



**121TACD2022**

Between

██████████

**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 ██████████ (“the Appellant”) against Notices of Assessment to Capital Gains Tax (“CGT”) and Income Tax (“IT”) raised by the Revenue Commissioners (“the Respondent”) in relation to the years 2013, 2014, 2015 and 2016.
2. On 30 July 2019, the Appellant duly appealed to the Commission. The hearing of this appeal was initially scheduled for 13 May 2022. However, on that date the hearing of the appeal was adjourned to provide the Appellant a further opportunity to furnish documentation in relation to his appeal and to request that the Respondent engage the services of a Stenographer to transcribe the proceedings.
3. On 28 June 2022, the hearing of the appeal proceeded and a stenographer was present to transcribe the proceedings. The parties have been furnished with copy of the transcript. In addition, the Commissioner has also been furnished with a copy of the transcript. The Commissioner heard evidence and submissions from the Appellant and evidence and submissions from the Respondent, who was represented by ██████████ and ██████████.

## Background

4. The Appellant's Notice of Appeal dated 30 July 2019, sets out his Grounds for Appeal as follows:-
- "Incorrect assessment made by Revenue, in particular for 2016.
  - Delay by Revenue in issuing tax demands for 2013, 2014, 2015, 2016, 2017 and 2018 following my submissions at their request.
  - Arbitrary manner in which Revenue states that I attempted to evade and lie about my income.
  - Amount of interest Revenue wishes to charge.
  - Amount of penalties Revenue wishes to charge".
5. The Appellant argues that he made significant losses in 2008, as a result of shares that he held in Anglo Irish bank ("Anglo shares") and that losses should be carried forward such that they result in the Appellant being entitled to a tax credit in the sum of €13,000.
6. The Respondent submits in its Statement of Case received by the Commission on 16 December 2019 that *"the main issue is the non-reporting of income and gains arising from investments held in the United States. The Appellant appears to have appealed against IT and CGT Assessment raised for the periods 2013 - 2016 along with the amount of relevant interest and penalties."*
7. The Respondent has set out the Appellant's liabilities to CGT for the years 2013- 2015 as follows:

	2013	2014	2015
<b>Realised gain in Dollars</b>	704,702	-127,423	138,326
<b>Realised gain converted to Euro</b>	€530,609	-€95,919	€124,674
<b>Less loss forward</b>	0.00	0.00	-€95,919
<b>Gain</b>	€530,609	0.00	€28,759
<b>Less Exemption</b>	-€1,270	0.00	-€1,270

<b>Chargeable gain</b>	€529,339	0.00	€27,489
<b>Subject to CGT @ 33%</b>	€174,681	0.00	€9,071
<b>Late filing surcharge 10%</b>	€17,468	0.00	€907
<b>Total Tax &amp; Surcharge</b>	€192,149	0.00	€9,978
<b>Statutory interest up to 22 May 2019</b>	€83,487	0.00	€2,740

8. The Respondent submits that the calculations for the year 2016, result in a liability in the sum of €19,811. The Respondent has confirmed that all liabilities have been discharged but for the interest and penalties that have accrued.

#### **Legislation and Guidelines**

9. The legislation relevant to this appeal is as follows:

10. Section 532 of the TCA 1997, Assets, provides:-

*(1) All forms of property shall be assets for the purposes of the Capital Gains Tax Acts whether situated in the State or not, including—*

*(a) options, debts and incorporeal property generally,*

*(b) any currency other than Irish currency, and*

*(c) any form of property created by the person disposing of it, or otherwise becoming owned without being acquired.*

11. Section 534 of the TCA 1997, Disposal of Assets, provides:-

*For the purposes of the Capital Gains Tax Acts—*

*(a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and*

*(b) there shall be a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal,*

*and, generally, there shall be a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.*

12. Section 546 TCA 1997, Allowable losses, provides:-

.....

*(2) Except where otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.*

*(3) Except where otherwise expressly provided, the provisions of the Capital Gains Tax Acts which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly,*

.....

*(5) Except where provided by section 573 , an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Act-*

*(a) more than once in respect of any loss or part of a loss, and*

*(b) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts*

.....

13. Section 959A TCA 1997, Interpretation, provides:-

*“chargeable person” means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person’s own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates.*

