



115TACD2022

Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as a decision by the Revenue Commissioners (hereinafter the “Respondent”) on 12th April 2018 in relation to the stamp duty chargeable on Deeds of Transfer / Assignment.
2. The total amount of tax at issue is €72,250.
3. The oral hearing took place before the Commissioner on 25th May 2022. Mr ██████████ (hereinafter the “Appellant”) was represented by a solicitor. Counsel appeared on behalf of the Respondent. The Commissioner heard evidence and submissions on behalf of the Appellant and submissions on behalf of the Respondent.

Background

4. The Appellant is a businessman who owned 10 properties (hereinafter the “Properties”) either jointly or as tenants in common with his brother as follows:

- i. [REDACTED], Cork County Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 1");
 - ii. [REDACTED] Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 2");
 - iii. [REDACTED] Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 3");
 - iv. [REDACTED] Cork held by the Appellant and his brother as joint tenants (hereinafter "Property 4");
 - v. [REDACTED] Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 5");
 - vi. [REDACTED], Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 6");
 - vii. [REDACTED], Cork held by the Appellant and his brother as joint tenants (hereinafter "Property 7");
 - viii. [REDACTED], Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 8");
 - ix. [REDACTED], Cork held by the Appellant and his brother as tenants in common (hereinafter "Property 9");
 - x. [REDACTED], Cork held by the Appellant and his brother as joint tenants (hereinafter "Property 10");
5. In or around 2009 the Appellant and his brother had charged the Properties to [REDACTED] [REDACTED] which said charges were transferred to [REDACTED] DAC (hereinafter the "Mortgagee") in or around November 2014.
6. In March 2015 the Mortgagee appointed [REDACTED] and [REDACTED] (hereinafter the "Receivers") as receivers over the Properties.
7. Subsequent to the appointment of the Receivers the Appellant secured finance facilities from [REDACTED] DAC to purchase the Properties.
8. On 17th October 2017 the Appellant and his brother as "Vendors" of the first part, the Receivers of the second part and the Appellant as "Purchaser" of the third part entered into Deeds of Transfer / Deeds of Assignment (hereinafter the "Instruments") for the Properties for the following amounts:
 - i. Property 1: €1,980,000.00 non-residential property
 - ii. Property 2: €1,700,000.00 non-residential property
 - iii. Property 3: €30,000.00 non-residential property

- iv. Property 4: €550,000.00 residential and €1,100,000.00 non-residential
- v. Property 5: €755,000.00 non residential
- vi. Property 6: €20,000.00 non-residential
- vii. Property 7: €450,000.00 non-residential
- viii. Property 8: €300,000.00 non-residential
- ix. Property 9: €15,000.00 non-residential
- x. Property 10: €600,000.00 non-residential

9. On 6th November 2017 ten stamp duty returns were filed with the Respondent by [REDACTED] Solicitors, acting for [REDACTED] DAC, in respect of the ten deeds of conveyance or transfers of property to the Appellant for the following amounts totalling €72,250.00 and representing stamp duty on 50% of the consideration paid by the Appellant under the said Instruments:

- i. Property 1: €19,800.00 non-residential
- ii. Property 2: €17,000 non-residential
- iii. Property 3: €300.00 non-residential
- iv. Property 4: €2,750.00 residential and €11,000.00 non-residential
- v. Property 5: €7,550.00 non residential
- vi. Property 6: €200.00 non-residential
- vii. Property 7: €4,500.00 non-residential
- viii. Property 8: €3,000.00 non-residential
- ix. Property 9: €150.00 non-residential
- x. Property 10: €6,000.00 non-residential

10. The “Expression of Doubt” box was ticked on each of these stamp duty returns and by letter dated 17th November 2017 [REDACTED] Solicitors, acting for [REDACTED] DAC set out the doubt as follows:

“Our Client: [REDACTED] DAC

Borrower: [REDACTED] (the “Borrower”)

Properties: (1) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (2) [REDACTED]
[REDACTED], (3) [REDACTED]
[REDACTED], (4) [REDACTED]
[REDACTED], (5) [REDACTED]
[REDACTED] and (6) [REDACTED]
[REDACTED] (the "Properties").

Document IDs: [REDACTED]
[REDACTED]
[REDACTED],

Dear Sirs,

We act for [REDACTED] DAC, who by a Facility Letter dated 19 June 2017 granted certain facilities to the Borrower to purchase the Properties from [REDACTED] and [REDACTED] the duly appointed receivers (the "Receivers") over certain assets of the Borrower and [REDACTED]. [REDACTED] DAC appointed the Receivers over the Properties by deeds of appointment dated 4 March 2015 and 31 August 2017.

As part of the taking of security from the Borrower on behalf of our client, we were instructed by the Borrower and his Solicitors, [REDACTED] Solicitors to submit online stamp duty returns for the properties and file an Expression of Doubt.

We have as instructed paid stamp duty in the sum of €72,250 which represents the full stamp duty due to the Revenue Commissioners on 50% of the total consideration paid by the Borrower to the Receivers, with the entire consideration as recited in the deeds being required to be paid to the Receiver, for the outgoing charge holder [REDACTED] DAC to provide a deed of release of its security over the Properties. The Borrower already held a 50% interest in the Properties and has now pursuant to the various deeds acquired [REDACTED] 50% interest in the Properties from the Receivers.

We enclose the following documentation for your review:

1. *Letter from the Borrower's Tax Advisors, [REDACTED] which summarises the basis for the assessment if the stamp duty liability and Expression of Doubt.*
2. *Certified copy of each of the deeds to the Borrower in respect of the Properties together with the stamp duty payment instruction form for each deed.*

We would be obliged if you would please now revert to confirm that the assessment of the stamp duty liability is correct and that a stamp duty certificate can now be furnished in respect of each of the deeds for the Properties."

11. The letter from [REDACTED] referred to in the letter from [REDACTED] Solicitors above was dated 8th November 2017 and stated as follows:

"We are writing to express doubt in relation to the stamp duty returns for the above transactions. The Appendix contains a list of the relevant stamp duty ID.

We have outlined below the relevant issue and how the stamp duty has been treated to reflect the beneficial interest passing under the deed of conveyance.

[REDACTED] and [REDACTED] own certain assets, over which Receivers were appointed on 4 March 2015. The Receivers have already sold some assets to third parties. The current transaction involves the Receivers in their fiduciary capacity, disposing of the Properties listed in the Appendix to [REDACTED]

The contract and deed of conveyance reflect the Receivers selling the properties to [REDACTED]. As the Receivers are acting in a fiduciary capacity, the only beneficial interest transferring is the 50% share held by [REDACTED] to [REDACTED], as [REDACTED] already holds his 50% interest in the properties.

While the deeds reflect the full consideration as [REDACTED] is only acquiring the 50% interest held by [REDACTED], the stamp duty due is only in relation to 50% of the consideration. Therefore, the stamp duty payment has been made on this basis."

12. On 20th December 2017 [REDACTED] Solicitors acting for the Mortgagee wrote to the Respondent in relation to the Expression of Doubt as follows:

"I refer to our discussion yesterday afternoon.

As you are aware from this submission, we act for [REDACTED] [REDACTED] DAC which granted certain facilities to [REDACTED] to purchase the Properties and settle his debt with [REDACTED] DAC. [REDACTED] entered into a Contract for Sale to purchase the Properties with [REDACTED] and [REDACTED] (the "Receivers") the duly appointed receivers over the Properties which were jointly owned by [REDACTED] and [REDACTED]. The full consideration due to the Receivers, [REDACTED] [REDACTED] DAC for the Properties was recited in each Deed of Assurance, notwithstanding the fact that [REDACTED] already owned a 50% interest in each of the Properties.

It is a matter of law that [REDACTED] is unable to purchase his 50% interest in the Properties from himself, therefore, under each Deed of Assurance [REDACTED] acquired the 50% interest of [REDACTED] in the Properties. The consideration recited in each Deed of Assurance was applied/allocated as follows, 50% towards the purchase of [REDACTED] half interest with the remaining 50% (notwithstanding that this is not specifically referred to in each Deed of Assurance) representing the amount due in order for [REDACTED] [REDACTED] DAC to provide a Deed of Release of its security over the Properties. It is on this basis that [REDACTED] has paid to the revenue Commissioners 2% stamp duty in respect of the non-residential properties and 1% stamp duty in respect of the residential properties on 50% of the consideration recited in each Deed of Assurance for the Properties.

I note that you will discuss this case with your manager for a second opinion. Having said that, I note your initial view is that stamp duty must be paid by [REDACTED] on the entire of the consideration recited in each of the Deeds of Assurance as the entire consideration was paid over to the Receivers. We do not consider this is correct as it appears to us that beneficially the only interest being purchased is the 50% interest of [REDACTED] acquired by [REDACTED].

