AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

116TACD2022

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [redacted] ("the Appellant") against a Notice of Amended Assessment to Capital Gains Tax ("CGT") dated 13 June 2018, issued by the Revenue Commissioners ("the Respondent") in the sum of €44,185.00, for the year 2008.

2. In 2007, the Appellant disposed of farmland in [redacted] to [redacted] County Council under the terms of a Compulsory Purchase Order ("CPO") with the total settlement being in the sum of €2,850,000. The Appellant claims that he is entitled to relief under section 536(1) of the Taxes Consolidation Act 1997 ("TCA 1997"), in respect of certain sums received under the CPO. In addition, this appeal relates to the application of section 865 TCA 1997 and whether a valid claim for the repayment of tax paid was made within time.

3. On 12 July 2018, following receipt of the Notice of Amended Assessment to CGT, the Appellant duly appealed to the Commission. This appeal is determined following a hearing that took place on 16 June 2022. The Commissioner heard evidence and submissions from the Appellant who was represented by his tax Agent and submissions from the Respondent, who was represented by Counsel.

Background

4. On 11 February 2005, [redacted] County Council issued to the Appellant a Compulsory Acquisition of Land Notice to Treat "(Notice to Treat"). The Notice to Treat invited the Appellant to identify the exact nature of his interests in the land and any compensation claimed by him. On 23 August 2007, the Appellant's advisors issued correspondence accepting the sum of €2,850,000 in full and final settlement for the land and that the Appellant was agreeable to accommodation works.

5. On 17 January 2008, the Appellant's Solicitor requested a Certificate of Clearance from CGT, in relation to the transaction, enclosing Form CG50 duly completed and Copy Notice to Treat. The correspondence and the documents indicated that consideration paid to the Appellant was in the sum of €2,701,345. On 24 January 2008, the Respondent issued a certificate under section 980 TCA 1997, in respect of consideration in the sum of €2,701,345.

6. The Appellant's duly completed Form 11 for the period 2008, under the heading "*Capital Gains, Total Consideration on Disposals*" states that the "*Aggregate Consideration*" was in the sum of €2,850,000 and the "*Net Chargeable Gain*" was in the sum of €1,802,887. On 17 November 2011, the Respondent issued a Notice of Audit of the Appellant's tax affairs for the year 2008. Thereafter, over the following number of years, correspondence ensued between the parties *inter alia* the diminution of the Principal Private Residence ("PPR") and relief under section 604 TCA 997.

7. In letter dated 30 January 2018, the Applicant's Tax Agent stated that the Appellant is in agreement with the figure of €64,000 for the diminution of the PPR. In addition, the letter references the compensation headings on the document the Respondent acquired from [redacted] County Council under section 902 TCA 1997 and the correspondence states "*primarily the injurious affection for the agricultural land of €282,000 and €192,000, the €156,250 for Reinvestment costs, €61,500 for Permanent Disturbance and €25,000 for Temporary disturbance which, in our opinion, would be relievable under section 536(1) TCA 1997*".

8. The Appellant argues that the overall sum received can be subdivided and specific sums allocated to headings of compensation i.e. injurious affection, disturbance, severance and goodwill and that different provisions apply. The Appellant submits that they are to be regarded, not as a sum paid on disposal of the asset, but as a capital sum derived from an asset, where no asset is disposed of. The Appellant submits that he has remedied the injury caused by the CPO, by purchasing a neighbouring farm for the sum of €1,300,000

and carrying out works, such that relief under section 536(1)(a) of the TCA 1997 is available to him.

9. The Appellant's Statement of Case dated 20 September 2019, indicates that the total sum of €2,850,000 was received, the proceeds of which were divided under the following headings:-

Reinvestment costs	€156,250
Permanent disturbance	€61,500
Temporary disturbance	€25,000
Goodwill	€148,650
Costs	€86,960
Injuries Affection	€538,000 (house €64,000, Agricultural Land €192,000 and plot 2 (larger area) €282,000)
Severance	€465,600
Land take	€1, 368, 040

10. The Appellant maintains that relief under section 536(1) TCA 1997 was claimed within time as is illustrated from the figures reflected in the Appellant's Form 11 for the year 2008 and that section 865 TCA 1997 does not apply to the Appellant's circumstances. The Appellant argues that section 955 TCA 1997 applies such that the four year time limit for making an amended assessment does not apply. The Appellant has submitted various computations in relation to the repayment amounts due and owing to the Appellant.