14. Section 959I TCA 1997, Obligation to make a return, provides:-

*“(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form”*

## **Submissions**

### *Appellant*

15. The Appellant gave the following evidence in support of his appeal:-

- (i) He has attempted to explore matters online with the Respondent. However, he has been made to feel like a criminal throughout the process, namely someone who has acquired money by criminal means. He has not earned any PAYE income in Ireland since 1982 and has a small pension entitlement. He mentioned that he has made limited gains on any shareholdings.
- (ii) He had 35,000 Anglo shares which since 2008, have been deemed to be worthless. There is no time limit on the length of time that losses can be carried forward. He said that the rate of CGT for 2008 is stated on the Respondent's website as 20%. However, the Respondent applied the rate of 33% in 2008. He stated that the Respondent's website also reflects a married persons allowance as €3,400. However, he has only been afforded the amount of €1,270 as a married person's allowance, which is wrong.
- (iii) He has been charged both a surcharge and interest on his liabilities for the period at issue. The interest is calculated on the sum inclusive of surcharge and therefore incorrect. He mentioned that he should not be liable to interest and penalties and that the Respondent delayed in issuing the assessments.
- (iv) All liabilities have been paid for the years 2013, 2015 and 2016, but for the statutory interest applied for each year and that there was no liability due for the year 2014. The losses incurred from Anglo shares should have been applied to both his 2008 and 2016 gains, such that there is now a credit due to him in the sum of €13,000. Reference was made to a computation he submitted in support of this and a computation in relation to losses incurred on Anglo shares amounting to the sum of €31,610. He mentioned that he was prepared to accept the liabilities incurred for the years 2013 and 2015 but not the surcharge, interest or penalties imposed. Nevertheless, he is not prepared to accept the penalties arising and liabilities incurred for the year 2016.
- (v) He mentioned that his correct PPSN was queried and he has had no response from the Respondent in relation to this, despite many attempts by him to correspond with the Respondent. Neither has he received a receipt for any tax paid, despite same being requested. The 2008 correspondence never mentioned losses incurred by him, in relation to his Anglo shares, and that there was no

assessment made for 2008. The Respondent's calculations in relation to the gains made are incorrect.

*Respondent*

16. The Respondent gave the following evidence in support of its appeal:-

- (i) The Appellant's correct PPSN is the number that he refers to and the number that is used on the Notices of Assessment and all correspondence from the Respondent to the Appellant.
- (ii) References to the sum of €3,400 on the website of the Respondent, relates to a tax credit applied for the purposes of income tax as opposed to a tax credit for CGT which is in the sum of €1,270.
- (iii) Section 1084 TCA 1997 permits the charging of interest and penalties on the combined tax and surcharge amount and that a late filing surcharge of either 5% or 10% may be applied.
- (iv) A gain of €40,385 was made by the Appellant in 2008, on his Reuters shares and it was accepted that the losses incurred on his Anglo shares could shelter that gain, such that no CGT liability arose for 2008. The formula used as the basis for the calculations, is provided for in the legislation. Reference was made to correspondence dated 16 August 2019, from the Respondent to the Appellant enclosing draft calculations used in relation to gains made for the year 2008. There was an error in the calculations in terms of the use of 33% CGT rather than 20% CGT. However, as the losses incurred on the Anglo shares were applied to the gains made for that year, no assessment was raised for the year 2008.
- (v) The Appellant has not produced evidence to support any further losses from Anglo shares, such that the 2016 liability should be reduced.
- (vi) All liabilities have been paid for the period 2013-2016 including surcharges. However, the statutory interest imposed has not been paid.
- (vii) Withholding Tax does not impact on CGT calculations. As this was a foreign jurisdiction withholding the tax, the Respondent would not have been notified of that. Usually, a taxpayer makes a claim in their tax return or as a credit against their Irish tax.

**Material Facts**

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

- (i) The gains made by the Appellant in 2008, in the sum of €40,385, as a result of his part disposal of Reuters Group plc shares, were sheltered as a result of losses incurred on Anglo shares, such that no assessment was raised by the Respondent for any liabilities for that year.

## Analysis

18. The Commissioner listened carefully to the testimony of the Appellant and the detailed evidence given in respect of his shareholdings and the gains made and losses associated with same. The Commissioner commends the Appellant on the arguments made at the hearing of his appeal. The Commissioner noted amongst other matters, that the Appellant is unhappy with the untimely manner in which the Respondent issued Notices of Assessment to him and that he has not received a receipt for taxes paid to date, despite requests being made for same by the Appellant. He states at page 15 of the transcript *"I paid a considerable amount of tax of my own accord in 2019 and 2020, I have not received any, any receipts for that. When I tried to get a receipt for the tax paid that is when I was told my, my PPS number did not coincide with my date of birth, as if I had been aborted or terminated. So I don't know what.....I have written to, I've written to Revenue and asked them to clarify this matter and what happened but I have got no reply"*.
19. It is important to state that the scope of the jurisdiction of an Appeal Commissioner is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. It is discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 ("the Lee decision"), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.
20. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

## **Interest and Penalties**

21. The Commissioner notes that the Appellant takes issue with the interest and penalties imposed by the Respondent in relation to the period 2013 to 2016. The Commissioner heard the arguments put forward by the Appellant in relation to the application of interest and penalties on the amount inclusive of a surcharge, which the Appellant states is unfair and wrong. The Respondent argues that it derives the power to do so under the provisions of section 1084 TCA 1997. The Commissioner is satisfied that this statement is not incorrect.
22. In addition, the Commissioner notes that the Appellant queries the period upon which the Respondent can impose interest and penalties and at page 31 of the transcript the Appellant states *"You cannot charge interest on a surcharge. The surcharge only becomes payable when the amount is discharged. Revenue also said that I was dishonest and deceitful, I have a letter to that effect, and that they were going to charge me maximum surcharge"*.
23. Notwithstanding this, the Commissioner does not have jurisdiction to proceed to make a determination in respect of the application of any interest and penalties by the Respondent and has no discretion to adjust interest charges. These are statutory charges and as such, any dispute in relation to the application of interest and penalties must be decided by a Court and not the Commission. Previous determinations of the Commission have addressed the matter of interest and penalties. These determinations may be found on the Commission website<sup>1</sup>