I would be grateful if you would revisit our application for an expression of doubt and look forward to hearing from you once you have had a chance to speak with your manager. In the meantime we confirm, as requested, we will not amend or vary our submission until such time as we hear further from you."

13. By correspondence dated 12th April 2018 the Respondent wrote to [REDACTED] solicitors confirming that the chargeable amount on each of the Instruments was the amount recited in the Instruments.

14. The Appellant lodged the within Notice of Appeal with the Commission on 11^h May 2018.

15. By email dated 21 May 2018 the Respondent wrote to the Appellant's solicitor as follows:

"I refer to the stamp duty appeal that you have lodged with the Tax Appeals Commission on 11 May 2018 in relation to ten stamp duty expression of doubt cases.

Appeals are made against assessments issued by Revenue in accordance with Section 21 Stamp Duties Consolidation Act 1999. We have not issued any assessments for these transactions. Revenue are willing to issue such assessments.

However we would like to point you towards Section 21(3)(a) Stamp Duties Consolidation Act 1999 that states that no appeal may be made against an assessment made by an accountable person.

In amending the stamp duty returns and paying the additional stamp duty, such an assessment has been made.

Please advise whether you still want me to issue an assessment on behalf of Revenue.

All 10 stamp certificates have now issued."

16. On 21st May 2018 the Respondent issued Stamp Certificates for the Properties as follows:

- i. Property 1: €39,600.00 non-residential
- ii. Property 2: €34,000 non-residential
- iii. Property 3: €600.00 non-residential
- iv. Property 4: €5,250.00 residential and €22,000.00 non-residential
- v. Property 5: €15,100.00 non residential
- vi. Property 6: €400.00 non-residential
- vii. Property 7: €9,000.00 non-residential
- viii. Property 8: €6,000.00 non-residential

- ix. Property 9: €300.00 non-residential
- x. Property 10: €12,000.00 non-residential

17. The Appellant has appealed the decision of the Respondent that 100% of the consideration appearing on Instruments dated 17th October 2017 was chargeable to stamp duty and the Stamp Certificates issued by the Respondent on 21st May 2018.

Legislation and Guidelines

18. The legislation relevant to the within appeal is as follows:

Section 1 of the Stamp Duties Consolidation Act 1999 (hereinafter the “SDCA1999”) – “Interpretation”:

“ ...

‘conveyance on sale’ includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, on the sale or compulsory acquisition of that property or that estate or that interest is transferred to or vested in a purchaser, or any other person on such purchaser's behalf or by such purchaser's direction;

...”

Section 2 of the SDCA1999 – “Charging of, liability for, and recovery of stamp duty”:

“(1) Any instrument which—

(a) is specified in Schedule 1, and

(b) is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State,

shall be chargeable with stamp duty.

(2) The stamp duties to be charged for the benefit of the Central Fund on the several instruments specified in Schedule 1 shall be the several duties specified in that Schedule, which duties shall be subject to the exemptions contained in this Act and in any other enactment for the time being in force.

(3) (a) Any instrument chargeable with stamp duty shall, unless it is written on duly stamped material, be duly stamped with the proper stamp duty before the expiration of 30 days after it is first executed, unless the opinion of the Commissioners with respect

to the amount of duty with which the instrument is chargeable, has, before such expiration, been required under this Act.

(b) If the opinion of the Commissioners with respect to any instrument chargeable with stamp duty has been required within 30 days after its first execution, the instrument shall be stamped in accordance with the assessment of the Commissioners within 14 days after notice of the assessment.

(4) Where any instrument chargeable with stamp duty is not stamped or is insufficiently stamped—

(a) the accountable person shall be liable, and

(b) where there is more than one such accountable person they shall be liable jointly and severally,

for the payment of the stamp duty or, where the instrument is insufficiently stamped, the additional stamp duty and such duty, additional duty and any penalty relating to any such duty shall be deemed to be a debt due by the accountable person to the Minister for the benefit of the Central Fund and shall be payable to the Commissioners and may (without prejudice to any other mode of recovery of the duty, additional duty and any penalty relating to such duty) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Attorney General or the Minister or the Commissioners in any court of competent jurisdiction, notwithstanding anything to the contrary contained in the Inland Revenue Regulation Act, 1890 .”

Section 7 of the SDCA1999 – “Instruments to be separately charged with duty in certain cases”:

“Except where express provision to the contrary is made by this or any other Act—

(a) an instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters;

(b) an instrument made for any consideration in respect of which it is chargeable with ad valorem duty, and also for any further or other valuable consideration or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations;

(c) without prejudice to the generality of paragraphs (a) and (b), where the consideration (other than rent) for the sale or lease of any property is partly attributable to residential property and partly attributable to property which is not residential property the instrument of conveyance or transfer or lease shall be chargeable to ad valorem stamp duty on the basis that it is a separate conveyance or transfer or lease of residential property to the extent that that consideration is attributable to residential property and also a separate conveyance or transfer or lease of property which is not residential property to the extent that that consideration is attributable to property which is not residential property.”

Section 41 of the SDCA1999 – “Expression of Doubt”:

“(1)In this section—

“the law” has the meaning assigned to it by subsection (2);

“letter of expression of doubt” means a communication received in legible form which—

(a)sets out full details of the facts and circumstances affecting the liability of an instrument to stamp duty, and makes reference to the provisions of the law giving rise to the doubt,

(b)identifies the amount of stamp duty in doubt in respect of the instrument to which the expression of doubt relates,

(c)is accompanied by supporting documentation as relevant, and

*(d) is clearly identified as a letter of expression of doubt for the purposes of this section,
and reference to 'an expression of doubt' shall be construed accordingly.*

(2)(a) Subject to paragraph (b), where, in relation to an instrument, an accountable person is in doubt as to the correct application of any enactment relating to stamp duty (in this section referred to as 'the law') to an instrument which could—

(i) give rise to a liability to stamp duty by that person, or

(ii) affects that person's liability to stamp duty or entitlement to an exemption or a relief from stamp duty,

then the accountable person may lodge a letter of expression of doubt with the Commissioners in such manner as the Commissioners may require.

(b) This subsection shall apply only if both—

(i) the electronic return or the paper return, and

(ii) the expression of doubt referred to in paragraph (a),

are delivered to the Commissioners before the expiration of 30 days after the instrument is first executed.

(3) Subject to subsection (4), where an accountable person causes an electronic return or a paper return to be delivered to the Commissioners and lodges an expression of doubt relating to the instrument in accordance with this section, then interest calculated in accordance with section 159D shall not apply to any additional stamp duty arising where the Commissioners notify the person of the correct application of the law to that instrument and the return will not be deemed to be an incorrect return if an amended return, which includes an assessment to be substituted for an earlier assessment, is delivered and the additional duty is paid within 30 days of the date on which that notification is issued.

(4) Subsection (3) does not apply where the Commissioners do not accept as genuine an expression of doubt in relation to the correct application of the law to an instrument, and

an expression of doubt shall not be accepted as genuine in particular where the Commissioners—

(a) have issued general guidelines concerning the application of the law in similar circumstances,

(b) are of the opinion that the matter is otherwise sufficiently free from doubt as not to warrant an expression of doubt, or

(c) are of the opinion that the accountable person was acting with a view to the evasion or avoidance of duty.

(5) Where the Commissioners do not accept an expression of doubt as genuine, they shall notify the accountable person accordingly and the accountable person shall, on receipt of the notification, cause an amended return that includes an assessment to be substituted for an earlier assessment to be delivered and the additional duty to be paid together with any interest payable calculated in accordance with section 159D.

(6) An accountable person aggrieved by a decision of the Commissioners under subsection (5) that the accountable person's expression of doubt is not genuine may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notice of that decision."

Section 21 of the SDCA1999 – “Right of appeal of persons dissatisfied with assessment or decision”:

“(2) An accountable person aggrieved by an assessment to stamp duty made on that person may appeal the assessment to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notice of assessment.

(3) No appeal may be made against—

(a) an assessment made by an accountable person, or

(b) an assessment made on an accountable person by the Commissioners, where the duty had been agreed between the Commissioners and the accountable person, or

any person authorised by the accountable person in that behalf, before the making of the assessment.

(4)(a)Where—

(i)an accountable person fails to cause an electronic return or a paper return to be delivered in relation to an instrument, or

(ii)the Commissioners are not satisfied with the electronic return or the paper return which has been delivered, or have received any information as to its insufficiency,

and the Commissioners make an assessment in accordance with section 20, no appeal lies against the assessment until such time as—

(I)in a case to which subparagraph (i) applies, an electronic return or a paper return is delivered to the Commissioners, and

(II)in a case to which either subparagraph (i) or (ii) applies, the accountable person pays or has paid an amount of duty on foot of the assessment which is not less than the duty which would be payable on foot of the assessment if the assessment were made in all respects by reference to the return delivered to the Commissioners.