11. The Respondent contends that the proposed subdivision of the overall sum is artificial and should not occur. The payments received and subdivided are not a "*capital sum…derived from an asset*" within the meaning of section 535(2)(a) TCA 1997. As section 535(2)(a) TCA 1997 does not apply, section 536 TCA 1997 is not engaged and relief is not available to the Appellant. The Respondent argues that "*it has long been recognised that payments derived from statute where no asset is disposed of are not payments derived from an asset and it is indisputable that the payments in issue here are derived from statute*".

12. In addition, the Respondent contends that even if section 536 TCA 1997 did apply, relief was not applied for within the time provided for in section 865(4) TCA 1997 and is not available to the Appellant. The Respondent states that "*any relief applied for outside the four year rule cannot be granted*" and argues that the relief applied for, was first mentioned in correspondence dated 30 January 2018, well outside the four year period as provided for in section 865 TCA 1997.

Legislation and Guidelines

13. The relevant legislation that applies in respect of this appeal is as follows:

14. Section 865 of the TCA 1997, Repayment of Tax, provides:-

"(1)…

(b) For the purposes of subsection (3) –

(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II) the repayment treated as claimed, if due -

(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.

ii) Where all information which the revenue commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable shall be treated as a valid claim when that information has been furnished by the person, and

(iii)…."

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made—

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,

after the end of the chargeable period to which the claim relates.

(6)…….

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

15. Section 955(2) of the TCA1997, Amendment of and time limit for assessments, provides:-

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

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

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

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

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

(iv) *to correct an error in calculation, or*

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

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

16. Section 535 of the TCA 1997, Disposals where capital sums derived from assets, provides:-

(1) In this section "capital sum" means any money or money's worth not excluded from the consideration taken into account in the computation of the gain under chapter 2 of this part.

(2) (a) Subject to sections 536 and 537(1) and to any other exceptions in the Capital Gains Tax Acts, there shall be for the purposes of those Acts a disposal of an asset by its owner where any capital sum is derived from the asset notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph shall apply in particular to –

(i) capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset,

(ii) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset,

(iii) capital sums received in return for forfeiture or surrender over right or for refraining from exercising a right, and

(iv) capital sums received as consideration for use or exploitation of an asset.

(b) Without prejudice to paragraph (a)(ii) but subject to paragraph (c) neither the rights of the insurer nor the rights of the insured under any policy of

insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue, and in this paragraph "policy of insurance" does not include a policy of assurance on human life.

(c) Paragraph (b) shall not apply where the rise to any capital sum within paragraph (a)(ii) is assigned after the event giving rise to the damage or injury to, or the loss or depreciation of, an asset has occurred, and for the purposes of the Capital Gains Tax Acts such an assignment shall be deemed to be a disposal of an interest in the asset concerned."

17. Section 536 of the TCA 1997, Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases, provides:

(1)(a) Subject to paragraph (b), where the recipient so claims, receipt of a capital sum within subparagraph (i), (ii), (iii) or (iv) of section 535(2)(a) derived from an asset which is not lost or destroyed shall not be treated as a disposal of the asset if -

(i) the capital sum is wholly applied in restoring the asset, or

(ii) the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum;

but, if the receipt is not treated as a disposal, all sums which, if the receipt had been so treated, would have been taken into account as consideration for that disposal in the computation of a gain accruing on the disposal shall be deducted from any expenditure allowable under Chapter 2 of this Part as a deduction in computing again on the subsequent disposal of the asset.

(b) Paragraph (a) shall not apply to cases within subparagraph (ii) of that paragraph if immediately before the receipt of the capital sum there is no expenditure attributable to the asset under paragraphs (a) and (b) of section 552(1) or if the consideration for the part disposal deemed to be effected on receipt of the capital sum exceeds that expenditure".

Submissions

Appellant

18. The Appellant gave the following evidence at the hearing of his appeal:-

(i) He mentioned that he owns two farms that are represented in the colour blue on the map that was submitted prior to the hearing. He stated that the motorway when

built, went straight through both of his farms. He said that he bought the neighbouring land represented in orange on the map, as an attempt to join his farm land. He mentioned that the motorway has had a huge effect not only on his ability to farm, but also his ability to access the land.

