and although the Respondent pointed out that they did not have the opportunity to test the veracity of much of the documentary evidence, I am satisfied as to the Appellant's overall credibility. I am also satisfied that the Appellant took every step possible to provide information in relation to **COMPANY 2** to the Respondent, including but not limited to undertaking travel to the Isle of Man to meet with **WITNESS 3**, carrying out searches of the Isle of Man CRO, providing the Respondent with authorities to contact **PERSON A** and **PERSON B**, and providing the Respondent with authority to contact **FINANCIAL INSTITUTION 2**.

155. Having considered all of the evidence given over a period of three days, the documentation submitted and the submissions of the parties, I am satisfied on the balance of probabilities that **COMPANY 2** was the beneficiary of the five Company cheques lodged to the **FINANCIAL INSTITUTION 1** in the Isle of Man. Therefore the answer to question (b) is yes, and I so find as a material fact. I further accept on the balance of probabilities the Appellant's evidence, which was supported by the testimony of **WITNESS 3**, that he did not, either directly or indirectly, have any beneficial interest in **COMPANY 2**, and I so find as a material fact.

156. In reaching these conclusions, I have also considered the evidence given on behalf of the Respondent which confirmed that the amended assessments raised against the Appellant reflected the figures which had been used by the Respondent in its 2010 proposed settlement with the Company. I have also taken into consideration the acceptance by the Respondent that the basis of the proposed 2010 proposed settlement with the Company was that the Respondent believed that section 919(5) of TCA1997 was applicable because there had been fraud or neglect on the part of the Company.

157. In addition, I have considered the Respondent's evidence that, subsequent to coming to its position that it believed that there was fraud or neglect on the part of the Company, it formed the view that the Appellant was personally liable and that he fell within section 919(4)(b)(ii) of TCA1997 in that regard.

158. The Respondent's evidence was that it had made no additional enquiries into the Appellant's personal tax position in coming to form its view in relation to the Appellant and prior to raising the amended assessments on the Appellant. The Respondent's evidence was also that it could not point to any unexplained income on the part of the Appellant; it confirmed that no enquiries were made into the Appellant's SA1s or pension and that no enquiries in relation to the Appellant's voluntary disclosure in 2006 had been made. The Respondent in evidence also accepted that it had not raised assessments against the Company despite its 2010 proposed settlement and that its decision to raise amended assessments against the Appellant was at least in part based on suspicion and dissatisfaction with the information provided.

I. Determination

159. For the reasons set forth above, having fully considered the facts and circumstances of this appeal, and evaluated the documentary and oral evidence as well as the submissions from both parties, I have concluded that the Appellant has succeeded in discharging the burden of proof in relation to this appeal.

160. As a result, I determine that the Appellant has, by reason of the amended assessments for 1997/98, 1998/99, 1999/2000 and 2000/01, been overcharged and determine in accordance with section 949AK(1) of TCA1997 that those amended assessments should be reduced accordingly.

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MARK O'MAHONY

APPEAL COMMISSIONER

27 January 2021