(b)References in this subsection to an amount of duty shall be construed as including a surcharge under section 14A(3) and any amount of interest which would be due and payable on that duty, calculated in accordance with section 159D, at the date of payment of the duty, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the duty contained in the assessment.

(8)Notwithstanding subsection (2)—

(a)any person dissatisfied with any decision of the Commissioners as to the value of any land for the purpose of an assessment under this Act may appeal against such decision in the manner prescribed by section 33 (as amended by the Property Values (Arbitrations and Appeals) Act 1960) of the Finance (1909-10) Act 1910, and so much of Part I of that Act as relates to appeals shall apply to an appeal under this subsection;

(b)an appeal shall not lie under subsection (2) on any question relating to the value of any land.

(9)In default of an appeal, in accordance with section 949I of the Taxes Consolidation Act 1997 or section 121, as the case may be, being made by an accountable person to whom a notice of assessment has been given, the assessment made on the person shall be final and conclusive.

(10)An assessment that is otherwise final and conclusive shall not, for any purpose of this Act, be regarded as not final and conclusive or as ceasing to be final and conclusive by reason only of the fact that a Revenue officer has amended, or may amend, the assessment.”

Section 41 of the SDCA1999 – “Conveyance in consideration of debt”:

“(1)Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem duty.

(2)Where, in connection with or as part of any arrangement involving any conveyance referred to in subsection (1) of stock of a company, the transferee procures, either directly or indirectly, the discharge of any indebtedness of the company (in this subsection referred to as the “first-mentioned company”) or of any other company which is connected with the first-mentioned company within the meaning of section 10 of the Taxes Consolidation Act 1997, and the main or one of the main purposes of the arrangement is to secure a tax advantage, then the conveyance shall, in addition to any other payment of money or transfer of stock to which it is subject (if any), be deemed to be subject to the payment of an amount equal to the amount of such indebtedness.

(3)In subsection (2)—

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“tax advantage” means the avoidance or reduction of a charge to stamp duty.”

Submissions

Appellant's Submissions

19. The Appellant submitted the following grounds of appeal in his Notice of Appeal to the Commission on 11th May 2018:

- i. The Appellant owned the Properties either jointly or as tenants in common with his brother;
- ii. The 10 instruments of conveyance and transfer effected a sale of a 50% beneficial interest only in the Properties the subject of the 10 instruments, such that the legal and beneficial owners of the Properties the subject of the instruments were the Appellant and his brother as to 50% each prior to the transfers and the Appellant as to 100% following the transactions;
- iii. The Appellant and his brother had charged the Properties to [REDACTED] and the benefit of the security was transferred to the Mortgagee;
- iv. The Receivers were appointed by the Mortgagee in March 2015 as receivers over the Properties the subject of the security;
- v. The consideration recited on the face of the instruments paid by the Appellant comprised of 50% paid for the beneficial interest passing from his brother (which was retained by the Receivers) and 50% being paid by the Appellant to secure the release of the Properties by the Mortgagee and the transfer to the Appellant of his brother's interest in the Properties.
- vi. Stamp duty is levied on "*amount or value of the consideration passing for the sale*". In this regard, the Appellant submitted that the sale was only of a 50% interest in the properties conveyed and the chargeable duty can only be levied on the consideration passing for those interests.
- vii. The Receivers, who participated in the sale, did not have a beneficial interest in the properties over which they were appointed. The Appellant submitted that any transfer of the properties effected by them is treated as beneficially by the beneficial owners of the properties which said point the Appellant submitted is accepted by the Respondent in their practice notes. The involvement of the Receivers is therefore to be effectively ignored in assessing what is comprised in the sale.

viii. Consideration paid to the Receivers by the Appellant is not consideration passing for the sale as the Appellant merely discharged his portion of the debt due on the Properties.

20. In written submissions the Appellant submitted that stamp duty is levied on any conveyance on sale falling within Schedule 1 of the SDCA1999 which he submitted is the relevant head of charge for the instruments concerning the Properties.

21. He submitted that a conveyance on sale includes every instrument, and every decree or order (including a decree or order for, or having effect of an order for, foreclosure) of any court or of any commissioners, whereby any property, or any estate or interest in any property, on the sale or compulsory acquisition of that property or that estate or that interest is transferred to or vested in a purchaser, or any other person on such purchaser's behalf or by such purchaser's direction.

22. He further submitted that stamp duty is chargeable where any property, or estate or interest in any property, is transferred on a sale to a purchaser or other person at the purchaser's direction.

23. It was submitted that where stamp duty is chargeable, it is then chargeable on the amount or value of the "*consideration for the sale*" pursuant to the wording of Schedule 1 of the SDCA1999. The Appellant submitted that in effect, *ad valorem* duty will generally be levied only on the consideration payable for the sale of the property in question under the Conveyance on Sale Head of Schedule 1 of the SDCA1999.

24. The Appellant submitted that an estate or interest in any property includes a co-owner's interest in a property and that it is accepted practice that a transfer by one co-owner of an interest in co-ownership property to another co-owner will crystallise a charge to stamp duty on the consideration moving from such co-owner as such a transfer will be "*on a sale*". This charge to stamp duty it was submitted will be levied only on the consideration moving for the transfer of the property or the estate or interest in the property.

25. It was submitted that in considering what stamp duty must be paid, consideration must be given to the property or interest in property being transferred to the purchaser and where the transfer arises on a sale, then stamp duty is chargeable only on the consideration passing for the sale. It was submitted that it is not all of the cash amounts or other consideration mentioned in an instrument on which stamp duty is charged but rather it is the consideration passing for the sale on which stamp duty which is charged. This arises,

the Appellant submitted, from a plain reading of the legislation in accordance with normal rules of statutory interpretation.

26. In addition the Appellant submitted that the SDCA1999 envisages a situation where one instrument can relate to several distinct matters and, in such case, prescribes that stamp duty shall be separately and distinctly charged as if it were a separate instrument.

27. The Appellant submitted that the interpretation of when the charge to stamp duty arises has been extended by the decision of Carroll J. in her decision in the case of *Waterford Glass (Group Services) Limited v Revenue Commissioners* IV ITR 187 (hereinafter “*Waterford*”), where she held:

“The court is entitled to look at the reality of what has been done. Just because the parties put a particular label on a transaction the court is not obliged to accept that label blindly. The court will look at the legal effect and the legal rights of the parties resulting from the transaction.”

28. It was submitted that it is the legal effect of what the documentation or transaction achieves that will dictate the outcome from a stamp duty perspective.

29. The Appellant submitted that section 108(2) of the Land and Conveyancing Law Reform Act 2009 provides that a receiver, although appointed at the behest of the mortgagee, will be an agent of the mortgagor.

30. In addition, a receiver, when appointed, will not have any interest in the underlying land and such interest remains within the ownership of the mortgagor. The power of sale of a receiver is not a power that confers an interest being held by the receiver in the underlying land.

31. The Appellant submitted that whilst receivers have an express power of sale conferred by the mortgage deed, they are usually given a power of attorney to execute deeds in the name of the mortgagor. In such cases, the seller is the mortgagor, as it was in the case of the instruments transferring the interest in the Properties to the Appellant.

32. It was submitted that this status of receivers not having any interest in underlying land, and their role as agents for a mortgagor, is supported by the Respondent’s Tax and Duty Manual “*Guidelines on tax consequences of receivership and mortgage in possession*” Part 04-00-01 published in June 2017 where in relation to filing of stamp duty returns

receivers are advised to ‘...tick the box to indicate that the receiver is acting in a fiduciary capacity for the vendor;’.

33. The Appellant submitted that as a result in the absence of any specific taxation provision to the contrary, the appointment of a receiver confers no interest in the property in the receiver and the sale of the property by the receiver will be treated as a sale by the mortgagor beneficially.
34. The Appellant submitted that it is a principle of property law that a person cannot convey property to themselves.
35. The Appellant submitted that, applying the above principles to the matters under appeal:
 - i. the interest in the Properties consisted only of a 50% interest in the Properties held by the Appellant’s brother, on which *ad valorem* stamp duty arose on the consideration passing for the sale of the 50% interest only;
 - ii. the consideration listed in the instruments comprised of an amount paid as consideration for the sale of the interests by the Appellant’s brother to the Appellant only to the extent of 50% of the consideration. The remaining amount was an amount paid by the Appellant to repay the Mortgagee the loan due on the Properties. It was submitted that whilst the former was liable to stamp duty, the latter was not as it did not form consideration for the sale of property on the transfer to the Appellant.
 - iii. as an already existing owner of 50% interest in the Properties, the Appellant could not convey the interests to himself and this was not the effect of the instruments;
 - iv. the form of the instruments for the transfer of the Properties was dictated by the wishes of the Receivers and their legal advisers. The form of these instruments should not change the fact that the reality of the transactions must be looked at from a stamp duty perspective. In this regard, what occurred was a transfer by the Appellant’s brother of his 50% interest in the Properties to the Appellant for 50% of the full amount referred to in the instruments;
 - v. it would be erroneous to consider a transfer of an interest in the Properties was effected by the Receivers. They had no interest in the Properties and the only interest passing to the Appellant in the Properties consisted of a 50% interest held by the Appellant’s brother;
 - vi. the payment by the Appellant of 50% of the agreed value of the Properties under the instruments to discharge the remaining loans on the Properties did not create a charge to stamp duty as no interest or estate in the Properties was transferred

to him by the Receivers. It was submitted that what occurred was no different to any agreement between a borrower and lender agreeing the release of a charge over a property on payment of a sum of money and that such an agreement or covenant is not chargeable to stamp duty.