(ii) He submitted that the actual shape of his fields are now problematic and that he is left with an area of land to the right of the map, which is very difficult for farming, given the triangular shape of the land. It has had a huge effect on the way that he is tillage farming. He stated that for the purpose of general farming, when he was in cattle, he could let the cows out and the farm was one continuous farm. Now, everything on the far side of the motorway must go over the bridge. He stated that he may have had the option to begin milking, but that was taken away from him when the motorway was built, given that the areas of land were now split and he could not bring the cows over the bridge.

(iii) He stated that in or around 2007, [redacted] County Council first approached him in relation to the CPO. He gave evidence that the fences went up and he had no access to his farmland that was to be acquired. He stated that he bought the neighbouring land in or around 2008 or 2009 and paid €1,300,000 inclusive of stamp duty on fees. He mentioned that he found the whole process extremely stressful and that he never wanted the road. He said that it was a type of bereavement for him, having taken over the farm in 1977 and being a farmer since he was 15 years old. He stated that the farmland has been in his family for many years.

(iv) Under cross-examination he stated that the CPO had a huge impact on his business and damaged the everyday business of farming. That 30 acres was taken across two parcels of land. In relation to the question of what relief was claimed, he stated that at the time, he mainly left any correspondence with the Respondent to his Tax Agent. When referred to the Form 11 at page 72 of the Respondent's bundle of documents and when asked where it stated that monies were reinvested in the purchase of land from his neighbour, he stated that the sum of €1,300,000 was not mentioned in the return, as it was likely that the purchase of the neighbouring land had not taken place in that tax year. When asked if the relief predicated could not be claimed, because it had not happened in that tax year, he stated that he agreed and that he gave everything to his accountant as he is a farmer, not an accountant.

(v) He gave evidence that he engaged his current Tax Agent when he received a Notice of Audit from the Respondent, in November 2011. He accepted that the documentation from [redacted] County Council setting out the various headings under which the compensation was paid was not available to him, until in or around 2017 and that prior to that, his Tax Agent was working on estimates. He accepted that there was nothing in the correspondence submitted up and until January 2018 that made reference to the purchase of the neighbouring land and the expenditure of €1,300,000, so as to claim relief under the provisions of section 536 TCA 1997. He stated that he had never seen a breakdown of the actual figures and headings under which the compensation was paid and that he did not know whether he had a right to that, as he mentioned that [redacted] County Council told them that he did not. He stated that he did not think that he could get the breakdown of these figures.

(vi) He agreed that the chargeable amount to CGT was simply reduced in his return for 2008 and that it did not reflect the purchase price paid for the neighbouring land. He also agreed that the damage that occurred was damage to the farming business and that the figure of €2,850,000 was compensation for everything, as such. He stated that he did not purchase the neighbouring land until such time that he had the funds in his account, as he was not in a financial position to do so otherwise.

19. [redacted] gave evidence on behalf of the Appellant as follows:-

(i) He stated that in his experience to date, he has never acquired documents from a County Council, in relation to the various breakdown of figures paid by way of compensation for a CPO. He mentioned that the County Council will provide you with a global figure only, in relation to any compensation paid. He gave evidence that when a landowner is invited to set out what compensation might be appropriate in the context of a CPO, it is usual that a breakdown of figures is provided to the County Council, to form a basis for discussion with a view to agreeing a final figure of compensation. He stated that it is not a case that you are necessarily working in the dark without the breakdown of figures used to arrive at the final compensation figure, but that you are relying on the estimates used during the discussions with the County Council.

(ii) When asked why there was no reference on the Form 11 to the reinvestment of the monies, for the purchase of the neighbouring land in the sum of €1,300,000 and the claim under section 536 TCA 1997, he stated that he does not know where that would be included in a Form 11. He mentioned that he did not complete and submit the Form 11 in respect of the Appellant. When asked were the two figures

relating to injurious affection and temporary and permanent deducted because it was on the basis that they are not chargeable to CGT at all, rather than being derived from an asset, he said that he could not answer that.

20. The Appellant's Tax Agent made the following submissions on behalf of the Appellant:-

(i) In relation to section 536 TCA 1997 the date upon which the compensation was paid is key. There is evidence of a reinvestment of a sum of money within one year of the disposal to satisfy the provisions of section 536 TCA 1997.

(ii) Rollover relief was claimed in the Appellant's original computation. The figures clearly show that. However, the Appellant could not acquire the information as to the various headings and breakdown of payments from [redacted] County Council, in order to get the exact figures for the purposes of computation. He was working on estimates at this stage.