## **Losses associated with Anglo shares**

24. The Commissioner has considered the computations submitted by the Appellant and his argument that he is due a credit in the sum of €13,000, as a result of losses incurred on Anglo shares. The Commissioner has considered the Appellant's calculations that the total losses incurred on Anglo shares to be carried forward to 2016 is €31,681. The Commissioner is cognisant that the Appellant took the time to set out the figures in his submissions and the Commissioner is grateful to the Appellant for doing so.
25. In contrast, the Commissioner is mindful of the Respondent's correspondence dated 16 August 2009 and the enclosed computation, outlining that a cash payment of £49,702.50 is viewed as a part disposal of the Reuters Group plc shares. The Commissioner notes that the Appellant acquired 14,100 shares in Reuters Group plc in 2003 and that Thompson Corporation bought Reuters Group plc in 2008, resulting in the Appellant

---

<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)



receiving the payment of £49,702.50 and 2,256 Thomson Reuters plc shares. Further, the Commissioner has considered that the Respondent deemed the receipt as a part disposal of Reuters Group plc shares and as such is subject to CGT. The Commissioner is satisfied that the Respondent did not err in classifying the receipt of the payment, in such a manner.

26. In addition, the Commissioner is satisfied that the correct credit available to the Appellant in respect of CGT is €1,270, was applied correctly by the Respondent. Further, in respect of the Appellant's argument that the Respondent applied the incorrect rate of CGT at the time in 2008 namely, 33% s opposed to 20%, the Commissioner accepts the Respondent's explanation that this was an error on the Respondent's part. However, as no assessment was raised for the year 2008 as gains were sheltered and whilst not ideal in terms of the error, it had no bearing on the Appellant's liabilities, as the evidence is that it was a draft calculation before a decision was made not to raise an assessment to tax for that year. The Respondent states at page 42 of the transcript that *"in the original draft computation that was issued there was the incorrect rate of 33%..... But because we had used the losses there was no CGT arising in 20, or 2008 and no assessment has been raised for 2008"*.

27. The Commissioner heard evidence that the Respondent accepts that the Appellant incurred significant losses in relation to a holding of 21,518 Anglo shares. The Commissioner notes the 2005 and 2008 documentation submitted in relation to the Appellant's Anglo shares. However, as not all of the documentation submitted accurately supports the actual monetary loss incurred by the Appellant, the Respondent proceeded to estimate the losses incurred, determining that there would be no CGT payable on the part disposal in 2008 and that no assessment should be raised for that year, such that the losses incurred on Anglo shares in effect sheltered the gain. The estimated loss was calculated in line with market information available at the time of calculation as to share pricing. The gains made by the Appellant in 2008, were in the sum of €40,385. Therefore, the Commissioner is satisfied that the Respondent has acknowledged the losses from Anglo shares to the sum of the gain made in 2008 being €40,385. At page 37 and 38 of the transcript the Respondent confirms that this amount was applied to shelter those gains made and that at this remove, there is no further losses to be carried forward such that any gains made in 2016 can be sheltered also. The transcript states *"Even if you look at our 2008 calculation we, further to Mr. [REDACTED] submissions, even though we didn't have exact figures of losses we said we would allow, given the amount of time ago that we would allow, the gain we calculated for 2008 was €40,385....we said we would accept that if there was Anglo losses available that they may be sufficient to shelter that gain so*

*we did not look to raise any assessment for 2008, so you can see the losses have been taken into account”.*

28. The Commissioner has considered the Appellant's argument that there are outstanding losses arising from his Anglo shares that should be applied to his 2016 liability, resulting in a credit due and owing to the Appellant in the sum, of €13,000. The law is such 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”.*

29. Accordingly, in the absence of any further evidence as to losses incurred in excess of the amount applied to the Appellant's gains made in 2008, the Commissioner finds that the Appellant has not discharged the burden of proof to satisfy the Commissioner that further losses are available to him to reduce his liabilities for the year 2016, resulting in a credit of €13,000. Whilst calculations and computations have been submitted, the Commissioner is not satisfied that this establishes that a further credit in the sum of €13,000 is due to the Appellant.
30. The Commissioner is mindful of the Respondent's representation at hearing that if the Appellant can produce evidence of further losses arising from Anglo shares, then it will engage with the Appellant again to advance matters. Should the Appellant have further documentary evidence to substantiate further losses, the Commissioner encourages the Appellant to present that to the Respondent.

### **Determination**

31. 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 is not payable.
32. 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. The Appellant was correct to check whether his legal rights were applied correctly.
33. 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.

A handwritten signature in black ink, appearing to read 'Claire Millrine', with a stylized, cursive script.

Claire Millrine  
Appeal Commissioner  
12 July 2022