Witness 1 – the Appellant

36. The Commissioner heard evidence from the Appellant as follows:

37. In direct evidence to the Commissioner the Appellant stated that, following the appointment of the Receivers by the Mortgagee he had secured finance from [REDACTED] DAC in circumstances where his brother did not wish to move forward with the Properties. He stated that having secured finance he put in offers with the Auctioneer acting for the Receivers / Mortgagee which were accepted. He stated that prior to the instruments the subject matter of the within appeal being executed, he had held a 50% interest in the Properties and his brother had held a 50% interest in the Properties. He stated that following the instruments the subject matter of the within appeal he held a 100% interest in the properties.

38. On cross examination the Appellant stated that [REDACTED] Solicitors acted for him during the course of the transactions the subject matter of the within appeal and that he had full legal advice in relation to same.

39. In relation to Property 1 the Appellant stated that, on foot of the Deed of Transfer dated 17th October 2017, €1,980,000.00 had been paid to [REDACTED] Solicitors who were acting for him and that, as far as he was aware, they in turn had transferred the €1,980,000.00 to the auctioneers who had been acting for the Mortgagee. The Appellant confirmed that the full amount of €1,980,000.00 had been paid over for Property 1 and not 50% of that amount.

40. In relation to Property 2 the Appellant stated that, on foot of the Deed of Transfer dated 17th October 2017, €1,700,000.00 had been paid to [REDACTED] Solicitors who were acting for him and that, as far as he was aware, they in turn had transferred the €1,700,000.00 to the auctioneers who had been acting for the Mortgagee. The Appellant confirmed that the full amount of €1,700,000.00 had been paid over for Property 2 and not 50% of that amount.

41. In relation to Property 5 the Appellant stated that, on foot of the Deed of Transfer dated 17th October 2017, €755,000.00 had been paid to [REDACTED] Solicitors who were acting

for him and that, as far as he was aware, they in turn had transferred the €755,000.00 to the auctioneers who had been acting for the Mortgagee. The Appellant confirmed that the full amount of €755,000.00 had been paid over for Property 5 and not 50% of that amount.

42. The Appellant stated that all of the Properties the subject matter of the within appeal had originally been financed by [REDACTED] and that this finance had then transferred to the Mortgagee. In relation to the original purchase of the Properties by the Appellant and his brother, the Appellant was unable to state precisely how much money they had personally contributed to the purchase prices and how much had been financed by [REDACTED]. The only property which the Appellant was able to give an indication as to how much money he and his brother had personally contributed was Property 5 to which he stated he and his brother put up 10% of the purchase price and the balance he stated was financed with [REDACTED]. The Appellant was unable to state how the 10% personal contribution was split between his brother and himself.

43. In relation to the amounts of consideration paid for the Properties the Appellant stated that these represented the amounts which were agreed with the Auctioneer who acted for the Mortgagee. As an example of this the Appellant was referred by his solicitor to Property 5 and the Appellant stated that he supposed that the €755,000.00 which he paid represented the total value of the property which comprised 70 apartments.

Witness 2 – Ms [REDACTED]

44. The second witness from whom the Commissioner heard evidence was Ms [REDACTED] who is a solicitor and who was engaged by the Receivers to act in the sale of the Properties. She stated that the Purchaser's / Appellant's solicitor drew up the Instruments and that she approved the Instruments.

45. In relation to Property 1 Ms [REDACTED] stated that the effect of the Deed of Transfer was to ensure that Appellant acquired 100% of the ownership in the property in his sole name. She stated that in her view the interest which was passing on foot of the Deed of Transfer was 50% passing to the Appellant given that prior to the Deed of Transfer he already had a 50% interest in the property.

46. When asked by the Appellant's solicitor to explain why the Deed of Transfer in relation to Property 1 refers to a figure representing 100% of the value of the property, [REDACTED] stated that this was because the property was subject to a mortgage and the Receivers had been

appointed over the entire interest in that mortgage. She stated that the entire consideration was recited in the Deed of Transfer:

- i. to protect the Receivers by ensuring that it was apparent that the Receivers were getting the best possible price for the property; and
- ii. to protect the Receivers by ensuring that the entire consideration was recited in the Deed of Transfer so that it was apparent that they were disposing of the entire interest in the property.

47. Ms [REDACTED] stated that the Deed of Transfer was drafted in order to recite the full consideration in the unusual circumstances where the entire interest in the property was being disposed of and where the Purchaser was already one of the co-owners. She stated that if the Transfer had been done in any other way, she thought that the bank would have needed to join in the Deed. She stated that the effect of the Deed of Transfer was to transfer the entire property to the Appellant as Purchaser in respect of which he already had a 50% interest.

48. Ms [REDACTED] stated that the Receivers did not have any interest in the property and that they were acting on behalf of the owners of the property that is to say on behalf of the Appellant and his brother. Ms [REDACTED] stated that the Receivers did not transfer any interest in the property but that they acted as agents for the Appellant and his brother in order to effect a transfer.

49. Ms [REDACTED] stated that had the Appellant and his brother repaid the outstanding money to the Mortgagee and then gone on to re-finance with another financial institution then there would have been no need for a Deed of Transfer because the Appellant and his brother already had an interest in the property and that type of situation would have simply been a re-finance of the property.

50. On cross examination Ms [REDACTED] stated that she was happy with the manner in which the Instruments were drafted and confirmed that there is nothing incorrect on the face of the Instruments. She agreed with Counsel for the Respondent that when a Deed of Transfer is drafted it transfers the full interest for the consideration stated on the Deed. When it was put to Ms [REDACTED] that the Instruments actually transferred 100% of the interest in the Properties she answered:

“And I suppose that's the technical issue, in that the receivers were appointed on foot of the mortgage which was over the entire property... and that was the

reason, what he already had, but I mean -- So, yes, pursuant to the mortgage, the receivers transferred the property, but I suppose [REDACTED] and [REDACTED] each held it as 50% co-owners and the receivers would have acted as their agents in transferring it."

51. In oral submissions to the Commissioner the Appellant submitted that section 1 of the SDCA defines a "conveyance on sale" as including "...every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, on the sale or compulsory acquisition of that property or that estate or that interest is transferred to or vested in a purchaser, or any other person on such purchaser's behalf or by such purchaser's direction,".

52. In addition the Commissioner's attention was drawn to section 2(1) of the SDCA1999 which provides that:

"(1) Any instrument which—

(a) is specified in Schedule 1, and

(b) is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State,

shall be chargeable with stamp duty."

53. The Appellant submitted that for stamp duty to be chargeable it is not enough that there is a conveyance on a sale but that there must also be a sale on which consideration is paid. It was submitted that in the within appeal there are Instruments which refer to consideration which reflects the full value of the Properties in question as if a 100% interest was being sold, but the Appellant submitted that the consideration referable to the sale is in relation to only 50% of that amount.

54. The Appellant referred to the case of *Inland Revenue Commissioners v Angus* (889) 23 QBD 579 (hereinafter "*IRC v Angus*") at 582 where Hawkins J. stated:

"The question turns upon section 70 of the Stamp Act 1870 which gives the interpretation to be placed upon the expression "conveyance on sale" in the following language: 'The term "conveyance on sale" includes every instrument and every decree or order of any Court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or by his direction.' The important words are "every instrument by

which any property upon the sale thereof is legally or equitably transferred". If the property is legally or equitably transferred by the instrument to which a stamp ought to be affixed, then no doubt an ad valorem duty ought to be paid upon an agreement, but if by an instrument no property is legally or equitably transferred, then it falls within the ordinary denomination..."

55. The Appellant submitted that this case explains conveyance on sale, it outlines that stamp duty is chargeable by reference to instruments, but it does go on to say that a charge to stamp duty it only applies to the extent that the property is legally or equitably transferred.