(iii) The breakdown of compensation into different headings relates back to the Land Clauses Consolidation Act 1845. Two categories can be identified, namely compensation for land taken and injurious affection and severance. In addition, there are payments made for disturbance and this relates back to a common law right before the Acquisition of Land (Assessment of Compensation) Act 1919. There are three distinct groups for compensation. CGT was introduced in 1975 and grounded on the 1845 and 1919 Acts.

(iv) Reference was made to section 535 and section 536 TCA 997 and to the decision of *Chaloner (H.M. Inspector of Taxes) v Pellipar Investments Limited* 68 TC 238 in support of the claim that the compensation received is a capital sum derived from an asset. Reference was also made to the decisions of *Zim Properties v Proctor* 58 TC 371*, Pritchard v Purves (Inspector of Taxes)* [1995] STC (SCD) 316, *Marren v Ingles* [1980] STC 500, *Henderson v Davis* [1995] STC (SCD) 308 and *Davis v Powell* 51 TC 492.

(v) The Appellant restored the damage to the two parcels of land by purchasing the interim land and that is the mechanism by which you restore something. The CGT refund is due in accordance with the provisions of section 536TCA 1997. Reference was made to a previous decision of the Commission in 127TACD2021 and that this is directly applicable to the present circumstances of the Appellant's appeal. Relief was sought under section 536(1)(a) TCA 1997 but Commissioner Cummins allowed relief under section 536(2). The Appellant is relying on either section.

(vi) Reference was made to the decision of *Bookfinders Limited v The Revenue Commissioners* [2020] IESC 60 that an Appeal Commissioner is required to look at the plain and ordinary meaning of the wording of a statute.

(vii) Reference was made to section 865 TCA 1997 and the four year rule. Reference was made to sections 877, 922, 931, 924 and 955 TCA 1997, in particular to section 955(2)(b) TCA 1997. In addition, reference was made to a previous decision of Commissioner O'Callaghan in *TC v Revenue Commissioners (271*/13) in relation to an appeal about an annual maintenance payment and the application of section 955 TCA 1997. That this is a discovery assessment via an amended assessment.

(viii) Reference was made to the decision of *The State (at the prosecution of Patrick J Whelan) v Michael Smidic (Appeal Commissioners of Income Tax* [1938] ITR Vol 1 ("*Smidic*") and the role of an Appeals Commissioner, namely that an Appeal Commissioner has a wide role inter parties and is not just confined to abating, reducing or increasing an assessment. An Appeal Commissioner's jurisdiction is in the nature of an inquiry and the role is to find out what the correct tax result ought to be. An Appeal Commissioner can do that, regardless of whether the relief is claimed in time or not.

Respondent

21. Counsel for the Respondent made the following submissions:-

(i) The grounds of appeal set out two quite separate issues. Section 535, is predicated on a payment, derived from an asset, being brought within the charge to tax and then giving rise potentially to an entitlement for rollover relief, but the starting point for the rollover relief is that the amount that you receive is chargeable to tax. That is the section 536 TCA 1997 claim. The second element of the appeal is that, if section 535 TCA 1997 does not apply, then the compensation proceeds are not brought within the charge to tax and the Appellant says that he simply gets to deduct the amounts as they are not chargeable to tax in the first place. That appears to be the basis which might be attributed to the deductions in the Appellant's 2008 return. The two propositions are not compatible. The deduction or the payment being outside the scope is the opposite, and the two very different propositions.

(ii) There was an endless exchange of correspondence but the first time that the relief was claimed under section 536 TCA 1997, was on 30 January 2018. Even if that

interpretation is wrong, there is no mention of the relief being claimed and reinvestment of the monies in Form 11 for the tax year 2008. Reference was made to the computation which forms the basis of the Appellant's Form 11 for the tax year 2008 and that the amounts appear to be deductions rather than a claim for relief. It may be that it was thought that those amounts were not subject to CGT in the first place, as they were not payments derived from an asset. If that is the case, then there is no claim for relief in the return as relief is predicated on the statutory compensation payments being subject to the charge to CGT. So, not only could there not be any claim for relief on the face of the return, but if the return is based on this computation then it is completely incompatible with a claim for relief.