56. The Appellant further highlighted the judgment of Lord Esher, Master of the Rolls in *IRC v Angus* at 589 where he stated:

"Now, the first thing to be observed is, that when the legislature assume to impose a tax on the subject, they must do so in clear and distinct terms; if the matter remains in doubt, the subject is entitled to judgment. Subject to that observation, the question is whether the instrument which was laid before the Commissioners was a 'conveyance on sale' within the meaning of section 70 of the Stamp Act 1870. That section says that 'the term "conveyance on sale" (a "conveyance on sale" being one of the matters on which duty is imposed....), "includes every instrument whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser". The first thing to be noticed is that the thing which is made liable to the duty is an instrument. If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section and no tax imposed. It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at and if anyone can carry through a purchase and sale without an instrument, then the legislature have not reached that transaction. The next thing is that it is not every instrument which may be brought into being in the course of a transaction of purchase and sale which is struck at. It is the instrument "whereby any property upon the sale thereof is legally or equitably transferred". The taxation is confined to the instrument whereby the property is transferred."

57. In the within appeal the Appellant submitted that there are Instruments and a transfer of property, but that the only property transferred was the Appellant's brother's 50% interest which the Appellant did not hold in the Properties prior to the transactions the subject

matter of the within appeal and stamp duty should be chargeable on the transfer of the Appellant's brother's 50% share accordingly.

58. The Appellant submitted that having regard to *IRC v Angus* and Schedule 1 of the SDCA1999, which says that it is the consideration referable to the sale which is chargeable to tax, this supports the Appellant's position that, irrespective of what is appearing on the Instruments, stamp duty should only be applied on an *ad valorem* basis to the actual consideration referable to the transfer of the property interest contained in the Instruments.

59. In addressing the fact that the Instruments the subject matter of the within appeal refer to consideration which reflect the full value of the Properties, it was submitted that the evidence adduced at the oral hearing shows that the Appellant held a 50% interest in the Properties prior to the Instruments being executed. Following the execution of the Instruments the Appellant held a 100% interest in the Properties. The Appellant submitted that the consideration applicable for that sale must be half of the figure that is appearing in the Instruments.

60. The Appellant again referred to the case of *Waterford* where Carroll J held as follows:

"The court is entitled to look at the reality of what has been done. Just because the parties put a particular label on a transaction, the court is not obliged to accept that label blindly. The court will look at the legal effect and the legal rights of the parties resulting from the transaction."

61. It was submitted that "*the reality of what has been done here*" is that a half interest in the Properties was transferred to the Appellant and that is the proportion of the consideration, the overall figure that is chargeable to stamp duty.

62. The Appellant pointed to the case of *Moorview Development Limited & Ors v First Active plc* [2010] IEHC 35 (hereafter "*Moorview*") and the judgment of Clarke J (as he then was) when he stated

"A receiver does not own any interest in lands which are properly described as being owned by the company to which the receiver has been appointed. The lands remain owned by the company. The lands remain owned by the company (in receivership). The fact that the receiver may well be entitled, provided that all necessary formalities are complied with, to execute a deed of transfer of a relevant interest in property in the name of the company does not alter that fact. It is the company which transfers the

property. The receiver is simply entitled by virtue of the debenture in favour of the relevant lender, and his appointment, to cause the company to effect the transfer."

63. It was the Appellant's submission that the Receivers should not be viewed as having any interests in the Properties the subject matter of the within appeal and therefore the Commissioner should have regard to the interest moving from the mortgagors to the purchaser, which the Appellant submitted can only be a 50% interest in the Properties.

64. The Appellant relied on the case of *Rye v. Rye* [1962] A.C. 496 [hereafter "*Rye*"] in support of its submission that the law recognises that a person cannot convey an interest in property to themselves, except in a limited capacity, and that is recognised in section 66 of the Land and Conveyancing Law Reform Act of 2009

65. The Appellant submitted that section 41 of the SDCA1999 may not apply to the within transaction because the consideration that was paid to the Appellant's brother was the full consideration. There was no additional obligation being assumed by the Appellant. section 41 of the SDCA1999 provides:

"(1) Where any property is conveyed to any person in consideration wholly or in part of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt money or stock shall be deemed the whole or part as the case may be of the consideration in respect of which the conveyance is charged with ad valorem duty."

66. The Appellant referred to the decision of Bruce J. in *Swayne v The Commissioners of Inland Revenue* [1899] 1 QB 335 (hereinafter "*Swayne*") where he stated:

"The history of the legislation on this subject, I think, confirms the view that I have expressed. It is related in the judgments delivered by the Lord President and the other judges of the Court of Session in the case of Commissioners of Inland Revenue v. Liquidators of City of Glasgow Bank. (1) Where property is incumbered and is sold subject to the incumbrance, or even subject to a bond or condition that certain monies shall be paid in futuro, then upon payment off of the incumbrance, or upon payment of the money stipulated to be paid in futuro, the purchaser obtains an estate discharged from the incumbrance, or bond, or condition, and the money so paid in discharge of the incumbrance, or bond, or condition is paid indirectly as part of the purchase-money

of the estate, and therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase-money and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burdened with the condition of the payment of money in futuro. It was to meet cases of this kind that from time to time various provisions have been made by the legislature, the last of which is contained in the section now under consideration. No doubt the words in the section are very wide but I think they cannot properly be applied to mean more, to use the language of Martin B in the case of Mortimer v. Commissioners of Inland Revenue, than this, that ad valorem duty shall be paid "on the entire consideration which, either directly or indirectly, represents the value of the free and unincumbered corpus of the subject-matter of the sale."

67. It was submitted that in the within appeal the unencumbered corpus of the Properties is an amount equal to 50% of the consideration that appears on the Instruments.

68. The Appellant rejected the Respondent's submission that the Instruments reflect the fact that the Receivers were selling the full legal interest in the Properties to the Appellant. It was submitted that *Moorview* confirms that the Receivers did not have any interest in the Properties and that they were acting as agent of the mortgagors, that it to say the Appellant and his brother, and it was the Appellant and his brother who transferred the legal and beneficial interest.

Respondent's Submissions

69. The Respondent submitted that the stamp duty payable by the Appellant should be calculated on the full amount of the consideration recited in each of the Instruments.

70. The Respondent submitted that stamp duty imposes a charge upon instruments and not on transactions as stated in *Angus*:

"The thing which is made liable to duty is an "instrument"...It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at."

71. It was submitted that it is not correct to say that only a 50% beneficial interest was transferred to the Appellant. It was submitted that each of the Instruments specifies that the full consideration recited in the operative part of the Instruments was paid by the

Appellant to the Receivers and that the Instruments transferred the full legal and beneficial interest in the Properties to the Appellant.

72. It was submitted that by virtue of the mortgages granted by the Mortgagee, the Mortgagee held a legal charge over the entire legal interest in the Properties. The Respondent submitted that the purpose of the Instruments was to secure the release of the Properties by the Mortgagee and to release the Appellant's brother from his liability in respect of the said mortgages. The Receivers were joined to the Instruments for the purposes of securing the release of the charge over the Properties held by the Mortgagee. The transactions were arranged following the grant of loan facilities to the Appellant (solely) by [REDACTED] [REDACTED] DAC.

73. It was submitted that the Instruments reflect the fact that the Receivers were selling the full legal interest in the Properties to the Appellant. The Appellant's brother was joined to the transactions because he was jointly and severally liable for the payment of the loans. In the circumstances, it was submitted that, stamp duty is correctly chargeable on the full consideration paid for the legal interest in the Properties and the release of the loans, that is to say the full amount of the consideration as shown on each of the Instruments and as paid by the Appellant to the Receivers.

74. It was submitted that the available correspondence makes it clear that the Appellant assumed the full burden of the debt involved and obtained the release of the debts associated with the Properties from the Mortgagee. It was submitted that in their letter dated 17th November 2017 [REDACTED] Solicitors (acting for [REDACTED] DAC) stated that "*...the entire consideration recited in the deeds being required to be paid to the Receivers, for the outgoing charge holder [REDACTED] DAC to provide a deed of release of its security over the properties*". It was submitted that [REDACTED] Solicitors acknowledged in further correspondence dated 20th December 2017 that the entire of the consideration recited in each of the Deeds of Assurance was paid over to the Receivers.

75. The Respondent further pointed to a letter dated 14th June 2018, wherein the Appellant's solicitor stated that 50% of the consideration was paid for the beneficial interest passing from the Appellant's brother and 50% was paid by the Appellant to the Receivers to secure the release of the Properties by the Mortgagee. The Respondent submitted that this is not the case as the entire consideration was paid to the Receivers to discharge the mortgages and to obtain the Properties free from all encumbrances.

76. It was submitted that section 41 of the SDCA1999 provides that “...where any property is conveyed to any person in consideration.... subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem duty.”
77. The Respondent submitted that because the consideration contained in the Instruments was paid for the release of the full debts owed to the Mortgagee, section 41 of the SDCA1999 applies to charge the full consideration to stamp duty.
78. The Respondent further submitted that section 41 of the SDCA1999 treats and deems the transactions the subject matter of the within appeal as the equivalent of a sale for the purposes of the charge to stamp duty with the assumption of the liability and the release of the debt being the consideration paid for stamp duty purposes.
79. The Respondent submitted that the application of section 41 of the SDCA1999 (and its UK equivalent) has been considered in the following cases:
80. In *IRC v Liquidators of City of Glasgow Bank* (1881) 8 R (Courts of Session) 389, it was held that the equivalent provision in the UK legislation had been correctly applied to include in the consideration in respect of which a conveyance of property was chargeable with stamp duty the amount of a debt discharged as a result of the transaction and also the value of a bond, payable to a third-party, charged on the property.
81. In *Swayne Bruce J.* at 341 explained the purpose of section 57 Stamp Act 1891 (which is the equivalent of section 41 SDCA1999) as follows:
- "The history of the legislation on this subject, I think, confirms the view that I have expressed. It is related in the judgments delivered by the Lord President and the other judges of the Court of Session in the case of Commissioners of Inland Revenue v. Liquidators of City of Glasgow Bank. Where property is incumbered and is sold subject to the incumbrance, or even subject to a bond or condition that certain money shall be paid in futuro, then upon payment off of the incumbrance, or upon payment of the money stipulated to be paid in futuro, the purchaser obtains an estate discharged from the incumbrance, or bond, or condition, and the money so paid in discharge of the incumbrance, or bond, or condition is paid indirectly as part of the purchase-money of*

the estate, and therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase-money and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burthened with the condition of the payment of money in futuro."

82. In *Commissioners of Inland Revenue v North British Railway Co* (1901) 4 F 27 (hereinafter "*North British Railway Co*") it was held that pursuant to section 57 of the Stamp Act 1891 the release of debt was to be treated as consideration. In that case under an agreement, confirmed by Act of Parliament, the North British Railway Company acquired the undertaking of the Bo'ness Harbour Commissioners. The agreement set forth that "...as the consideration for such sale and transfer the Company shall undertake as from the date of entry and shall free and relieve the Harbour Commissioners of the whole debts, liabilities, contracts, and obligations and engagements of the Harbour Commissioners ...". Prior to the date of entry, the Company had become creditors of the Commissioners in terms of a guarantee, under which they had made large advances, amounting to £303,376, 19s., for a series of years, to meet the interest due on the harbour debentures. This debt was set forth in the preamble of the special Act as one of the debts due by the Harbour Commissioners at the date of the transfer.

83. It was held in *North British Railway Co* that:

- i. the debt due to the Company was included in the debts from which the Company undertook to free and relieve the Harbour Commissioners, as part of the consideration for the transfer of the undertaking; and
- ii. *ad valorem* conveyance duty was chargeable on its whole amount, irrespective of whether it was or was not a bad debt which could not have been recovered from the Harbour Commissioners.

84. The Respondent submitted that in the transactions the subject matter of the within appeal the Appellant assumed the full burden of the debt involved and obtained the release of the debts owed to the Mortgagee associated with the Properties so that the Properties could then be the subject of a charge on foot of the loan facilities granted to the Appellant by [REDACTED] DAC. It was submitted that *ad valorem* stamp duty is correctly chargeable on the full sums recited in the Deeds.

85. In oral submissions the Respondent submitted that the Instruments transfer the legal and beneficial, and not just the beneficial interest, to the Appellant and that there is no split of consideration between the legal and beneficial interest contained in the Instruments. As a result the Respondent contends that the amount or value for the consideration for the sale is the full consideration paid to the Receivers which was paid to them to discharge the full amount of debt to the Mortgagee.

86. The Respondent submitted that the effect of the Instruments was to release the mortgages by discharging the full amount of the mortgages and this is why the Instruments were drafted in the matter in which they were drafted. The Respondent submitted that both the Appellant and his brother were both jointly and severally liable for the repayment of the mortgages in that each was liable for 100%. It was submitted that 100% of consideration was paid to the Receivers on foot of the Instruments to release the Appellant and his brother from that indebtedness. In support of this the Respondent pointed to the correspondence from [REDACTED] solicitors to the Respondent dated 17th November 2017 which stated

"...We have as instructed paid stamp duty in the sum of €72,250 which represents the full stamp duty on 50% of the consideration with the entire consideration as recited in the deeds being required to be paid to the receivers for the outgoing chargeholder [REDACTED] to provide a deed of release of its security over the properties."

87. The Respondent submitted that the Appellant in effect assumed 100% of the debt by paying 100% of the consideration contained in the Instruments to the Receivers. In doing so, the Respondent submitted, the Appellant paid his brother's share of the debt owing to the Mortgagee.

88. In relation to the split of the ownership of the Properties held by the Appellant and his brother as co-owners, the Respondent submitted that no evidence had been adduced by the Appellant to show that the Properties were all held on a 50/50 basis. In addition it was submitted that the Appellant was unable to state what kind of consideration or what portion of consideration was met by each of the brothers when the Properties were originally purchased.

89. The Respondent submitted that it is not necessary for the Commissioner to look beyond the Instruments themselves and that the stamp duty was correctly chargeable on the full consideration as shown on the Instruments.

Material Facts

90. The following material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:

- i. The Appellant and his brother were co-owners of the Properties which were the subject of charges held by the Mortgagee, [REDACTED] DAC;
- ii. In March 2015 the Mortgagee appointed Receivers over the Properties;
- iii. The Receivers appointed over the Properties held no interest in the Properties;
- iv. The Appellant secured finance of €7,500,000.00 from [REDACTED] [REDACTED] DAC in his sole name in 2017;
- v. On 17th October 2017 Conveyances of Sale as defined in section 1 of the SCDA1999 were entered into in respect of the Properties between the Appellant and his brother as “Vendors” of the first part, the Receivers of the second part and the Appellant as “Purchaser” of the third part whereby consideration totalling €7,500,000.00, being the finance from [REDACTED] [REDACTED], was paid by the Appellant which said consideration was paid to the Receivers and ultimately to the Mortgagee;
- vi. On foot of the payment of the consideration contained in the Instruments, totalling €7,500,000, by the Appellant the Mortgagee released its charges on the Properties;
- vii. On 6th November 2017 Stamp Duty returns were filed by the solicitors acting on behalf of [REDACTED] DAC in the name of the Appellant in respect of the Instruments whereby the following amounts of stamp duty totalling €72,250.00 were returned:
 - Property 1: €19,800.00 non-residential
 - Property 2: €17,000 non-residential
 - Property 3: €300.00 non-residential
 - Property 4: €2,750.00 residential and €11,000.00 non-residential
 - Property 5: €7,550.00 non residential
 - Property 6: €200.00 non-residential
 - Property 7: €4,500.00 non-residential

- Property 8: €3,000.00 non-residential
 - Property 9: €150.00 non-residential
 - Property 10: €6,000.00 non-residential
- viii. The stamp duty returns filed and paid on 6th November 2017 represented stamp duty on 50% of the consideration paid by the Appellant;
- ix. Following the execution of the Instruments the Appellant held 100% of the interest in the Properties.

Analysis

91. On the one hand the Appellant submits that the returns made on 6th November 2017, which returned stamp duty on the value of 50% of the consideration contained in the Instruments dated 17th October 2017, were correct.

92. On the other hand the Respondent submits that the Appellant should correctly have returned stamp duty on 100% of the consideration contained in the Instruments dated 17th October 2017.

93. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

94. The relevant recitals and provisions of the Instruments are set out as follows:

i. Property 1:

“RECITALS

A. The Vendors are the registered owners of the lands and premises comprised in Folio [REDACTED] of the Register of Freeholders County of Cork (“the Premises”).

...

H. Immediately prior to the date of this deed the Purchaser was the owner of 50% of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PROVISIONS

1. *In pursuance of the agreement and in consideration of the sum of €1,980,000 (one million nine hundred and eighty thousand Euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as registered owners by the direction of and acting by their lawful attorneys the Receivers HEREBY TRANSFER the Premises, being all of the property comprised in Folio [REDACTED] County Cork to the Purchaser.*

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

ii. Property 2:

"J. Immediately prior to the date of this deed the Purchaser was the owner of 50% of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €1,700,000 (one million and seven hundred thousand euro) paid by the Purchaser with the consent of the Mortgagors to the Receivers (receipt of which is acknowledged by the Mortgage orders and the Receivers), the Mortgagors as beneficial owners by the direction of and acting by their lawful attorneys the Receivers HEREBY ASSIGN the Premises to the Purchaser for all the unexpired residue of the Leasehold Term subject to the Rent and the Lessee's covenants and conditions in the Lease but otherwise free from encumbrances.