(iii) The reference to section 955 TCA 1997 and the words "*tax shall be paid or repaid",* refers to the assessment. Where an assessment is made outside the four-year time limit, in the permitted circumstances, tax can be paid or repaid on foot of that assessment. The assessment that we are concerned with here does not disclose or contain any repayment or relief granted by the Respondent. The Respondent must have all the information it might reasonably require to determine if and to what extent a repayment of tax is due. A positive act has to be undertaken to claim the relief and section 536(1) and 536(2) TCA 1997 states "*where the recipient so claims."* On no account, could it be said that any relief or deduction, was claimed in the Form 11 delivered in 2009 for the year 2008, or in the computation that travelled with the return.

(iv) Reference was made to the *Smidic* decision and the role of an Appeal Commissioner not being to conduct an inquiry. The Appellant has not made a section 536 claim under any particular heading. Reference was made to the decision of Commissioner O'Callaghan in *TC v Revenue Commissioners* and that it does not support the Appellant's argument.

(v) Reference was made to sections 877, 924, 931 and 955 TCA 1997. This is not a first assessment and the Respondent did issue an assessment here, it did not allow any relief. Case 127TACD2021 can be distinguished and should not be relied upon. Reference was made to section 536 that this is in effect an expansion to the charge to tax. Reference was made to the case law submitted and that it can be distinguished. In particular to the decision of *Davis v Powell* and the cases which follow, that statutory payments for compensation do not come within the scope of section 535(2) TCA 1997.

Material Facts

22. The Commissioner makes the following material findings of fact:-

(i) The Appellant disposed of part of his farmland in [redacted] to [redacted] County Council under a CPO.

(ii) In February 2008, the total sum of €2,850,000 was paid to the Appellant as compensation for the lands acquired by [redacted] County Council.

(iii) The sum of €2,850,000 is a statutory payment made to the Appellant for the compulsory purchase of his land by [redacted] County Council.

(iv) In or around mid-April 2008, the Appellant was in the process of agreeing and exchanging contracts to purchase the neighbouring farm for the sum of €1,300,000.

(v) In June 2018, a Notice of Amended Assessment to CGT issued in the sum of €44,185 for the year 2008.

(vi) In January 2018, the Appellant's Tax Agent wrote to the Respondent to claim relief under section 536(1) TCA 1997.

(vii) The Appellant's Form 11 for the year 2008 does not refer to the reinvestment of monies for the purchase of the neighbouring land and does not purport to claim relief under section 536(1) TCA 1997.

Analysis

23. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another,* [2010] IEHC 49, at para. 22, Charleton J. stated

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".*

24. Further, the Commissioner considers it proper to first consider and identify the approach which the Commissioner is required to take in relation to the interpretation of taxation statutes. The principles are well settled and the Commissioner had the benefit of eloquent

and learned submissions from both Counsel, on how the Commissioner should read, understand and apply the various statutes that were opened.

25. The Commissioner is cognisant of the recent decision of McDonald J. in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 wherein he reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74

> "*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. 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"*.

26. The Commissioner is of the view that this is the most recent decision of the Courts in this jurisdiction, in relation to the approach to be taken to statutory interpretation and as such, is authoritative in this regard. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. In addition, as an exemption to the liability to pay tax has been sought, therefore, an exemption must be strictly construed.

27. Before addressing the competing arguments in relation to whether the provisions of section 535 and section 536 TCA 1997 apply, the appropriate starting point is to address the arguments in relation to section 865 TCA 1997.

Section 865 TCA 1997

28. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. Section 865(3) TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.

29. Section 865(1)(b)(i) TCA 1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which

the Respondent may reasonably require to enable it to determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.

30. Section 865(1)(b)(ii) TCA 1997 provides that where all the information which the Respondent may reasonably require to enable it to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.

31. In relation to a limitation period for a repayment of tax section 865(4) TCA 1997 provides that *'…a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made- ….. within 4 years, after the end of the chargeable period to which the claim relates.*'. [Emphasis added]. As the Appellant's claim for repayment relates to the tax year 2008, a valid claim for repayment must have been made on or before 31 December 2012.

32. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax to be due, the Respondent must have received a valid claim from the Appellant.

33. The use of the word "shall" as set out in section 865(4) TCA 1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the four year period specified in section 865(4) TCA 1997.

34. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website[1].