In further pursuance of the agreement and for the consideration paid as aforesaid the Mortgagors as trustees of the Nominal Reversion acting by their lawful Attorney the Receivers HEREBY ASSIGN to the Purchaser all that and those the Nominal Version and all estate and interest whatsoever of the mortgage orders of and in the Premises to hold same unto the Purchaser for all residue of the unexpired residue of the Leasehold Term subject to the Rent and the Lessee's covenants and conditions in the Lease.

The Purchaser declares that the Mortgage Term shall merge in the unexpired residue of the Leasehold Term and thereby become extinguished.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

iii. Property 3:

"G. Immediately prior to the date of this deed the Purchaser was the owner of 50% of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €30,000 (thirty thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by the direction of and acting by their lawful attorneys the Receivers HEREBY ASSIGN the Premises to the Purchaser for all the unexpired residue of the Leasehold Term subject to the Rent and the Lessee's covenants and conditions in the Lease but otherwise free from encumbrances.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

iv. Property 4:

"RECTALS

...

L. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as joint tenant with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €1,650,000 (one million six hundred and fifty thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by the direction of and acting by their lawful attorneys the Receivers HEREBY CONVEY the Premises to the Purchaser for the unexpired residue of the Term subject to the Adjusted Rent and to the covenants and conditions contained in the Lease and subject to and with the benefit of a Lease of the ground floor of the Premises dated 21 March 1997 and made between (1) [REDACTED] and [REDACTED] and (2) [REDACTED] Limited for a term of 25 years from 2 April 1997 and the lease specified in the second schedule hereto but otherwise free from encumbrances.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

v. Property 5

"RECTALS

...

F. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €755,000 (seven hundred and fifty five thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial

owners by direction of and acting by their lawful attorneys the Receivers HEREBY CONVEY the Premises to the Purchaser in fee simple.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

vi. Property 6

"RECTALS

...

I. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €20,000 (twenty thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by direction of and acting by their lawful attorneys the Receivers HEREBY CONVEY the Premises to the Purchaser in fee simple £3. 9s. 04d and to the covenants and conditions contained in the said Fee Farm Grant but otherwise free from encumbrances.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

vii. Property 7

“RECTALS

...

I. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as joint tenant with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €450,000 (four hundred and fifty thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by direction of and acting by their lawful attorneys the Receivers HEREBY CONVEY the Premises to the Purchaser in fee simple subject to the Adjusted Rent (but indemnified against the payment of same) and to the covenants and conditions contained in the said Fee Farm Grant but otherwise free from encumbrances.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise.”

viii. Property 8

“RECTALS

...

H. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €300,000 (three hundred thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by direction

of and acting by their lawful attorneys the Receivers HEREBY CONVEY the Premises to the Purchaser in fee simple.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

ix. Property 9

"RECTALS

...

I. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as tenant in common with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €15,000 (fifteen thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by direction of and acting by their lawful attorneys the Receivers HEREBY GRANT CONVEY AND ASSIGN the Premises to the Purchaser.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

x. Property 10

"RECTALS

...

I. Immediately prior to the date of this deed the Purchaser was the owner of the Premises as joint tenant with the said [REDACTED].

OPERATIVE PART

In consideration of the said agreement and in consideration of the sum of €600,000 (six hundred thousand euro) paid by the Purchaser with the consent of the Vendors to the Receivers (receipt of which is acknowledged by the Vendors and the Receivers), the Vendors as beneficial owners by direction of and acting by their lawful attorneys the Receivers HEREBY ASSIGN the Premises to the Purchaser for all the unexpired residue of the First Term and all the unexpired residue of the Second Term subject to the rents reserved therein and to covenants and conditions contained in the First Lease and in the Second Lease and subject to and with the benefit of a Lease of a portion of the Premises dated 14 September 2012 and made between (1) [REDACTED] and [REDACTED] and (2) [REDACTED] Limited for a term of 20 years from 1st September 2012 but otherwise free from encumbrances.

Provided always and it is hereby acknowledged that the Receivers are executing this Deed in their capacity as joint receivers over the assets of the Vendors for the sole purpose of facilitating the sale of the Property to the Purchaser. Without prejudice to the generality of the foregoing the Purchaser hereby expressly acknowledges that any personal liability of the Receivers hereunder is excluded and nothing in this deed shall prejudice or affect the estate or person of the Receivers who execute this deed as the Receivers of the assets of the Vendors and not personally or otherwise."

95. At the outset it is noted that it is not in dispute between the Parties that, as confirmed in *Rye*, the law recognises that a person cannot convey an interest in property to themselves, except in a limited capacity as set out in section 66 of the Land and Conveyancing Law Reform Act of 2009 which said exception is not relevant to the within appeal.
96. In addition it is noted that it is not in dispute between the Parties that the Receivers did not hold any interest in the Properties the subject matter of the within appeal, as confirmed in *Moorview*.
97. Section 1 of the SDCA1999 defines a "conveyance on sale" as including:

“...every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, on the sale or compulsory acquisition of that property or that estate or that interest is transferred to or vested in a purchaser, or any other person on such purchaser's behalf or by such purchaser's direction.”

98. Section 1 of the SDCA1999 further defines “instrument” as including “every written document”.

99. Section 2(1) of the SDCA1999 provides that:

“(1) Any instrument which—

(a) is specified in Schedule 1, and

(b) is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State,

shall be chargeable with stamp duty

100. Schedule 1 of the SDCA1999 specifies, *inter alia*, conveyances on sale “of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” the entirety of which is set out at Appendix 1 hereto.

101. It is not in dispute between the Parties that the Instruments the subject matter of the within appeal are conveyances on sale.

102. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter “Perrigo”), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

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

the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.

103. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in section 2(1) of the SDCA1999 are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that conveyances on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance which are executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State, are chargeable to stamp duty.
104. In addition Schedule 1 of the SDCA1999 sets out the amounts of stamp duty payable “(1)Where the amount or value of the consideration for the sale is wholly or partly attributable to residential property...” and “(4)Where the amount or value of the consideration for the sale is wholly or partly attributable to property which is not residential property...”.
105. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in Schedule 1 of the SDCA1999 as set out in paragraph 105 hereto are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that Schedule means that where stamp duty is chargeable, it is chargeable on the amount or value of the consideration for the sale.
106. The amounts or values of the consideration for sale for the Properties the subject matter of the within appeal were set out in the Operative Parts of the Instruments as set out above.
107. In written submissions the Appellant submitted that stamp duty is levied on “*amount or value of the consideration passing for the sale*” and must therefore be taken as being in agreement with the Commissioner in this regard.
108. The Appellant invites the Commissioner to divide out the consideration recited in the Instruments and contends that a sale of only a 50% interest, that is to say the Appellant’s brother’s interest, in the Properties took place and that the chargeable stamp duty can only be levied on the consideration passing for those 50% interests.
109. In support of this it was submitted that the evidence adduced at the oral hearing shows that the consideration paid by the Appellant reflects 100% of the value of the Properties.

The Commissioner finds that no such evidence has been adduced. No evidence was adduced, whether oral or documentary, to the Commissioner in relation to the value of the Properties. The Appellant, when asked by his solicitor in relation to the amounts of consideration paid for the Properties, stated that the amounts of consideration represented the amounts which were agreed with the Auctioneer who acted for the Mortgagee. The Appellant gave no evidence in relation to the value of the Properties.

110. In addition no evidence was adduced to the Commissioner as to the precise nature of the Properties the subject matter of the Instruments save and except that the Appellant stated that Property 5, for which the consideration on the Instrument was €755,000.00, comprised 70 apartments. The Commissioner notes the evidence of Ms [REDACTED] who stated that the Deed of Transfer was drafted in order to recite the full consideration and that Ms [REDACTED] gave no evidence as to the value of the Properties. By the Commissioner's calculation the amount of consideration on the Instrument for Property 5 represents an average price per apartment of €10,785 for Cork [REDACTED] apartments in late 2017.

111. The Commissioner finds that no evidence has been adduced, oral or documentary, which establishes that the consideration paid by the Appellant reflected 100% of the value of the Properties. As a result, the Commissioner finds as a material fact that the Appellant has not proven on the balance of probabilities that the consideration paid on foot of the Instruments the subject matter of the within proceedings reflected 100% of the value of the Properties.