35. The Commissioner has considered the Appellant's argument that a "valid claim" emanates from the computation attached to the Appellant's Form 11 for the tax year 2008. The Commissioner notes that the Appellant's Agent's calculated the "Estimated CGT" for the purposes of the Form 11 as the sum of €2,850,000 less the amount of €462,000 for "Injurious" and "Temp/Perm" and other costs to arrive at a sum of €1,802,877 as the net gain for the purposes of CGT. When CGT is calculated at 20%, a figure of €360,575 is

[1] www.taxappeals.ie

arrived at as the tax payable by the Appellant to the Respondent. The Commissioner is satisfied that the computation clearly illustrates an intention to remove the sum of €462,000 from the charge to tax by deducting it from the total figure of compensation received by the Appellant. Notably, there is no mention in this computation of the reinvestment of monies to purchase the neighbouring farm, despite the evidence being that Form 11 for the tax year 2008 was submitted in 2009.

36. The Commissioner cannot accept the Appellant's argument that Form 11 forms the basis of a valid claim for repayment of tax in accordance with the provisions of section 865 TCA 1997. What is required by section 865(3) TCA 1997 is first, the provision of a statement or return required to be delivered by a person for a chargeable period, second, this must contain all the information reasonably required for Revenue to determine whether and to what extent a repayment is due and third, until that information is required the claim is not a valid one. It is only on the provision of information reasonably required that a valid claim is made. As set out above, the calculations clearly remove the sum of €462,000 for "injuries" and "temp/perm" from the charge to tax. In order for the Appellant's claim to succeed, namely that Form 11 is the basis of a valid claim for relief under section 536 TCA 1997, the amounts must be within the charge to tax. If amounts are not within the charge to tax, it is incompatible with a claim for relief under section 536 TCA 1997. Accordingly, the Commissioner is satisfied that there is no valid claim for relief in the Form 11, as relief is predicated on the statutory compensation payments being subject to the charge to CGT.

37. However, if the Commissioner is wrong in her interpretation of the calculations submitted with the Appellant's Form 11, and if the Commissioner were to accept that Form 11 forms the basis of a valid claim for a repayment of tax, the Appellant also fails in his claim as manifestly, there was no reference in correspondence, spanning the entire period 2011 to 2018, to an entitlement to a repayment of tax, in accordance with the provisions of section 535 and section 536 TCA 1997. It was not until October 2017, that the Respondent had information in relation to sums allocated to the various headings, which was information that was reasonably required in order that a valid claim could be made and it was not until correspondence dated 30 January 2018, issued from the Appellant's Tax Agent to the Respondent, that the first mention was made of an entitlement to relief under section 536(1) TCA 1997 and a repayment of tax on that basis. Such was the absence of objective information in relation to the amounts to be allocated to the various headings of compensation, that on 14 August 2017, the Respondent issued a notice under section 902 TCA 1997 to [redacted] County Council, in order to establish the sums allocated to the various headings of deduction raised by the Appellant in correspondence. Consequently, it was only in October 2017 that those amounts were accepted by the Respondent as being

correct. Accordingly, the Commissioner is satisfied that the Appellant did not furnish the Respondent with information sufficient to enable it to determine whether or to what extent a repayment arose within the requisite four year period in accordance with section 865(1) TCA 1997 and the Appellant's appeal must fail.

38. The Commissioner has considered the Appellant's argument in relation to the applicability of sections 877, 922, 931, 924 and 955 TCA 1997. The Commissioner does not accept that as a Notice of Amended Assessment issued on 13 June 2018, section 955 TCA 1997 operates to essentially nullify section 865 TCA 1997. The wording of section 955 TCA 1997 makes it abundantly clear that the repayment of tax referred to is not one arising from a late repayment claim by a taxpayer, but one arising on foot of an amended assessment issued by an authorised officer.

39. Further the Commissioner does not accept the Appellant's argument that "*the appeal here is against the Revenue assessment that CGT rollover relief does not apply and should the position be that there is a repayment of CGT to give effect to the Tax Appeals Commissioner's determination then the 4 year time limit in section 865 TCA 97 does not come into play*".

40. Accordingly, the Commissioner finds that the Appellant has not discharged the burden of proof to satisfy the Commissioner that a valid claim for a repayment of tax was made in accordance with the provisions of section 865 TCA 1997.

41. As the Commissioner has determined that no valid claim exists in relation to a repayment, there is no requirement for the Commissioner to consider any additional arguments of the Appellant relating to the application of the provisions of section 535 and section 536 TCA 1997 to the compensation received by the Appellant following the CPO, as the issue of the time limit under section 865 TCA 1997 is determinative.

Determination

42. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal. The Appellant has not succeeded in showing that the tax is not payable and the Assessment shall stand.

43. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax.

44. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason 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 TCA 1997.

Claire Millrine
Appeal Commissioner
30 June 2022

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