112. The Commissioner further notes that the Appellant submitted that the consideration paid to the Receivers by the Appellant in relation to his share of the Properties was not consideration passing for the sale as the Appellant merely discharged his portion of the debt due on the Properties. The Commissioner notes that no evidence was adduced, oral or documentary, as to whether the debt owed to the Mortgagee was a single debt or whether separate and distinct mortgages applied to each Property. In addition, the Commissioner notes that no evidence was adduced, oral or documentary, which sets out the amount of debt owed by the Appellant to the Mortgagee at the time of the execution of the Instruments. Furthermore, the Commissioner notes that no evidence was adduced, oral or documentary, which set out that the consideration paid by the Appellant discharged his portion of the debt due on the Properties. In that regard the Commissioner notes the contents of the letter 20th December 2017 from the Appellant's solicitor to the Respondent which stated that the consideration recited in the Instruments represented "... *the amount due in order for [REDACTED] DAC to provide a Deed of Release of its security over the Properties.*"

113. Whilst the evidence was that the Receivers were appointed by the Mortgagee over the Properties, and this is accepted by the Respondent, no details of the precise nature of the Receivership and the precise debts due and owing on the Properties the subject matter of the within appeal was adduced. As a result the Commissioner finds as a material fact that the Appellant has not proven on the balance of probabilities that the consideration paid to the Receivers by the Appellant merely discharged his portion of the debt due on the Properties.

114. The Appellant has submitted that had the Appellant directly repaid the Mortgagee his portion of the debt owing on the Properties, then the consideration recited on the Instruments would be an amount equivalent to 50% of the consideration which was in fact recited on the Instruments and that therefore the matter on appeal would not have arisen. The Commissioner makes no finding in relation to this save and except to note that this is not what happened.

115. The Commissioner has found as a material fact that the Appellant has not discharged the burden of proof to satisfy the submissions that:

- i. the consideration paid by the Appellant reflected 100% of the value of the Properties; and
- ii. the consideration paid to the Receivers by the Appellant merely discharged his portion of the debt due on the Properties.

116. The Commissioner has had regard to the finding of Carroll J in *Waterford* where she held:

"The court is entitled to look at the reality of what has been done. Just because the parties put a particular label on a transaction, the court is not obliged to accept that label blindly. The court will look at the legal effect and the legal rights of the parties resulting from the transaction."

117. The Commissioner finds that it is not possible to divide out the consideration recited in the Instruments as suggested by the Appellant, in circumstances where the Appellant has not provided evidence that the consideration paid reflected 100% of the value of the Properties or that the consideration paid by the Appellant merely discharged his portion of the debt due on the Properties.

118. In circumstances where it is not possible to divide out the consideration recited in the Instruments, the Commissioner refers to the provisions of the SDCA1999 and the findings already made herein.

119. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of section 2(1) of the SCA1999 means that the conveyances on sale contained in the Instruments the subject matter of the within appeal are chargeable to stamp duty.

120. The Commissioner further finds that applying the ordinary, basic and natural meaning of the words of Schedule 1 of the SDCA1999 means that the stamp duty chargeable on the Instruments the subject matter of the within appeal is chargeable on the amount or value of the consideration for the sale.

121. In this regard the Commissioner refers to the judgment of Lord Esher, Master of the Rolls in *IRC v Angus* at 589 where he stated:

"... the question is whether the instrument which was laid before the Commissioners was a 'conveyance on sale' within the meaning of section 70 of the Stamp Act 1870. That section says that 'the term "conveyance on sale" (a "conveyance on sale" being one of the matters on which duty is imposed....), "includes every instrument whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser". The first thing to be noticed is that the thing which is made liable to the duty is an instrument. ... It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck ..."

122. Therefore the Commissioner finds that the stamp duty chargeable on the Instruments the subject matter of the within proceedings is as follows:

- i. Property 1: €39,600.00 non-residential
- ii. Property 2: €34,000 non-residential
- iii. Property 3: €600.00 non-residential
- iv. Property 4: €5,250.00 residential and €22,000.00 non-residential
- v. Property 5: €15,100.00 non residential
- vi. Property 6: €400.00 non-residential
- vii. Property 7: €9,000.00 non-residential
- viii. Property 8: €6,000.00 non-residential

ix. Property 9: €300.00 non-residential

x. Property 10: €12,000.00 non-residential

123. Having made the above findings the Commissioner does not consider it necessary to address the relevance of section 41 of the SDCA1999 to the within appeal and makes no findings thereon.

Determination

124. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the relevant tax was not payable.

125. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Commissioner commends the Appellant and the Respondent for the manner in which this appeal was conducted. The Appellant was correct to check to see whether his legal rights were correctly applied.

126. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the Taxes Consolidation Act 1997.



Clare O'Driscoll
Appeal Commissioner
28th June 2022

Appendix 1

CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.

(1)Where the amount or value of the consideration for the sale is wholly or partly attributable to residential property and the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which, had there been a larger transaction or a series of transactions, the amount or value, or the aggregate amount or value, of the consideration (other than the consideration for the sale concerned which is wholly or partly attributable to residential property) would have been wholly or partly attributable to residential property:

(a)for the consideration which is attributable to—

(i)residential property which is not a relevant residential unit, within the meaning of section 31E, or

(ii)residential property which is a relevant residential unit, within the meaning of section 31E, to which subsection (17) of that section applies.

1 per cent of the first €1,000,000 of the consideration and 2 per cent of the balance of the consideration thereafter, but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(b)for the consideration which is attributable to a relevant residential unit, within the meaning of section 31E, other than a relevant residential unit to which subsection (17) of that section applies.

*10 per cent of the consideration,
but where the calculation results
in an amount which is not a
multiple of €1 the amount so
calculated shall be rounded down
to the nearest €.*

(2)Where paragraph (1) does not apply and the amount or value of the consideration for the sale is wholly or partly attributable to residential property and the transaction effected by that instrument forms part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to residential property is an amount equal to Y

where—

Y is the amount or value, or the aggregate amount or value, of the consideration in respect of the larger transaction or of the series of transactions which is attributable to residential property:

*for the consideration which is attributable to residential property
.....*

*Stamp duty of an amount determined by
the formula—*

A x B

—————

C

where—

A is the amount of stamp duty that would have been chargeable under paragraph (1) on the amount or value, or the aggregate amount or value, of the consideration in respect of the larger transaction or of the series of transactions which is attributable to residential property had paragraph 1 applied to such consideration,

B is the amount or value of the consideration for the sale concerned which is attributable to residential property, and

C is the amount or value, or the aggregate amount or value, of the consideration in respect of the larger transaction or of the series of transactions which is attributable to residential property,

but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(4)Where the amount or value of the consideration for the sale is wholly or partly attributable to property which is not residential property

2.0 per cent of the consideration which is attributable to property which is not residential property but where the

calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(5)Where paragraph (4) applies in the case of a conveyance or transfer on sale or in the case of a conveyance or transfer operating as a voluntary disposition inter vivos of property that is land—

(a)the instrument is executed—

(i)on or after 1 January 2015 and before 1 January 2016, or

(ii)on or after 1 January 2016 and before 1 January 2024 ,

(aa)the individual to whom the property is being conveyed or transferred is an individual—

(i)who, from the date of conveyance or transfer and for a period of not less than 6 years thereafter—

(I)farms the land, or

(II)leases it for a period of not less than 6 years to an individual who farms the land,

and

(ii)who, in a case where subclause (I) applies—

(I) is the holder of or, within a period of 4 years from the date of transfer or conveyance, will be the holder of, a qualification set out in Schedule 2, 2A or 2B to the Act, or

(II) spends not less than 50 per cent of that individual's normal working time farming land (including the land conveyed or transferred),

(ab) in a case where subparagraph (aa)(i)(II) applies, the individual to whom the land is leased—

(i) is the holder of or, within a period of 4 years from the date of transfer or conveyance, will be the holder of, a qualification set out in Schedule 2, 2A or 2B to the Act, or

(ii) spends not less than 50 per cent of that individual's normal working time farming land (including the land conveyed or transferred),

(ac) the land is farmed on a commercial basis and with a view to the realisation of profits from that land, and

(b) the person becoming entitled to the entire beneficial interest in the property (or, where more than one person becomes entitled to a beneficial interest in the property, each of them) is related to the person or each of the persons immediately theretofore entitled to the entire beneficial interest in the property in one or other of the following ways, that is, as a lineal descendant, parent, grandparent, step-parent, husband or wife, brother or sister of a parent or brother or sister, or lineal descendant of a parent, husband or wife or brother or sister, or is, as respects the person or each of the persons immediately theretofore entitled, his or her civil partner, the civil partner of either of his or her parents or a lineal descendant of his or her civil partner.....

1 per cent of the consideration which is attributable to property which is not

residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(5A)Where any of the conditions in paragraph (5) are not complied with, at the time of the conveyance or transfer or subsequently, paragraph (5) shall not apply, any additional duty shall be chargeable by reference to the rate of duty in paragraph (4) and the provisions of this Act, in relation to the delivering of returns, the charging of interest and (where appropriate) the incurring of a penalty shall apply from the date on which compliance with any such condition ceases.